

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

G.T. by his Parents Michelle and Jamie T.,
K.M. by his Parents Danielle and Steven M.,
*on behalf of themselves and all similarly
situated individuals*, and THE ARC OF
WEST VIRGINIA,

Civil Action No. 2:20-cv-00057

Plaintiffs,

Judge Irene C. Berger

v.

THE BOARD OF EDUCATION OF THE
COUNTY OF KANAWHA,

Defendant.

DECLARATION OF JUDY ELLIOTT, Ph.D.

I, Judy Elliott, do hereby declare as follows:

1. I have been retained to act as an expert witness for the Plaintiffs in the above-captioned action.
2. Attached hereto as Exhibit A is a true and accurate copy of my April 16, 2021, Report in support of Plaintiffs' Motion for Class Certification, and the exhibits attached thereto (collectively, my "report").
3. My report describes the primary data and other information I considered in forming my opinions.
4. My CV is attached as Appendix A to my report, and sets forth my qualifications and all publications I have authored in the past 10 years.
5. Within the last four years, I have provided reports as an expert witness or court monitor in the following federal court litigation:

- a. *Stephen C. v. Bureau of Indian Educ.*, No. CV-17-08004-PCT (D. Ariz.) (expert witness);
- b. *T.G. v. Kern Cnty.*, No. 1:18-cv-0257 JLT (E.D. Calif.) (court monitor); and
- c. *M.H. v. Mount Vernon City Sch. Dist.*, No. 7:13-cv-03596-VB-PED (S.D.N.Y.) (court monitor).

6. I am compensated for work on my report at a rate of \$250 per hour. Because of the COVID-19 pandemic, I have not yet traveled to Kanawha County for this report; should that happen, I will be compensated at the rate of \$2,500 per day.

7. I respectfully adopt and incorporate into this Declaration my report, which describes the testimony I am offering in support of Plaintiffs' Motion for Class Certification.

8. I understand and intend that my report is to be presented to the Court with the same weight and consequences as if I had stated the report orally, under oath, in a court of law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26th, 2021 in Tampa, Florida.



Judy Elliott, Ph.D.

EXHIBIT A

Report of Judy Elliott, Ph.D.
April 16, 2021
G.T. v. Board of Education of Kanawha County

INTRODUCTION AND EXECUTIVE SUMMARY

I have been retained by Plaintiffs to provide my expert opinions on issues related to the education of students with disabilities who need behavior supports in the Kanawha County Schools (KCS).

I have worked as a teacher, school psychologist, administrator, consultant, and court monitor in the field of the education of students with disabilities for almost 40 years. I was responsible for educating students with disabilities in some of the nation's largest school districts, including as Chief Academic Officer for the Los Angeles Unified School District. I have been an adjunct professor and lecturer in special education and school psychology at two universities, and I have co-authored approximately 50 articles, books, book chapters, and reports. The opinions expressed in this report are the product of this experience, my analysis of quantitative data about KCS, and my review of deposition transcripts, KCS policy documents, and a sample of 332 sets of records of KCS students with disabilities.

In this report, I set forth my opinions in response to a set of questions posed to me by Plaintiffs' counsel. These questions include:

- Whether KCS has an adequate system and procedures for identifying students with disabilities who need behavior supports to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) without disability-based discrimination?¹
- Whether KCS has an adequate system and procedures for identifying the causes of disruptive behavior when developing behavior supports for students with disabilities who need them to receive FAPE in the LRE without discrimination?
- Whether KCS has an adequate system and procedures for developing individualized education program plans (IEPs), "Section 504" service plans, and

¹ The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities who need special education services be provided FAPE in the LRE, through the child's Individualized Education Program (IEP) plan. *See* 20 U.S.C. §§ 1400(d)(1)(A), 1401(9), 1412(a)(1), 1412(a)(5); 34 C.F.R. §§ 300.101, 300.114. Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA) prohibit discrimination against individuals with disabilities based on disability, including in public education settings. *See* 29 U.S.C. § 794; 42 U.S.C. § 12132. For further discussion of IEPs, "Section 504" service plans, and behavior intervention plans (BIPs), see pp. 31-38 *infra*.

behavior intervention plans (BIPs) for students with disabilities who need behavior supports to receive FAPE in the LRE without discrimination?

- Whether KCS has an adequate system and procedures for implementing IEPs, “Section 504” plans, and BIPs for students with disabilities who need behavior supports to receive FAPE in the LRE without discrimination?
- Whether KCS has an adequate system and procedures for monitoring whether students with disabilities who receive behavior supports make appropriate progress in their educational programs?
- Whether KCS adequately monitors that its disciplinary policies are implemented in compliance with the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act?
- Whether KCS provides adequate training and professional development to staff so that they can provide behavior supports to students who need them to receive FAPE in the LRE without discrimination?

My opinions may be summarized as follows:

1. KCS does not have a systemic infrastructure to identify, develop, implement, monitor, and evaluate the impact of behavior supports for students with disabilities. Among other things, the KCS Exceptional Students Office, which is responsible for the education of KCS students with disabilities, lacks access to data, or does not collect data, to enable on-going monitoring and evaluation of behavior supports to students with disabilities.
2. KCS does not have or use student-level or school-level data to routinely monitor:
 - a. The rates of determinations for special education eligibility and need for behavior supports, and placements in separate special education classrooms.
 - b. The rates of suspensions of students with disabilities, disaggregated by category of student (for special education or “Section 504” eligibility), race/ethnicity, level of schooling (elementary, middle, or high), and across schools.

- c. Lost instructional time, in days, weeks, or months, for students with disabilities because of suspensions and office disciplinary referrals.
 - d. The academic performance of students with disabilities, through regular assessments, monitoring for the need for early interventions, on-going progress monitoring (OPM), and analysis of whether students meet academic benchmarks.
 - e. The impact of the district's educational services, including behavior supports, on behavioral and social outcomes for students with disabilities.
3. KCS lacks adequate policies, practices, and procedures to guide school administrators and school-based planning teams in the implementation and monitoring of behavior supports to students with disabilities, and the evaluation of whether the students are making appropriate academic progress. This is critical, since KCS school principals and IEP (or "Section 504") planning team members are responsible for these activities.
4. KCS lacks a system for providing effective and ongoing training and professional development to staff in procedures (e.g., IEP fidelity, developing and monitoring behavior supports) that results in implementation of appropriate instructional methods, supportive related services, and other supports needed by students with disabilities across the district's schools. This includes targeted professional learning, coaching, and technical assistance needed to address critical issues in the education of students whose disabilities affect their behavior, including the type and sufficiency of behavior supports available to school staff, and the disproportionate use of suspensions.
5. KCS appears to lack sufficient personnel qualified to provide a full continuum of comprehensive behavior supports necessary to meet the full range of needs of students with disabilities.
6. KCS fails to implement districtwide whole-school approaches to supporting student behavior, including the behavior of students with disabilities, such as Positive Behavior Interventions and Supports (PBIS) and West Virginia Tiered Systems of Support (WVTSS), as encouraged by the West Virginia Department of Education (WVDOE).

In sum, KCS does not have adequate systems of policies and procedures to guide the provision of instruction, services, and supports for students with disabilities who need behavior supports. As a result, these students experience high rates of suspensions and other forms of discipline-related removals from the classroom.

QUALIFICATIONS

I am currently a consultant to several organizations, local school districts, and individual schools across the country, including the Council of the Great City Schools (CGCS), which supports over 75 school districts across the country; Sacramento City Unified School District, Sacramento, CA; Sonoma Valley Unified School District, Sonoma, CA; Palo Verde Unified School District, Blythe, CA; North College Hills City Schools, Cincinnati, OH; Educational Service Unit #3, La Vista, NE; and Grantwood Area Education Agency (AEA), Cedar Rapids, IA. In this role, I evaluate the school districts' systems for educating all students, including students with disabilities, and make recommendations for how to improve these systems to ensure that students receive FAPE in the LRE without disability-based discrimination. I work with program staff to update and realign systems for implementing curricula, instructional methods, and programs for supporting student social and emotional well-being and behavior; using data-driven decision making and problem solving to monitor progress toward improved academic outcomes; and promoting leadership and accountability for the success of all students, including students with disabilities.

Before beginning my work as a consultant in 2011, I was the Chief Academic Officer of the Los Angeles Unified School District. In this role, I oversaw curriculum and instruction from early childhood through adulthood, including for students with disabilities; professional development programs for teachers and other school staff; systems of assessing student progress and teacher effectiveness; compliance with state and federal programs, including federal requirements under the IDEA; health and human services; afterschool programs; magnet programs; language acquisition for both English and Standard English learners; parent outreach and engagement; and intensive intervention programs in academics and behavior for all students, including students with disabilities.

Before my work in Los Angeles, I was the Chief of Teaching and Learning in the Portland (OR) Public Schools. Prior to that, I was the Assistant Superintendent of Student Support Services in

the Long Beach (CA) Unified School District. My work in these roles entailed responsibilities similar to my work in Los Angeles.

I started my career as a special education classroom teacher for students with emotional and behavioral disorders and as a school psychologist. During this time, I was also an adjunct professor at the Department of Exceptional Education at what is now the University of Buffalo, part of New York's state university system, where I taught graduate courses in instructional methods and behavior analysis and support for children with disabilities. I have also worked as a Senior Researcher at the National Center on Educational Outcomes at the University of Minnesota. I have co-authored over 50 articles, books, book chapters, and reports on topics related to the education of students with disabilities and other students with specialized support needs.

In 2012, then-State Superintendent of Education (and former U.S. Secretary of Education) John King named me to be the first New York State "Distinguished Educator" to help support and oversee the Buffalo City School District's "Priority Schools," a cohort of 28 schools that the state determined needed targeted technical assistance and monitoring.

I have served as an expert witness or court monitor in the following federal court litigation:

- Stephen C. v. Bureau of Indian Educ.*, No. CV-17-08004-PCT (D. Ariz.) (expert witness)
- Ga. Advoc. Office v. State of Ga.*, No. 1:17-cv-03999 (N.D. Ga.) (expert witness)
- T.G. v. Kern Cnty.*, No. 1:18-cv-0257 JLT (E.D. Calif.) (court monitor)
- M.H. v. Mount Vernon City Sch. Dist.*, No. 7:13-cv-03596-VB-PED (S.D.N.Y.) (court monitor)

My Curriculum Vitae is attached as Appendix A.

COMPENSATION

I am compensated for my work on this report at a rate of \$250 per hour. Because of the COVID-19 pandemic, I have not yet traveled to Kanawha County for this report; should that happen, I will be compensated at the rate of \$2,500 per day.

METHODOLOGY

This report is based on my review and analysis of a number of documents provided to Plaintiffs by KCS, along with some publicly available data and policy documents. I reviewed KCS student data for the 2017-2018 school year maintained by the U.S. Department of Education Civil Rights Data Collection. I also reviewed KCS student data, including suspension data, that Plaintiffs received from the WVDOE and data provided to Plaintiffs through discovery.

I reviewed documents made available to the public through the KCS website, <https://kcs.kana.k12.wv.us>. I also reviewed about 185 documents provided by KCS in discovery, listed in Appendix B, describing the district's policies, practices, and procedures, including, but not limited to:

- Documents relating to the KCS Student Assistance Team (SAT) process for determining whether students need additional supports to make progress in the general education curriculum;
- A WVDOE "Special Education Curriculum Guide";
- Documents relating to the process for developing IEPs and BIPs;
- Documents relating to the development of functional behavior assessments (FBAs), for developing hypotheses about the function of a student's behaviors of concern, including those relating to an "Expedited FBA" process;
- A board-certified behavioral analyst (BCBA) "Referral Process Flowchart";
- Training materials, including agendas and sign-in sheets, for professional development sessions; and
- KCS's discipline policy document, which was last revised in 2012.

I reviewed materials available on the website of the WVDOE, including W. Va. Policy 2419 ("Policy 2419"), West Virginia's special education regulation, and information on the WVDOE's processes for monitoring district compliance with Policy 2419. I also reviewed the transcripts from the depositions of Dr. Katherine Porter, who was at the time KCS's Assistant Superintendent for Special Education and Student Support Services; Zachary Hanshaw; and Holly Samples.

I also reviewed student records for a sample of KCS students with disabilities. In my experience, review of a sample of student records is a standard way to evaluate a school district's systems for educating students with disabilities, including systems for providing behavior supports to students

who need them to receive FAPE in the LRE. I reviewed both records relating to the students' IEPs and "Section 504" plans (plans identifying supports for students with disabilities who have not been found eligible for special education under IDEA), and the students' disciplinary records. The records that I reviewed reflect that other class members can be identified through records maintained by KCS in its normal business operations.

I determined that to answer Plaintiffs' questions I needed to review a sample of the records of students who had experienced two or more in-school or out-of-school suspensions during an approximately 24-month period immediately preceding the filing of Plaintiffs' complaint, beginning on January 24, 2018. I asked Plaintiffs' counsel to request a list of KCS students with disabilities who had experienced an in-school or out-of-school suspension (a) two or three times, (b) four, five or six times, and (c) more than six times, between January 24, 2018 and May 22, 2020, aggregated by (i) IDEA eligibility status, (ii) IDEA disability category,² (iii) Section 504 eligibility status, and by (iv) whether the student was placed in a general education classroom, with students without disabilities, or a separate special education classroom, for only students with disabilities. I believed that review of records for a sample of this group of students would help me understand KCS's systems for providing behavior supports to the population of students who experienced more than one suspension during this time period, which may indicate a need for behavior support. I wanted to know whether the students received any behavior supports during this period; if so, what type of supports; whether the supports were able to address concerning behavior and support the students' academic progress; and, if not, whether KCS provided different or additional supports.³

² A "child with a disability" under the IDEA includes a child "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities." 20 U.S.C. § 1401(3)(A)(i).

³ I have reviewed Plaintiffs First Set of Interrogatories, in which Plaintiffs requested the list of students with disabilities who had received two or suspensions during the identified time period. In that document, Plaintiffs define "behavior supports" as "school-based interventions and supports that are provided as part of a child's educational program as necessary to enable the child to advance appropriately toward attaining the annual goals specified in the IEP, to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities. Behavior supports, such as positive behavior interventions and supports ("PBIS"), may be identified through functional behavioral assessments ("FBAs") and behavior intervention plans ("BIPs"). They may be provided as part of a student's general or special education, related services, or supplementary aids and services." I agree with this definition, which reflects a general understanding among educators of what behavior supports are and why they must be provided to students with disabilities who need them.

In response to Plaintiffs' request, KCS produced spreadsheets including 647 uniquely identified students with IEPs and 268 uniquely identified students with Section 504 plans who experienced at least two suspensions during the time period. From these spreadsheets, Dr. Stephen Raphael, another consultant working with Plaintiffs, drew random samples of 200 students with IEPs and 134 students with 504 plans, for a total of 334 KCS students with disabilities. I have read the Declaration of Dr. Steven Raphael; his description of how he drew the sample comports with my recollection of what we discussed about drawing the sample, and my general understanding of statistical methods used to draw random, statistically significant samples for educational services studies. In my experience, a sample of 334 randomly selected student files from a district the size of KCS is more than enough to evaluate that district's systems for supporting students with disabilities.⁴

Sixty-nine percent of the sets of records that I reviewed were for students with IEPs who were receiving special education. Thirty-one percent of the sets of records were for students with disabilities receiving services and supports through "Section 504" plans; some of these students also had IEPs. Of the 69 percent of students with IEPs, 29.2 percent were identified as students with specific learning disabilities (SLD); 22.3 percent as students with "other health impairments" (OHI), typically attention deficit hyperactivity disorder (ADHD); four percent as students with an emotional/behavior disorder (EBD); and 13.5 percent identified as "other," because they had a communication disorder, autism, intellectual disability or something else.

I have also reviewed the report of Sara Boyd, and I generally agree with her methodology for evaluating the behavior support needs of the two students whose cases she reviewed, G.T. and K.M. Her findings regarding whether the two students whose cases she reviewed are KCS students who need behavior supports to avoid disciplinary removals from the classroom, and whether these

⁴ As Dr. Raphael notes, after he drew the sample of 334 students, we learned that Defendant produced 332 sets of student records. When Plaintiffs' counsel asked about the discrepancy, Defendant's counsel stated that Defendant produced five more set of records than Dr. Raphael asked for, and four of the students were on both the IEP list and the Section 504 list. Later, Defendant disclosed additional errors in the data provided in October 2020, such that a few of the students in the sample had not experienced suspensions, or had only experienced one suspension, during the time period reviewed. These minor discrepancies do not change my view that the sample of student records I reviewed were more than enough to evaluate KCS's systems for supporting students with disabilities.

students can be educated in general education settings if provided appropriate academic and behavioral supports, seem reasonable and credible to me.

DISCUSSION OF FINDINGS AND OPINIONS

I. QUANTITATIVE ANALYSES OF KCS'S USE OF SUSPENSIONS

A. The Negative Impact of Suspensions

The use of suspensions to discipline students, including students with disabilities, has a demonstrated negative impact on student graduation rates, academic performance, post-secondary outcomes and future adaptive behavior.⁵ Suspensions are also not considered an effective practice for improving student behavior. In 2015, a technical assistance center for the U.S. Department of Education's Office of Special Education Programs (OSEP) published a report addressing the effectiveness of suspensions on reducing student behavior problems.⁶ The data from about 1,900 middle schools across the country indicated that 28.1 percent of students suspended for behavior problems between August and October 2009 did not have a repeat suspension during the 2009-2010 school year. However, 50.4 percent of students suspended did have at least one more suspension that school year, and 71.9 percent of students suspended had additional suspensions and office discipline referrals. The study authors concluded that suspensions did not improve student behavior. Studies show that students with disabilities generally experience higher rates of suspensions than do students without disabilities.⁷ As such, students with disabilities are at even higher risk for non-improvement and subsequent suspensions.

B. Quantitative Analysis of the KCS Use of Student Suspensions

To understand KCS's use of suspensions to manage the behavior of students, including students with disabilities, I performed various quantitative analyses of the suspension data produced by KCS and provided to me by Plaintiffs. I focused on KCS suspension data, for both in-school and

⁵ *Effect of Suspensions on Student Outcomes*, Fla. Positive Behav. Supports Project, <https://floridarti.usf.edu/resources/factsheets/suspension.pdf>.

⁶ See Michelle M. Masar et al., *Do Out-of-School Suspensions Prevent Future Exclusionary Discipline?*, Ctr. on Positive Behav. Interventions and Supports (2015), <https://www.pbis.org/resource/do-out-of-school-suspensions-prevent-future-exclusionary-discipline>.

⁷ *U.S. Comm'n on C.R.*, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* 64 (2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf?fbclid=IwAR2hbECW531i0Liva3jODOz2A4gdqXgeu5PFxzCcIfKWBoXfHTeOR3MQXoA>.

out-of-school suspensions, for the 2018-2019 school year, the only year for which data were provided for the entire school year. These data identified the total number of suspensions during the 2018-2019 school year, disaggregated by school, by type of school (elementary, middle, high), and by whether the student was receiving special education. I calculated a set of probability statistics by dividing the number of suspensions within a group by the total number of students within the group. These statistics can be used to understand the levels of variability within the group, including how likely it is that an individual student will be suspended.

My analyses of the KCS suspension data indicate that the patterns and risks of suspensions vary significantly between students with disabilities who receive special education (“special education students”) and students who do not receive special education (“general education students”); across types, or levels, of schools; and among schools of the same type.

Suspension of general education students in KCS schools does not occur at similar levels either among schools within a level (elementary, middle, high) or across levels. The probability that a general education student will be suspended, across all KCS schools, is .33—or, approximately three in 10 students. Suspension probabilities vary significantly based on the type or level of school: At the high school level, the probability is .38—or approximately four in 10 students. At the middle school level, the probability is .69—or approximately seven in 10 students. At the elementary school level, the probability is .14—or approximately one in one in 10 students.

The probability of suspension for a KCS student with a disability receiving special education across all levels and across all schools is .55—or approximately six in 10. This compares to a probability of .33 for general education students, or a 66 percent greater chance than for students without disabilities. At the high school level, the probability of suspension for special education students is .93—meaning that each KCS high school special education student is likely to receive at least one suspension during the school year. At the middle school level, the probability is .71—or more than seven in 10 students will be suspended at least once during the school year. At the elementary school level, the probability that a special education student will be suspended is .23—or two in 10 students will be suspended at least once, but still almost twice as likely as for KCS elementary school general education students.

**Comparison of Suspension Rates Between KCS General Education Students and
KCS Special Education Students by School Type**

	General Education Students	Special Education Students	Difference for Special Education Students
Elementary School	.14 (1 in 10)	.23 (2 in 10)	1.64 times more likely
Middle School	.69 (7 in 10)	.71 (7 in 10)	1.03 times more likely
High School	.38 (4 in 10)	.93 (9 in 10)	2.45 times more likely
KCS Total	.33 (1 in 3)	.55 (6 in 10)	1.67 times more likely

Where a student attends school also determines the probability of suspension. For example, one KCS high school, Sissonville, had the highest rates of suspensions for all high schools in KCS and was above the district average (0.93) for suspension probabilities for high school special education students. The suspension probability at Sissonville was 1.3, meaning that every special education student was likely to be suspended more than once during the 2018-2019 school year. Sissonville had 104 special education students, who as a group were suspended 135 times.

The Chandler Academy School, KCS's alternative school for students in grades 6-12, had a suspension probability for students with disabilities of 5.93, meaning that every special education student was likely to be suspended approximately 6 times during the 2018-2019 school year. This compares to a suspension rate of 2.2 for students at Chandler who did not have disabilities. Disturbingly, students with disabilities at Chandler are about three times more likely to be suspended than are non-disabled students; they are also five times more likely to be suspended than if they attended a regular, non-alternative KCS high school in KCS. (The highest suspension probability for special education students at a non-alternative high school was 1.3, at Sissonville High School.)

It is also important to note that some KCS schools have above-average suspension probabilities for both general education students and special education students. Three KCS middle schools—

Sissonville (.83), East Bank (1.73) and Andrew Jackson/West Side (2.10) are above the district average (.69) for probability of suspension for general education students in KCS middle schools. These three (of 13) middle schools account for 51 percent of all middle school general education suspensions in the district. These same three middle schools, along with McKinley Middle School, are also above the middle school district average (.71) for suspension probabilities for special education students (Sissonville, 1.14; East Bank, 1.43; Andrew Jackson/West Side, .99; McKinley, 1.02).

However, this is not always the case. McKinley (1.02) and South Charleston (.76) middle schools are also significantly above the district average (.71) for suspension of special education students, but South Charleston had one of the lowest rates (.29) of suspension for general education students. Also, numerous KCS high schools (George Washington, Herbert Hoover, Nitro, St. Albans) and middle schools (Andrew Jackson/West Side, DuPont, Dunbar, Elkview, Hays, John Adams, and Horace Mann) had suspension probability rates for both general education students and special education students that were below district averages.

This variability of suspension by school suggests that KCS lacks districtwide policies relating to the provision of behavior supports for at-risk students, including students with disabilities; has ineffective policies; or has not implemented and monitored existing policies consistently across its schools. In my view, it is appropriate to assume that a school district with such variation in rates of suspension by school and type of student does not analyze its suspension data in a way to identify those schools that clearly need additional supports for students with—and without—disabilities. As such, the district cannot implement behavior supports for students who need them adequately and consistently across schools. School districts have the responsibility to use data to ensure that all students have equity in access to quality education programs. The district has suspension data, but they do not appear to be using this data to ensure equity for all students.

School districts across the country seeking to reduce suspension rates and probabilities, and other punitive responses to student behavior, have implemented districtwide multi-tiered systems of academic and behavioral supports that have been shown to reduce the use of suspensions. In the Every Student Succeeds Act (ESSA), the term “Multi-Tiered System of Supports” (MTSS) is defined as “a comprehensive continuum of evidence-based, systemic practices to support a rapid

response to students' needs, with regular observation to facilitate data-based instructional decision making."⁸ These programs deliver academic, behavioral, and social-emotional instruction and supports in varying intensities, or tiers, based on student need. The WVDOE has developed and promoted the WVTSS, stating that "the ultimate purpose of WVTSS is to enhance the success of all students across the full spectrum of academic, behavioral, and mental health competencies."⁹

The WVDOE's expectation for implementation of this model is that WVTSS is to be used with all students, with the most significant supports provided to students with disabilities.¹⁰ I did not see that KCS has implemented the WVTSS districtwide, or any other districtwide model for a multi-tiered system of academic and behavior supports.

In addition, there is no evidence that the district has widely adopted another evidence-based and data-driven approach called PBIS. The WVDOE supports implementation of such a model and defines PBIS as a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students.¹¹ Research shows that implementation of PBIS with fidelity to the model reduces suspensions by approximately 42 percent for all students, and 50 percent for students with disabilities.¹² Nitro Elementary School in KCS has implemented PBIS

⁸ ESSA § 8002, 20 U.S.C. § 7801(33).

⁹ *West Virginia Tiered Systems of Support: An Overview 4*, W. Va. Dep't of Educ., (2020), <https://WVDOE.us/west-virginia-tiered-system-of-support-wvtss/> ("The ultimate purpose of WVTSS is to enhance the success of all students across the full spectrum of academic, behavioral and mental health competencies.") [hereinafter "W. Va. Dep't of Educ."].

¹⁰ *Id.* at 5 ("WVTSS is a framework to be used with all students. Approximately 75-80% of students are successful using the universal tier of instruction and its typical supports. This process should also be followed for students who are gifted, English Learners (EL), and those who have a documented disability.").

¹¹ See *W. Va. Dep't of Educ.*, *supra* note 9. Research states, when schools implement PBIS with fidelity their programs will see a decrease in disciplinary problem behavior, an increase in positive school climate, improved organizational health, decreased student bullying, and increased academic achievement. See *Positive Behavioral Interventions and Supports*, W. Va. Dep't of Educ., <https://WVDOE.us/special-education/initiatives/positive-behavior-interventions-and-support-pbis/>.

¹² Research has established that school-wide Positive Behavior Supports (SWPBS) within a Multi-Tiered System of Behavior Supports (MTSS-B) results in, on average, 42% fewer suspensions in those schools implementing the multi-tiered model than in those schools that do not. For students with disabilities, the reduction in suspensions have been shown to reach 50%. See, e.g., *Fla. Positive Behav. Supports Project*, *supra* note 5, at 2; see Jessica Swain-Bradway et al., *Do Wisconsin Schools Implementing an Integrated Academic and Behavior Support Framework Improve Equity in Academic and School Discipline Outcomes?*, Ctr. on Positive Behav. Interventions and Supports (2019), https://assets-global.website-files.com/5d3725188825e071f1670246/5d82aa7feb813389e04fabad_Wisconsin%20Integrated%20Academic%20an

and recently received recognition from the WVPBIS for the quality of its implementation. The recognition of Nitro's achievement is the only mention of PBIS that I saw on the KCS website.¹³ Dr. Porter also referenced PBIS in her deposition, but my review of KCS student records does not support its implementation districtwide.

II. ANALYSIS OF STUDENT RECORDS

As stated above, Plaintiffs' attorneys have requested that I answer a set of questions about KCS's systems and procedures for providing behavior supports to students who need them to receive FAPE in the LRE without disability-based discrimination. My answers to the questions, based on my experience and the methodology I have used to gather information about KCS, are set forth below. KCS identified all of the students in the sample whose records I reviewed as eligible for special education and/or having received services and supports under Section 504. In general, the students exhibit the need for behavior supports so that they may receive FAPE in the LRE without discrimination.

In analyzing the relevance of behavior supports to whether a student receives FAPE in the LRE, I followed the U.S. Department of Education's 2016 guidance documents interpreting the IDEA: a "Dear Colleague Letter on Supporting Behavior for Students with Disabilities" and a "Summary for Stakeholders on Supporting Behavior for Students with Disabilities."¹⁴ The Department's expectation for the provision of behavior supports for all students with disabilities, not just students identified as having EBD, is clear:

d%20Behavior%20Support%20Framework.pdf; see *Positive Behavioral Interventions and Supports Fact Sheet*, W. Va. Dep't of Educ.,

<https://WVDOE.us/special-education/initiatives/positive-behavior-interventions-and-support-pbis/> (describing West Virginia's support for and implementation of school-wide and early childhood PBIS). See *Fla. Positive Behav. Supports Project*, *supra* note 5.

¹³ See *Nitro Elementary Named WV PBIS Spotlight School*, Kanawha Cnty. Sch., (Feb. 2, 2021), <https://kcs.kana.k12.wv.us/cms/one.aspx?portalId=24999415&pageId=32513211>. West Virginia PBIS is a collaboration between the WVDOE Office of Special Education and Student Support and the WV Autism Training Center at Marshall University. See *About Us*, W. Va. Positive Behav. Interventions & Supports, <https://wvpbis.org/about-us/> (last visited Apr. 2, 2021).

¹⁴ OSEP, *Dear Colleague Letter from Acting Assistant Secretary Sue Swenson and Acting Director Ruth E. Ryder*, U.S. Dep't of Educ., (Aug. 1, 2016) [hereinafter *Dear Colleague Letter*], <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>; OSEP *Dear Colleague Letter on Supporting Behavior of Students with Disabilities: A Summary for Stakeholders*, U.S. Dep't of Educ. OSEP, (Aug. 1, 2016), <https://sites.ed.gov/idea/files/dcl-summary-for-stakeholders.pdf>.

- The IDEA requires IEP teams to consider the use of behavior supports for children with disabilities whose behavior interferes with their learning or the learning of others.
- When a child displays inappropriate behavior, such as violating a code of student conduct or disrupting the classroom, this may indicate that behavior supports should be included in the child's IEP; *this is especially true when the child displays inappropriate behavior often or when the behavioral incidents lead to suspensions or other disciplinary measures that exclude the child from instruction.*
- If a child displays inappropriate behavior despite having an IEP that includes behavior supports, this may indicate that the behavioral supports in the IEP are not appropriately implemented, or the behavior supports in the IEP are not appropriate for the child.¹⁵

These two guidance documents communicate the Department of Education's interpretation of the IDEA. They direct that the IDEA's requirements for the provision of behavior supports follow upon the presence of inappropriate behavior: either inappropriate behavior that interferes with the student's learning or the learning of others when no behavior supports have been provided, or inappropriate behavior that is escalating despite the presence of behavior supports. These directives make it clear that KCS must monitor and analyze a student's response to the instruction and services provided through the IEP, including whether the student is making appropriate progress toward academic and behavior goals and grade-level academic achievement, to determine the type and intensity of behavior supports provided to the student.

The vast majority of the KCS students whose records I reviewed have a history of behavior problems, suspensions, office referrals, and other removals from school or the classroom. Specifically, for the students whose files I reviewed, the average number of suspensions per student was 22.7 with a range of between 1-141 suspensions. The average number of office discipline referrals not including ones leading to suspensions was 19.2 per student with a range of 0-124. This group of students were, with few exceptions, in need of appropriate behavior supports. I observed a consistent pattern of behavior problems for this group of students, and a consistent

¹⁵ See Dear Colleague Letter, *supra* note 14, at 1.

pattern of classroom removals accomplished through repeated suspensions, office referrals, lunch detentions, classroom exclusions, bus suspensions (for parents or caregivers with no other way to transport their child to school), expulsion petitions, and “unofficial” requests that parents and caregivers remove their children from school because of their behaviors.

These records rarely identify specific, individualized behavior supports that the students are to receive; typically, a term such as “Behavior Support Plan” appears in the IEP or “Section 504” plan, without identifying what supports will be provided to the student under the plan. Nor, for those students with multiple suspensions, are there indications in the records that staff understood that the student’s disability-related behavior interfered with the student’s learning or the learning of others, which should have prompted a review of the IEP to determine whether the student needed additional or different behavior supports.¹⁶

My answers to Plaintiffs’ questions are as follows:

1. Does KCS have an adequate system and procedures for identifying students with disabilities who need behavior supports?

My review indicates that KCS does not have an adequate system for identifying students with disabilities who need behavior supports.

As an initial matter, there is little evidence in the records that I reviewed that the district has a set of procedures for determining special education eligibility for students with disabilities who need specially designed instruction and services, including behavior supports, to help them make progress. The district has a number of SAT forms that KCS schools may use to decide whether to provide a student additional support to help the student make progress in the general education curriculum. It also has eligibility criteria checklists for deciding whether students should receive special education. These forms, along with the standard WVDOE special education forms used

¹⁶ KCBOE 33569: For example, one KCS student had a long history of behavior challenges, and a diagnosis by a medical specialist of “insecure, anxious and withdrawn behavior, a risk of depression and chance of changing moods and easily overwhelmed by emotions.” He was suspended for 16 days, including a 10-day suspension for “insubordination,” during the 2019-2020 school year, with multiple additional office referrals. Still, KCS staff did not identify him as a student whose behavior impeded his learning or that of others. Ultimately, KCS transferred this student to an alternative program for students with disciplinary issues. Under the U.S. Department of Education IDEA guidance, as a student with on-going behaviors of concern KCS should have provided this student with behavior supports, but I do not see that he was given the range of behavior supports that he needed.

by KCS, should provide ample guidance to staff to help them identify students with disabilities in need of behavior supports.

In particular, Part IV of the standard IEP form used by KCS, “Consideration of Factors for IEP Development/Annual Review,” asks “Does the student’s behavior impede his or her learning or that of others?” The answer to this question should guide KCS staff in determining whether a student needs behavior supports. However, KCS does not appear to have a document or procedure that delineates how it organizes all the separate forms (e.g., SAT, IDEA eligibility, IEP) into a systematic process for eligibility determination. My search of the KCS website revealed a page for a “Special Education Handbook,” but I did not see a link to such a handbook. It is normal and customary for school districts to have a special education handbook that is a repository for all policies and procedures that guide the special education eligibility process for the district. It is unusual to find a district without a manual.¹⁷

My review of student records revealed that, despite its written policies, procedures, and forms, KCS’s systems for identifying students with disabilities who need behavior supports are not working.

KCS’s process for determining whether a student has a disability and needs behavior supports appears to work as follows: KCS students suspected of having a disability are referred to their school’s multidisciplinary evaluation team (MDET), which determines special education eligibility, in one of several ways: through parent referral, SAT referral, referral from a physician or mental health provider, transfer from another district that already determined eligibility, or transfer from an early childhood program for children with developmental delays. In most files I reviewed, the MDET determined that the student’s behavior did not interfere with learning when there was ample evidence to the contrary in the student’s school records. Typically, students referred to the MDET had a history of suspensions, classroom exclusions, and office referrals. In addition, many had mental health diagnoses (such as anxiety, depression, significant mood swings, oppositional defiance disorder) rendered by providers outside the district that spoke directly to the types of behaviors for which students were suspended. In most cases, a comprehensive review of

¹⁷ On the other hand, KCS provided a process document that delineates the steps for identifying whether a student will receive services and supports through a Section 504 plan.

both the student's file and the student's disciplinary records would reveal a pattern of classroom removals for behavior infractions.

Other students developed subsequent behavior problems that clearly interfered with learning, but the IEP documents do not acknowledge those behavior problems or address the student's need for behavior supports. In many cases, the IEP team's annual review of the student's IEP did not acknowledge behavior problems for which the student had repeated suspension during the school year.

My review indicates that one or more of the following problems took place when KCS determined eligibility for special education and the need for behavior supports for many students whose records I reviewed.

- Failure to Collect and Review Data: There was little evidence in the records I reviewed to indicate that KCS implements normal and customary practices, such as those identified in Policy 2419 including the ongoing collection of student academic achievement and behavior data, and assessments of behavior support needs based on these data.

For example, an alarming number of the students in the files I reviewed have a history of chronic absenteeism, defined as being absent from school 10 percent or more of school days. One student was absent for 36 days between August 2019 and February 2020, with 17 of these days in out-of-school suspension.¹⁸ Another student was absent 40 days between August 2019 and December 2019, with 10 of those spent in suspension or in an alternative setting outside the student's classroom.¹⁹ Yet another student was absent 52 days between August 2018 and May 2019, with 11 days suspended, and absent 43 days between August 2019 and November 2019, with another 11 days suspended.²⁰ Over a 16-month period, this student was absent 95 school days, with 22 days suspended. The 95 school days

¹⁸ KCBOE 36094.

¹⁹ KCBOE 49128.

²⁰ KCBOE 20612.

translates into 19 weeks of lost instruction out of 48 weeks of available instruction, or 40 percent of total available instructional time.

The impact of chronic absenteeism is significant for both student academic performance and social-emotional growth.²¹ In no student file I reviewed was an issue of a student's chronic absenteeism addressed or included in the student's SAT notes, MDET notes, or eligibility checklists—or, for that matter, the student's IEP plan, "Section 504" plan, or BIP.

- Staff Misunderstanding: KCS staff may have an erroneous understanding of when the IDEA requires them to provide behavior supports to students with disabilities so that they receive FAPE in the LRE. Under the IDEA, school districts must conduct a "manifestation determination" review (MDR) after a student has been suspended more than 10 days out of the school year, to determine whether the behavior for which the student has been suspended is a manifestation of the student's disability.²² The IDEA regulation explicitly states that when behavior is found to be a manifestation of disability, the student must be provided a behavior plan, or an existing behavior plan must be reviewed and revised as needed.²³ Some KCS staff appear to believe that unless behavior is found to be a manifestation of the student's disability through this process, the school is not required to provide behavior supports. Many student files contained discipline data that documented on-going behavior problems and classroom exclusions over a number of years, yet little evidence existed that the IEP team met regularly to revise the IEP to include behavior supports, unless the pattern of suspensions met the "10 or more days" requirement. However, this does not comply with the U.S. Department of Education's guidance, or with the WVDOE's similar procedures for providing

²¹ See Alan Ginsburg et al., *Absences Add Up: How School Attendance Influences Student Success*, (Aug. 2014), at https://www.attendanceworks.org/wp-content/uploads/2017/05/Absences-Add-Up_September-3rd-2014.pdf.

²² See 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(e).

²³ See 34 C.F.R. § 300.530(f).

supports to students with disabilities with behavioral issues.²⁴ These regulatory materials make it clear that behavior supports must be provided for students with disabilities who need them, whether or not there has been a formal MDR following 10 annual suspension days.

- Staff Error: Staff error may also play a role. KCS uses a WVDOE “Eligibility Determination Checklist” that is part of the IEP in most, but not all, files I reviewed. The checklist contains the criteria the district uses for each special education eligibility category (type of disability). Many of the eligibility categories in the checklist start with a phrase, “exhibits characteristics consistent with the definition” of the category. However, the definitions are not included in the checklist. To use the checklist consistently whenever determining eligibility, and to use it accurately in each student’s case, the MDET must either have the definitions of each IDEA eligibility category in front of them, or have excellent retention of the definitions. If the members of the MDET do not have or do not know the definitions, however, they could easily make errors when determining eligibility for an individual student.
- Misidentification: Misidentification of the student’s disability appears to be part of the problem in a significant number of cases. In my experience, sometimes school districts misidentify students by making them eligible for special education but placing them in an inappropriate eligibility category—that is, they identify the student as having the wrong type of disability. Although special education students should get the behavior supports they need regardless of the category of eligibility, the misidentification of the student often drives the district’s failure to provide the student with needed behavior supports so that the student can receive FAPE.

In KCS, far fewer students with severe behavioral issues than would be expected are found eligible for special education as a student with an “emotional/behavior disorder” (EBD).²⁵ Many students whose records indicate significant behavioral

²⁴ See Dear Colleague Letter *supra* note 14 *supra*; see also Policy 2419, incorporated by reference through 126 C.S.R. 16-3; W. Va. Dep’t of Educ., *supra* note 9.

²⁵ The WVDOE defines “EBD” as “a condition in which a student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance: (1) An

issues are instead found eligible as students with “other health impairment” (OHI).²⁶ This was particularly true for students identified as having ADHD or Attention Deficit Disorder (ADD), along with mental health conditions such as depression, anxiety, oppositional defiant disorder, post-traumatic stress disorder, or bipolar disorder. I reviewed numerous KCS student records where outside behavioral health agencies conducted evaluations and diagnosed the student with DSM (Diagnostic and Statistical Manual)²⁷ diagnoses of significant mental health conditions that in other districts are typically associated with EBD eligibility rather than OHI eligibility.

It is unusual to see so many students with complex emotional and behavioral conditions found eligible for the OHI category, as I did in the KCS student records I reviewed. For example, one student had a history of hospitalizations for mental health issues and multiple mental health diagnoses.²⁸ While enrolled in KCS, this student had a history of suspensions, including 12 days of suspensions in one month during the 2017-2018 school year and 15 days during the 2018-2019 school year, for issues such as “insubordination,” “disrespect,” and similar behaviors. It was clear from reading the student file that the student’s behavior was related to the mental health issues for which the student had been diagnosed. These mental health issues, and the behavior evaluations performed by KCS, clearly indicated that this student met the criteria for EBD. Instead, KCS made this student eligible for

inability to learn that cannot be explained by intellectual, sensory, or health factors; (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) Inappropriate types of behavior or feelings under normal circumstances; (4) A general pervasive mood of unhappiness or depression; or (5) A tendency to develop physical symptoms or fears associated with personal or school problems; or (6) Schizophrenia.” A determination by the school that the student is “socially maladjusted” means that the student is not eligible for special education, unless the student has one or more of these characteristics. W. Va. Policy 2419, Chapter 4 (F), incorporated by reference through 126 C.S.R. 16-3.

²⁶ “OHI” is defined as “having limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.” These health problems may include asthma, attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student’s educational performance, such that the student needs special education. W. Va. Policy 2419, Chapter 4 (K), incorporated by reference through 126 C.S.R. 16-3.

²⁷ *Am. Psychiatric Ass’n, diagnostic and Statistical Manual of Mental Disorders*, (5th ed. 2013).

²⁸ KCBOE 35772.

special education under the OHI category. A large number of the student records I reviewed contained information similar to this one.

Based on my review of student records, it appears that EBD is a more appropriate eligibility category than OHI for many of the students KCS finds eligible for special education. The majority of the students found eligible in the OHI category had significant difficulties with interpersonal relationships with peers and teachers. This appears to be the primary reason for their disciplinary removals from the classroom, including office referrals and suspensions. In addition, the majority of the students found eligible for OHI also demonstrated inappropriate behaviors and feelings under normal circumstances. These behaviors included refusal to comply with directions, verbal and physical aggression, and sexual inappropriateness. These are all typical behaviors associated with children with EBD.

The misidentification (e.g., OHI instead of EBD) of the student may be driving the district's failure to provide appropriate behavior or any behavior supports. Assessment and data collection activities that are consistent with an OHI eligibility determination would not necessarily lead to and inform an appropriate behavior support plan. Under the WVDOE's definition, to make a student eligible for special education in the OHI category, a school district must document the existence of a chronic or acute medical or health condition that adversely affects student learning. The district is not required to observe the student and collect behavior data that would inform the district's determination that the student needs behavior supports. Documentation of interpersonal difficulties or social-emotional and mental health issues are not part of the eligibility criteria for OHI.

On the other hand, the eligibility criteria for the EBD category focus primarily on student behavior and emotional state, and require assessments of the student's behavior through observations in multiple settings by multiple observers to establish relationships between the student behavior and the classroom environment. The school district should document certain specific characteristics of the student's behavior, such as whether the student exhibits behaviors over a

long period of time; whether the behavior takes place in more than one setting in school or community; and whether the frequency, duration and or intensity of the behavior is significantly different from the student's peers in the same or similar circumstances. The data collected to document these relationships and characteristics are very useful and inform the determination of whether the student needs behavior supports, as well as the types of support and instruction the student needs to be successful. Normal and customary data collection activities and assessments consistent with establishing that the criteria for EBD are met would lead to and inform the system of behavior supports for the student as part of an IEP or BIP.

The misidentification of a student with EBD as having OHI is problematic particularly after one or more suspensions that triggers the school district's responsibility under the IDEA to hold a MDR to determine whether the behavior for which the student was suspended was a manifestation of the student's disability. If the MDR team believes that the student's disability eligibility category is OHI, it is less likely that the behavior (e.g., aggression, disrespect) leading to the student's suspension will be seen as a manifestation of the student's disability. If the team understands that the student's eligibility category is EBD, the team would be more likely to find the behavior to be a manifestation of the student's disability.²⁹

I did not see that KCS has provided guidance to staff through policy and procedures that could help them appropriately identify the correct IDEA eligibility category for a student with a disability.

Additionally, many KCS students with ADHD or ADD are found eligible for services under Section 504. The profiles of these students often seemed similar to

²⁹ In the KCS student records I reviewed, a vast majority of special education students suspended for 10 or more days were identified as OHI; in almost all of these cases, the MDR team determined that the student's behavior was not a manifestation of the student's disability. In my experience, typically in cases like these the MDR team questions the student's eligibility for special education as a student with OHI when the student is displaying a pattern of behavior so clearly inconsistent with that eligibility category. The MDR team could use the manifestation process to evaluate whether the original eligibility determination was correct, and change it if not. I did not see that this happened in KCS MDR meetings.

or identical to those of students found eligible under the IDEA in the OHI category. I did not see a KCS policy or procedure document that would guide staff in determining whether a student with ADHD or ADD should be found eligible for services and supports under the IDEA or Section 504. The vast majority of students with ADHD found eligible for special education in the OHI category did not have any other condition, such as physical health conditions, that would justify finding them eligible in the OHI category. Whether they were made eligible for services under the IDEA or Section 504 seemed arbitrary.

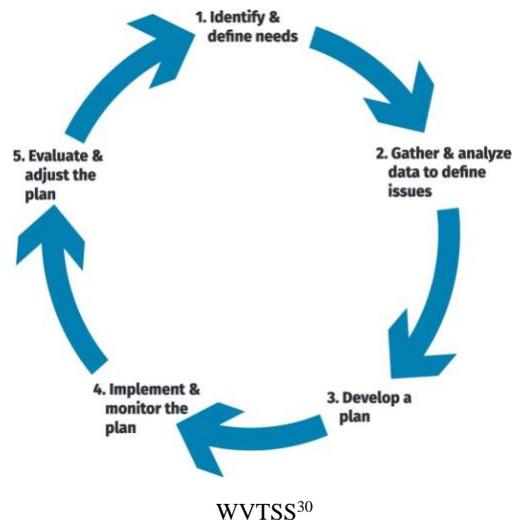
Almost all of the KCS students whose records I reviewed had a history of suspensions and classroom removal due to student behavior. All these records document a history and pattern of behavior problems that have typically been unresolved. Every KCS student, regardless of the eligibility category, who demonstrates a pattern of behavior problems must receive behavior supports, and KCS must identify those supports in the student's IEP or "Section 504" plan. KCS does not do this. The failure to consider the student's behavioral history can lead to significant adverse outcomes for students with disabilities. I believe that KCS failed to identify a significant number of KCS students who needed behavior supports, including because KCS misidentified the students. As a result, these students did not receive behavior supports that met their needs.

2. Does KCS have an adequate system and procedures for identifying the causes of disruptive behavior when developing behavior supports for students with disabilities?

My review of KCS student records indicates that staff did not follow generally accepted practices and procedures in assessing student behaviors in order to develop behavior supports.

The accepted practice in schools across the country for assessing student behavior is to identify the "root cause" of the behavior using a comprehensive and evidence-based problem-solving process. This problem-solving process examines the interaction of the teacher's instructional methods, the school's curriculum, the environments in which the student interacts with others (including the student's home, school, school bus, and other locations in the community), and student factors (academic achievement, behavior and social/emotional skills, cultural norms) to understand the root causes of a student's behaviors of concern.

I did not see that KCS uses such a problem-solving process. As previously noted, the WVDOE has created the WVTSS. The WVTSS embraces a comprehensive problem-solving process, the steps of which appear below:



The purpose of a problem-solving process for students who exhibit repeated behaviors of concern—which could be disrupting class, being aggressive or insubordinate, refusing to follow direction, or having a tantrum—is to identify the root causes of the behaviors in order to develop and implement appropriate supports to prevent them, or make the behavior less likely to happen in the future. The problem-solving process looks at all sources of root causes—instructional methods, curriculum, learning environments, issues relating to the student and family—as soon as behavior concerns arise, in order to develop and implement comprehensive supports to improve student outcomes.

Use of a comprehensive and systematic problem-solving process is a critical component of the WVTSS, including using it to determine what behavior supports to provide a student who needs such supports to receive FAPE in the LRE. Through its dissemination of the WVTSS, the WVDOE clearly expects West Virginia school districts to provide behavioral supports to any student with a disability when the student begins to exhibit concerning behaviors—regardless of the student’s disability eligibility category.³¹ The WVDOE’s position is consistent with the U.S.

³⁰ W. Va. Dep’t of Educ., *supra* note 9, at 6.

³¹ As the WVDOE has indicated, a student’s special education eligibility category does not supplant the student’s ability to access these supports. For example, a student found eligible for special education as having a Communication Disorder (CD), has an IEP in place with appropriate classroom supports, but begins to exhibit

Department of Education's expectations, as set forth in its guidance to schools on the provision of behavior supports.³²

Despite this, my review of the KCS website and documents produced to Plaintiffs through discovery did not reveal any reference to KCS's implementation of a tiered-system of supports, comprehensive problem solving, or the WVTSS. In my review of KCS student records, I did not see that KCS schools engaged in a comprehensive problem-solving process to identify the behavior support needs of individual students.

The student records I reviewed contain psychological evaluations of students conducted by KCS staff. In most school districts where I have worked, staff conduct and review these evaluations as part of a comprehensive problem-solving process designed to identify the instruction, services, and other supports the student might need to receive FAPE in the LRE. The KCS psychological evaluations that I reviewed do not fully address the needs of students with significant or consistently recurring behavioral challenges. Typically, the KCS psychological evaluations I reviewed examine intellectual, achievement, motor, and cognitive processing factors exhibited by the student. Sometimes the psychological evaluations include behavior checklists, such as the Connors Comprehensive Behavior Rating Scale or the Behavior Assessment System for Children (BASC). However, the results reported in the KCS psychological evaluations are typically descriptive rather than analytical, and do not address the root cause of a student's behavior. The recommendations provided for behavior supports in these evaluations are insufficient for the type and severity of the student's concerning behaviors. These evaluations do not give KCS staff developing a student's IEP adequate information about the student's strengths and needs.

The KCS psychological evaluations also did not address developmental, family, or sociocultural issues that have clear relationships to patterns of problem behavior. In the files reviewed, it was rare that a psychological or psychoeducational evaluation included observations in multiple settings. As described above, Policy 2419's criteria for determining whether a student has an EBD require that KCS document the behavioral characteristics in question "a. for a long period of time;

concerning behaviors. Supporting the student and staff who work with the student by implementing the WVTSS framework is a necessary part of the school's response to this student's increasing level of need. W. Va. Dep't of Educ., *supra* note 9, at 5.

³² See *supra* note 14.

b. by more than one knowledgeable observer trained in data gathering; c. in more than one setting; and d. at a level of frequency, duration and/or intensity that is significantly different from the student's peers in the same or similar circumstances.”³³ In no student record that I reviewed were these criteria fully addressed. Multiple observations in multiple settings by multiple trained observers did not take place. Documentation that the student's behavior was significantly different from that of peers in the same or similar settings did not take place.

There was also limited or no evidence in the records that parental or caregiver input, either from interviews, written assessments or checklists, or other forms of participation in an evaluation of the student were a regular and valued part of KCS's procedures for identifying the root causes for the student's concerning behaviors and supports for addressing those behaviors. This was the case even though the records I reviewed consistently showed attempts to contact parents and caregivers and invite them to meetings about the student's performance, such as SAT meetings, IEP meetings, or suspension hearings. These efforts at engagement did not result in the meaningful incorporation—through means such as the use of virtual technology or home visits—of parents involvement and input as part of the evaluation and planning process.³⁴ “Parent involvement” is defined as “...the parents' interaction with schools and with their children to benefit their children's education success.”³⁵ Research has shown that parent involvement is significantly related to student academic outcomes,³⁶ gains in cognition, language and social-emotional development,³⁷ self-esteem, emotional self-regulation and self-perceptions of academic skills.³⁸ The issues experienced by the students whose records I reviewed are the same issues identified as critically important by this research.

³³ W. Va. Policy 2419, Chapter 4 (F), incorporated by reference through 126 C.S.R. 16-3.

³⁴ See, e.g., Oswald, D.P., Zaidi, H.B., et al., *Correlates of parent involvement in students' learning: Examination of a National Data Set*, *J. of Child and Family Studies*, 27, 316-323 (2018).

³⁵ Hill, N.E., et.al., *Parent academic involvement as related to school behavior, achievement and aspirations: Demographic variations across adolescence*, *Child Development*, 75, 1491-1509 (2004).

³⁶ Hill, N.E., & Tyson, D.G., *Parental involvement in middle school: A meta-analytic assessment of the strategies to promote achievement*, *Developmental Psychology*, 45, 740-763 (2009).

³⁷ USDHHS, *Policy statement on family engagement: From the early years to the early grades*, U.S. Department of Health and Human Services, U.S. Department of Education (2016).

³⁸ Wang, M., & Sheikh-Khalil, S., *Does parental involvement matter for student achievement and mental health in high school?*, *Child Development*, 85, 610-625 (2014).

My review of the student records indicates that KCS sometimes—but not always—conducted FBAs to determine the function of a student’s behavior. An FBA meeting generally accepted standards is an assessment based on data collected about the student in a variety of school settings, and records the antecedents and consequences of a student’s behavior as support for making an effective hypothesis about the function of the student’s behavior. FBAs can be an important part of the comprehensive problem-solving process. FBAs are required by the IDEA when an MDR indicates that behavior for which a student has been punished is a manifestation of the student’s disability.³⁹ Schools need not and should not wait for an MDR, however, to conduct an FBA to help determine what supports might prevent or ameliorate a student’s behaviors of concern.

In general, the quality of the KCS FBAs I reviewed was poor. The district conducts few, if any, functional observations evaluating the student behavior and its impact on academic performance. This requires both direct classroom observations of the student behavior and documentation of the impact of that behavior on academic performance of the student during that observation. Without data to document the interaction between behavior and academic performance, there is no way to determine the degree to which the student’s behavior is adversely affecting learning. The KCS FBAs focused on “triggers” that were primarily external (e.g., “peer,” “teacher”), and identified “causes” of disruptive behavior that were limited primarily to a few cursory reasons: “escape,” “seeking attention,” and “task avoidance.”

Identifying the “root cause” of student behavior means conducting a problem-solving approach and inquiry into the “whys” for a student’s behavior, and not just the identification of a cursory “trigger.” The FBA should identify answers to these questions: Why did the student want to “escape”? What was taking place that the student wanted to escape from? From whom did the student want to escape? Where did the student go to escape? What in the student’s background or home life might be contributing to the need to escape? Answering these and other questions to determine what individualized changes KCS could make to the student’s environment and educational program to prevent or ameliorate the student’s behaviors of concern is necessary, if the FBA is to be an effective part of the comprehensive problem-solving process.

³⁹ 34 C.F.R. § 300.530(f).

The root causes of the disruptive behaviors for the students whose records I reviewed typically appeared to go far beyond the cursory “causes” associated with the “conditions” that “triggered” the student’s behaviors that were identified in the FBA conducted by KCS. KCS FBAs rarely got to the root causes of the student’s behavior, and so did not help staff develop an effective plan of behavior supports for the student. For example, one student’s FBA indicated that the student fights or threatens peers, and curses or challenges teachers.⁴⁰ However, the FBA did not adequately analyze the root cause of this behavior. The FBA hypothesized that the student lacked conflict resolution skills, but did not convey whether the student’s lack of these skills was a “skill” deficit (meaning the student lacked the skill) or a “performance” deficit (meaning the student had the skill but chose not to use it). The determination of whether a student has a skill deficit or a performance deficit is a universally recognized approach in assessing a student’s concerning behaviors, and is one of the first things taught to professionals learning how to administer FBAs and develop BIPs based on those FBAs. I did not see a single example in the records I reviewed of an FBA or BIP that contained this most basic function of behavior analyses.

FBAs that do not adequately assess the functions of a student’s behavior are not an adequate basis for an effective plan of behavior supports. The BIP for the same KCS student stated that he would “resolve conflicts with peers using conflict resolution skills and will respect teachers and refrain from threatening/challenging them.” The BIP did not include normal and customary behavior supports, such as social skills training or anger control training, which could help the student with conflict resolution. The only supports KCS indicated on the BIP were that his teachers would give the student choices to give him a sense of power or control, and would give him rewards for appropriate behavior. These supports are not individualized to this student, and as such did not support his behavior. His records documented evidence of continued behavior problems and exclusions. Little evidence existed that his IEP teams met to determine why the student was not responding to behavior supports in the BIP.

KCS frequently uses an “Expedited FBA” template for conducting FBAs. I saw this template used in many of the student files I reviewed. I have never heard of an “Expedited FBA” before, and it

⁴⁰ KCBOE 37087.

does not appear that the WVDOE endorses such practice. I saw no information in any of the documents I reviewed indicating when KCS staff are to perform an “Expedited FBA.”

The “Expedited FBA” template form is far less comprehensive than the KCS FBA form. The FBA form includes (1) a general information section, in which the staff member conducting the FBA is to list background information about the student, the reason for referral for an FBA, and any physiological or biological concerns for the student; (2) a comprehensive listing of all sources of data that might be collected about the student; (3) identification of previous supports provided, and an estimate of their effectiveness; and (4) a section indicating the methods by which KCS collected data about the student’s behavior, and a summary of findings. None of these areas is included in the Expedited FBA form.

Clearly, the FBA template includes far more information for staff to analyze, which should yield conclusions that are more accurate. For example, the FBA template reminds staff to consider factors other than just observed behavior data (such as the antecedent, the behavior, and the consequence), such as physiological and biological factors. The vast majority of the student files I reviewed contained findings of physiological and biological factors such as ADHD, anxiety, and depression that easily could contribute to behaviors of concern. These factors should affect the types and intensity of behavioral supports recommended by the FBA.

Importantly, the section of the FBA requiring identification of past behavior supports provided to the student should provide the team with information about what strategies had worked in the past. The KCS “Expedited FBA” template form does not require the staff member conducting the FBA to consider physiological or biological factors that might affect the student’s behavior, or to review previous supports provided to the student. Without this information, staff conducting “Expedited FBAs” recommended strategies that KCS had already tried and failed.

“Expedited FBAs” are clearly not as comprehensive as KCS’s other FBAs (which were generally poorly performed despite using a more appropriate template, as discussed above). KCS students with disabilities who need behavior supports are ill-served by the use of the “Expedited FBA” form, which does not follow generally accepted standards for conducting FBAs that may be used to develop needed behavior supports.

In my opinion, KCS does not have an adequate system or procedures for determining what behavior supports students with disabilities need to receive FAPE in the LRE without discrimination. It does not engage in the comprehensive problem-solving process identified in the WVTSS and does not appropriately assess the functions of student behaviors as needed to develop behavior supports that meet the student's needs. In particular, the use of the "Expedited FBA" is not a standard practice, and treats some students with disabilities who need behavior supports differently than others.

3. Does KCS have an adequate system and procedures for developing IEPs, "Section 504" plans, and BIPs for students with disabilities who need behavior supports?

In my opinion, the system, and procedures that KCS has in place for developing IEPs, "Section 504" support plans, and behavior intervention plans (BIPs) for students with disabilities who need behavior supports are not adequate to ensure that the students receive FAPE in the LRE without discrimination. Although the district's forms reflect standard IEP and BIP formats that comply with the requirements of the IDEA and Section 504, the use of the correct format does not necessarily mean that a student receives behavior supports that are appropriate for the type and severity of the student's behavior issues.

Every student who is found eligible for special education must have an IEP that identifies reasonable goals, both academic and functional, designed to meet the child's needs that result from the child's disability, to enable the child to be involved in and make progress in the general education curriculum. In addition, the IEP should identify the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child to help the student make progress toward goals.⁴¹

⁴¹ See 20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 CFR §300.320(a). An IEP is one way to provide FAPE to a child with a disability to comply with Section 504 of the Rehabilitation Act. See 34 C.F.R. § 104.33(b)(2); U.S. Dep't of Educ., Office for C.R., Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973 (2010), <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>. For students with disabilities who are not eligible for special education, schools may develop "Section 504" plans that contain services, supports, and accommodations designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met. See 34 C.F.R. § 104.33(b)(1)(i); see U.S. Dep't of Educ., Office for C.R., OCR-000100, Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools 10 (2016).

A BIP is required when students with disabilities demonstrate behavior problems that interfere with their learning or the learning of others. The BIP is often developed following an FBA, but a district may develop a behavior plan when an FBA is not needed but behavior supports are, to reduce or eliminate the behavior that interferes with learning. The BIP must, at a minimum, address the following:

- The pattern of behavior that is impeding the student’s learning, or the learning of others;
- The instructional or environmental conditions or circumstances that contribute to that pattern of behavior;
- The positive behavior supports needed to:
 - Reduce the behavior that is impeding learning, and increase desired prosocial behaviors, and
 - Ensure the plan is implemented consistently across the student’s school day, including in classes and during extracurricular activities; and
- The skills that will be taught and monitored as alternatives to the student’s challenging behavior.⁴²

The KCS student records I reviewed contained standard templates (IEP forms, IEP “Snapshots,” IEP Meeting Notice forms, MDET Referral form, “Section 504” forms, FBA and “Expedited FBA” forms, and BIP forms) that may be used to document what the student’s IEP team has decided to include in the student’s IEP and BIP. District staff typically follows the procedures outlined in these forms. However, the actual content of the IEPs, “Section 504” plans, and BIPs—the academic and behavioral goals for the student, the identification of what instruction, services, and supports the student will receive, and the identification of behavior supports that KCS provides to the student, along with their frequency, location, and duration—often does not reflect what a student needs. These plans provide inappropriate support for the type and severity of the student’s behavior issues.

⁴² See, e.g., *Behavior Intervention Plan (BIP)*, PBIS World (2021), (<https://www.pbisworld.com/tier-2/behavior-intervention-plan-bip/>).

Behavior Goals: Thirty-one percent of the IEPs I reviewed had few or no goals related to behavior for the student to meet, with behavior supports from the school. Sixty-nine percent of the IEPs reviewed had no behavior goals, despite these students having had documented behavior problems. The average number of behavior goals for the 31 percent of files with goals was 2.04 goals per student, with a range of between one and five goals.

When KCS develops IEP behavior goals, it seems to be because KCS staff believe they must include them for some students to comply with the IDEA, and solely to complete the IEP form. I saw many behavior goals that were not realistic for the student. The format of many goals was not appropriate, as the same goal often addressed multiple student behaviors, such as noncompliance with direction, lack of self-control, and disruptive student response to peers. The level of achievement the student needed to attain to meet the goal was also often inappropriate. I saw IEPs that set as a goal that the student would comply with instructions 100 percent of the time, from a baseline of zero percent of the time. A goal like this sets the student up to fail.

In her deposition, Dr. Porter explained that the county does not conduct formal training on IEP development; it appears that any training is “on the job” and occurs as IEPs and BIPs are developed and presented to the IEP team for decision.⁴³ When asked in her deposition about guidance to staff on how to identify students who may need behavior goals, Dr. Porter stated that the only guidance staff are given is to follow Policy 2419 and the WVDOE’s guidance on the IEP process.⁴⁴

Behavior Supports: When IEPs, “Section 504” plans, and BIPs identified behavior supports to help students meet behavior goals, in the majority of the student records I reviewed they appeared to be inadequate to meet the severity of the student’s behavior problems. Normal and customary evidence-based supports for students who present with the type and severity of behavior issues in the files I reviewed include, but are not limited to, social skills training, self-control training, self-monitoring training, anger control training, Check and Connect (in which the student checks in with a trusted adult at the school),⁴⁵ Check-in/Check-out (CICO, another model for student-adult

⁴³ Porter Dep. Tr. 224:24–226:5.

⁴⁴ Porter Dep. Tr. 26:2–15; 40:5–16; 70:22–71:10; 83:20–25.

⁴⁵ See, e.g., *Efficacy Studies*, U. of N.M. Inst. of Community Integration, at <http://www.checkandconnect.umn.edu/research/efficacy.html> (last visited Apr. 9, 2021) (listing academic studies on the efficacy of “Check and Connect”).

check-ins), reintegration practices following suspensions, counseling, home-school collaboration practices, cognitive behavior supports,⁴⁶ and de-escalation supports (including those facilitated by the teacher or a specialist, or those self-regulation skills the student may acquire through training).⁴⁷

I saw little evidence that KCS staff and IEP teams have access to an array of behavior supports like these, which have been shown to address the root cause of student behavior challenges. Behavior supports listed in the KCS student documents I reviewed (typically, in “Section 504” plans and BIPs) were limited and not individualized to the student, regardless of the type and severity of the student’s behavior. These limited supports included teacher reinforcement and attention; concrete rewards, such as computer or iPad access, or token rewards that could be used to obtain concrete rewards; accommodations, such as more time on tests or having material read aloud; and environmental actions, like a “time out” from classroom work, time away from the classroom, or a “break” from a classroom activity.

These limited supports assume that a student can perform the desired behavior but chooses otherwise. As discussed above, this is known as a “performance deficit,” where the student possesses a behavior-related skill but chooses not to use it. In most cases of students with patterns of inappropriate behavior, and in particular for students with disabilities, the root cause is often far more complex. One primary root cause is a “skills deficit,” where the student simply does not have the “skill” to perform the behavior in order to access a reward. Evidence-based supports such as targeted social skills training (such as training in self-control skills, which the student can use in social situations, like responding to teasing), anger control training (including learning how to control anger responses and replace them with more appropriate behavior), and meta-cognitive strategies the student can use to cope with depression and anxiety are typical of the supports provided by related services personnel—psychologists, counselors, social workers—in schools

⁴⁶ Cognitive behavioral interventions and supports teach learners to examine their own thoughts and emotions, recognize when negative thoughts and emotions are escalating in intensity, and then use strategies to change their thinking and behavior. See, e.g., AFIRM, Cognitive Behavioral Interventions, at <https://afirm.fpg.unc.edu/cognitive-behavioral-intervention> (last visited Apr. 2, 2021).

⁴⁷ See, e.g., Susan Barrett ET AL., *Advancing Education Effectiveness: Interconnecting School Mental Health and School-Wide Positive Behavior Supports*, at https://assets-global.website-files.com/5d3725188825e071f1670246/5d76c6a8344facab50085275_final-monograph.pdf.

across the country. KCS does not appear to be providing these supports to its students with disabilities.

Related Services: I saw no evidence that KCS has an organized system of “related services” to support the behavior of students with disabilities.⁴⁸ Students with significant behavior challenges require supports provided by personnel with the training to implement them with fidelity. KCS relies for the most part on classroom teachers to implement behavior supports, without adequate consultation from persons with specialized training. This creates a serious risk that the school will provide a level of support that is far below what is needed by the student. Both the student and teachers may believe that because the student is receiving “supports” and not improving, the student must have a severe problem and cannot improve. The student, for their part, is likely to believe that they do not have the capacity to engage in learning, and disengages from the classroom. This is likely the case when, despite the provision of classroom behavior supports, the student’s office referrals and suspensions do not diminish or, as in many cases I reviewed, actually increase.

Customary practices in IEP development for students with behavioral and emotional issues include the provision of supportive related services. Students with behavioral issues, regardless of their special education eligibility category, should have access to related services including counseling, psychological services, or targeted case management, as appropriate to the student, as well as school-community agency collaboration and school-home collaboration.⁴⁹ KCS can provide these related services through school psychologists, school social workers, other behavior specialists, paraprofessional aides, and mentors, including peer mentors.

None of the KCS student IEPs or “Section 504” plans identified any of these “behavioral” related services. Occasionally, the IEPs would include a transportation support, like a school bus aide,

⁴⁸ The IDEA defines “related services” as “transportation and such developmental, corrective, and other supportive service as are required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.34.

⁴⁹ Under the IDEA regulation, related services include counseling services by psychologists, social workers, counselors, and other qualified personnel; parent counseling and training including helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP; psychological services, including developing positive behavior intervention strategies; and social work services, including preparing the social and developmental history of a student with a disability and developing positive behavior intervention strategies to use to support the student. 34 C.F.R. § 300.34.

speech or language therapy that may help the student with communication issues, or occupational therapy to help students develop a repertoire of daily living skills and activities, which may help reduce frustration. These services alone are not enough to help the KCS students with disabilities whose records I reviewed develop skills to address the root causes of their behavior issues.

BIPs: The KCS BIPs I reviewed were deficient in a number of ways. Very few KCS BIPs indicated that students would receive services such as social skills training and coping skills training, which students with concerning behaviors often need in order to learn in general education environments with other students. The BIPs I reviewed did not convey who would provide the service, where or for how long, or the data that would be collected to determine the effectiveness of the behavior supports in the plan. The description of such a service in a BIP or IEP *should* look like:

- *Service*: Social skills training focusing on improving self-control when confronted with a direction from the teacher or teasing from a peer.
- *Duration*: Training will take place in a small group for a minimum of eight consecutive weeks. This period may be extended based on data indicating the effectiveness of the service.
- *Provider*: School Psychologist (or some other person with similar qualifications).
- *Frequency*: Two times each week for 35 minutes each session.
- *Goal*: Improve compliance with staff direction from 50 percent to 75 percent in five weeks (improving five percent each week). Improve positive response to peer teasing from zero percent to 50 percent in five weeks (10 percent improvement each week).
- *Data Monitoring*: Staff will record percentage of teacher directions followed appropriately, and the number of office discipline referrals for inappropriate response to peers.⁵⁰

⁵⁰ This could be consolidated to state: Social Skills training will be provided twice each week, for 35 minutes each session, focusing on improving self-control when given directions from the teacher or teased by a peer. Training will be provided in a small group by the school psychologist. Staff will use Percentage of compliance and number of office referrals to monitor the outcomes of the social skills training.

In the KCS BIPs I reviewed, there was no indication of the focus of social skills training (e.g., self-control training, following directions, dealing with teasing) when it was identified in the BIP, the number of times per week that the training would be provided, the person who would provide the training, and specific goals and performance levels for the training. It is difficult to imagine how services such as social skills and coping skills training that did not contain these elements could be implemented at all, let alone with any level of fidelity or sufficiency, without documentation that the service *was* provided, on a particular date, for a specific amount of time.

This was a significant problem throughout the KCS BIPs, and IEPs. When behavior supports are identified, typically the staff member(s) responsible for providing those supports, the frequency or intensity of the supports, and the time during which supports will be provided are not identified.⁵¹ Virtually all of the behavior supports identified in KCS BIPs and IEPs are implemented “across all areas,” without describing precisely what those supports entail, with a notation such as “Behavior Intervention Plan All Locations.” This means that KCS cannot collect or analyze adequate data to determine the impact of those supports on student outcomes. When this information does appear in a student’s IEP or BIP, the frequency of the support is often inadequate (such as when a student receives “Behavior Monitoring 30 Minutes/Month”), based on the student’s subsequent student behavior and related disciplinary removals.

The BIPs I reviewed also do not identify replacement behaviors KCS will teach the student as an alternative to engaging in behaviors of concern. Instead, they state what the student should not do at school. Stating what the student should not do does not identify a replacement behavior that the student will be taught. For example, one BIP indicated that the student’s behavior was “challenging.”⁵² The challenging behavior identified was “threat of injury.” The identified replacement behavior was “no threat of injury.” This is an inappropriate replacement behavior for this challenging behavior. An appropriate replacement behavior would be to teach the student the skills to use *instead* of the challenging behaviors, such as asking the teacher for help, self-de-escalation, or anger management techniques. This student did not have the skills to engage in any of these replacement behaviors—or else he would have used them—and simply stating that the student will not threaten injury does not solve this problem. Students learn replacement behaviors

⁵¹ See e.g., KCBOE 38575; KCBOE 34862; KCBOE 23236.

⁵² KCBOE 35100.

through the provision of behavior supports that teach the student those behaviors, and should be the focus of the BIP.

It also does not appear that parental or caregiver involvement in the process of planning BIPs, or IEPs and “Section 504” plans, occurs regularly, or at all. In most of the files reviewed, there is an absence of parental involvement (other than checklists for parents to complete and return) in the evaluation and planning process. There is no consistent evidence that I could discern from the records that KCS staff interviewed parents, that parents participated in planning meetings, or that these and similar contributions by other family members led to changes in the instruction, services, or other supports provided to the student.

In general, KCS does not appear to have a districtwide approach to developing appropriate IEPs, BIPs, and “Section 504” plans. The ineffectiveness of the behavior supports identified in these plans is demonstrated by the disciplinary actions—including in-school or out-of-school suspension, lunch detention, Saturday detention, exclusion from class, loss of bus privileges, transfer to an alternative program, or in some cases expulsion—that continued to take place after supports were provided. The KCS student experiences, in the files I reviewed, were consistent with the research findings cited in the 2015 OSEP report on the effectiveness of suspensions, and affirm that suspensions are ineffective in reducing future negative behavior. In this sample of student files, there was a significant number of students with over 10, 50, or even 100 suspensions during the two-plus years for which I received records. The typical KCS response seemed to be not to try different supports, but to continue to punish and wait for the student to fail. One “Section 504” plan noted only that the student’s “...behavior plan discontinued. It was not effective.”⁵³ Yet the plan did not document that any other actions were taken, or supports provided.

The rate and duration of the suspensions and other disciplinary removals KCS students experienced, even after a plan was in place, suggests the lack of an adequate districtwide system for developing IEPs, BIPs, and “Section 504” plans for these students that meet their behavior support needs.

⁵³ KCBOE 11536.

4. Does KCS have an adequate system and procedures for implementing IEPs and BIPs for students with disabilities who need behavior supports?

Based on the evidence provided (KCS policy and procedure documents and the KCS student records), there is no indication that KCS has appropriate procedures for *implementing* IEPs, “Section 504” plans, and BIPs after they are developed. Student records do not always reflect what actually takes place at school and in the classroom. However, it appears that KCS lacks the systems, either districtwide or at the school level, to monitor adequately whether implementation of these plans is taking place.

I saw no evidence that KCS has adequate procedures or protocols to monitor the implementation of special education or “Section 504” services for students who need behavior supports. In her deposition, Dr. Porter indicated that KCS principals have the responsibility for monitoring the implementation of all plans for students with disabilities.⁵⁴ KCS does not appear to provide principals or other school staff with guidance on what this “monitoring” entails, however. Dr. Porter also stated that the district did not have any processes or guidelines for creating a BIP, did not provide training on how to monitor whether a BIP is being implemented, and did not track such information districtwide.⁵⁵ I saw no evidence of specific policies or procedures for monitoring whether students met their IEP and BIP goals.

Normal and customary monitoring procedures for implementation of behavior (and academic) supports include two areas of monitoring: 1) fidelity and 2) sufficiency. Fidelity monitoring documents that the provider of the support implemented it in the intended manner. Observations and interviews by supervising staff or consulting professionals are the usual and customary methods for determining fidelity. For example, to document fidelity a school psychologist or counselor might indicate that social skills training had been implemented consistent with implementation standards and that the provider had been adequately trained to implement this support.

⁵⁴ Porter Dep. Tr. 26:16–27:12; 60:2–61:10; 66:22–67:6.

⁵⁵ Porter Dep. Tr. 70:25–71:10; 77:10–85:8.

in systemic review of student behavior data, including to determine whether a student is demonstrating a positive, questionable, or poor response to behavior supports, which should inform problem solving and modification of supports. The IEPs, BIPs, and “Section 504” plans do not document who is to conduct such reviews, how often they are to be conducted, what data is to be collected, and how KCS would use such information.

This is an area of significant weakness for KCS. If monitoring of implementation fidelity and sufficiency is not taking place at the school level, the district cannot identify deficiencies in implementation among its schools and correct them. Dr. Porter stated repeatedly that KCS delegates monitoring the implementation of the IEP to the principal and the student’s IEP or “Section 504” planning team.⁵⁶ To repeat, there was no evidence that principals have the knowledge, skills, and training to conduct this monitoring.

Typically, the documentation of the provision of supports, and data to document whether desired outcomes are obtained, is the responsibility of the provider of the support, such as a school psychologist. The role of the principal is to ensure that the school psychologist or other staff providing the support actually provides such documentation on a continuous basis. Though Dr. Porter explained that monitoring implementation of plans was the responsibility of the principal and the planning team, the monitoring process she described amounted to a checklist of IEP components for principals or team members to use to monitor whether plans contained required elements. She did not describe, and I did not see in the student records or other documents I reviewed, any evidence that the school principals and team members actually monitored implementation.

I saw no evidence that KCS has any data collection processes that it could aggregate on a schoolwide or districtwide basis to determine whether IEPs, “Section 504” plans, or BIPs were implemented appropriately, in order to identify problem trends that may require additional or different training or other solutions. At the school level, I did not see that KCS principals and school staff received the training and professional development they need to meet Dr. Porter’s expectations for monitoring implementation.

⁵⁶ Porter Dep. Tr. 60:2-61:10; 66:22-67:6.

5. Does KCS have an adequate system and procedures for monitoring whether students with disabilities who receive behavior supports make appropriate academic progress?

KCS does not appear to have progress monitoring policies, procedures, or practices that would allow district administrators to understand whether students with disabilities who need behavior supports are making appropriate academic progress.

It is normal and customary that school districts have policies, procedures, and practices for the implementation of robust data collection systems measuring student progress. These policies, practices, and procedures focus on different types of data collection, for different purposes: early warning systems, screenings, formative OPM assessments, and summative assessments. IEPs and “Section 504” plans should contain evidence that a student’s school-based team is collecting and monitoring the student’s progress through these methods:

- (a) **Early Warning Systems:** I saw no evidence that KCS has implemented an early warning system to identify students at risk for behavior and academic problems, either early in the development of these problems or before they present. Instead, the district appears to wait until a problem is significant before addressing it. Many of the records I reviewed documented adverse behavior issues that manifested early in a student’s enrollment in the district, but none of the significant supports that would typically be provided under those circumstances. The lack of supports for students with these behavior profiles often results in long-term school failure.
- (b) **Screening:** It is customary for school districts to begin screening of students in kindergarten to identify at-risk factors for learning and behavior. Many educational service companies sell such screening tools, such as Renaissance Learning’s STAR assessments, or the Early Childhood Technical Assistance Center’s Child Outcome Survey.⁵⁷ As an example, the Child Outcome Survey measures enable districts to plan for meeting student needs in the following areas:

⁵⁷ See *Renaissance Star Reading*, Renaissance, at <https://www.renaissance.com/products/star-reading/> (last visited Apr. 9, 2021); *Child Outcomes Summary (COS) Process*, Early Childhood Technical Assistance Center, at <https://ectacenter.org/eco/pages/cos.asp> (last visited Apr. 9, 2021) [hereinafter “Child Outcomes Summary Process”].

- Positive social-emotional skills (including in forming social relationships);
- Acquisition and use of knowledge and skills (including early language and communication, and early literacy); and
- Use of appropriate behaviors to meet needs.⁵⁸

Collection of these types of data, designed for early identification of academic and behavior or social-emotional strengths and needs, enables a district and school to provide less intensive supports to meet the student's needs. Such supports are often more effective than waiting for the student to demonstrate moderate or severe levels of academic and behavioral issues that require far more intensive supports. Academic and behavior screening measures exist also for elementary school, middle school, and high school students. However, the focus on early prevention and intervention yields outcomes that are more positive for students with disabilities, and for their schools and school districts. I saw no evidence that KCS screens students using these or similar methods.

- (c) **Formative Assessments:** I also saw no evidence that KCS makes effective use of formative assessments. The purpose of formative assessments is to identify how well supports are improving student outcomes. These assessments measure the effectiveness of supports. The goal is to identify, as early as possible, which supports are working and which supports are not. When supports are not working, an IEP or "Section 504" team can meet at the earliest sign of non-improvement to determine whether it is due to a lack of implementation fidelity, or whether the team needs to reconsider and change the support.

Schools typically conduct formative assessments in two ways: first, OPM monitors student performance on a weekly or monthly basis. This could be academic performance, such as measures of improving reading fluency or improving performance on periodic testing, or behavioral performance, such as improving

⁵⁸ Child Outcomes Summary Process, *supra* note 57.

regular compliance with classroom directions, or regularly completing classroom assignments, or behavioral performance.

OPM is a formative assessment focused on individual students, including students with disabilities. I saw no evidence in the documents I reviewed to show that KCS used a systematic process to support OPM practices. In her deposition, Dr. Porter indicated that KCS does not in fact monitor the academic performance of students with disabilities throughout the year, but rather waits until the end of the year state academic assessment.⁵⁹

The second type of formative assessments, benchmark assessments, typically take place three or four times each school year. School districts that use STAR or MAP (Measures of Academic Progress) assessments for reading or math typically administer these assessments three times each year (fall, winter, and spring).⁶⁰ The purpose of these benchmark assessments is to ensure that staff review student progress in assessment “windows” that still permit time to modify instruction or supports to keep students on-track for grade-level performance. These assessments, unlike OPM, are typically administered to all students. At the middle and high school levels, the benchmark assessments typically occur during report card cycles—typically four times each year. Performance of all students is reviewed in areas of attendance, behavior, and measures of academic progress like grades (or credits, at the high school level). Benchmark assessment permits the assignment of “risk” for future academic or behavioral challenges for every student in a school. The “risk” levels typically identify three levels—low, moderate, and high. These risk levels are predictive of future performance and alert staff to the need to differentiate supports for students based on their level of risk. Higher risk students should receive more support. The goal is to leverage and provide supports aligned with level of risk to ensure students remain on-track for success.

⁵⁹ Porter Dep. Tr. 15:14.

⁶⁰ See Renaissance Star Reading, *supra* note 5757; *Map Suite*, NWEA, at <https://www.nwea.org/the-map-suite/> (last visited Apr. 9, 2021).

Typically, these academic and behavior benchmark assessments provide stable, accurate predictions of students' end-of-year academic performance, including for progress on IEP goals and performance on annual state academic assessments. For, example, if a team knows in October that a student is at significant risk of not attaining the end-of-year goal, the team can modify, or intensify, interventions early in the year to increase the probability that the student will attain end-of-year goals. If this type of evidence is not available, the team has no way to know if the student's academic progress is sufficient to attain the student's end-of-year goals. The earlier the problem is identified, the more time the team has to address that problem successfully. I saw no evidence that KCS has a systematic and systemic approach to benchmark assessments, or uses them for prevention and intervention of academic and behavior issues, including for its students with disabilities.

- (d) **Summative Assessments:** KCS includes data from end-of-year summative assessments, including state academic achievement assessments and end-of course assessments, in some of the IEP annual and triennial reports⁶¹ that I reviewed. However, it does not appear that these data are interpreted so as to permit KCS can use the data to develop necessary student supports for the subsequent school year. If end-of-year summative data is used effectively, a student who demonstrates significantly below-average rates of reading fluency in May can receive targeted intensive instruction in reading fluency skills from the beginning of the school year. Similarly, a student who has demonstrated chronic absenteeism (greater than 10 percent of available school days) during the school year could receive supports over the summer and from the first day of school the next year to remove barriers to school attendance, before the student's attendance patterns have more time to adversely affect academic progress. Time engaged in instruction, measured by the number of instructional minutes per week, is one of the best predictors of student growth. When summative end-of-year data is not used to monitor the on-going progress of students from the beginning of a school year, school-based planning

⁶¹ The IDEA requires that IEPs be reviewed annually, and that reevaluations of students with an IEP be conducted at least once every three years. The IDEA regulations establish several procedural and substantive requirements for the evaluations. *See* 34 C.F.R. §§ 300.303, 300.304, 300.305, 300.306.

teams do not have the information necessary to provide academic and behavior supports when they are needed most—*when there is sufficient time for those supports to be successful.*

In addition to these methods of data collection, it is also normal and customary for school districts to have a system of interpreting the data collected to compare the student's actual progress to expected levels of progress. These systems differentiate between simple "improvement" and improvement that reveals progress toward grade-level performance—also known, where students have fallen behind grade level, as "closing the gap." My review of KCS student records indicated that this type of data interpretation did not take place in SAT, IEP, "Section 504" plan, or BIP meetings and processes. For example, most of the SAT forms completed by teachers either did not contain any quantitative progress data at all or reported incomplete data, or reported progress using binary and/or subjective teacher judgment terms such as "improved" or "did not improve." I also saw this type of progress assessment measure, based on subjective teacher judgment, in student IEP records, including annual review reports and triennial reevaluation reports. The term "improved" can connote many different things, and many different degrees of progress. It is purely subjective. This type of progress monitoring and reporting is not appropriate and does not conform to customary school district practice.

Record keeping in KCS tracking the relationship between student behavior and student academic and behavioral outcomes is inconsistent. The vast majority of the IEPs I reviewed had no data in the student's IEP plan documents that could be used to assess IEP goal attainment. The standard statement of data collection in virtually all KCS IEPs with behavior goals is that progress is "as measured within the teacher's anecdotal records, observation notes, general education teacher input and WVEIS documentation if necessary." None of these methods collects data that can be compared over time in a valid manner. In addition, there was little or no evidence that data from these sources was ever used to evaluate progress during annual reviews of a student's IEP. KCS also seldom collected completed teacher evaluation forms, and these forms rarely contained any information about how the teacher measured the student's progress.

Where data is collected, it often appears to be cursory, or inaccurate. Some IEP checklists in individual KCS student records indicate that the student did not experience behavioral challenges

that might interfere with academic progress. However, the adverse impact of the district's failure to provide supports to meet those challenges—continued suspensions, other classroom exclusions, requests that the student stay home pending a “safety” psychological examination—on the student's instructional time and academic progress are evident in the student records I reviewed, and clearly indicate otherwise.

In her deposition, Dr. Porter indicated that the district does not know how many students with IEPs are meeting their IEP academic and behavioral goals.⁶² It is customary in school districts where I have worked for both annual IEP review meetings and triennial reevaluation meetings to identify the degree to which the student has met each IEP goal. Typically, the team measures a range of possible outcomes, including whether the goal was exceeded, met, partially met, or not met, which are measured through objective student progress data. The goal attainment data should be stored in a central database, so that district leaders can use it in conducting evaluations of districtwide policies, procedures, and resources, identifying problem trends among schools, and planning targeted professional learning opportunities. In this way, the district not only monitors the degree to which individual students meet their IEP goals but also, through analysis of trends across students, schools, and type or level of schools, evaluates the effectiveness of the special education system in the district.

Dr. Porter stated that for the last two years KCS has monitored approximately 1,000 IEPs annually, or about 100 IEPs per month.⁶³ She stated that the district had not developed its own form to use for its monitoring, but alluded to a “state form.” There is no evidence that KCS has systematically collected aggregated data from the IEP reviews and used it as part of a data-driven process to identify district or schoolwide areas of noncompliance, or need for improvement. I have not reviewed any of the forms that were used for this monitoring program, as they were not provided by KCS. I suspect, however, that the purpose of this monitoring is to ensure that IEP forms are filled out as appropriate—that is, that all the boxes are checked, to ensure compliance with IDEA procedural requirements—and not to identify the need for improvement in KCS's systems for providing supports to students who need them, as reflected by improved student outcomes. It is

⁶² Porter Dep. Tr. 69:3–7; 102:4–13; 216:5–217:20.

⁶³ Porter Dep. Tr. 40:17–41:9.

possible to tell through a solely visual review whether an IEP has met the requirements of state and federal special education regulations, such as whether IEP goals and objectives are identified and meet the WVDOE's required format. However, unless the review assesses the appropriateness of the content, such as a goal, for the student and determines whether students are actually making appropriate progress, there is no way to determine whether the IEP is adequate, in order to predict or improve student achievement. In my review of student records, I sought to determine whether identified goals were appropriate—not just present—and whether the criteria for whether a goal is met was appropriate. In many of the records I reviewed, behavior goals were not written appropriately. The goals tried to address as many as five or six separate behaviors in the same goal, rather than a single concerning behavior or skill deficit. Successful goal attainment meant behaving in a desired way 100 percent of the time. Setting perfection as a target for goal attainment regardless of the severity of the student's behavior, or the student's ability to behave differently, is unrealistic. Such goals are inappropriate.

Many of the patterns of concerning behavior in the KCS student records I reviewed had similar histories, development, and negative outcomes. KCS does not appear to acknowledge that it has a significant number of students with this behavioral profile. I saw no systemic approaches to monitoring these students' progress, and no evidence that KCS has used data obtained from progress monitoring to develop and implement systems of supports that would result in improved outcomes for the students.⁶⁴

6. Does KCS adequately monitor whether its disciplinary policies are implemented in compliance with the IDEA and Section 504 of the IDEA?

It appears that KCS is not monitoring critical data regarding the use of exclusionary discipline with its students with disabilities, or using these data to ensure compliance with the protections for these students in the IDEA and other federal and state law, including the requirements for behavior planning when indicated following suspensions or other classroom removals.⁶⁵

⁶⁴ I have provided a summary of facts about one such student in Appendix C. This student is representative of many of the students whose records I reviewed, and many of the trends described in my report.

⁶⁵ See *supra* p. 15.

In her deposition, Dr. Porter stated repeatedly that KCS school principals monitor implementation of disciplinary policies and procedures for students with disabilities.⁶⁶ District administrators use the web-based West Virginia Education Information System (WVEIS) Discipline Reporting and Management System to document certain identified types of disciplinary removals from the classroom, including office referrals, in-school and out-of-school suspension, and expulsion recommendation.

KCS provided Plaintiffs with 562 pages of KCS student suspension data, apparently reported from the WVEIS database, for the calendar years 2018, 2019 and through mid-March 2020. I do not know whether KCS recorded all such discipline events in WVEIS, or if discipline events occurred that were not recorded. KCS represents that this is a compilation of all student suspensions, disaggregated by date, school, type of infraction, type of suspension (in-school or out-of-school), and the number of days of suspension for each of those years.

As discussed above, I analyzed the suspension data that was provided to me by Plaintiffs, including cross-analyses of different datasets produced by KCS, based on total suspensions by student type, school, and district levels. Through this analysis, I determined the likelihood that students with disabilities, at individual KCS schools and across types or levels of KCS schools, will experience suspensions. My review of district policies and procedures did not indicate that KCS maintains a comprehensive system to analyze discipline data in the way that I did. I also did not see that KCS uses these data to develop districtwide responses to concerns, such as racial, ethnic, or socioeconomic disproportionality in the use of suspensions or separate special education placements, or the disparate rates of suspensions among KCS schools, that the data might reveal.

It is unclear whether KCS regularly maintains discipline data, in WVEIS or another database, which would permit it to generate reports extracting the data by other metrics, such as whether the student suspended was a special education student or a “Section 504” student with a disability, and whether that student receives behavior supports. In her deposition, Dr. Porter stated that the KCS Exceptional Students Office did not collect suspension information for students with disabilities, including patterns or trends of suspensions among students, schools, and types or levels of school; whether students who are suspended receive behavior supports; and whether FBAs and BIPs

⁶⁶ Porter Dep. Tr. 81:19–82:9; 114:18–116:11.

required to be performed or revised after a student has received 10 or more days of suspensions during the school year are actually developed or implemented.⁶⁷ If this is representative of the district, it does not appear that KCS's data systems would permit other analyses that would be useful in understanding important trends, including whether students with disabilities continue to experience suspensions after receiving supports.

It is highly unusual for a school district not to have a data system that permits it to aggregate and compare its behavior support and discipline data and monitor continually the impact of the services and supports it provides to its students, including students with disabilities. Such systems exist to immediately alert a district, and a school principal for that matter, when issues such as disproportionality (by race, ethnicity, socioeconomic status, disability eligibility category, or time spent in separate placements) become significant. In addition, as discussed above if a district cannot evaluate student academic and behavior outcomes using ongoing monitoring of discipline databases, to determine whether behavior supports are working to help students stay in the classroom, then the district's capacity to adjust program emphases to address these problems is lacking.⁶⁸

KCS maintains or has access to certain databases, such as WVEIS, an attendance database, and state-level academic achievement testing results. However, it does not appear to analyze these data to identify issues such as disproportionality, early identification of at-risk students, or contributing causes to poor student academic performance, including the frequency and duration of disciplinary removals from the classroom, or student absenteeism. In addition, based on Dr. Porter's testimony it appears that the district lacks databases to track the type, frequency, and duration of academic and behavior supports and the impact of those supports on student outcomes.⁶⁹ KCS's Exceptional Students Office also does not appear to have data systems or

⁶⁷ Porter Dep. Tr. 23:2–5; 43:21–45:7; 120:10–14; 120:10–122:18; 147:11–23.

⁶⁸ Similarly, in her deposition Dr. Porter said that her office does not maintain districtwide information on the placements of students with disabilities in separate special education classrooms, or information regarding the steps school staff take before recommending placements in these restrictive settings. Porter Dep. Tr. 236:6–239:2; 240:16–21. Regarding whether KCS documents steps staff take before recommending more restrictive placements, Dr. Porter said, "That's the training we provide our staff to do." Well, that is what they are trained to do." This indicates that the district does not maintain districtwide data regarding whether these placements are made consistent with IDEA requirements. *See* Porter Dep. Tr. 15:40.

⁶⁹ Porter Dep. Tr. 43:21–45:7; 73:5–74:14; 190:4–193:7; 218:2–16; 220:8–17; 238:4–239:2; 240:16–21; 324:19–236:23.

procedures that would permit KCS to track whether discipline complies with the IDEA's procedural protections for special education students. This is needed to track the rates and incidence of behavioral issues for students with disabilities that would indicate that KCS should provide behavior supports to them, to provide them FAPE and otherwise comply with the IDEA. This also implicates whether students are receiving the behavior supports they are entitled to under Section 504 and the Americans with Disabilities Act (ADA).

KCS's difficulties responding to Plaintiffs' discovery requests underscore the deficiencies in its data systems. In order for KCS to respond to Plaintiffs' requests for data, KCS required several members of staff to manually review over 5,000 student records to then input behavior support and suspension data into a spreadsheet by hand.⁷⁰

Without these data collection and analysis processes, the entire KCS system of special education and supports, and its intersection with disciplinary procedures, is "delegated" to implementation by principals and IEP team members without adequate oversight by the district.

7. Whether KCS provides adequate training and professional development to staff so that they can provide behavior supports to students with disabilities.

Based on the records I reviewed, and my experience as a school administrator and consultant, I see little or no evidence that KCS provided adequate professional development opportunities for staff focused on the complex behaviors I saw in student records. The focus and level of the training and professional development provided by KCS to its staff appears to focus instead on very basic information that may help support students with minor behavior problems.

It is unclear when and how often professional development occurs for KCS teachers, principals, and other staff. KCS produced documents describing presentations to which it invited staff, and sign-in sheets for these presentations, but it is unclear for whom these presentations were intended, how many staff could have attended, and when and how often these took place. The webpage for the KCS Office of Professional Development and Instructional Support did not contain any listing of annual professional development offerings or information about past professional development activities. There was no philosophy statement of the purpose, mission, or vision of this department,

⁷⁰ Samples Dep. Tr. 145:13 – 147:11; 152:6 – 154:15.

or any other statement regarding how KCS provides and supports professional development. I saw no information about whether KCS mentors or coaches teachers, no mention of technical assistance materials about either the provision of behavior supports or the administration of discipline, and nothing about other forms of staff support.

Learning Forward, the national association for professional learning for educators, provides districts with evidence-based models and practices that guide the implementation of professional learning, using national standards to increase educator knowledge and skills, along with evidence-based methods to transfer those skills to practice and evaluate the impact of the professional learning on student outcomes.⁷¹ Learning Forward has graphed this evidence-based national model for professional development:



<http://www.learningforward.org/standards/StandardsReferenceGuide.pdf>

I did not see that this model existed at KCS. No evidence indicated that KCS implements professional learning for all educators, focused on the behavioral needs of students (in both general and special education) and designed to increase awareness around the needs of these students and to encourage implementation of effective practices across the district.⁷²

⁷¹ See *Learning Forward*, at www.learningforward.org (last visited Apr. 9, 2021).

⁷² Examples of such professional learning curricula that might benefit KCS staff include modules on schoolwide PBIS, youth mental health first aid, chronic absenteeism, and early warning systems.

As discussed above, Dr. Porter stated in her deposition that KCS school principals and IEP teams were accountable for monitoring the implementation of all procedures relating to instruction, services, and other supports, including behavior supports, for student with disabilities.⁷³ My review of KCS’s publicly-available professional learning information, and that produced by KCS in discovery, provided no evidence that a districtwide professional learning program exists to ensure that principals have the skills, capacity, and time to effectively monitor such things as discipline procedures, IEPs, BIPs, “Section 504” planning, and other services provided for students with disabilities. For example, Dr. Porter stated in her deposition that no professional learning opportunities existed for staff to learn how to develop IEPs.⁷⁴ Instead, the learning occurred as the teams implemented the IEPs. This is inadequate support for school staff who are responsible for educating students with disabilities, including those who need behavior supports.

The data I reviewed make it clear that a great deal of variability exists among KCS schools and across the district’s elementary, middle, and high schools in the administration of suspensions for general and special education students. It is typical for districts to implement professional learning strategically to address the different needs presented by students in different schools. For instance, during the 2018-2019 school year students with disabilities made up 12 percent of the KCS high school student population, yet disturbingly received 31 percent of all suspensions at the high school level. Three KCS high schools—Capital, Sissonville, and Riverside—account for 50 percent of the suspensions of students with disabilities. If suspensions at Chandler Academy, where 32 students with disabilities received 190 suspensions, are added, these four schools account for 72 percent of all high school suspensions for students with disabilities. Effective professional development would provide professional learning, coaching, and technical assistance to these schools because of their unique needs. At the same time, George Washington, Herbert Hoover, Nitro, and St Albans high schools have suspension rates for both general education students and students with disabilities that are below the districtwide averages. An effective professional development program might partner the leadership of high suspension schools with the leadership

⁷³ Porter Dep. Tr. 26:24–27:12.

⁷⁴ Porter Dep. Tr. 71:11–72:15; 102:14–104:5; 105:6–109:16.

of low suspension schools, in a learning community focused on the implementation of effective behavior supports to address the use of suspensions.

A review of all the documents provided by KCS, and the KCS website for professional development and instructional support, reveals that KCS currently lacks a cohesive and comprehensive system of professional learning to help staff address the needs of all students, in particular its students with disabilities, experiencing disciplinary removals from the classroom.

CONCLUSION

In my opinion, KCS currently does not have effective systems for providing behavior supports to students with disabilities. The academic and behavioral outcomes for the sample of students whose records I reviewed indicates that systems for supporting them do not exist, or are inadequate to meet their needs. The systems of special education and supports are delegated to implementation and monitoring by school staff, principals, and IEP team members, without adequate district oversight. There is little evidence that the individuals responsible for implementing and monitoring supports for these students receive adequate training or other support to do so.

Although KCS has a set of general discipline policies and procedures, last revised in 2012, I saw no discipline policies specific to special education students or other students with disabilities. Moreover, as discussed above, the district does not have a systemic data collection system to aggregate and monitor critical information, including discipline data, necessary to ensure that special education and “Section 504” services meet student needs. It is customary for districts to collect and analyze data regarding the number and percentage of students with disabilities receiving behavior supports; the number and percentage of those students meeting IEP goals; the students’ academic achievement; the number, rate, and probability of suspensions administered to the students; and the number of “unofficial” behavior-related removals, such as being sent home early or excluded from classes, that these students experience. There is no evidence that these data systems existed at KCS. Without them, the district cannot effectively monitor whether students who need behavior supports receive them, and whether with those supports they are receiving FAPE in the LRE without discrimination.

In particular, it appears that KCS does not have a process to ensure consistent and valid eligibility determination across the district. In my review of KCS student records, students were consistently

found eligible for special education as students with OHI when the contents of their files, including evaluations by outside providers, teacher reports, and WVEIS disciplinary incidents, clearly indicated that the student's primary issues were behavioral, with considerable evidence that the student met the state's definition of a child with an EBD.

In my opinion, the information I reviewed reflects that KCS has abdicated its responsibility to ensure effective instruction, services, and other supports for its students with disabilities who need behavior supports, so that they can make appropriate progress.

A handwritten signature in black ink, appearing to read 'Judy Elliott', with a stylized, cursive script.

Judy Elliott, Ph.D.

Date: April 16, 2021

APPENDIX A

Judy L. Elliott, Ph.D.

Education

1992 M.A. School District Administration
State University of New York, Fredonia, NY

1989 Ph.D. in Educational Psychology
State University of New York, Buffalo, NY

1989 M.A. in School Psychology
State University of New York, Buffalo, NY

1984 M.A. in Educational Psychology
State University of New York, Buffalo, NY

1982 B.S. in Education Major: Exceptional Education,
Minor: Elementary Education
State University of New York College, Buffalo, NY

Certification

2007 Oregon – Transitional Administrator License

2005 California Administrative Services – Clear Credential

1992 New York State Permanent Certification in School District Administration

1991 New York State Permanent Certification in School Psychology

1988 New York State Permanent Certification in Elementary Education

1986 New York State Permanent Certification in Exceptional Education

Professional Experience

Oct. 2011 – Present *CEO*, EduLead, LLC.

July 2012 – July 2015 Appointed as “*Distinguished Educator*” by Commissioner John King, to support and monitor Buffalo Public Schools, Buffalo, NY.

June 2008 – Aug. 2011 *Chief Academic Officer*, Los Angeles Unified School District, Los Angeles, CA.

- Feb. 2007 – June 2008 *Chief of Teaching and Learning*, Portland Public Schools, Portland, OR.
- 1999 – 2007 *Assistant Superintendent for School Support Services*, Long Beach Unified School District, Long Beach, CA.
- 1994 – 1999 *Senior Research Associate/Educational Specialist*, National Center on Educational Outcomes, College of Education, University of Minnesota, Minneapolis, MN.
- 1996 – 1999 *Adjunct Lecturer*, College of Education, University of Minnesota.
Taught Graduate courses in the School Psychology Program
- 1988 – 1994 *Adjunct Professor*, Department of Exceptional Children
State University of New York College, Buffalo, NY
Courses: Curriculum Planning for Clinical Instruction of
Learning/Behavior Disabled Students, Applied Behavioral Analysis.
- 1989 – 1994 *School Psychologist*, Williamsville Central School District, Williamsville, NY.
Responsible for mental health and instructional support at High School and Elementary level.
- 1987 – 1989 *School Psychologist*, Frontier Central School District, Hamburg, NY.
Responsible for mental health and instructional support at Middle School and Elementary level.
- 1984 – 1987 *Exceptional Education Teacher*, Self-contained Seventh Grade Learning Disabled Students, Amsdell Junior High School, Frontier Schools, Hamburg, NY.
- 1983 – 1984 *Exceptional Education Teacher*, Self-contained Ninth Grade Learning Disabled and Emotionally Disabled Students, Hamburg Junior High School, Hamburg Schools, Hamburg, NY.
- 1982 – 1983 *Exceptional Education Teacher*, Grades 9-12 Learning Adjustment and Emotionally Disabled Team Teaching, Kenmore East Senior High School, Tonawanda, NY.

Professional Services

- 2012 – Present Board member, Achievement Network. Boston, MA
- 2011 – 2012 Member of USDOE ESEA Peer Review Team for NCLB Waivers
- 2010 – Present Member of Council of the Great City Schools team conducting Special Education Reviews for urban districts.
- 2009 – Present Member, Foundation Board of Directors, State University College of NY at Buffalo
- 2010 – 2013 Member, Board of Directors Inner-City Arts, Los Angeles, CA
- 2006 – 2015 Senior Advisor of National Advisory for the Response to Intervention Action Network. National Center on Learning Disabilities.
- 2006 – 2009 Member, Board of Directors for the Instructional Research Group (IRG). IRG conducts rigorous research on instruction and professional development, with a particular focus on improving the quality of instruction to English learners and students with disabilities.
- 2004 – 2014 Vice-Chair of the National Center on Learning Disabilities (NCLD) Professional Advisory Board.
- 1999 – Present Member Professional Advisory Board, National Center on Learning Disabilities (NCLD).
- 2004 – 2008 Invited council faculty to Western Governors University. Providing oversight for a new special education program and department development.
- 2005 – 2007 President, American Education Research Association (AERA) Special Interest Group (SIG) on Research on the Inclusion of Students with Disabilities and Limited English Proficient in Large Scale Assessment.
- 2005 Invited guest to the US Department of Education, Secretary Spelling's discussion on the regulatory guidance for the Alternate Assessment and respective issues related to students with disabilities and NCLB.
- 2005 Invited reviewer of U.S. Department of Education, Institutes of Education Sciences funded projects. Purpose was to provide feedback on the relevance of funded projects to K-12, special education and post-secondary education.
- 2005 Invited author for the National Association of State Directors of Special Education sponsored policy guidance document related to IDEA 2004's issuance of the Response to Intervention statute to the traditional discrepancy model of identification of Learning Disabilities.

- 2004 – 2005 Appointed by California’s State Superintendent of Education, Jack O’Connell to the SB964 – High School Exit Examination for Pupils with Disabilities Advisory Panel
- 2004 – 2007 Appointed Research Liaison to the National Executive Committee for the Council of Administrators for Special Education (CASE), Council for Exceptional Children.
- 2004 – 2005 Secretary/Treasurer, American Education Research Association (AERA) Special Interest Group (SIG) on Research on the Inclusion of Students with Disabilities and Limited English Proficient in Large Scale Assessment.
- 2003 – 2004 Appointed to the National Research Council Committee on the Participation of English-Language Learners and Students with Disabilities in NAEP and other Large-Scale Assessments (Report in Reference Section)
- 2002 – 2005 Appointed by California’s Senate Rules Committee (Senator Burton’s Office) to the California AB312 Legislative Panel for planning and roll out of NCLB in CA.
- Reviewer for OERI funded projects. Reviewed currently funded projects for their relevance to the field and worthiness of continued funding.
- 2002 Invited testimony to the President's Commission on Special Education
- 2000 – 2001 Appointed member of the National Blue-Ribbon Panel to mediate the class action lawsuit against the State Department of Education in Oregon in regard to high stakes testing, accommodations, and students with disabilities (Report in Publications Section).
- 1998 – Present Member of the Professional Advisory Board for the National Council for Learning Disabilities (NCLD).
- 1998 – 2003 Member of the ‘Critical Friends’ Advisory group for the New York State Office of Vocational and Educational Services for Individuals with Disabilities.
- 1997 Invited facilitator and panelist for the U.S. Department of Education’s Improving America’s Schools Regional Conferences. San Diego, CA, Dallas, TX, and Washington, DC.
- 1996 Reviewed and prepared feedback on the U.S. Department of Education National Blue-Ribbon Schools criteria for special populations, Blue Ribbon Schools Panel. Washington, DC.
- 1996 Reviewed and revised Title I Guidance Document on Assessment of Students with Disabilities. U.S. Department of Education, Washington, DC.

1995 Reviewed and prepared feedback on the evaluation criteria for Goals 2000 state grants. U.S. Department of Education workgroup, Washington, DC.

Areas of Expertise

Leadership for Systemic Change/Reform

Policy Development

Data-based Decision Making – Multi-Tiered Systems of Support

Accountability, Assessment, and Accommodations

Special Education Service Delivery Systems and Accountability

Instructional Strategies and Intervention

Behavior Management/School-wide Discipline

Technical Assistance to School Districts, County, and State Organizations

Sep. 2019 – Present Sacramento City Unified School District, Sacramento, CA. Contracted via California Collaborative for Educational Excellence (CCEE) to support the district in tandem with county office of education in the areas of special education and building a multi-tiered system of supports.

June 2019 – Present Sonoma Valley Unified School District, Sonoma, CA. Providing Differentiated Assistance support, in collaboration with the county office of education, to build systems and the capacity to use data to drive decision making across the district.

Sep. 2019 – Present ESU #3 NE. Educational Service Unit #3, La Vista, NE. Creating professional learning systems, infrastructures and coaching systems to support multi-year cohorts of secondary schools in the implementation of MTSS.

Dec. 2019 – Present Grantwood Area Education Agency Cedar Rapids, IA. Creating professional learning systems, infrastructures and coaching systems to support multi-year cohorts of secondary schools in the implementation of MTSS.

- Nov. 2018 – June 2020 North College Hills City Schools, Cincinnati, OH. Building the capacity of district leadership to plan, develop and implement systemic multi-tiered systems of support.
- Jan. 2018 – Present Palo Verde Unified School District, Blythe CA. Review of Special Education and General Education Systems. Systemic planning for inclusive schooling, reduction of disproportionality and implementation of tiered instruction and supports.
- Jan. 2018 – June 2019 Mason City Schools, Mason OH. District-wide planning and implementation of a Multi-tiered System of Support (MTSS). Building the capacity of District Leadership teams, School based Leadership team, instruction coaches and student support personnel.
- Nov. 2017 – June 2019 DeSoto County Schools, DeSoto MS. District-wide planning and implementation of a Multi-tiered System of Support (MTSS). Building the capacity of District Leadership teams and School based Leadership team.
- June 2015 – June 2019 Arkansas ASCD, Department of Education, and Local Cooperatives, Little Rock, AR. Technical support to ARASCD and the AR State Education Department in their efforts to develop materials and support Cooperative in the planning, training and capacity building for the implementation for AR RtI.
- Feb. 2015 – Dec. 2017 Des Moines Public Schools, Des Moines, IA. District-wide training, planning and support for the implementation of Multi-tiered Systems of Support. Newly developed District Improvement Plan to guide School Improvement Plans within the MTSS framework. Coordinating and delivering data-driven decision- making and system realignment for all alternative education and credit recovery programs in Des Moines Public Schools.
- Sep. 2015 – Dec. 2018 Mashpee Public Schools, Mashpee, MA. Leadership level coaching and support for data driven decision-making in an integrated system of academics and behavior.
- Oct. 2016 – Dec. 2018 Rochester City School District, Rochester, NY. Conducted a special education review and report on the current state of the District.
- Oct. 2016 – Mar. 2020 Waukegan #60 School District, Waukegan IL. District-wide training, planning and support for the implementation of Multi-tiered Systems of Support at both the central office and school levels.

Oct. 2016 – June 2019	Winston Salem Forsyth County Schools, Winston Salem, NC. District-wide training, planning and support for the implementation of Multi-tiered Systems of Support at both the central office and school levels.
Jan. 2015 – June 2016	Barnstable Public Schools, Hyannis, MA. Development of a Multi-tiered System of Supports (MTSS) implementation plan and School Board Policy for respective school districts, to guide the training and support at the District and school levels.
Jan. 2013 – June 2015	Chicago Public Schools, Chicago, IL. Building capacity at District and Network/School levels to support the development of District-wide Action Plan for the implementation of MTSS.
June 2012 – June 2016	Wake County Public School System, Cary NC. Countywide planning and implementation of MTSS with School based leadership teams and the development of an infrastructure that coordinates, supports and sustains MTSS across all offices.
Jan. 2012 – 2015	Madison Metropolitan School District, Madison, WI. District-wide training, planning and support for the implementation of MTSS.
Jan. 2012 – June 2013	St Paul Public School District, St Paul, MN. District-wide training, planning and support for the implementation of MTSS.
Dec. 2012 – June 2014	Pasco County School District, Pasco, FL. Coaching and support for reorganization of the Office of Curriculum, Instruction, Assessment and Student Support Services.
July 2012 – July 2015	Buffalo City School District. As the NYS Distinguished Educator, had oversight of 28 Priority Schools and systems. Reported to Commissioner John King, New York State Department of Education.

Federal Consent Decrees

2005 – 2007	Appointed to the ‘National Expert Panel’ for the Baltimore City School District <i>Vaughn G.</i> Consent Decree.
2003 – 2007	Appointed member of the Core Team of the Los Angeles Unified School District <i>Chandra Smith</i> Modified Consent Decree.
1999 – 2002	Appointed consultant to the Hawaii State School District <i>Felix</i> Consent Decree

Monitoring Activities/ Expert Consultation

Currently	Serving as Monitor for the Mount Vernon City School District. Complaint filed August 18, 2014; CASE NO. 13 CV 3596 (VLB) filed in THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; Plaintiffs vs. Mount Vernon City School District
Currently	Serving as Monitor for the Kern County Office of Education. Complaint filed February 21, 2018 in THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA; Plaintiffs vs. Kern County; Kern County Probation Department.
2019	Expert Consultation for Complaint filed January 12, 2018 in THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA; Plaintiffs vs. Bureau of Indian Education.
Currently	Expert Consultation for Complaint filed August 23, 2016 in THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA; Plaintiffs vs. State of Georgia
Currently	Expert Consultation for Complaint filed January 24, 2020 in THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA; Plaintiffs vs. Kanawha County Schools

Editorial Reviews

2007 – 2010	Reviewer, The Journal of Special Education
2007	Reviewer for book Handbook for Response to Intervention
1996 – 2012	Consulting Editor, Remedial and Special Education.
1996 – 2004	Field Reviewer, Exceptional Children.
1997	Reviewer for book Curriculum Based Measurement: Advanced Application
1997	Test Reviewer, Burros Institute of Mental Measurements Yearbook
1995	Guest Columnist, Learning Magazine.
1993	Guest Reviewer for School Psychology Review.

Speaking Engagements

Over the past 39 years, I have delivered well over 475 keynote addresses, workshops, and daylong institutes in the areas of Assessment and Accountability, Leadership, Data-based decision-making, Behavior/School-wide discipline, and Effective Instruction. Below are highlights over the past five years.

- | | |
|-----------|--|
| Sep. 2019 | “Making What Matters Happen: Leading with MTSS.” Nebraska Department of Education Annual MTSS Summit, Kearney, NE. |
| June 2019 | “Making What Matters Happen: Leading with MTSS.” Iowa Department of Education First Annual ESSA Conference, Des Moines, IA |
| Jan. 2018 | “Symposium on Multi-tiered System of Supports (MTSS) to Achieve Student Success.” Massachusetts Urban Project, Holyoke, MA. |
| Aug. 2017 | MTSS: Making what matters happen! David P. Riley Summer Institute, Massachusetts Urban Project, Cape Code MA. |
| June 2017 | “Response to Intervention: Making what matters happen!” New York State Response to Intervention Technical Assistance Center, Albany, NY. |
| Sep. 2015 | “Response to Instruction & Intervention: It’s about Core Instruction!” Arkansas ASCD Fall Conference. Little Rock, AR. |
| June 2015 | “Multi-Tiered Systems of Support: Making what matters happen!” Arkansas ASCD. Summer Institute. Hot Springs, AR. |
| Nov. 2013 | “Multi-Tiered Systems of Support: Common Language, Common Understanding.” Fayette County School District, Fayette KY |
| Oct. 2013 | “MTSS: Common Language, Common Understanding & Connecting the Dots.” Chicago Public Schools Central Office kickoff for District-wide implementation. Chicago, IL |
| Sep. 2013 | “Implementing an Integrated Multi-Tiered System of Supports: District-/School-Level Action Planning.” Fall Conference NC CASE, Wilmington, NC. |
| June 2013 | “Response to Instruction and Intervention: Making sense of it all. RtI Institute, Wake County Public School District, Wake County, NC. |
| June 2013 | “The New Normal: Sustaining the use of MTSS to improve student outcomes.” RtI Consortia Conference, Cary, NC. |

- Mar. 2013 “MTSS and Higher Education: Making Connections.” IHE Partnership Summit, Bloomington, IL.
- May 2013 Dr. Horace Mann Graduate Research Symposium. State University of New York at Buffalo. Buffalo, NY.
- May 2012 “RtI2 and Higher Education: Making Connections. 2012 IHE Summer Institute, Department of Public Instruction, Wisconsin.
- Mar. 2012 “Response to Instruction & Intervention (RtI2): Making what matters happen.” Opening Keynote Wisconsin RtI Summit, Department of Public Instruction. Green Bay, WI.
- Feb. 2012 “Response to Instruction and Intervention: Making sense of it all.” Opening Keynote, RtI statewide conference, Anchorage, AK
- Oct. 2011 “Using an RtI Model to Improve Instructional Outcomes for All Students.” Keynote Midwest Leadership Conference. Rochester, MN
- Aug. 2011 “RtI2: Making what matters happen.” Los Angeles Unified School District Special Education Charter School Summit. Pasadena, CA.
- Jan. 2011 “RtI: The What, Why and How.” Madison Unified School District, Madison, WI.
- Feb. 2010 “Preparing Educators for 21st Century Schools.” Inaugural John M. Wozniak Lecture Series, College of Education, Loyola University, Chicago, IL.

Invited Institutes/Sessions

- Sep. 2019 “Data-based Implementation of MTSS for District and School Leaders.” Nebraska Department of Education Annual MTSS Summit, Kearney, NE.
- Sep. 2019 “The Nuts and Bolts of Leading MTSS: The administrator Lens.” Nebraska Department of Education Annual MTSS Summit, Kearney, NE.
- June 2016 MTSS: From Common Language, Common Understanding to Implementation. Kalamazoo Regional Ed Service Agency, Kalamazoo, MI.
- Apr. 2016 Series of workshops: MTSS planning for Implementation for Marlborough High School, Marlborough, MA

- Jan. 2013 “We get RtI, now what?” Structuring for a multi-tiered service delivery model.” AK RtI Conference, Anchorage, AK.
- July 2012 “Implementing RtI²/MTSS: Making what matters happen.” Marathon County Office of Education, Wausau, WI
- June 2012 “Implementing RtI/MTSS: The Critical Role of Leadership.” Desert Canyon Institute, Tucson, AZ.
- June 2012 “RtI²: Making what matters happen!” Coalition for Inclusive Education’s 10th Annual Summer Inclusion Conference. Point Pleasant, NJ.
- Apr. 2012 “RtI²: Making what matters happen.” New Jersey Association of Pupil Service Administrators. Long Branch, NJ.
- Jan. 2012 “Implementing RtI²: The critical role of leadership. Statewide RtI Conference. Anchorage, AK.
- Oct. 2011 “Systems Change and Effective Strategies for Developing Consensus and Sustaining Implementation.” Midwest Leadership Conference. Rochester, MN.
- Nov. 2008 “RtI and the School Psychologist: Do we really have to do this?” Ohio School Psychologist Association, Columbus, OH
- July 2008 “So Much to Do, So Little Time: Making What Matters Happen!” Minnesota Administrators Association.
- Aug. 2008 Integrated Service Delivery: What does it look like, sound like, and feel like in Middle School/High School? Bay Village School District, Cleveland, OH.
- June 2008 Implementing Problem-Solving/Response to Intervention: Critical Issues for Administrators. Desert Canyon Institute, Tucson, AZ
- May 2008 “Thriving in Leadership: We know what works!” New Jersey Association of School Administrators, Ocean Beach, NJ
- Feb. 2008 The World According to RtI: What’s it all about? 21st Annual Professional Development Day, Educational Service Center, Scottsbluff, NE
- Jan. 2008 “Building Integrated Service Delivery Systems Using RtI.” Denver Public Schools. Denver, CO.

- Jan. 2008 “Making What Matters Happen: Building integrated educational systems using RtI.” North East Regional Professional Development Council, Sterling, CO.
- Jan. 2008 “Making What Matters Happen: Building integrated educational systems using RtI. North East Regional Professional Development Council, Limon, CO.”
- Oct. 2007 It’s About Every Ed: Building Coordinated Service Delivery for Kids! Cleveland Special Education Service Center. Cleveland, OH
- Oct. 2007 “Making What Matters Happen: Building integrated service delivery systems.” Columbus Ohio Special Education Regional Resource Center. Columbus, OH.
- Aug. 2007 “Building Tiered Approaches to Instruction: Making the Difference with All, Some, and Few!” Baltimore Public School District. Baltimore, Maryland.
- July 2007 “Building Integrated Educational Systems Using RtI. New Mexico Coalition of School Administrators. Albuquerque, NMX.

National Conferences

- Oct. 2012 “Common Core State Standards and Diverse Urban Students: Using the Multi-tiered System of Supports.” Council of Great City Schools Fall Conference, Indianapolis, IN.
- Feb. 2012 “Implementing Response to Intervention: Evidence-Based Strategies for Sustaining Successful Implementation.” Preconference Session, National Association of School Psychologists. Philadelphia, PA.
- Feb. 2012 “Implementing Response to Intervention: Evidence-Based Strategies for Developing Consensus.” Preconference Session, National Association of School Psychologists. Philadelphia, PA.
- June 2011 “A Conversation: English Learners and the Common Core State Standards.” Council of Chief State School Officers National Conference on Student Assessment, Orlando, FL
- Feb. 2011 “Response to Intervention: Effective strategies for sustaining successful implementation. National Association of School Psychologists, San Francisco, CA.

- Feb. 2011 “Response to Intervention: Systems Change and Effective Strategies for Developing Consensus.” National Association of School Psychologists, San Francisco, CA.
- May 2007 “Making What Matters for Student Achievement Happen.” LRP 28th National Institute. San Diego, CA.

Publications

Articles

- Elliott, J. (2013). The New Normal: Leading with Data. *SpecialEdge*, 26(3), 6-15.
- Elliott, J.L. (2008). Response to Intervention: What is it and why should we care? School Administrator. September: *American Association of School Administrators*.
- Elliott, J. (2007). Providing Academic Support for Teachers and Students in High Stakes Learning Environments. *Journal of Applied School Psychology*.
- Echevarria, J, Powers, K, & Elliott, J. (2004). Promising practices for curbing disproportionate representation of minority students in special education. *Issues in Teacher Education*, 13(1), 19-34.
- Elliott, J. (2003). Assessment, Accommodations, and Accountability: The good, the bad, and the ugly. *Urban Perspectives*, 8(1), 10-14.
- Elliott, J. (2003). IDEA vs. NCLB: Reauthorization or Retrofit? *American Association of School Administrators*. March.
- Elliott, J. (2002). Assessment and accountability of students with disabilities: The good, the bad, and the ugly. *In Case*, July-August 5-6.
- Elliott, J. (2002). Accountability and Assessment: The Road Less Traveled. An on-line module written for the University of Kansas On-Line Academy.
- Elliott, J. & Shrag, J. (2002). Assessment and accommodations: Lessons learned in Oregon. *International Dyslexia Association*. February.
- Elliott, J.L., Erickson, R.N., Thurlow, M.L., & Shriner, J. (1999). State-level accountability for the performance of students with disabilities: Five years of change? *The Journal of Special Education*.
- Elliott, J. L., Thurlow, M. L. & Ysseldyke, J. E. (1999). Out-of-Level Testing: Just another name for low expectations? *The School Administrator*, 10(56), 18-23.

Elliott, J. L., Ysseldyke, J. E., Thurlow, M.L., and Erickson, R. (1998). What about assessment and accountability? Practical implications for educators. *Teaching Exceptional Children*, 31(1), 20-27.

Elliott, J. L. (1997). Invited Commentary. *The Journal of the Association for Persons with Severe Handicaps*, 22(2), 104-106.

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Elliott, J. L., & Gentile, J. R. (1986). The efficacy of a mnemonic technique for learning disabled and non-disabled adolescents. *Journal of Learning Disabilities*, 19, 237-241.

Elliott, J. L., & Ysseldyke, J. E. (1996). Linking assessment of instructional environments to instructional interventions. *Communiqué*, 24(4), 22.

Elliott, J. L., & Ysseldyke, J. E. (1995). Assessment: What do we know about it and where is it going? *School Psychology Minnesota*, 28(1), 15-17.

Elliott, J. L., Shin, H., Thurlow, M. L., & Ysseldyke, J. E. (1996). Participation of students with disabilities in the United States and Canadian assessment programs. *British Columbia Journal of Special Education*, 20(1), 77-85.

Erickson, R., Ysseldyke, J., Thurlow, M., & Elliott, J. (1998). Inclusive assessments and accountability systems. *Teaching Exceptional Children*, 31(2), 4-9.

Minnema, J, Elliott, J, Barboza, J, Thurlow, M, & VanGetson, G. (in press). Including English learners with disabilities in statewide testing: Touchstones for school administrators. *Journal of Educational Leadership*.

Thurlow, M. L., Elliott, J. L., Erickson, R. N., & Ysseldyke, J. E. (1997). Learning disabilities and accommodations: Best practice for bar exams. *The Bar Examiner*, 66(4), 17-30.

Books

Algozzine, R. A., Ysseldyke, J. E., & Elliott, J. L. (1997). *Strategies and tactics for effective instruction* (2d ed.). Longmont, CO: Sopris West.

Elliott, J. L., Algozzine, R. A., Ysseldyke, J. E. (1997). *Time Savers for educators*. Longmont, CO: Sopris West.

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Thurlow, M. L., Elliott, J. L. & Ysseldyke, J. E. (2003). *Testing students with disabilities: Practical strategies for complying with district and state requirements*. (2d ed.). Thousand Oaks, CA: Corwin Press.

Chapters

Ikea, M., Elliott, J., & Paine, S. (2010). The School Psychologist as Educational Systems Change Agent: Implementing and Sustaining Evidence-based Practices in Schools and Districts. In M. R. Shinn, H. M. Walker, and G. Stoner (Eds.). *Interventions for Achievement and Behavior in a Three-Tier Model including RTI*. NASP Publications.

Elliott, J., Thurlow, M., & Reid, E. (2008). *Evaluating High School Transition: Programs and Practice* in F. R. Rusch & J. Chadsey Rusch (Eds.), *Transition from school to work: New opportunities for adolescents*. Bristol, PA: Taylor & Francis.

Elliott, J., (2003). *Assessment and Accountability for students with disabilities: Putting theory into practice* in J. E. W. Wall & G. R. Waltz (Eds.) *Measuring up: Assessment issues for teachers, counselors, and administrators*. Greensboro, NC. CAPS Press.

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Technical/Research Reports

Van der Embse, N., Elliott, J. (2020). *Addressing Mental Health and Social-Emotional Wellness in the Covid-19 Crisis: A resource guide for school districts*. Washington, DC: Council of Great City Schools.

Asturias, H., Daro, P., Elliott, J., Wong Fillmore, L. (2020). *Addressing Unfinished Learning After COVID-19 School Closures*. Washington, DC: Council of Great City Schools.

Gamm, S., Elliott, J., Wright-Halbert, J., Price-Baugh, R., Hall, R., Waltson, D., Uro, G., (2012). *Common Core State Standards and Diverse Urban School Students: Using multi-tiered systems of support*. Washington, DC: Council of Great City Schools.

Elliott, J., & Morrison, D. (2008). *Response to Intervention Blueprints: District Level Edition*. Alexandria, VA: National Association of State Directors of Special Education.

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Elliott, J. L. (1995). Case Study; Exam Questions. In J. Salvia, J. Ysseldyke, & M. Thurlow, *Instructor's resource manual with test items* (for *Assessment*, 6th ed., by Salvia & Ysseldyke). Boston: Houghton Mifflin.

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Elliott, J. L., Ysseldyke, J. E., Thurlow, M. L., Erickson, R. (1997). *Providing accommodations for students with disabilities in state and district assessments*. (NCEO Policy Directions 7). Minneapolis, MN: National Center on Educational Outcomes.

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McGrew, K.S., Thurlow, M. L., Ysseldyke, J.E., Elliott, J.L., & Tindal, G. (1998). *Assessment accommodations research: Design and analysis considerations*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

National Research Council of the National Academies (2004). *Keeping score for all: The effects of inclusion accommodation policies on large-scale educational assessment*. Committee on Participation of English language learners and students with disabilities in NAEP and other large-scale assessment. The National Academies Press: Washington, DC.

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Thurlow, M. L., Ysseldyke, J. E., Erickson, R., & Elliott, J. L. (1997). *Increasing participation of students with disabilities in state and district assessment* (NCEO Policy Directions 6). Minneapolis, MN: National Center on Educational Outcomes.

Ysseldyke, J. E., Krentz, J., Elliott, J.L., Thurlow, M. L., & Erickson, R., & Moore, M. (1998). *NCEO framework for educational accountability*. Minneapolis, MN: National Center on Educational Outcomes.

Ysseldyke, J.E., Krentz, J., Elliott, J.L., Thurlow, M.L., Thompson, S., Moore, M. (1998). *NCEO framework for educational accountability: Post-School Outcomes*. Minneapolis, MN: National Center on Educational Outcomes.

Dissertation Committees

Overcoming Organizational Barriers to the Implementation of Response to Intervention: Aligning theories of action to increase student achievement. (David Riddick, 2011. California State University at North Ridge).

The Road to Success: the experiences of academically successful and graduation bound African American males. (Jaime Hernandez, 2013. California State University at Long Beach).

Awards

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| 2011 | Nominee for the Theodore Roosevelt NCAA Award |
| 2011 | Inductee of the Hall of Distinction, Kenmore East High School, Tonawanda, NY |
| 2010 | Honorary Doctorate of Humane Letters. State University of New York College at Buffalo |
| 2008 | Bill Ellis Award, National Center on Learning Disabilities at the International Dyslexia Association National Convention. Seattle, WA. |
| 2004 | Outstanding Service and Leadership, Presented by Harbor Regional Center, Harbor Developmental Disabilities Foundation, Inc. Torrence, CA. |

- 2000 Inductee of the Athletic Hall of Fame, Kenmore East High School, Tonawanda, NY.
- 1996 – 1997 Education Policy Fellowship, Institute for Educational Leadership. Sponsor – Robert Bruininks, then Dean College of Education, past President of the University of Minnesota
- 1987 Inductee of the Athletic Hall of Fame, State University of New York College at Buffalo
- 1978 – 1982 NCAA four time All American Collegiate Athlete
- 1980 – 1982 Awarded Most Valuable Player by Division III coaches of the New York State Collegiate Swimming and Diving Association
- 1978 – 1982 Recipient of State University of New York College at Buffalo Female Varsity Athlete (four consecutive years)

APPENDIX B

KCBOE Documents Reviewed

KCBOE 001396-1551: Policy 2419
KCBOE 001552-1595: Policy 4373
KCBOE 000179-180: WVDOE Assistive Technology fact sheet
KCBOE 000186-188: WVDOE “Rubric for Determining Student Eligibility for the WV Alternate Assessment for Students with Significant Cognitive Disabilities”
KCBOE 000704-705: WVDOE “Understanding Alternate Diplomas”
KCBOE 000191-279: WVDOE Online IEP training
KCBOE 000706-801: Graduation 2020 Implementation Manual
KCBOE 008352-399: WVDOE “Procedural Safeguards Available to Parents and Students with Exceptionalities”
KCBOE 059514-518: WVDOE “District Review of Policies, Procedures and Practices: Significant Discrepancy in Suspension and Expulsion Indicators 4A & 4B”
KCBOE 000657-680: KCS Student Parent Handbook 2019-2020
KCBOE 001596-643: KCS student behavior rules
KCBOE 002206-208: Behavior code mapping document
KCBOE 000681-694: KCS High School information
KCBOE 000900-996: KCS Senior High Course Description Handbook 2017-2018
KCBOE 000007-16: Job descriptions
KCBOE 000463-464: ESY Services doc
KCBOE 000474-475: Writing Present Levels
KCBOE 000189-190: Writing Present Levels
KCBOE 000177-178: Writing Annual Goals
KCBOE 000465-466: Writing Annual Goals
KCBOE 000181-182: IEP Writing Checklist
KCBOE 000476: “How to do IEP Progress Reports”
KCBOE 000473: “Spanning Grades”
KCBOE 000472: Documentation Itinerant Services
KCBOE 000478-491: Training materials and PowerPoints
KCBOE 000160; KCBOE 000161; KCBOE 000162-163; KCBOE 000164; KCBOE 000165; KCBOE 000166-167; KCBOE 000168: Forms-student information form, teacher information form, notice of review, parent information form, parent notice of initial meeting, initial meeting report, review meeting report, pre-referral checklist, SAT checklist
KCBOE 000171-000173: FAQ documents
KCBOE 000169: Behavior documentation log
KCBOE 000002-004: “Staff conducting FBA”
KCBOE 000116: ABC Data Collection forms
KCBOE 000282: B.O.S.S. Behavioral Observation of Students in Schools
KCBOE 000422: Incident Data Sheet
KCBOE 000283-284: Expedited FBA form
KCBOE 000285-288: FBA form
KCBOE 000289-290: FBA Teacher Interview Form

KCBOE 000117: BCBA referral process
KCBOE 000291-311: “Motivation Assessment Scale”
KCBOE 000312-316: “Problem Behavior Questionnaire”
KCBOE 000318: BCBA referral process flowchart titled “When a Student has behavioral concerns, who does the FBA/BIP?”
KCBOE 000319-320: Behavior Intervention Plan form
KCBOE 002235-314; KCBOE 002382-492: Documents from workshop on Comprehensive School Threat Assessment Guidelines*
KCBOE 002325-326: Summary of workshop logistics
KCBOE 002327-381: Attendance Threat Assessment Training
KCBOE 002316: Safety Psychological and Threat Assessment Policies and Procedures
KCBOE 002315: Safety Psych Checklist
KCBOE 002318-319: Threat Assessment Procedures
KCBOE 002320-324: Safety Psychological Evaluations
KCBOE 002317: No Harm Contract
KCBOE 000001_A; KCBOE 000001_B: Spreadsheet KCS 000001 (with List of Schools & School Numbers for Spreadsheets)
KCBOE 001092: Table of graduation rates
KCBOE 001644-2205: 561-page data run-suspensions
KCBOE 002209-234: Transfers to alternative education-26-page data run
KCBOE 001093-149; KCBOE 001150-203; KCBOE 001204-247: Budget documents
KCBOE 001248-320; KCBOE 001321-295: Financial audit documents
KCBOE 002581-589: Jim Ball invoices
KCBOE 000017-115: WVDOE “PBIS Academy” docs
KCBOE 000423-424: List of “Trainings involving behavior supports”
KCBOE 000425-441: 17-page printout dated 7/20/20 of attendance at CPI trainings
KCBOE 000442-445: 4-page printout dated 7/20/20 of attendance at “Special Education Help Sessions”
KCBOE 000446-460: 15-page printout dated 7/20/20 of attendance at IEP Training sessions
KCBOE 000581-656: 17-page printout dated 7/20/20 of attendance at “Special Education Mini Conference”
KCBOE 000376-384: “Presentation by applied behavior analysis team”
KCBOE 000321-339: “Physical Arrangement of the Classroom”
KCBOE 000340-343: “Classroom Layout Examples”
KCBOE 000344-366: “Classroom Management Plan”
KCBOE 000367: “9 Reasons to Use Visuals”
KCBOE 000368: “Stop Go Visual”
KCBOE 000369-370: “Visual examples”
KCBOE 000371-374: “Visual Supports and Autism Spectrum Disorders”
KCBOE 000375: “Visuals”
KCBOE 000385: “Five Techniques to Ease Transitions”
KCBOE 000386-392: “First then visuals”
KCBOE 000393: “Challenging Behavior Cheat Sheet”
KCBOE 000394: “Classroom Crisis Plan”
KCBOE 000395-400: “Examples of Intervention Strategies for Improving Student Behavior”
KCBOE 000401: “Stop and Ask Right”

KCBOE 000402-403: “Free Classroom Rewards”
KCBOE 000404: “Catch ‘em Being Good”
KCBOE 000405-408: “Free or Inexpensive Rewards for Individual Students Elementary Level”
KCBOE 000409-411: “Free or Inexpensive Rewards for Individual Students Secondary Level”
KCBOE 000412: “Reinforcement v. bribery”
KCBOE 000413-416: “Reinforcer Checklist”
KCBOE 000417-420: “Reward coupons”
KCBOE 000477: Lesson Plan-Verbal De Escalation Training
KCBOE 000478-491: “Verbal De-Escalation”
KCBOE 51668: 504 Checklist
KCBOE 51669-670: 504 Eligibility
KCBOE 51671-672: 504 Manifestation Determination
KCBOE 51673-674: Teacher Evaluation Report 504
KCBOE 51675-676: Referral for Evaluation form 504
KCBOE 51677-678: Parent evaluation report for 504
KCBOE 51679-680: 504 Notice of Meeting
KCBOE 51681-682: 504 Student Evaluation Report
KCBOE 51683-684: Termination of Services 504
KCBOE 51685-686: 504 Individual Accommodation Plan
KCBOE 51687-688: 504 Documentation Log for Teachers
KCBOE 51689-690: KCS Suspension Checklist
KCBOE 51691-707: Overview of the Virginia Student Threat Assessment Guidelines VSTAG
KCBOE 51708: School Threat Assessment Consultants LLC
KCBOE 51709: Guidelines for responding to student threats of violence brochure
KCBOE 51710: KCS Threat Assessment Procedure
KCBOE 51711: October 24, 2018 Threat assessment email
KCBOE 51712: ABC Data Collection email October 31, 2018 from Amber Jones
KCBOE 51713-716: KCS school psychologist meeting November 2 2018
KCBOE 51717: Section 504 and ADHD Power Point Presentation by Laura Winter
KCBOE 51718: ADHD 504 email
KCBOE 51719-722: ADHD Accommodations 504 Plans
KCBOE 51723: November 28, 2018 email to 504 coordinators
KCBOE 51724-729: Behavior Evaluation Report Sample
KCBOE 51730: Sample Behavioral Evaluation of a KCS student
KCBOE 51731: ATA for County Test Coordinators
KCBOE 51732: District Test Coordinators & Special Education Directors Accommodations Training
KCBOE 51733: BIP FBA monitoring email
KCBOE 51734: January 24, 2019 Porter Email re. State Department Monitoring Bips Fbas and Other Special Ed Info
KCBOE 51735: WVDOE Monitoring Email
KCBOE 51736: WVDOE Monitoring Email 2
KCBOE 51737: WVDOE Monitoring Email 3
KCBOE 51738: WVDOE Monitoring Email 4
KCBOE 51739-740: WVDOE Review email
KCBOE 51741: WVDOE Review 2

KCBOE 51742-744: OCR Complaint January 31, 2019
KCBOE 51745-749: March 19, 2019 Letter from OCR
KCBOE 51750-751: Manifestation Determination for 504 Students
KCBOE 51752-802: 2018 RDP Manual
KCBOE 51803-903: Dynamic Learning Maps Manual
KCBOE 51904: Proposal for Trauma Informed School
KCBOE 51905: April 16, 2019 Email re. Presentation
KCBOE 51906-979: State Presentation by Office of Special Education
KCBOE 51980: SAT Meeting Schedule
KCBOE 51981: More SAT Meeting Info
KCBOE 51982: May 2019 Corrections to Discipline Data
KCBOE 51983: May 2019 Corrections to Discipline Data
KCBOE 51984: May 2019 Corrections to Discipline Data 3
KCBOE 51985: June 10, 2019 Email re. Suspension Data
KCBOE 51986: June 10, 2019 Email re. Suspension Data 2
KCBOE 51987: June 10, 2019 Email re Suspension Data 3
KCBOE 51988: June 10, 2019 Email re Suspension Data 4
KCBOE 51989: June 11, 2019 Email re Suspension Data
KCBOE 51990: June 11, 2019 MD for 504 Students Email
KCBOE 51991-993: MD for 504 Students Form
KCBOE 51994-995: Black Eagle Academy 2019-2020
KCBOE 51996: August 14, 2019 Email re. List Of Specialists
KCBOE 51997: August 14, 2019 Email re. List Of Specialists etc.
KCBOE 51998: List of specialists for 2019-2020
KCBOE 51999-2005: Elk Elementary School-Wide Positive Behavior Plan
KCBOE 52006-007: Example of KCS Behavior Monitoring System Working
KCBOE 52008-009: Threat Assessment and Response Protocol
KCBOE 52010-011: Key Observation Form for Threat Assessment
KCBOE 52012-013: Threat Interview Doc
KCBOE 52014: Threat Report Form
KCBOE 52015: September 2019 Threat Assessment Email
KCBOE 52016: September 23, 2019 Email about FBAs and BIPs
KCBOE 52017: September 27, 2019 Email re. Serious Concerns About a Student Who Has Behavior Issues
KCBOE 52018-019: part 2 September 27, 2019 Email re. Serious Concerns About a Student Who Has Behavior Issues
KCBOE 52020-057: Enrollment Coding Guidelines From the WVDOE
KCBOE 52058: October Special Education Student Count Email
KCBOE 52059-129: October Collections Submission Instructions WVDOE
KCBOE 52130-236: MTSS Manual for KCS pilot program 2019-2020
KCBOE 52237-239: October 2019 Emails re. Training for Principals on Discipline of Special Education Students
KCBOE 52240-251: Threat Assessment Procedure
KCBOE 52252: November 22, 2019 Email About New Threat Assessment Procedure
KCBOE 52253-254: FORM Manifestation Determination Form For Students In SAT Process
KCBOE 52255: December 11, 2019 Email SAT Student Manifestation Form

KCBOE 52256-280: Due Process Complaint December 2019 – January 2020
KCBOE 52281: October 2019 Another Example of the KCS System Working
KCBOE 52282: Part 2 October 2019 Another Example of the KCS System Working
KCBOE 52283-284: Changes to Suspension Reporting Program December 17, 2019 Response Email
KCBOE 52285-286: December 17, 2019 Email Suspension Reporting Program for Students With Disabilities
KCBOE 52287-288: Part 2 Changes To Suspension Reporting Program December 17, 2019 Response Email
KCBOE 52289-338: WVDOE January 2020 Special Ed Handbook
KCBOE 52339-340: FW++Expulsion+Recommendations.msg
KCBOE 52341-342: RE++Expulsion+Recommendations.msg
KCBOE 52343-344: RE++Expulsion+Recommendations.msg (1)
KCBOE 52345-346: RE++Expulsion+Recommendations.msg (2) – Shortcut.lnk
KCBOE 52347-351: MOU with Harmony Mental Health

APPENDIX C

CASE FILE REVIEW Student File # KCBOE 33835-34068

Note: This case was selected because it provides an example of the many issues identified in this report on district practices.

1. Student was found eligible for special education under the category of Specific Learning Disability (SLD) on April 24, 2013, when he was in 7th grade. *Note: this information was taken from the student's 2015 IEP. The student's records that I reviewed did not contain documentation of IEPs prior to 2015, nor of any psychological evaluation (one was referenced in the IEP narrative at a later date, but no psychological evaluation information was found in the student's records).*
2. Student had a long history of behavior and emotional problems. Between November 2008 (beginning of WVEIS entries) and May 2016, the student had 14 in-school or out-of-school suspensions and 25 other discipline incidents (classroom exclusions including referrals to office, counselor) recorded in the WVEIS discipline database, for a total of 39 recorded discipline incidents by the end of the 2015-2016 year.
3. The student's records contain written IEPs beginning in 2015. No IEP in the file contains any behavior goals, nor is there any indication that the student's IEP team believed that the student's behavior interferes with learning or the learning of others. This was in spite of the fact that this student had a total of 39 recorded discipline incidents by the end of the 2015-2016 year.
4. During the 2016-2017 school year, the student had an additional seven suspensions for a total of 14 missed school days.
5. The student was expelled for bringing firecrackers to school and setting one off during the 2017-2018 school year. During that school year, the student had an additional 18 discipline incidents before being expelled, including a four-day suspension just prior to the expulsion.
6. An MDR hearing held on March 30, 2018 determined that the firecracker behavior was not a manifestation of the student's disability; as such, "no BIP was needed." This is an example of a case where the district found the student eligible for special education in one category, SLD, while appearing to ignore a history of long-term behaviors (aggression-hitting other students, threatening, skipping, refusal, blurting profanity, unsafe behavior) that are referenced in West Virginia's definition of EBD. Many of these documented behaviors were of the same type as bringing a firecracker to school and setting it off, the behavior for which the student was expelled. These included: "blowing" the lid off a milk bottle, making a loud noise and spraying milk everywhere; making a "hornet" out of cardboard and throwing it toward another student, hitting that student in the ear; and aggression toward other students "because it was funny and I get attention." Disturbingly, the student's FBA noted that the firecracker incident was a "1-time" event. This simply is not true. The student's WVEIS record clearly indicates a long history of these types of behaviors. Had the district correctly identified this student's eligibility as EBD, the

student's IEP team would have been more likely to find his behavior with the firecracker a manifestation of the disability, and would have restricted the district's use of discipline for this student.

7. The student's records did not contain any documentation of a psychological evaluation or any evaluation that included a behavioral assessment, even though the student had a documented, long-term pattern of behavior that interfered with the student's learning and the learning of others. Apparently, some psychological evaluation was done because results from assessments typically done as part of such an evaluation were referenced in narratives in the student's IEPs. However, no documentation of any type of behavior rating scale or behavior assessment was noted as part of the reference to a psychological evaluation. It is alarming that an evaluation of a student with these exhibited patterns of behavior did not include assessments that focused on the student's long history of behavior incidents and the degree to which those behaviors interfered with learning and the learning of others. .

8. None of the student's IEPs for the 2016-2020 school years contained any behavior goals or indicated that student behavior was interfering with learning or the learning of others.

9. The academic supports provided to this student were inappropriate and apparently not working. Between 2016 and 2020, the student's IEP academic goals were identical to the goals in his 2015 IEP. The goals included the identical language regarding skill type and level of proficiency to be attained, and the desired accuracy level. Identical goals across that many years is inappropriate. In addition, the accuracy level of 95%—almost perfect accuracy—set as part of the goals for the student were inappropriate and unattainable, particularly when the student apparently was making absolutely no progress on the goals during those years. If academic supports were working, identical goals, skills, and levels of proficiency should not be repeated identically for five years. One possible explanation is that the student's behavior, including classroom absences related to disciplinary removals, was interfering significantly with the student's academic progress and engagement with instruction. Yet, the district failed to address this student's behavioral and academic difficulties.

10. More disturbingly, following expulsion and placement on "homebound" instruction, the student continued to demonstrate the same type and pattern of behaviors during the 2018-2019 school year. In the first six months of that school year, the student had an additional eight discipline incidents, including five suspensions. No behavior goals were written, and no behavior supports provided, on the student's IEPs for subsequent school years.

11. This student demonstrated chronic absenteeism for multiple years, one year missing 25 days and another year missing 18 days. There was no documentation of any attempt to address the student's chronic absenteeism, such as providing home-school-community supports to address absenteeism.

This student has had a pattern of behavioral issues that have not been adequately addressed. KCS failed to provide this student with protections afforded to students with disabilities. The evaluations conducted were not comprehensive, the needs of the student were not adequately identified, and eventually the student was expelled following an MDR hearing and an FBA that was not comprehensive and did not recognize all aspects of the student's functioning. Rather,

because “no BIP was needed” none was developed. The student’s poor academic performance was not effectively addressed and the behavior that led to the student’s separation from instruction was not addressed.