

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHANNA CASTILLO, on her own behalf and on behalf of her minor son, A.H.; ELSINAY MEZA, on her own behalf and on behalf of her minor daughter, A.M.; CUBERTA ROBLEDO, on her own behalf and on behalf of her minor daughter, M.E.; LAKEISHA RIDDICK, on her own behalf and on behalf of her minor son, M.M.; JOHANNY SANDOVAL, on her own behalf and on behalf of her minor son, R.A.; and ASHLEY BARRETO, on her own behalf and on behalf of her minor son, U.B,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF EDUCATION COMMITTEE ON SPECIAL EDUCATION 1; STEVEN BIRKELAND; and ELENI CHRONAS,

Defendants.

Civil Action No. _____

COMPLAINT

and

JURY DEMAND

INTRODUCTION

1. This is an educational rights case about the New York City Department of Education Committee on Special Education 1’s systemic, repeated, and ongoing failure to provide Success Academy Charter Schools’ special needs students with adequate and timely special education support, in violation of laws that Congress passed to address this very issue.¹

2. Success Academy offers free, high quality education to approximately 15,000 children through 46 public charter schools across New York City. Admission is non-selective and open to all New York City children, including those with special needs, through a random

¹ As used herein, unless otherwise indicated, the terms “Success Academy Charter Schools,” “Success Academy,” and “Success” refer collectively to Success Academy Charter Schools, Inc. (a non-profit charter school management organization that operates a network of 46 public charter schools) and Success Academy Charter Schools - NYC (the governing legal entity for each of those 46 public charter schools).

² As used herein, unless otherwise indicated, the terms “CSE 1” and “the CSE” refer collectively to the New York City Department of Education Committee on Special Education 1 and the New York City Department of Education.

lottery held each year. Across the schools, about 76% of students are from low-income households, 8.5% are current and former English Language Learners, 93% are children of color, and 15% are current or former special needs students.

3. CSE 1 is the entity controlled by the New York City Department of Education (“DOE”) that is responsible for coordinating and carrying out the special education process for children who attend private and charter schools located in New York City school districts 7, 9, and 10.² In other words, the CSE - not Success Academy - is responsible for determining whether and when children who attend Success Academy should receive special education support.

4. The DOE itself is responsible for coordinating and carrying out the special education process for children who attend DOE schools.

5. Success Academy schools and DOE schools in districts 7, 9, and 10 are non-selective public schools that educate similar student populations. Therefore, even though the CSE conducts the IEP process for Success Academy schools, and the DOE conducts the IEP process for DOE schools, one would expect that those schools would have similar percentages of children who are deemed to qualify for special education support.

6. In fact, a child who attends a DOE school is significantly more likely to qualify for special education support than a child attending a Success Academy school within a CSE 1 school district:

- In the 2016-17 academic year (the most recent year where this data is publicly available), more than 80% of DOE district school students within CSE 1’s school district who were referred for IEPs were deemed eligible for special education support.

² As used herein, unless otherwise indicated, the terms “CSE 1” and “the CSE” refer collectively to the New York City Department of Education Committee on Special Education 1 and the New York City Department of Education.

- By contrast, approximately 40% of the Success Academy scholars who were referred for services were deemed eligible by CSE 1 in the most recent school year.

7. CSE 1's refusal to timely evaluate Success Academy scholars is also disparate and shameful:

- In 2016-17, district schools within the same geographic area as CSE 1 successfully held IEP meetings for their students within 60 days of a parent signing a consent form - as required by law - in about 66% of their cases.
- For Success Academy scholars, CSE 1 has held IEP meetings within 60 days of a parent signing a consent form in approximately 3% of their cases in the most recent school year.

8. The CSE's special education process begins when a child's parent or guardian or a charter or private school (with the parent's or guardian's consent) believes that the child is disabled and needs special education support. The parent or guardian and/or the charter or private school in district 7, 9, or 10 (with the parent's or guardian's consent) then refers the child to CSE 1 for an Individualized Education Program ("IEP").

9. An IEP is a personalized program and the key document for addressing a child's special education needs. If a child qualifies for special education support, then the child receives an IEP that lists the child's academic achievement levels, goals for how the child can make further academic progress, and the specific special education support that the child will receive to advance toward those goals. That support can include, for instance:

- Placement in an integrated co-teaching ("ICT") classroom
 - An ICT classroom integrates disabled children with their general education peers.
 - An ICT classroom allows disabled students to access the general education curriculum while also receiving instruction targeted to support their learning needs that arise from their disabilities.

- Special Education Teacher Support Services (“SETSS”)
 - Through SETSS, a child typically works directly with a special education teacher, in small groups or one-on-one instruction.
- Related Services
 - Related services can include paraprofessional services for children who have difficulty behaving, or speech and language therapy.
- Special Class Staffing Ratio
 - Students can be in classrooms with a smaller than typical student to teacher ratio, such as a 12:1:1 classroom that includes 12 students, one special education teacher, and one paraprofessional.

10. After a child is referred to CSE 1 to potentially receive an IEP and special education support, CSE 1 is responsible for scheduling and holding required evaluations and meetings to consider whether the referred child should receive special education support. Ultimately, CSE 1 determines at a final IEP meeting whether the referred child qualifies for an IEP and special education support. The law requires that CSE 1 make this determination in no more than 60 days after the child’s parent consents to the required evaluations.

11. In this case, Plaintiffs Johanna Castillo, on her own behalf and on behalf of her minor son, A.H.; Elsinay Meza, on her own behalf and on behalf of her minor daughter, A.M.; Cuberta Robledo, on her own behalf and on behalf of her minor daughter, M.E.; Lakeisha Riddick, on her own behalf and on behalf of her minor son, M.M.; Johanny Sandoval, on her own behalf and on behalf of her minor son, R.A.; and Ashley Barreto, on her own behalf and on behalf of her minor son, U.B (collectively, “Plaintiffs”) challenge the unlawful actions of Defendants DOE, CSE 1, Steven Birkeland, the Chairperson of CSE 1 (“Birkeland”), and Eleni Chronas, CSE 1’s Supervisor of Psychologists (“Chronas”) (collectively, “Defendants”), concerning their coordination and carrying out of the special education process for children who attend Success Academy schools.

12. As alleged in more detail below, CSE 1 insists that Success Academy overestimates what children can achieve and, as a result, CSE 1 refuses to provide the necessary and legally required services that would help children with disabilities to thrive in Success Academy's schools. Led by a DOE supervisor who has insisted to Success Academy representatives that some children are simply "slow" and that children should not receive special education support for being "slow learners," CSE 1, Birkeland, and Chronas believe that Success Academy's standards are too high, and that special education services would be wasted on many Success Academy students (or as Success calls them, "scholars"). Therefore, Defendants have implemented a policy and a pattern and practice of deliberately ensuring that Success Academy scholars are routinely denied services that could timely and appropriately address their special education needs.

13. CSE 1 consistently denies Success Academy scholars their Congressionally guaranteed right to a free appropriate public education ("FAPE"), by using any and all of the following three tactics:

- *First*, CSE 1 routinely refuses to provide struggling Success Academy scholars with a determination that the scholars need special education support;
- *Second*, CSE 1 often uses the slightest hint of academic progress or improvement by Success Academy's special needs scholars as an excuse to take away the determination that the scholars need special education support; and
- *Third*, CSE 1 constantly delays determining whether it believes Success Academy scholars qualify for special education services. On average, CSE 1 forces Success' scholars to wait more than 162 days for their IEP meeting - and often even longer - before CSE 1 makes a determination. This is far more than the 60 days in which CSE 1 is legally required to make a determination.

14. CSE 1's policy and pattern and practice has left numerous Success Academy scholars without special education support that is an essential prerequisite to them receiving a

free appropriate public education, and that the CSE would have provided to children attending a different school.

15. For example:

- In May 2017, a CSE 1 representative told Plaintiff A.H.'s mother that A.H. likely would not qualify for special education support, and that A.H. had only been referred for an IEP because Success Academy's academic standards for children were too high.
 - Nonetheless, CSE 1 forced A.H. to wait more than 200 days after his referral before CSE 1 denied him special education services.
 - A.H. had to wait so long in part because a CSE 1 representative repeatedly missed evaluations that she had scheduled.
- Likewise, in February 2018, a CSE 1 representative told one Success Academy scholar's mother that her daughter would not receive special education support while she attended Success Academy.
 - The representative urged the mother to withdraw her daughter from Success Academy, insisting that Success Academy's curriculum was too difficult, and that Success asks too much from its students.
 - CSE 1 ultimately denied the child special education services, even though her full scale IQ was in the 6th percentile.
- As another example, a Success Academy scholar had received dedicated special education support for several years, but in October 2017 CSE 1 took away most of that support after the child had failed the New York State English Language Arts exam in 2016 and 2017.
 - When Success Academy suggested that the child's failing score was evidence that he should retain his special education services, CSE 1 insisted that the child no longer needed his special education support because he had come somewhat closer to not failing the exam in 2017.

16. CSE 1 also has conducted sham IEP meetings for several Success Academy scholars, where the CSE predetermined before the meetings that the CSE either would deny the children special education support or take away special education support that the scholars already had. On multiple occasions, a CSE 1 psychologist announced at the conclusion of Success Academy scholars' IEP meetings that the children were ineligible for special education

services, but had drafted the documents stating that those scholars were ineligible for services before the IEP meetings occurred.

17. At bottom, children are significantly less likely to receive adequate and timely special education support if they attend Success Academy schools than if they attend district schools within the same geographic area that CSE 1 covers because CSE 1 has and is continuing to deliberately deny children meaningful and timely support simply because those children attend Success Academy schools.

18. In other words, CSE 1 is forcing children to languish without special education services they need and hurt their ability to succeed academically because the CSE does not support the school that those children attend.

Defendants' Conduct Violated Congress' Guarantee That All Special Needs Children Have the Right to a Free Appropriate Public Education

19. In 1975, Congress enacted what was then known as the Education for All Handicapped Children Act (the "EHA"). The EHA guaranteed for all children with disabilities the right to a free appropriate public education, as Congress specified in the EHA's Statement of Findings and Purpose: "It is the purpose of this Act to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." Pub. L. No. 94-142, sec. 3(a), § 601(c), 89 Stat. at 775.

20. Over time, Congress continued to strengthen the educational protections it provided for children with disabilities through multiple amendments to the EHA, which Congress renamed as the Individuals with Disabilities Education Act (the "IDEA") in 1990.

21. Congress emphasized that the IDEA was intended to ensure high expectations and, wherever possible, improved academic results for special needs children. For example, in

1997, Congress amended the IDEA to stress that a child's right to a free appropriate public education includes special education supports to improve a child's educational outcomes. Congress explained that it enacted this change because "[o]ver 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . having high expectations for such children." IDEA Amendments of 1997, Pub. L. No. 105-17, sec. 101, § 601(c)(5)(A), 111 Stat. 37, 39.

22. In other words, Congress required that Local Education Agencies such as the DOE and DOE entities like CSE 1 provide special needs children with more than de minimis special education support. Instead, to ensure that children receive their right to a free appropriate public education, CSE 1 must provide special education support that gives every child the chance to meet challenging objectives.

23. Congress also included several requirements for how entities like CSE 1 must carry out the special education process. For example, the IDEA requires that CSE 1 consider a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information" when deciding whether a child qualifies for an IEP. Congress explicitly prohibited the "use [of] any single measure or assessment as the sole criterion for determining whether the child is a child with a disability or determining an appropriate educational program for the child." 20 U.S.C. § 1414(b)(2).

24. In addition, Congress ensured that the IEP process would be completed in a reasonable timeframe. The IDEA specifies that the IEP process must be completed "within 60 days of receiving parental consent for the evaluation" unless state law imposes different requirements. 20 U.S.C. § 1414(a)(1)(C)(i). New York State regulations impose the same requirements. 8 N.Y.C.R.R. 200.4(b)(7).

25. Here, Defendants have violated the IDEA. As alleged in more detail below, Defendants, by criticizing Success Academy's high standards for children, end up continually applying inappropriately low expectations to Success Academy scholars. Defendants then deny children who attend Success Academy access to special education services, wholly ignoring information provided by the scholars' own teachers, and predetermining that scholars should have no special education support before the scholars' IEP meetings are even held. Defendants also on average complete the IEP process more than 100 days after the 60 day time limit that the IDEA allows. In short, Defendants have established a policy and a pattern and practice of deliberately and routinely denying Success Academy scholars access to meaningful and timely special education services.

26. Plaintiffs therefore bring claims against Defendants for violating the IDEA. Plaintiffs also bring claims for violation of 42 U.S.C. § 1983, multiple New York State statutes and regulations, fraudulent misrepresentation and omission, negligent misrepresentation and omission, and negligent supervision.

PARTIES

Plaintiffs

27. A.H. attended the fifth grade at Success Academy Charter School - Bronx 2 Middle School in 2017-18 and brings this lawsuit through his mother, Johanna Castillo. Castillo also brings this lawsuit individually. CSE 1 denied A.H. special education services after a CSE 1 representative told his mother that he was only being referred because Success Academy's academic standards for children were too high, and after the CSE delayed his IEP meeting by more than 200 days. A.H. and Castillo reside in the Bronx.

28. A.M. attended the seventh grade at Success Academy Charter School - Bronx 2 Middle School in 2017-18 and brings this lawsuit through her mother, Elsinay Meza. Meza also brings this lawsuit individually. CSE 1 refused to provide special education support to A.M. for more than two years, despite consistent academic struggles and repeated failing scores on New York State exams. A.M. and Meza reside in the Bronx.

29. M.E. attended the third grade at Success Academy Charter School - Bronx 2 in 2017-18 and brings this lawsuit through her mother, Cuberta Robledo. Robledo also brings this lawsuit individually. CSE 1 forced M.E. to wait an astounding 336 days for an IEP meeting, despite M.E.'s severe struggles with reading comprehension. M.E. and Robledo reside in the Bronx.

30. M.M. attended kindergarten at Success Academy Charter School - Bronx 1 - in 2017-18 and brings this lawsuit through his mother, Lakeisha Riddick. Riddick also brings this lawsuit individually. CSE 1 delayed M.M.'s evaluation by more than 180 days and then insisted he did not qualify for special education services despite his severe reading struggles. M.M. and Riddick reside in the Bronx.

31. R.A. attended the first grade at Success Academy Charter School - Bronx 1 in 2017-18 and brings this lawsuit through his mother, Johanny Sandoval. Sandoval also brings this lawsuit individually. CSE 1 denied R.A. the exact same services that the Committee on Preschool Education 1 ("CPSE 1," which is the DOE's equivalent of CSE 1 for preschool age children) had recommended for R.A. before he began attending a Success Academy school. R.A. and Sandoval reside in the Bronx.

32. U.B. attended the fourth grade at Success Academy Charter School - Bronx 2 in 2017-18 and brings this lawsuit through his mother, Ashley Barreto. Barreto also brings this

lawsuit individually. CSE 1 forced U.B. to wait a full 378 days - *more than an entire year* - for an IEP meeting, despite U.B.'s severe struggles in reading and math. U.B. and Barreto reside in the Bronx.

Defendants

33. The DOE is the branch of municipal government in New York City that manages the city's system of public schools, which includes the responsibility to provide a free appropriate and public education to disabled children who attend charter schools. The DOE's headquarters is located at Tweed Courthouse, 52 Chambers Street, New York, NY 10007.

34. CSE 1 is the DOE entity that is responsible for coordinating and carrying out the special education process for children who attend charter schools (including Success Academy schools) and private schools located in New York City school districts 7, 9, and 10. CSE 1's headquarters is located at 1 Fordham Plaza, 7th floor, Bronx, NY 10458.

35. Birkeland is the Chairperson of CSE 1 and works at CSE 1's headquarters.

36. Chronas is CSE 1's Supervisor of Psychologists and works at CSE 1's headquarters.

JURISDICTION AND VENUE

37. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1367(a) (pendent state law claims).

38. Venue is proper in this District under 28 U.S.C. § 1391 as the jurisdiction in which numerous Plaintiffs reside, in which Defendants are located, and in which the events giving rise to Plaintiffs' claims occurred.

JURY TRIAL DEMAND

39. Plaintiffs demand a trial by jury in this action.

FACTUAL ALLEGATIONS

CSE 1 Refuses to Fairly Evaluate Success Academy Scholars for Special Education Needs

40. CSE 1 is responsible for coordinating and carrying out the special education process for children who attend any of the six Success Academy schools within CSE 1's geographic area: Success Academy Charter School - Bronx 1 ("Success Academy - Bronx 1"), Success Academy Charter School - Bronx 1 Middle School ("Success Academy - Bronx 1 MS"), Success Academy Charter School - Bronx 2 ("Success Academy - Bronx 2"), Success Academy Charter School - Bronx 2 Middle School ("Success Academy - Bronx 2 MS"), Success Academy Charter School - Bronx 3 ("Success Academy - Bronx 3"), and Success Academy Charter School - Bronx 3 Middle School ("Success Academy - Bronx 3 MS") (collectively, the "CSE 1 Success Academy Schools").

41. To coordinate and carry out this responsibility, CSE 1 must work together with the CSE 1 Success Academy schools to timely provide suitable special education support to help Success Academy scholars receive a free appropriate public education.

42. Nonetheless, the DOE, CSE 1, Birkeland, and Chronas all believe that Success Academy overestimates what children are capable of achieving academically, and that Success Academy's standards are too high.

43. As a result, Defendants have refused to work together with Success Academy to provide special needs scholars with the special education support they need. Instead, Defendants established a policy, pattern, and practice of routinely refusing to provide Success Academy scholars who are referred for IEPs with suitable special education support, because Defendants wrongly believe that that special education support would be wasted on many Success Academy scholars.

44. CSE 1 primarily carries out this policy, pattern, and practice through three different tactics, each of which is alleged in greater detail below. First, CSE 1 routinely denies any special education support whatsoever to Success Academy scholars. Second, CSE 1 illegally and unnecessarily removes special education support that Success Academy scholars had been receiving. Third, CSE 1 severely delays the process - by an average of over 100 days longer than the law permits - in which the CSE determines whether and to what extent Success Academy scholars should receive special education support.

CSE 1 Routinely Denies Any Special Education Support Whatsoever to Struggling Success Academy Scholars

45. CSE 1's first tactic to prevent Success Academy scholars from receiving appropriate special education services is to simply deny any special education support whatsoever to struggling Success Academy scholars.

CSE 1 Denies Success Academy Scholars Special Education Support Because the CSE Believes that Success Academy Overestimates What Children Can Achieve

46. One strategy that the CSE uses to deny special education support to Success Academy scholars is to consistently and openly apply inferior academic standards to Success Academy scholars.

47. As far as CSE 1 is concerned, Success Academy overestimates how much children can achieve. The CSE believes that because Success Academy already goes above and beyond to provide extra support to children, any support that the CSE provides on top of that would be a waste of the CSE's resources, because the CSE does not think that children can accomplish as much as Success Academy believes they can - and in fact have with the right services - achieve.

48. Indeed, CSE 1 and DOE representatives have openly acknowledged to Success Academy staff and parents that CSE 1 and the DOE believe that Success Academy's standards

for children are too high and that children can never achieve at the level Success Academy believes they can.

49. For example, in or around May of 2015, Success Academy contacted Mariama Sandi (the DOE's Chairperson for all charter schools' CSEs, including CSE 1) to express several concerns about CSE 1, including the CSE's refusal to find that several deserving Success Academy scholars qualified for special education support. Sandi responded that some children are simply "slow," and that children should not receive special education support for being "slow learners."

50. In response, Success Academy's Special Education Advisor at the time, Jessica Stein, explained that she "respectfully disagree[s] and, in fact, feel[s] strongly that these children deserve services and supports to help them access tools they need to accommodate their individual learning profiles. To the extent CSE 1 continues to refuse to provide services to children who are struggling academically, and particularly those who have cognitive and academic testing that also reflects that they are struggling in their learning, we will continue to request re-evaluations and/or advise parents of their rights to request an impartial hearing to help get these children what they need."

51. CSE 1 representatives have confirmed that they share Sandi's view that Success Academy's standards are too high. For example, in 2015, a CSE 1 school psychologist directly told a Success Academy parent that Success' standards were too high, and complained to another Success Academy parent that she was tired of Success Academy referring scholars for IEPs because the scholars were not reading at the level that Success Academy felt they should.

52. Likewise, on May 20, 2017, a CSE 1 representative conducted a social history interview of Plaintiff A.H. During that social history interview, the representative informed

A.H.'s mother that A.H. likely would not qualify for special education support, and that he felt that A.H. had only been referred for an IEP because Success Academy's academic standards for children were too high.

53. In fact, A.H. was struggling in his reading and writing classes at that time. His reading ability was behind grade level, and he failed to make any reading growth between November and April of the 2016-17 academic year. Nonetheless, CSE 1 refused to provide A.H. with an IEP and the special education support that he badly needed.

54. As another example, by December 2017 it was clear that a Success Academy eighth grader was severely struggling with reading comprehension and fluency. The child was failing literature, and her reading struggles were hurting her in all of her academic classes. She failed three out of her four academic finals because they all contained reading and writing elements.

55. The child's IEP evaluation process plainly showed that she needed special education support. Her psychoeducational evaluation showed that her full scale IQ was in just the 6th percentile, that her verbal comprehension fell in the 5th percentile, and that both her working memory and processing speed were in just the 3rd percentile. Her speech and language evaluation demonstrated that her ability to recall sentences was in only the 5th percentile, that her ability to understand paragraphs was in just the 7th percentile, and that her reading comprehension skills were in only the 9th percentile.

56. Despite the child's obvious struggles, CSE 1 refused to provide her with the special education support she desperately needed. Instead, on February 8, 2018, a CSE 1 representative told the mother that she should send her daughter to a different school because

Success Academy's curriculum was too difficult and that Success asks too much from its students.

57. The CSE 1 representative then assured the Success Academy mother that her daughter would receive special education support if she were to attend a different school, but noted that Success Academy was already going above and beyond to try to help the child through efforts like small group attention and extra tutoring sessions. The CSE felt that it would be pointless to give the child even more support while she attended Success Academy.

58. CSE 1 is so unwilling to provide special education support to Success Academy scholars that the CSE often denies them the very same special education support that CPSE 1 was willing to provide to the very same children before those children began attending Success Academy schools. CPSE 1 is the DOE's equivalent of CSE 1 for preschool age children. Like CSE 1, CPSE 1 is a DOE entity that is chaired by Birkeland and that addresses the special education process for preschool age children.

59. For example, in the 2016-17 academic year (after Plaintiff R.A. began attending Success Academy), CSE 1 refused to offer R.A. the same special education support that CPSE 1 had deemed necessary to support him one academic year earlier when he attended a Pre-K program at a school other than Success Academy.

60. In the Fall of 2015 - while R.A. attended Pre-K at a non-Success Academy school - CPSE 1 offered R.A. special education services to address his speech development. At the time, a psychoeducational evaluation observed that R.A. had some "expressive language delays and articulation deficits." CPSE 1 offered R.A. speech services, but Plaintiff Sandoval (R.A.'s mother) declined the speech services at the time.

61. The next school year, R.A. began attending kindergarten at Success Academy - Bronx 1. R.A. struggled in kindergarten, and Sandoval felt that his speech was “immature.” It became clear to Sandoval that her son needed special education support after all. On or about December 6, 2016, Sandoval referred her son to CSE 1 to be evaluated so he could receive “speech therapy” as well as “any other services that would help him academically.”

62. CSE 1 required R.A. to once again be evaluated to determine the services he would need. As part of that process, the CSE conducted a second psychoeducational evaluation of R.A.

63. The second psychoeducational evaluation showed similar results as when CPSE 1 had evaluated R.A. R.A. had speech difficulties, as the evaluation specified that “his oral discourse comprehension was below Average.”

64. Nonetheless, CSE 1 denied R.A. speech services on May 12, 2016, even though CPSE 1 had been willing to provide R.A. with speech services just one school year earlier. The only thing that had meaningfully changed when CSE 1 decided he did not qualify for speech services was that R.A. was now attending a Success Academy school.

65. CSE 1’s disgraceful treatment of these Success Academy scholars is not an anomaly. The available data demonstrates that CSE 1 provides special education support to Success Academy scholars far less often than district schools do within the same geographic area, providing further evidence that the CSE thinks that Success Academy’s standards for children are too high, and that the CSE is convinced that additional support would be wasted on many Success Academy scholars.

66. Indeed, a child attending a Success Academy school served by CSE 1 is statistically less likely to be found by CSE 1 to qualify for special education support than a

student attending a DOE school within the school districts served by CSE 1, even though the schools draw from the same population.

67. For example, in 2016-17, fewer than 20% of DOE district school students within CSE 1's school districts who were referred for IEPs were deemed ineligible for special education support.

68. In contrast, an astounding almost 60% of Success Academy scholars who had IEP meetings during the most recent school year were deemed by CSE 1 not to qualify for any special education support whatsoever.

69. This enormous disparity would not exist if CSE 1 provided all Success Academy children in need of special education support with the chance to meet challenging objectives and to pursue meaningful academic standards.

CSE 1 Routinely Disregards Information Provided by Success Academy When CSE 1 is Determining Whether a Scholar is Entitled to Special Education Services

70. Another strategy CSE 1 uses to deny special education support to Success Academy scholars is to disregard information provided by Success Academy when the CSE is determining whether a scholar is entitled to special education services.

71. Indeed, CSE 1 leadership has instructed its teams to disregard Success Academy's teachers' reports when determining whether Success Academy scholars should receive special education support.

72. For example, in or around October of 2017, CSE 1 told its teams to reject Success Academy's teachers' insights and professed that Success Academy's teachers reports were not reliable sources for determining children's special education classification. Instead, CSE 1 leadership ordered that the CSE should rely only on report cards and state test results to evaluate Success Academy scholars.

73. This policy is in direct contravention of both federal and New York law, which requires CSE 1 to consider numerous sources, including teacher recommendations, when determining children's special education needs.

74. Because of this policy, CSE 1 refused to provide special education services to numerous Success Academy scholars (including several Plaintiffs) even though their teacher evaluations confirmed that they were struggling, leaving those children without the help that their own teachers strongly felt that they needed.

75. For example, CSE 1 denied special education services to Plaintiff R.A. as a kindergartener even though R.A.'s teacher wrote that:

- “[R.A.] is below grade level in Reading. He is reading at a level B . . . The current kindergarten benchmark is a level D/E.”
- “[R.A.] continues to struggle with output and writing a coherent idea. His writing is very slow, and he often loses his train of thought while he is concentrating on forming letters appropriately and deciding what letter makes the sound he wants to write. As a result, [R.A.] almost always does not fulfill the requirement of writing assignments during the time allotted. Further, [R.A.'s] words are often jumbled and do not clearly explain his ideas.”
- “[R.A.] continues to have difficulty solving math word problems. When solving word problems, he struggles to comprehend the problem and to choose a workable strategy for those problems.”

76. In short, CSE 1's refusal to seriously consider Success Academy scholars' teacher reports means that CSE 1 is disregarding evidence from people who work closely with scholars each school day, and who generally will have more insight than anyone else into scholars' academic performance. Therefore, CSE 1's policy impermissibly ensures that the CSE is making IEP determinations without thoughtful, carefully-prepared, written documentation of scholars' academic needs.

CSE 1 Often Decides to Deny Special Education Support to Scholars Before the Scholars' IEP Meetings are Even Conducted

77. CSE 1's next strategy to deny any special education support whatsoever to Success Academy scholars is perhaps its most egregious.

78. After the necessary evaluations, meetings, and observations of a scholar who has been referred for an IEP have been completed, CSE 1 must hold an IEP meeting to determine what - if any - special education services the scholar should receive.

79. The DOE's own website confirms that an IEP meeting must be held after the required evaluations are completed, and that the purpose of the IEP meeting is to "determine whether [a referred] child is eligible for special education services." The CSE, school representatives, parents, and others with relevant information attend the meeting to discuss information from the evaluations and any other relevant sources.

80. However, CSE 1 has repeatedly held IEP meetings for Success Academy scholars where the CSE had predetermined the outcome of those meetings before they occurred.

81. For example, in 2015, on multiple occasions a CSE 1 psychologist found Success Academy scholars ineligible for special education services, but drafted the documents stating that those scholars were ineligible for services before the IEP meetings occurred.

82. The psychologist's actions demonstrate that CSE 1 had decided to deny special education support to scholars before several IEP meetings were even conducted, and that each of those scholars' IEP meetings was a sham.

CSE 1 Regularly Removes Essential Special Education Support From Success Academy Scholars Who Have Shown Only Minimal Improvement

83. On the rare occasions when CSE 1 does provide Success Academy scholars with appropriate educational support, CSE 1 routinely takes that support away when scholars show

even the slightest improvement or academic progress. This is CSE 1's second tactic for preventing Success Academy scholars from receiving suitable special education support.

84. The CSE uses the same strategies to remove special education support from children who attend Success Academy as the CSE does to prevent other Success Academy scholars from receiving any special education support in the first place: the CSE holds sham IEP meetings where the CSE has already predetermined that it will take away children's special education support, the CSE refuses to consider Success Academy scholars' teacher evaluations and other forms of evidence, and the CSE refuses to apply appropriately high academic standards to Success Academy scholars.

85. The IDEA forbids Local Education Agencies like CSE 1 from removing special education support due to a child's mere de minimis improvement with that support.

86. Nonetheless, the CSE routinely removes special education support from struggling Success Academy scholars who show even minor improvement, even when it is clear that the scholars need the support that they are receiving.

87. For example, one Success Academy scholar - who repeated kindergarten in 2012-13 and repeated the sixth grade in 2017-18 - has displayed serious and obvious academic struggles since he began attending Success Academy - Bronx 2 in the fall of 2011.

88. In late 2012, Success Academy - Bronx 2 and the child's parents referred him for an IEP. The child's IEP-related evaluations plainly showed that he needed special education support. His speech and language evaluation showed that his ability to formulate sentences was in the "*severe*" range, and recommended that he receive speech and language services in small groups (emphasis in original). His psychoeducational evaluation showed that his visual processing and fluid reasoning abilities ranked in just the bottom first percentile, and his short-

term memory fell in the ninth percentile. In addition, the child's occupational therapy evaluation demonstrated "severe delays in visual motor and visual perceptual skills" and recommended that he receive occupational therapy services.

89. By May of 2013, the student was receiving support in an ICT classroom to assist with his speech and language disability.

90. On the continuum of services that CSE 1 can provide to children who attend non-specialized schools, ICT is among the more comprehensive supports.

91. The child received ICT support for several years. In the spring of 2016, his IEP required that he receive substantial ICT support.

92. Even with that ICT support, the child continued to struggle academically. His writing and math abilities remained below grade level. In 2017-18, he began repeating the sixth grade.

93. In addition, the child failed the New York State English Language Exam (the "ELA Exam") in both 2016 and 2017. His score was 2.48 in 2015-16 and 2.89 in 2016-17. The New York State Education Department considers anything below a 3 a failing score.

94. CSE 1 did not view the child failing the ELA exam in two consecutive years as evidence that his special education support should be increased, or even as evidence that he should keep his ICT support.

95. Instead, in October 2017, CSE 1 used the child's slightly higher failing score on the ELA exam to justify removing the ICT support that he had had for more than four years.

96. In other words, *CSE 1 thinks that children are capable of so little that the CSE took ICT support away from a child in part because he had come closer to not failing the New York State ELA exam - even though he still failed.*

97. CSE 1 has openly acknowledged that its policy is to remove special education support from Success Academy scholars who show even the slightest academic improvement or strength. On October 17, 2017, CSE 1 Special Education Teacher Nikki Kakkos confirmed to Success Academy representatives that CSE 1 leadership had told CSE 1 evaluation teams that Success Academy scholars could not qualify for academic supports unless they were at least a full year behind their same-grade peers.

98. That same day, CSE 1 removed all academic supports from one scholar's IEP as a result of this guidance.

CSE 1 Regularly and Systematically Delays Special Education Evaluations and Reevaluations of Success Academy Scholars

99. In addition to routinely failing to provide Success Academy scholars with the special education services they need, CSE 1 has consistently failed to complete the IEP process for Success Academy scholars within the 60 days that the law allows. CSE 1's insistence on severely delaying the special education process for Success Academy scholars is the CSE's third tactic for preventing Success Academy scholars from receiving suitable special education support.

100. CSE 1's delays are systemic and frequent. The CSE evaluates approximately 3% of Success Academy scholars referred for IEPs within the 60 days that the law allows.

101. In contrast, in the 2016-17 academic year, DOE schools within the same districts as CSE 1 successfully held IEP meetings for DOE students within 60 days of a parent signing the DOE consent form in about 66% of cases.

102. On average, CSE 1 has forced every Success Academy scholar referred to CSE 1 during the 2017-18 school year to wait an average of over 162 days between their referral and IEP meetings - *more than 100 days longer than the law permits.*

103. Many Success Academy scholars (including Plaintiffs) have to wait even longer. For example, CSE 1 forced Plaintiff M.E. to wait 336 days and Plaintiff U.B. to wait 378 days - *more than an entire year* - before the CSE decided that these children should not receive any special education support.

104. As alleged in more detail below, CSE 1 accomplishes these delays through numerous dilatory tactics, including but not limited to the following:

- **First**, CSE 1 refuses to start its 60 countdown to complete a child's IEP process until after a CSE 1 representative bothers to upload the IEP request for that child into the DOE's computer system, no matter how long the CSE takes to enter the request.
- **Second**, and similarly, CSE 1 routinely refuses to begin their 60 day countdown until after Success Academy parents sign the DOE's evaluation consent form.
 - This form is unnecessary because parents sign broad consent forms provided by Success Academy that cover any and all evaluations when their children are referred for IEPs.
 - Still, the CSE typically forces Success Academy parents to wait more than 44 days to sign the DOE's duplicative form, and insists that not one of those 44 days counts towards the CSE's 60 day deadline.
- **Third**, CSE 1 often delays the dates of Success Academy scholars' social history meetings.
 - At a social history meeting, a social worker meets with a parent to better understand a child's home and community environment, and what intervention strategies have previously helped the child.
 - Social history meetings are among the most important meetings or evaluations because CSE 1 typically chooses to have parents sign CSE 1's superfluous consent forms at those meetings.
- **Fourth**, CSE 1 delays all other IEP-related meetings, evaluations, and observations, even after all the consent forms are signed.
- **Fifth**, CSE 1 routinely schedules Success Academy scholars' meetings and evaluations so that it is difficult if not impossible for parents and Success Academy representatives to attend.
- **Sixth**, CSE 1 representatives often fail to hold IEP-related meetings, observations, and evaluations altogether.

- **Seventh**, CSE 1 almost always insists on conducting its own evaluations and refuses to rely on independent evaluations that Success Academy schools and parents have secured to try to speed up the IEP process.
- **Eighth**, even after CSE 1 finally obtains or conducts all the evaluations that it deems necessary to evaluate a Success Academy scholar, CSE 1 delays holding the IEP meeting where the CSE determines what special education support a Success Academy scholar will receive.

CSE 1 Routinely Delays Uploading Referral Requests Into the DOE's Information System

105. The first of CSE 1's delay tactics is to wait several days and sometimes weeks before a CSE 1 representative bothers to enter into the DOE's Special Education Student Information System ("SEGIS") a request for an initial evaluation, a request for a reevaluation, or a request to reopen a Success Academy scholar's case.

106. SEGIS is the student information system used by the DOE and CSE 1 to track children referred for special education services.

107. CSE 1 has established a policy where it refuses to start its 60 day countdown to complete a Success Academy scholar's IEP process on the day when the CSE receives a Success Academy parent's request for referral or reevaluation. Instead, CSE 1 waits to begin its 60 day countdown until after a CSE 1 representative has uploaded the scholar's referral into SEGIS, at the very earliest (and often even later, as alleged in more detail below).

108. For example, Plaintiff R.A.'s referral request was submitted on or around September 25, 2017, but CSE 1 did not upload it until more than a month later, on October 30, 2017. Nonetheless, CSE 1 claimed that it did not need to complete R.A.'s IEP process until January 12, 2018 - approximately 110 days after his referral was submitted.

109. For another scholar, CSE 1 waited a full month to upload his mother's and Success Academy's December 2016 joint request to reopen the scholar's IEP process (the "Request to Reopen").

110. Instead of reopening the case, CSE 1 instead decided to spend a month questioning the integrity of the Request to Reopen, even though it was clear that Success Academy had submitted a legitimate document.³

111. CSE 1's dilatory tactic of starting the 60 day countdown only at the earliest after CSE 1 uploads the IEP referral or request for re-evaluation into SESIS is plainly impermissible. If this stalling strategy were permitted, children would have no recourse if CSE 1 were to delay the IEP process indefinitely by not uploading a referral or request for re-evaluation into SESIS.

112. CSE 1's appalling delay tactic not only violates federal and New York State law, but also the DOE's own policy, which requires that referral documents promptly be uploaded into SESIS. For example, the New York City Department of Education Special Education Standard Operating Procedures Manual ("DOE SOPM") requires that any DOE staff member "who receives a referral document must immediately either open the case in SESIS or convey the referral document to a professional colleague . . . who is able to do so." Moreover, the DOE SOPM provides that "[t]he referral document must be faxed into SESIS by the conclusion of the following business day."

113. Nonetheless, CSE 1 blatantly disregards this DOE policy for Success Academy scholars.

³ After CSE 1 received the Request to Reopen on December 19, 2016, Chronas emailed CSE 1 representative Kathy Sauls the next day and asked Sauls to reach out to the scholar's mother to verify whether she actually signed the Request to Reopen. On January 17, 2017, Chronas emailed Sauls and again asked her to contact the parent, insisting that: "It looks like it is the same request that was initially sent [for the scholar's initial referral] with a 2 written over the 0" to represent the month when the document was dated.

Chronas' purported concern for whether the scholar's Request to Reopen was a different document than his initial referral shows a clear and deliberate attempt to delay his IEP referral process. Even if the Request to Reopen does have a 2 written over a 0 to correct the month when the document was dated, the Request to Reopen is plainly a different document than the initial referral. In the initial request, the month written on the second page labeled "Parent/Guardian Consent" is "9." In the Request to Reopen, the month written on the second page labeled "Parent/Guardian Consent" is "12," which looks nothing like a "9." In addition, the signature on the Request to Reopen is clearly different than the signature on the initial referral. What is clear, however, is that Chronas was determined to work against Success Academy, even at the expense of a child referred for special education services.

CSE 1 Demands Success Academy Parents Sign and Provide a Superfluous Consent Form

114. CSE 1's next delaying tactic is similar to its first. CSE 1 routinely refuses to begin the 60 day countdown to complete the IEP process until after Success Academy parents sign a duplicative and unnecessary consent form.

115. When Success Academy schools and parents jointly refer a child for an IEP, the referral document explicitly confirms that the referring parent consents to any evaluation necessary for the IEP process.⁴

116. Despite this broad consent, which is adequate under the law to permit an evaluation, the CSE refuses to rely on consent forms signed by parents of Success Academy scholars that are submitted with the IEP referrals. Instead, the CSE insists that parents also must sign the DOE's separate, duplicative form consenting to IEP-related evaluations.

117. The CSE's insistence on parents signing needless, extra pieces of paper has dire consequences for Success Academy scholars referred for IEPs. The CSE refuses to start its 60 day countdown to complete the IEP process for evaluations of children who have not previously been referred for IEPs until a parent signs the DOE's own form.

118. For example, Plaintiff Castillo jointly with Success Academy submitted her son A.H.'s request for an IEP referral on or about April 24, 2017. The referral included Success Academy's robust consent language discussed above.

119. Nonetheless, CSE 1 refused to begin its 60 day countdown for A.H. until May 20, 2017, when the CSE finally offered Castillo the opportunity to sign the DOE's duplicative form on the same day as an evaluation that CSE 1 had scheduled. As far as the CSE was concerned,

⁴ The consent states in full: "I give my consent for additional testing and assessments to be given to my child if necessary, including such assessments as a psycho-educational evaluation, classroom observation, speech and language evaluation, occupational therapy evaluation, or other appropriate assessments or evaluations as necessary to determine my child's needs. I understand that these assessments are to provide information about whether or not my child has/continues to have an educational disability and my child's need for special education and related services."

the 26 days that the CSE made Castillo wait before giving her the form did not count towards their deadline to hold an IEP meeting for her son.

CSE 1 Delays Scheduling the Social History Meetings Where Parents Typically Sign CSE 1's Duplicative Form

120. Another of CSE 1's dilatory tactics is to routinely delay the dates of Success Academy scholars' social history meetings. At a social history meeting, a social worker meets with a parent or guardian to better understand a child's home and community environment, and what intervention strategies have previously helped the child.

121. Social history meetings are among the most important meetings or evaluations during CSE 1's IEP referral process because CSE 1 typically chooses to have parents sign CSE 1's superfluous consent form at those meetings. As discussed above, CSE 1 refuses to start the countdown on its 60 day deadline to complete the IEP process until parents have signed that superfluous consent form.

122. These delays frequently cause CSE 1 to exceed its 60 day deadline to complete the IEP process, in violation of federal and state law.

123. CSE 1's scheduling delays also violate the DOE's own guidelines. DOE guidelines provide that social history meetings must be scheduled "as soon as possible" and "no later than 15 business days from the date of the initial referral."

124. CSE 1 routinely fails to meet this 15 day time period for Success Academy scholars.

125. For example, CSE 1 inexplicably waited for 96 days after entering one scholar's referral request in SESIS on March 15, 2016 before the CSE bothered to hold the scholar's social history meeting on June 18, 2016.

126. Similarly, CSE 1 tried to schedule Plaintiff R.A.'s social history meeting for November 21, 2017 (a full 23 days after CSE 1 entered his referral request and 58 days after R.A.'s IEP referral was submitted to CSE 1), forcing R.A. to go even longer without special education services.

127. CSE 1 has continued to delay Success Academy scholars' (including several Plaintiffs') social history meetings even after Success Academy repeatedly wrote to remind the CSE of its obligation to schedule meetings and evaluations promptly.

128. For example, on October 27, 2017, Success Academy - Bronx 1's Education Coordinator wrote to Birkeland, Chronas, Sandi, and other DOE officials, noting that several scholars (including Plaintiff R.A.) had been waiting at least one month and in some cases almost three months for social history meeting appointments. CSE 1 did not respond.

129. On November 2, 2017, Danae Ioannidis - a Manager of Scholar Support at Success Academy - wrote to follow up on the email. Among other concerns, Ioannidis stressed that it was unacceptable that CSE 1 was trying to delay R.A.'s social history evaluation until November 21, nearly two months after R.A. was referred for an IEP.

130. Thereafter, CSE 1 moved R.A.'s social history evaluation, but only to November 13, 2017 - still over a month after CSE 1 entered the request for reevaluation in SESIS, and 50 days after CSE 1 actually received R.A.'s IEP referral.

131. On average, CSE 1 has forced Success Academy scholars referred during the 2017-18 school year to wait over 44 days between their IEP referral and their social history meetings.

CSE 1 Delays Scheduling Other IEP-Related Meetings, Evaluations, and Observations

132. CSE 1's next dilatory tactic is to delay holding other IEP-related meetings, evaluations, and observations even after all of the consent forms are signed. After a parent or guardian signs the DOE's superfluous consent form, the CSE schedules additional IEP-related meetings, evaluations, and classroom observations of children to help determine which special education services a child should receive.

133. Success Academy scholars (including several Plaintiffs) often have to wait months before CSE 1 schedules these IEP-related meetings, evaluations, and classroom observations.

134. For example, CSE 1 forced Plaintiff A.H. to wait 130 days and Plaintiff M.E. to wait 106 days between the time that their parents signed the DOE's superfluous consent forms and when CSE 1 finally managed to conduct their classroom observations.

135. On average, CSE 1 has forced Success Academy scholars referred during the 2017-18 school year to wait more than 21 days from their social history meetings (when parents would typically sign the DOE's consent forms) until the CSE even bothers to schedule classroom observations, causing children who need services to fall another month behind their peers.

136. CSE 1's track record for other evaluations and meetings before the final IEP meeting is no better than for classroom observations.

137. For example, CSE 1 delayed conducting a speech and language evaluation for Plaintiff U.B. for a full 128 days, despite repeated requests by Success Academy employees to schedule one.

138. Although Plaintiff Barreto (U.B.'s mother) had signed the DOE's consent form on September 19, 2017, CSE 1 still had not conducted a speech and language evaluation by

November. Only after Success Academy wrote multiple emails in November and December to the attention of Birkeland (which were ignored) and eventually to Christina Foti, Chief Executive Director of the Special Education Office of New York City Department of Education, did CSE 1 finally schedule a speech and language evaluation for January 24, 2018 - an astounding 272 days from when Barreto and Success Academy jointly referred U.B. to CSE 1.

CSE 1 Frequently Schedules Meetings and Evaluations for Success Academy Students on Short Notice and at Inconvenient Times

139. Another way that CSE 1 intentionally delays the evaluation and reevaluation of Success Academy scholars is to schedule Success Academy scholars' meetings and evaluations so that it is difficult if not impossible for parents and Success Academy representatives to attend.

140. On multiple occasions, the CSE has scheduled meetings and evaluations with barely any notice, and on days or at times that the CSE knows or should know would not work for parents, teachers, and staff.

141. For example, CSE 1 scheduled a social history appointment for one Success Academy scholar at 8:30 a.m. on March 12, 2017 - a Sunday morning - by a notice dated March 8, 2017, and sent to that scholar's parents by regular mail. Not surprisingly, the scholar's parents did not learn of this meeting on time. CSE 1 then forced the scholar to wait more than a month until the next social history meeting, which CSE 1 set at 8:30 a.m. on April 30, 2017 - another Sunday morning.

142. Likewise, CSE 1 routinely schedules meetings for Success Academy scholars after providing notice only days in advance via snail mail and postings on SESIS.

143. For example, in December 2017, CSE 1 attempted to schedule weekend meetings for Success Academy - Bronx 1 scholars on extremely short notice. CSE 1 only sent notice to

the scholars' parents by snail mail, just two days prior to the scheduled weekend meetings, and posted the meeting notices on SESIS without reaching out to Success Academy.

144. It was only through the dedication of Success Academy employees and the determination of the families of the scholars that those families were able to attend the weekend meetings on such short notice. Kellie Grant, the Education Manager at Success Academy - Bronx 1 had been checking SESIS and luckily spotted the weekend meetings. Grant then contacted the families involved, who set aside their prior commitments to ensure that they were able to attend. CSE 1 never alerted Grant or any other Success Academy representative beforehand that the CSE had posted these meeting dates on SESIS.

CSE 1 Often Misses IEP-Related Meetings, Observations, and Evaluations Altogether

145. Another of CSE 1's techniques for stalling the IEP process for Success Academy scholars is to miss the meetings, observations, and evaluations altogether. This forces parents to miss work for no reason, and further delays the evaluation process of Success Academy scholars.

146. For example, on August 31, 2017, a Success Academy parent arrived for an IEP meeting scheduled for that day. When no one from CSE 1 showed, the parent reached out to Success Academy, and Success Academy called CSE 1 to explain the situation. A CSE 1 representative put Success Academy on hold for a full 30 minutes before explaining that the person who was supposed to have conducted the IEP meeting was on vacation.

147. On another occasion, CSE 1 representative Kathy Sauls scheduled three classroom observations on September 8, 2017, at Success Academy - Bronx 2 MS (including for Plaintiff A.H.), but Sauls failed to show up for the observations or even notify Success Academy that she would not attend. Sauls then rescheduled the observations for September 19, 2017, but again did not appear and failed to notify Success Academy in advance that she would not be

there. That same day, Sauls arrived three hours late to another Success Academy school (Success Academy - Bronx 2) for a classroom evaluation, once again without prior notice.

148. On September 20, 2017, Success Academy raised with Sauls the problem of her showing up hours late for scheduled classroom observations. Rather than working to resolve the issue, Sauls instead replied that should she be delayed by more than 30 minutes, “please consider the day cancelled.”

CSE 1 Routinely Refuses to Rely on Evaluations Submitted by Success Academy Schools or Parents, or Conducted by Success Academy Psychologists

149. Faced with these long delays, in an effort to expedite the IEP process, Success Academy schools and parents often secure independent evaluations or use Success Academy school psychologists to conduct evaluations.

150. Nonetheless, CSE 1 routinely refuses to rely on these evaluations secured by Success Academy schools and parents, despite having legal authority to do so. Instead, CSE 1 almost always insists on conducting its own evaluations, at the expense of Success Academy scholars waiting to be evaluated.

151. For example, in an attempt to expedite Plaintiff A.H.’s IEP evaluation process, Success Academy had conducted tests of A.H before the end of the 2016-17 school year.

152. Nonetheless, CSE 1 insisted on redoing an academic test of A.H. that Success Academy had conducted, while forcing A.H. to wait more than 200 days for his IEP meeting.

153. CSE 1’s insistence on conducting the same evaluations as Success Academy does more than just delay scholars’ IEP processes. At times, CSE 1 skews the results of its evaluations because CSE 1 often requires scholars to complete the exact same tests and evaluations that Success Academy already conducted. These tests and evaluations are meant to

be reviewed after they have been taken and reviewed once. Therefore, a child can appear to have performed better if he or she takes the test or evaluation multiple times.

154. Nonetheless, CSE 1 at times still relies on results even when Success Academy scholars already have been exposed to the tests and evaluations.

CSE 1 Routinely Delays Holding IEP Meetings

155. Even after CSE 1 finally obtains or conducts all the evaluations that it deems necessary to evaluate a Success Academy scholar, CSE 1 frequently causes further delays by waiting to hold the IEP meeting where the CSE must determine what special education support a Success Academy scholar will receive.

156. For example, when CSE 1 first evaluated Plaintiff A.M. in 2015, the CSE waited a full 38 days after completing her evaluations to hold an IEP meeting where they denied her special education support.

157. The next year, CSE 1 forced A.M. to wait 32 days between her last evaluation and her IEP meeting. Once again, the CSE denied her special education services at that meeting.

CSE 1's Refusal to Work With Success Academy Contributes to its Policy and Pattern and Practice of Not Providing Success Academy Scholars With Sufficient Special Education Support

158. CSE 1 has repeatedly shown that it does not care that is violating the law. Throughout the IEP referral process, CSE 1 representatives routinely refuse to respond to many of Success Academy's emails highlighting concerns with CSE 1's actions and their effects on children, even when Success Academy escalates these concerns to more senior DOE officials. For example, on September 13, 2016, Freese wrote to Sandi to explain that "We are having persistent challenges getting responses from Steven Birkeland at CSE 1, and have many outstanding concerns that have gone completely unaddressed . . . We would appreciate responses

to these concerns and would like to discuss how we can improve communication with CSE 1 so this does not continue to be our experience” (emphasis omitted).

159. Nonetheless, Birkeland and other CSE 1 representatives have continued to ignore and discount Success Academy’s concerns and have routinely refused to respond to Success Academy’s emails and letters escalating these issues.

160. In addition, in an effort to prompt CSE 1 into action, Success Academy often sends weekly emails listing dozens of Success Academy scholars (including Plaintiffs) whose evaluation processes have stalled in one respect or another - including whether CSE 1 has delayed opening cases in SESIS or delayed scheduling social history meetings, evaluations, or IEP meetings.

161. CSE 1 rarely, if ever, responds to these emails, and Success Academy scholars (including Plaintiffs) are forced to languish without needed special education services while waiting at the mercy of CSE 1’s scheduling whims.

162. Success Academy frequently escalates these problems to other DOE officials, again with little effect.

163. CSE 1 also has demonstrated its refusal to collaborate with Success Academy through CSE 1 representatives’ open attacks on Success.

164. Birkeland, in particular, has used his personal social media account to attack Success Academy. For example, on or about February 15, 2016, Birkeland posted on his Facebook page a link to a *New York Times* article about Success Academy. Birkeland added the sarcastic hashtag “unsuccessful” to his post.

165. Likewise, CSE 1 representatives have encouraged parents to withdraw their children from Success Academy, such as CSE 1's comments to Plaintiff Castillo and another Success Academy parent discussed above.

166. These examples demonstrate that CSE 1 is not committed to working with Success Academy to provide special education services to children who need them and at times has demonstrated an animus towards Success Academy, its parents and its scholars. Ultimately, Success Academy's scholars are the ones who are hurt by CSE 1's actions.

CSE 1 Denied Each Child Plaintiff Their Right to a Free Appropriate Public Education

A.H.

167. A.H. attended the fifth grade at Success Academy - Bronx 2 Middle School in 2017-18. A.H. is a child with a disability who is eligible for the services and protections of IDEA.

168. By the spring of 2017, A.H. was struggling in his reading and writing classes. His reading ability was behind grade level, and his reading level did not improve at all between November and April of the 2016-17 academic year.

169. Due to these struggles, Castillo (A.H.'s mother) and Success Academy - Bronx 2 Middle School jointly referred A.H. for an IEP on or around April 24, 2017. Castillo also consented to any necessary evaluation, test, or assessment.

170. As part of that process, on May 20, 2017 - almost a month after A.H.'s referral - a CSE 1 representative held a social history meeting with Castillo.

171. During that social history meeting, the CSE 1 representative said to Castillo that her son likely would not qualify for special education support, and that A.H. had only been referred for an IEP because Success Academy's academic standards for children were too high.

172. That same day, CSE 1 required Castillo to sign the DOE's Consent to Initial Evaluation form if she wanted evaluations, even though Castillo had already consented to evaluations when she submitted her son's IEP referral.

173. On June 27, 2017, CSE 1 conducted a speech and language evaluation of A.H. The CSE 1 evaluator found that A.H.'s abilities were below average in sentence assembly and sentence formulation. The evaluator noted that "the problem is that unless these weaknesses are accounted for and remediated as they are not going to magically disappear or resolve on their own. In fact, both research and clinical judgment dictate that these weaknesses will exacerbate over time and will continue to adversely impact both social communication and academics" (emphasis omitted).

174. Despite this finding, the CSE 1 representative refused to recommend speech and language services for A.H.

175. A.H. continued to struggle academically, and he began the 2017-18 school year by repeating the fifth grade. Yet CSE 1 still had not conducted an IEP meeting for A.H. by the start of the school year, even though approximately four months had passed since A.H. was referred for an IEP.

176. In an attempt to expedite A.H.'s IEP evaluation process, Success Academy had conducted tests of A.H. and provided a teacher report before the end of the 2016-17 school year. A.H.'s teacher report confirmed that he was below grade level in writing ability.

177. Nonetheless, CSE 1 insisted on redoing an academic test of A.H. that Success Academy had conducted. At one point, CSE 1 even tried to give A.H. the same exact test that Success Academy had given him, which would have skewed the results.

178. In addition, CSE 1 repeatedly missed and delayed A.H.'s IEP evaluations and meetings, even though Success Academy frequently reminded CSE 1 and DOE officials that CSE 1 had delayed A.H.'s IEP meeting for months, and emphasized the importance of getting A.H. services as quickly as possible.

179. For example, Sauls contacted Success Academy to schedule a classroom observation of A.H. and other scholars on September 8, 2017. Sauls did not show up for the observation or inform Success Academy ahead of time that she could not attend.

180. Sauls also scheduled a classroom observation of A.H. and other scholars on September 19, 2017. Sauls did not show up for that observation either, and again failed to inform Success Academy ahead of time that she could not attend the observation that she herself had scheduled.

181. Success Academy repeatedly followed up with CSE 1 to try to expedite A.H.'s IEP process. For example, on November 2, 2017, Sarah Rodriguez, the Education Manager of Success Academy - Bronx 2 Middle School, wrote to Birkeland (copying several other CSE 1 representatives) to request that CSE 1 schedule an IEP meeting for A.H. Rodriguez reminded Birkeland that she had "originally requested [a] meeting[] on June 12, 2017 . . . and sent another reminder over the summer, but ha[d] not yet heard back." Birkeland did not respond.

182. On November 29, 2017, Julie Freese (Success Academy's Associate Director of Scholar Support at the time) emailed Sandi to stress that more than 200 days had passed since A.H. was referred for an IEP, and that Success Academy had asked Birkeland and Chronas every week for the past seven weeks to set a meeting date for A.H. Yet A.H. still did not have an IEP meeting scheduled.

183. On November 30, 2017, Ioannidis wrote to Birkeland and his team to again request their help in scheduling A.H.'s and other scholars' IEP meetings. Ioannidis emphasized that "we have yet to hear back from the team. As a reminder, these students have been waiting since last school year to hold their initial IEP meeting and have thus been in queue for over 200 days. These families are eager to hold their meetings. Your help in promptly scheduling these is much appreciated."

184. Birkeland's response on December 1, 2017 did not address A.H. or two other scholars' delays. Therefore, Ioannidis emailed again to request a response regarding A.H. and the two other scholars.

185. Birkeland's response stated that A.H. and the other scholars were "Pending Finalized Assessment. Not ready for review," which he tried to suggest meant that A.H.'s required assessments for his IEP had not been completed. Birkeland did not elaborate on what that meant.

186. When Ioannidis replied, she stressed in an email to Birkeland and other CSE 1 representatives that A.H. and the two other scholars "were all referred more than 200 days ago, in April or May of 2017. Each had a social history meeting between the end of May and the beginning of June, and evaluations were completed in June; including psycho-educational evaluations for all three scholars and a Speech evaluation for [A.H.]. The school first asked your summer team to schedule IEP meetings in June, but the summer team never responded and does not appear to have re-assigned these cases to the school year team. We raised them to you again over a month ago, yet this is the first we are hearing that the cases are not ready for review."

187. Ioannidis emphasized that CSE 1's delays had hurt A.H. and other children, and that Birkeland's refusal to explain the reason for the delay made it even more difficult to

schedule A.H.'s IEP meeting. She stressed: "Given how far out of compliance many of these cases are, coupled with the fact that evaluations were completed months ago, I would appreciate if you could provide a more specific explanation of why these students' assessments are not yet finalized. Otherwise, I am kindly requesting your support in scheduling these IEP meetings for a date in December so as not to allow these students to flounder and further delay the potential for them to receive special education supports."

188. On December 8, 2017, Freese escalated the issue to Christina Foti, Chief Executive Director of Special Education Office for DOE. Freese noted that almost two dozen scholars had experienced substantial delays, and approximately half of those scholars fell within CSE 1's purview (out of ten CSEs in total). Among those scholars, A.H. had been waiting over 200 days since his referral, and he still did not have an IEP meeting scheduled.

189. When CSE 1 finally did attempt to schedule A.H.'s IEP meeting, it provided just hours' notice to Success Academy and sent A.H.'s family a letter via regular mail.

190. Specifically, on December 12, 2017, at 10:29 a.m., CSE 1 School Psychologist Erin Zanfardino emailed Sarah Rodriguez, the Education Manager of Success Academy - Bronx 2 Middle School. Zanfardino attempted to confirm that A.H.'s IEP meeting was scheduled for 4:00 p.m. that same day - fewer than six hours after Zanfardino's email.

191. In response, Rodriguez explained that CSE 1 had not provided sufficient notice for Castillo or Rodriguez to attend.

192. Rodriguez still attempted to work with CSE 1, stressing that "While [A.H.'s] IEP meeting is a priority because this case has been in queue since last summer, moving forward, the the school and family would appreciate advance notice of any scheduled IEP meetings with

enough notice to ensure the availability of all participating parties, and to avoid delaying the process further.”

193. On December 19, 2017, CSE 1 finally held an IEP meeting for A.H., a full 239 days from A.H.’s initial referral.

194. At that meeting, CSE 1 denied A.H. any special education support whatsoever.

195. When CSE 1 denied A.H. services, Zanfardino informed the participating Success Academy representative that the CSE never considered any of the testing that Success Academy conducted.

196. Zanfardino also claimed that A.H. was completely capable because he had passed his annual New York State exam, even though the Success Academy representative explained that A.H. only passed the exam after Success Academy provided remediation in small groups of three-to-four students for approximately three hours per day in the weeks before the test.

197. Castillo vehemently disagreed with CSE 1’s refusal to provide services. She stressed that A.H. often did not understand what he read, and that he needed help to make academic progress. She also emphasized that Success Academy best understood A.H.’s needs, and that the CSE had made a serious mistake.

198. Despite CSE 1’s refusal to provide A.H. with special education support, Success Academy believes that A.H.’s struggles are severe enough to warrant extra help. In addition to the small group support discussed above, Success Academy provided A.H. with ICT, guided reading, and additional small group support and interventions.

199. CSE 1 denied A.H. special education services and repeatedly delayed evaluating him because he attends a Success Academy school.

200. CSE 1's refusal to provide services to A.H. and its delays in evaluating A.H. are due to CSE 1's illegal policy and its pattern and practice of refusing to provide Success Academy scholars with a FAPE and the special education services they need to thrive academically. Therefore, it would be futile for A.H. and Castillo to exhaust their administrative remedies.

201. CSE 1's failure to provide A.H. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even if CSE 1 ultimately were to provide A.H. and other Success Academy scholars with sufficient services, they would need to be frequently re-evaluated to determine whether his services should change. A.H. and Castillo (and other Success Academy scholars and parents) would therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

A.M.

202. A.M. attended the seventh grade at Success Academy - Bronx 2 Middle School in 2017-18. A.M. is a child with a disability who is eligible for the services and protections of IDEA.

203. During the 2014-15 school year, A.M. was in the fourth grade at Success Academy - Bronx 2. A.M. was struggling in reading and math. Although A.M. could read text accurately, she lacked the ability to summarize or give the main idea of what she had read. She also routinely scored below grade level standards on math exams.

204. Success attempted to help A.M. through several interventions, including informal SETSS, small group and direct math instruction, and both math and ELA tutoring. Nonetheless, A.M. continued to struggle.

205. As a result, on or around April 15, 2015, Meza (A.M.'s mother) and Success Academy - Bronx 2 referred A.M. for an IEP. Meza consented to any necessary evaluation, test, or assessment.

206. On May 2, 2015, CSE 1 conducted a social history evaluation of A.M. That same day, CSE 1 required Meza to sign the DOE's Consent to Initial Evaluation form if she wanted evaluations, even though Meza had already consented to evaluations when she submitted her daughter's IEP referral.

207. As part of the IEP process, also on May 2, 2015, the DOE conducted a psychoeducational evaluation of A.M. The evaluation confirmed that A.M.'s full scale IQ was in just the 18th percentile.

208. On July 15, 2015 (92 days after A.M.'s referral), CSE 1 held an IEP meeting. At that meeting, the Success representative, the CSE 1 representative, and Meza discussed how A.M. had failed her New York State ELA exam. And despite Success' and Meza's previously stated concern that A.M. lacked the ability to identify the main idea of a text, the CSE 1 representative inexplicably wrote in her meeting minutes that A.M.'s ability to identify the main idea of a text was a *strength*. CSE 1 then denied special education support to A.M.

209. Without special education support from CSE 1, A.M.'s struggles continued. Her math and ELA assessments were below her class' average score. She continued to struggle with reading comprehension, and similarly, had trouble understanding what math word problems were asking her to do or to solve.

210. Success attempted to support A.M. with interventions outside of an IEP, such as targeted instruction for growth areas in ELA and math in the general education setting, and intervention support for 55 minutes per day for 4-to-5 days each week. However, A.M. continued to struggle.

211. As a result, on April 14, 2016, Meza and Success Academy - Bronx 2 referred A.M. for an IEP, to try for a second time to get special education support for A.M. Meza once again consented to any necessary evaluation.

212. On May 4, 2016, the CSE forced Meza to sign the DOE's superfluous consent form if she wanted her daughter to be evaluated through the IEP process, even though Meza had already consented to evaluations when she had referred her daughter more than two weeks earlier.

213. CSE 1 conducted another psychoeducational evaluation of A.M. The evaluation noted that A.M.'s perceptual reasoning ability recently had ranked in just the 12th percentile.

214. Nonetheless, on July 25, 2016 (103 days after A.M.'s second referral), CSE 1 refused for a second time to provide A.M. with any special education services.

215. Success Academy and Meza tried again. On September 7, 2016, Success Academy - Bronx 2 and Meza wrote to Birkeland to refer A.M. for an IEP for the third time. Once again, Success and Meza emphasized how much A.M. was struggling without special education support. They stressed that:

- A.M. had failed her New York State ELA and math exams
- “[A.M.] is currently reading below grade level. . . . Considering [A.M.] has been previously held over, this indicates that she is even further behind than her peers.”

216. To expedite A.M.'s IEP referral, Success provided completed evaluations and reports. For example, a speech and language evaluation indicated concerns and found delays in A.M.'s verbal language, semantic language, and language memory skills. The pathologist recommended that A.M. receive speech-language therapy services. And once again, Meza consented to any necessary evaluation.

217. In addition, A.M.'s teacher report noted that A.M. struggled to understand her reading at a deeper level, she tended to interpret text too literally, she struggled to write cohesive sentences, and she was only able to solve basic math problems even though she was in the 6th grade.

218. Despite Success' best efforts to expedite A.M.'s IEP process, CSE 1 delayed her evaluations yet again. On October 11, 2016, the CSE forced Meza to sign the DOE's superfluous consent form if she wanted her daughter to be evaluated through the IEP process. And CSE 1 representatives repeatedly showed up late or completely missed meetings that they scheduled and that A.M.'s mother missed work to attend.

219. For example, on January 18, 2017, Hannah Moreau - a Success Academy Scholar Support Manager at the time - emailed Birkeland, Chronas, and other DOE representatives to explain that "Our team at Bronx 2 MS is waiting for the per session team to begin [A.M.'s] IEP meeting. They have been waiting with the parent for 18 minutes and have not received a call from the CSE. This is now the third meeting in the last week [for Success Academy scholars] that has either started late or not occurred at all. It is wasting our staff and parents' time and is furthering delaying our scholars' access to services. Are you all free for a call tomorrow to discuss ideas for how we can ensure these per session meetings occur?"

220. Neither Birkeland, Chronas, nor anyone else from CSE 1 or the DOE responded.

221. After Moreau followed up again, Chronas finally emailed at 11:59 a.m. on January 24, 2017 to ask if A.M.'s mother and Success Academy could be available for a meeting at 4:15 p.m., just over four hours after Chronas' email.

222. Moreau rushed to confirm, despite the short notice from CSE 1. Approximately one hour later, Moreau informed Chronas that A.M.'s mother could attend the meeting.

223. Nonetheless, CSE 1 representatives once again failed to attend the meeting the CSE had scheduled with A.M. At 4:25 p.m., Rodriguez emailed Chronas, Birkeland, and other CSE 1 representatives to stress that “we still have not received a phone call. I have tried calling to no avail. Mom made special arrangements and went out of her way so that she could be here. This is now the second time that mom has come for an IEP meeting and the CSE has not called.”

224. At 4:50 p.m. - more than thirty minutes after the meeting that CSE 1 had scheduled on short notice, Moreau followed up again to emphasize how the CSE had failed to timely attend a meeting it had scheduled, and that this was not tenable for A.M.’s mother. She stressed that “this is now the second time [A.M.’s] mom has been kept waiting for the IEP meeting to begin. Today mom made last minute child care arrangements so she could be present, only to be informed that the meeting will not begin until close to 5pm. She now has to leave, as she did not anticipate having to wait 45 minutes for the meeting to begin. This meeting will now have to be rescheduled for the third time.”

225. Eventually, after Success Academy continued to escalate the issue, CSE 1 finally held A.M.’s IEP meeting on or around January 27, 2017.

226. Only then - approximately 143 days after A.M.’s third IEP referral, and a full 654 days since A.M.’s very first IEP referral - did CSE 1 finally agree to provide A.M. with special education support.

227. CSE 1 denied A.M. special education services for years and repeatedly delayed evaluating her because she attends a Success Academy school.

228. CSE 1’s refusal to provide services to A.M. and its delays in evaluating A.M. are due to CSE 1’s illegal policy and its pattern and practice of refusing to provide Success Academy

scholars with a FAPE and the special education services they need to thrive academically. Therefore, it would be futile for A.M. and Meza to exhaust their administrative remedies.

229. CSE 1's failure to provide A.M. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even assuming CSE 1 is providing A.M. and other Success Academy scholars with sufficient services, they will need to be frequently re-evaluated to determine whether their services should change. A.M. and Meza (and other Success Academy scholars and parents) will therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

M.E.

230. M.E. repeated the third grade at Success Academy - Bronx 2 during the 2017-18 academic year. M.E. is a child with a disability who is eligible for the services and protections of IDEA.

231. M.E. has struggled academically despite Success Academy's attempts to provide her with extra support. Success provided M.E. with small group instruction in both ELA and math five times per week, a small math skills group on a daily basis taught by one of Success Academy - Bronx 2's most successful math teachers, and one-on-one support throughout each day.

232. Still, M.E. continued to struggle, and on April 26, 2017, Robledo (M.E.'s mother) and Success Academy - Bronx 2 jointly referred M.E. for an IEP due to her academic struggles. As the referral letter explained, "[M.E.] has struggled to be able to consistently answer comprehension questions about texts that she reads and fully understand and identify the correct operation for math word problems." Robledo also consented to any necessary evaluations at that time.

233. CSE 1 severely delayed M.E.'s entire IEP process. For example, CSE 1 waited 16 days to even try to schedule M.E.'s social history and psychoeducational evaluations, and did not set those evaluations until June 6, 2017, a full 42 days after M.E.'s referral.

234. On the June 6th evaluation date, CSE 1 forced Robledo to sign the DOE's Consent to Initial Evaluation form before CSE 1 would conduct any evaluations, even though Robledo had already consented to evaluations when she submitted the IEP referral. Only then did CSE 1 conduct the scheduled social history and psychoeducational evaluations scheduled for that day.

235. CSE 1 continued to delay M.E.'s IEP process. After the June 6th psychoeducational evaluation, CSE 1 did not generate a psychoeducational evaluation report until August 1, 2017, 57 days after the evaluation.

236. Success Academy repeatedly reminded CSE 1 that M.E.'s IEP process was delayed, but CSE 1 continued to stall.

237. For example, on September 6, 2017, Sabrina Stavonor - a Manager of Scholar Support at Success Academy - emailed Birkeland, Chronas, and Sandi to stress that approximately two dozen scholars - including M.E. - still were waiting for CSE 1 to schedule and conduct additional evaluations. CSE 1 did not respond.

238. On September 12, 2017, Stavonor again reminded Birkeland, Chronas, and Sandi that M.E. still was waiting for CSE 1 to conduct additional evaluations.

239. On September 19, 2017, CSE 1 finally conducted a classroom observation - more than a month after classes had resumed on August 14, 2017.

240. Sauls, the classroom observer from CSE 1, failed to interview the teacher during her classroom observation and only briefly observed M.E. because Sauls showed up to the school three hours late that day and left herself little time to conduct observations.

241. Sauls then waited 18 days after the classroom observation, until October 6, 2017, before she finally wrote her one-page report.

242. On September 19, 2017, Success Academy requested that CSE 1 schedule an IEP meeting for M.E. CSE 1 did not respond.

243. Success Academy continued to escalate the issue. On December 8, 2017 - 227 days after Robledo initially referred her daughter for an evaluation - Success Academy again reached out to CSE 1, requesting that M.E. be scheduled for an IEP meeting.

244. After Success Academy's persistent outreach, on March 16, 2018, CSE 1 finally scheduled M.E.'s IEP meeting for March 27, 2018 - a full 336 days (more than 11 months) after M.E. was referred for an IEP.

245. At the IEP meeting, CSE 1 denied M.E. special education services.

246. CSE 1 denied M.E. special education services and repeatedly delayed evaluating her because she attends a Success Academy school.

247. CSE 1's refusal to provide services to M.E. and its delays in evaluating M.E. are due to CSE 1's illegal policy and its pattern and practice of refusing to provide Success Academy scholars with a FAPE and the services they need to thrive academically. Therefore, it would be futile for M.E. and Robledo to exhaust their administrative remedies.

248. CSE 1's failure to provide M.E. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even if CSE 1 ultimately were to provide M.E. and other Success Academy scholars with sufficient services, M.E. and other Success

Academy scholars would need to be frequently re-evaluated to determine whether their services should change. M.E. and Robledo (and other Success Academy scholars and parents) would therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

M.M.

249. M.M. attended kindergarten at Success Academy - Bronx 1 during the 2017-18 school year. Although he began the 2017-18 school year in first grade, he was moved back to kindergarten and repeated the grade due to his academic struggles. M.M. is a child with a disability who is eligible for the services and protections of IDEA.

250. On November 9, 2016, Riddick (M.M.'s mother) wrote to CSE 1 to request that M.M. be evaluated for special education support and to refer him for an IEP.

251. When CSE 1 attempted to schedule M.M.'s IEP-related evaluations, they did so at times that they knew or should have known would be difficult for M.M. and Riddick to attend.

252. For example, on November 30, Birkeland wrote to Riddick and attempted to schedule a social history evaluation on a Saturday (December 17, 2016).

253. At the December 17 social history meeting, Riddick signed the DOE's evaluation consent form.

254. CSE 1 also severely delayed M.M.'s IEP meetings and evaluations, and only scheduled them after repeated follow-up from Success Academy.

255. For example, on February 6, 2017, Kellie Grant - the Education Manager of Success Academy - Bronx 1 - wrote to Birkeland, Chronas, and others to address several scheduling concerns. She stressed that CSE 1 needed to schedule a speech and language evaluation due to "low" and "below average" scores in areas of M.M.'s psychoeducational evaluation, and asked CSE 1 to promptly schedule the evaluation.

256. CSE 1 did not schedule the evaluation the next day, or even the next week. Instead, on February 23, 2017, CSE attempted to schedule M.M.'s speech and language evaluation for March 7 - more than a month after Grant's email to CSE 1.

257. Ultimately, the speech and language evaluation noted that Riddick was concerned that M.M. was dyslexic, and confirmed that M.M.'s Language Structure Index ("a measure of . . . performance on four tests designed to probe understanding and production of syntactical structures and morphology") ranked in just the 10th percentile.

258. In addition, the evaluation placed M.M. in just the 16th percentile on a test of his ability to understand spoken paragraphs, and in the 5th percentile for sentence comprehension.

259. Thereafter, CSE 1 continued to delay M.M.'s IEP meeting.

260. On May 2, 2017, Moreau wrote to Birkeland to emphasize that CSE needed to schedule more than a dozen scholars' IEP meetings. Moreau noted that over 100 days had passed since M.M.'s referral had been sent to the CSE.

261. Finally, on May 8, 2017, CSE 1 scheduled M.M.'s IEP meeting for May 11, 2017 - 184 days after M.M.'s referral.

262. M.M.'s teacher report had explained that he was below grade level in reading, writing, and math. His reading level was "level B," the second lowest possible reading level.

263. At the IEP meeting, Riddick reiterated her concern that M.M. flipped his letters when writing. He would often confuse the letter "b" with "d" and "m" with "w."

264. Despite this, and all of M.M.'s struggles outlined above, CSE 1 refused to provide any special education support to M.M.

265. Success Academy has tried to help M.M. even without the CSE's support, and provided M.M. with small group instruction in ELA four times per week and in math three times each week.

266. Still, without special education support from CSE 1, M.M.'s struggles worsened. By mid-September 2017, his reading level dropped from B to A - the lowest possible reading level - and he was moved back to kindergarten. The benchmark for scholars his age is level G or H.

267. His writing and math abilities also remain below grade expectations.

268. On December 6, 2017, Riddick and Success Academy - Bronx 1 again wrote to CSE 1 to refer M.M. for an IEP. Riddick once again consented to evaluations and assessments.

269. Yet again, CSE 1 severely delayed M.M.'s IEP process. The CSE tried to schedule M.M. social history meeting for January 3, 2018 - 29 days after M.M.'s second referral.

270. At the social history meeting, the CSE forced Riddick to sign the DOE's superfluous consent form if she wanted her son to be evaluated for an IEP, even though she had already consented to any necessary evaluations.

271. A speech and language evaluation of M.M. plainly showed that he needed special education services. His sentence comprehension ability ranked in just the 5th percentile, and his ability to follow directions, recall sentences, and understand spoken paragraphs each ranked in just the 16th percentile.

272. Nonetheless, the CSE continued to delay M.M.'s IEP process, forcing him to go months longer without special education support. The CSE waited until March 26, 2018 - 111 days after M.M.'s second referral - to conduct a classroom observation of M.M. The CSE 1

representative then waited until April 4, 2018 - 120 days after M.M.'s second referral - to complete a one page report of the classroom observation.

273. Finally, on April 27, 2018 - 143 days after M.M.'s second referral, and an astounding 535 days after M.M.'s first referral - the CSE held an IEP meeting for M.M. and agreed to provide him with special education support. M.M. had had to go nearly two full school years without this support and repeat kindergarten because the CSE was so reluctant to provide him with the support he plainly needed for so long.

274. CSE 1 denied M.M. special education services and repeatedly delayed evaluating him because he attends a Success Academy school.

275. CSE 1's refusal to provide services to M.M. and its delays in evaluating M.M. are due to CSE 1's illegal policy and its pattern and practice of refusing to provide Success Academy scholars with a FAPE and the special education services they need to thrive academically. Therefore, it would be futile for M.M. and Riddick to exhaust their administrative remedies.

276. CSE 1's failure to provide M.M. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even assuming CSE 1 is providing M.M. and other Success Academy scholars with sufficient services, they will need to be frequently re-evaluated to determine whether their services should change. M.M. and Riddick (and other Success Academy scholars and parents) would therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

R.A.

277. R.A. attended the first grade at Success Academy - Bronx 1 during the 2017-18 school year. R.A. is a child with a disability who is eligible for the services and protections of IDEA.

278. During the 2015-16 school year, R.A. attended Pre-K at a non-Success Academy school.

279. In the fall of 2015 - while R.A. attended the other school - Sandoval (his mother) requested that R.A. be evaluated to determine if R.A. was eligible for special education services. Sandoval was particularly concerned about R.A.'s speech and language development, and communication skills.

280. R.A. was evaluated by CPSE 1, which is a DOE entity that is also chaired by Birkeland, because R.A. was attending a non-Success Academy Pre-K program. A psychoeducational evaluation determined that R.A.'s communication level was "Adequate" and noted that he had an average verbal and non-verbal I.Q. level. The evaluation also observed that R.A. had some "expressive language delays and articulation deficits."

281. Despite R.A.'s average cognitive ability, CPSE 1 offered R.A. speech services.

282. However, Sandoval declined the speech services at that time because she was comforted by the psychoeducational evaluation showing that R.A.'s I.Q. was in the average range, even though CPSE 1 did not view this as a reason to deny R.A. speech therapy.

283. The next school year, R.A. began attending kindergarten at Success Academy - Bronx 1.

284. R.A. struggled in kindergarten. His reading was below grade level, his writing was slow, and he had difficulty using math strategies. Sandoval felt that his speech was "immature."

285. It became clear to Sandoval that her son needed special education support. On or about December 6, 2016, Sandoval referred her son to CSE 1 to be evaluated so he could receive "speech therapy" as well as "any other services that would help him academically."

286. CSE 1 required R.A. to once again be evaluated to determine the services he would need. On February 2, 2017, R.A.'s mother consented to all necessary evaluations and assessments. However, CSE 1 waited until March to conduct a second psychoeducational evaluation of R.A. and then until May 9, 2017 - a full 155 days after R.A.'s referral - to complete the report on his psychoeducational evaluation.

287. The second psychoeducational evaluation showed similar results as the first. R.A. had an IQ in the average range but had some speech difficulties.

288. Specifically, the evaluation showed that "[R.A.] obtained a Full Scale IQ (FSIQ) score of 98 within the 40th percentile and in the Average Range of intellectual functioning" and that "Her [sic] FSIQ is a good representation of his overall cognitive abilities." In terms of speech-related ability, R.A.'s verbal comprehension ability ranked in just the 32nd percentile. His listening comprehension skills ranked in just the 21st percentile. And the evaluation specified that "his oral discourse comprehension was below Average."

289. The second psychological evaluation even noted that after R.A.'s evaluation the previous year, "[R.A.] was offered speech services but mom declined classifying him since his then psychoeducational FSIQ fell firmly in the average range."

290. Beyond that, R.A. was struggling in other areas. His visual spatial ability ranked in just the 9th percentile, his early reading skills were in only the 14th percentile, and his math problem solving ability was in just the 18th percentile.

291. R.A.'s teacher report from Success Academy also showed that he was performing below grade level in reading and writing, and below kindergarten benchmarks in math. His teacher also emphasized that R.A. benefited from learning a small group setting.

292. Nonetheless, CSE 1 denied R.A. services on May 12, 2016 - 158 days after Sandoval referred her son to CSE 1.

293. CSE 1 even refused to offer R.A. the very same speech services that CPSE 1 had been willing to provide for him before he attended Success Academy.

294. At the meeting where CSE 1 denied R.A. services, Sandoval emphasized that R.A. struggled with his speech abilities, that he had a hard time expressing himself, that his academic performance was poor, and that she disagreed with the CSE's decision. CSE 1 refused to budge.

295. Without special education support, R.A. continued to struggle in school. He failed numerous math exams during the 2017-18 school year, and his reading level remained below grade level.

296. On September 25, 2017, Success Academy - Bronx 1 and Sandoval once again referred R.A. for an IEP. They reiterated that R.A. was struggling in both ELA and math. For example, R.A. routinely struggled reading words and would substitute the word he could not read with a word that did not make sense. He had difficulty comprehending what he read, his writing was difficult to understand, he had trouble counting by 5s and 10s, and he struggled with counting the number of objects that appeared on a page.

297. Success Academy - Bronx 1 and Sandoval also emphasized that "Throughout the day, [R.A.] struggles to comprehend and follow directions. It typically seems as if he is not comprehending the instructions being given."

298. Despite R.A.'s obvious struggles, CSE 1 severely delayed his IEP referral process.

299. By October 11, 2017, CSE 1 still had not scheduled the social history evaluation necessary for R.A.'s evaluation or even uploaded R.A.'s IEP referral to SESIS. Success Academy - Bronx 1's Education Coordinator had to write to CSE 1 to ask them to schedule the evaluation.

300. On October 24, 2017, CSE 1 attempted to schedule R.A.'s social history meeting for November 21, 2017 - a full 58 days (nearly two months) after R.A.'s IEP referral.

301. On November 2, 2017, Freese wrote to Sandi to emphasize that CSE 1 had had more than enough time to upload R.A.'s referral to SESIS, and was inappropriately trying to delay the social history evaluation until November 21.

302. Thereafter, CSE 1 moved R.A.'s social history meeting, but only to November 13, 2017 - 50 days after R.A.'s IEP referral. At the social history meeting, Sandoval consented to additional evaluations.

303. CSE 1 continued to delay R.A.'s IEP meeting. On January 19, 2018, the CSE agreed to hold the meeting, but not until February 12, 2018 - a full 141 days after R.A.'s September 2017 referral, and an astounding 434 days from when R.A. was first referred after attending Success Academy.

304. At the IEP meeting, the CSE finally agreed to provide R.A. with special education support. Unfortunately, the CSE's persistent delays and refusals to provide R.A. with support had left R.A. without the help he needed for one entire school year and for more than half of another. Although he finally received special education support in the last few months of the 2017-18 school year, the damage had been done. He remains behind academically and will have to repeat the first grade in 2018-19.

305. CSE 1 denied R.A. special education services and delayed evaluating him because he attends a Success Academy school.

306. CSE 1's refusal to provide services to R.A. and its delays in evaluating R.A. are due to CSE 1's illegal policy and its pattern and practice of refusing to provide Success Academy scholars with a FAPE and the special education services they need to thrive academically. Therefore, it would be futile for R.A. and Sandoval to exhaust their administrative remedies.

307. CSE 1's failure to provide R.A. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even assuming CSE 1 is providing R.A. and other Success Academy scholars with sufficient services, they will need to be frequently re-evaluated to determine whether their services should change. R.A. and Sandoval (and other Success Academy scholars and parents) would therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

U.B.

308. U.B. is a fourth grader attending Success Academy - Bronx 2. U.B. is a child with a disability who is eligible for the services and protections of IDEA.

309. U.B. attended P.S. 58 until the third grade. In the fall of 2016, Barreto (U.B.'s mother) enrolled her son at Success Academy - Bronx 2, where he again entered the third grade.

310. Even though U.B. was repeating the third grade, he struggled academically during the 2016-2017 school year. He performed below grade level in reading and math.

311. Success Academy did its best to help U.B. It provided U.B. with small group instruction in both ELA and math five times per week, and brought U.B. into a small math skills group on a daily basis taught by one of Success Academy - Bronx 2's most successful math teachers. In addition, U.B.'s teacher at Success Academy - Bronx 2 provided U.B. with in-class, one-on-one instruction throughout each day.

312. Still, it was clear by the Spring of 2017 that U.B. needed additional help.

313. On April 28, 2017, Barreto and Success Academy - Bronx 2 jointly referred him for an IEP, requesting that CSE 1 evaluate U.B. and provide him with special education services. Barreto also consented to any necessary evaluation, test, or assessment.

314. CSE 1 severely delayed U.B.'s entire IEP process.

315. For example, CSE 1 waited until May 19, 2017 - a full 22 days after the initial referral - to generate a notice for a social history evaluation and a psychoeducational evaluation. CSE 1 scheduled these evaluations for June 6, 2017, a full 40 days after CSE 1 received U.B.'s initial referral.

316. However, Barreto never received the notice of these evaluations in the mail or via email. Instead, Barreto received a voicemail from CSE 1 on June 4, 2017, but was confused by the message. As a result, Barreto missed the June 6, 2017 evaluations.

317. Success Academy repeatedly reminded CSE 1 that U.B.'s evaluations were delayed, but CSE 1 continued to stall U.B.'s IEP process.

318. For example, on September 6, 2017, Stavonor emailed Birkeland, Chronas, and Sandi to stress that approximately two dozen scholars - including U.B. - still were waiting for CSE 1 to schedule and conduct necessary evaluations. CSE 1 did not respond.

319. On September 12, 2017, Stavonor again reminded Birkeland, Chronas, and Sandi that U.B. and other scholars' IEP processes were severely delayed.

320. Finally, CSE 1 scheduled U.B.'s social history meeting and psychoeducational evaluation on September 19, 2017, a full 145 days after U.B.'s initial referral.

321. Barreto and U.B. attended the social history meeting and psychoeducational evaluation on September 19, 2017.

322. At the social history meeting, CSE 1 forced Barreto to sign the DOE's Consent to Initial Evaluation form before CSE 1 would conduct any evaluations, even though Barreto had already consented to evaluations when she submitted the IEP referral.

323. However, even though Barreto and U.B. attended on September 19, 2017, CSE 1 insisted on stopping and rescheduling.

324. CSE 1 wanted to reschedule the social history meeting because the CSE had failed to provide a Spanish interpreter. CSE 1 bizarrely insisted on a bilingual evaluation even though Barreto stated on the DOE's own home language identification survey that she preferred to receive notices in English and preferred to be spoken to in English. Moreover, Barreto made it clear that U.B. spoke English with her at home.

325. As for the psychoeducational evaluation, CSE 1 insisted on rescheduling the evaluation purportedly because U.B. did not bring his glasses. However, U.B.'s vision issues are mild. He easily could have taken a psychoeducational exam and his vision issues would not have impacted the results. U.B.'s mom explained this to CSE 1, but CSE 1 insisted on rescheduling anyway.

326. On September 19 and September 27, 2017, Stavonor again reminded Birkeland, Chronas, and Sandi about CSE 1's obligation to timely evaluate U.B. and other scholars.

327. Finally, on October 27, 2017, a full 183 days from U.B.'s referral, CSE 1 held a social history meeting.

328. Success Academy continued to remind CSE 1 about the CSE's delays. On November 21, 28, and 29, and December 5, 2017, Stavonor emailed Birkeland, Chronas, and Sandi to stress that U.B. needed additional evaluations for his IEP referral process. They did not respond.

329. On December 8, 2017, Success Academy - Bronx 2 escalated the problem by writing to Christina Foti, Chief Executive Director of the Special Education Office of New York City Department of Education, noting that CSE 1 was substantially delayed in processing the evaluations and reevaluations of several Success Academy scholars, including U.B.

330. On January 24, 2018 - a full 274 days from the day that Barreto initially referred her son to CSE 1 for evaluation - CSE 1 conducted a speech and language evaluation for U.B. The evaluation noted that U.B.'s teachers "had expressed concerns about his academic performance" and that he was "performing below grade level." U.B. was also observed to have a speech-language delay and to be below average in auditory comprehension, narrative skills, and reading and writing. Therefore, the evaluation recommended that U.B. receive speech-language services.

331. After Success Academy's persistent outreach, on May 7, 2018, CSE 1 finally scheduled U.B.'s IEP meeting for May 10, 2018 - a full 378 days (*more than an entire year*) after U.B. was referred for an IEP.

332. At the IEP meeting, CSE 1 denied U.B. special education services.

333. CSE 1 denied U.B. special education services and repeatedly delayed evaluating him because he attends a Success Academy school.

334. CSE 1's refusal to provide services to U.B. and its delays in evaluating U.B. are due to CSE 1's illegal policy and its pattern and practice of refusing to provide Success Academy scholars with a FAPE and the services they need to thrive academically. Therefore, it would be futile for U.B. and Barreto to exhaust their administrative remedies.

335. CSE 1's failure to provide U.B. and other Success Academy scholars with a FAPE is capable of repetition yet evading review. Even if CSE 1 ultimately were to provide

U.B. and other Success Academy scholars with sufficient services, U.B. and other Success Academy scholars would need to be frequently re-evaluated to determine whether his services should change. U.B. and Barreto (and other Success Academy scholars and parents) would therefore repeatedly be subjected to CSE 1's illegal policy and pattern and practice.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT
(The DOE and CSE 1 violated 20 U.S.C. § 1400, *et seq.*)

336. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

337. The IDEA entitles all children with disabilities to a free appropriate public education.

338. The IDEA defines a child with a disability as someone “with intellectual disabilities, . . . speech or language impairments, visual impairments . . . , serious emotional disturbance . . . , orthopedic impairments, autism, . . . other health impairments, or specific learning disabilities . . . who, by reason thereof, needs special education and related services.” 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8(a)(1).

339. Each child Plaintiff in this lawsuit has a disability for purposes of the IDEA, and is entitled to a free appropriate public education.

340. As the Local Education Agency for the CSE 1 Success Academy Schools, the DOE and CSE 1 are required to provide each child Plaintiff with a free appropriate public education.

341. A free appropriate public education guarantees an educational program (namely, an IEP) calculated to enable a child to make progress appropriate in light of their circumstances. The IEP must provide more than de minimis support.

342. Here, the DOE and CSE 1 have denied and continues to deny each child Plaintiff their right to a free appropriate public education through the policy and pattern and practice alleged above.

343. The DOE's and CSE 1's violations of the IDEA are capable of repetition yet evading review.

344. Declaratory and injunctive relief are appropriate remedies because the DOE's and CSE 1's unlawful conduct is ongoing.

SECOND CLAIM FOR RELIEF

DEPRIVATION OF RIGHTS SECURED BY THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (Birkeland and Chronas violated 42 U.S.C. § 1983)

345. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

346. As a public entity within the DOE, CSE 1 is a state actor for purposes of 42 U.S.C. § 1983. As employees of CSE 1, Birkeland and Chronas were acting at all relevant times under the color of state law.

347. Birkeland and Chronas violated Plaintiffs' rights under the IDEA by intently implementing the policy and pattern and practice discussed above.

348. In violating Plaintiffs' rights under the IDEA, Birkeland and Chronas were motivated by an evil motive or intent, and/or reckless or callous indifference to Plaintiffs' federally-protected rights. Specifically, Birkeland and Chronas implemented a policy and pattern and practice designed to prevent Success Academy scholars - including Plaintiffs - from receiving timely, appropriate special education support.

349. Birkeland's and Chronas' violations of law are capable of repetition yet evading review.

350. Declaratory and injunctive relief are appropriate remedies because Birkeland's and Chronas' unlawful conduct is ongoing.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF IMPLEMENTING NEW YORK STATE LAWS
(Defendants violated N.Y. Educ. Law § 4401, *et seq.*, and 8 N.Y.C.R.R. Parts 200 and 201)

351. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

352. Defendants' pattern and practice of refusing to provide Success Academy scholars with a free appropriate public education and the services they need for academic assistance violates the special education statutes and regulations of the State of New York - N.Y. Educ. Law § 4401, *et seq.*, and 8 N.Y.C.R.R. Parts 200 and 201 - which implement the IDEA in New York State.

353. Defendants' violations of these laws and regulations are capable of repetition yet evading review.

354. Declaratory and injunctive relief are appropriate remedies because Defendants' unlawful conduct is ongoing.

FOURTH CLAIM FOR RELIEF

FRAUDULENT MISREPRESENTATIONS AND OMISSIONS
(Defendants Made Fraudulent Misrepresentations and Omissions Inducing Plaintiffs
to Believe that Child Plaintiffs Would Be Fairly Evaluated)

355. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

356. Defendants made material misrepresentations and omissions of fact to the Plaintiffs, including the material misrepresentation that Defendants would evaluate the Plaintiff children to determine if they were eligible for special education services.

357. Defendants made these material misrepresentations and omissions at various times, including at each parent Plaintiff's social history meeting, by and through the social worker or other representative who conducted the social history meeting.

358. At the time Defendants made these statements to the Plaintiff parents, Defendants knew that these statements were false.

359. Defendants never intended to evaluate the Plaintiff children in order to determine if the Plaintiff children were eligible for special education services.

360. Instead, Defendants intended to evaluate and did evaluate the Plaintiff children with the intent to eventually wrongly deny the Plaintiff children special education services.

361. Defendants also intended to delay practically every step in the evaluation process with the intent to wrongly deny Plaintiff children special education services.

362. Defendants' material misrepresentations are also reflected in the DOE's Consent to Initial Evaluation form and in its Consent to Reevaluation form.

363. The Consent to Reevaluation form states that "it has been determined that additional assessments are required as part of a requested reevaluation or mandated three-year evaluation. . . . [T]hese assessments will provide important information regarding your child's present levels of performance, and whether modification to your child's Individualized Education Program (IEP) are necessary."

364. The Consent to Initial Evaluation states that "I give my consent to have my child evaluated to determine if he has an educational disability and is eligible for special education services."

365. The Consent to Initial Evaluation further states that, “I understand that if my child does not attend a New York City public school, the committee on Special Education Office will be contacting my child’s school in order to ensure that all assessments be completed.”

366. At the social history meetings, Defendants required each Plaintiff parent to sign either the DOE Consent to Initial Evaluation form or the Consent to Reevaluation form, depending on whether the Plaintiff Parent sought to have his or her child reevaluated for special education services or evaluated for special education services for the first time.

367. At the time Defendants made these statements to Plaintiffs, Defendants knew that these statements were false.

368. Defendants never intended to evaluate any of the child Plaintiffs with the purpose of “determin[ing] if he has an educational disability and is eligible for special education services.”

369. Instead, Defendants intended to manipulate the evaluation process and misinterpret the evaluations in order to deny the Plaintiff children the special education services for which they were actually qualified to receive.

370. Defendants never intended to “contact[] [the] child’s school in order to ensure that all assessments be completed.”

371. Rather, Defendants intended to wait until the relevant Success Academy school contacted them and reminded them, multiple times, of the need for additional assessments.

372. Plaintiffs reasonably relied on Defendants’ false material misrepresentations and omissions.

373. If Plaintiffs had known that CSE 1 had no intention of completing timely evaluations or ever providing Plaintiff children with adequate special education services, the

parent Plaintiffs would have immediately looked for other ways to help their children, all of whom were struggling academically and in desperate need of assistance.

374. As a result of Defendants' misrepresentations and omissions, Plaintiff children languished for months without receiving the special education services that they needed, Plaintiff parents needlessly missed work, and Success Academy teachers and staff spent years using Success' resources to work with CSE 1 in lieu of using those resources to help children in other ways.

375. Defendants' fraudulent misrepresentations and omissions are capable of repetition yet evading review.

376. Declaratory and injunctive relief are appropriate remedies because Defendants' unlawful conduct is ongoing.

FIFTH CLAIM FOR RELIEF

NEGLIGENT MISREPRESENTATIONS AND OMISSIONS

(Defendants Made Negligent Misrepresentations and Omissions Inducing Plaintiffs to Believe that Child Plaintiffs Would Be Fairly Evaluated)

377. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

378. Defendants owe Plaintiffs a duty to provide a free and appropriate education to the Plaintiff children.

379. Defendants owe Plaintiffs a duty to evaluate and to determine in good faith the eligibility of Plaintiff children for special education services, and to provide accurate information to Plaintiffs about the IEP process.

380. At various times, including at each Plaintiff's social history meeting, Defendants told Plaintiffs that they would evaluate the Plaintiff children and determine whether they were eligible for special education services.

381. In telling Plaintiffs this information, Defendants made materially false and untrue statements and representations to Plaintiffs that they would fairly and timely conduct these evaluations and make these determinations regarding the child Plaintiffs.

382. At the time each of these representations were made, Defendants should have known that they were false or misleading.

383. Defendants should have known that the false statements made by Defendants would induce the parent Plaintiffs to take time off work to bring their children to their evaluations and/or to attend meetings in connection with the evaluation process, the Plaintiff children to miss valuable school time to attend these evaluations, Success Academy to have its teachers and staff waste time and effort to engage with Defendants and participate in the evaluation process, and the parent Plaintiffs and Success Academy to have immediately sought other methods to help the child Plaintiffs.

384. Plaintiffs reasonably relied on and believed Defendants' misrepresentations and omissions.

385. If Plaintiffs had known that Defendants had no intention of completing timely evaluations or ever providing Plaintiff children with adequate special education services, the parent Plaintiffs would have immediately looked for other ways to help their children, all of whom were struggling academically and in desperate need of assistance.

386. As a result of Defendants' negligence, Plaintiff children languished for months without receiving the special education services that they needed, Plaintiff parents needlessly missed work, and Success Academy teachers and staff spent years using Success' resources to work with CSE 1 in lieu of using those resources to help children in other ways.

387. Defendants' negligent misrepresentations and omissions are capable of repetition yet evading review.

388. Declaratory and injunctive relief are appropriate remedies because Defendants' unlawful conduct is ongoing.

SIXTH CLAIM FOR RELIEF
NEGLIGENT SUPERVISION
(Defendants Engaged in Negligent Supervision)

389. Plaintiffs reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

390. Defendants owe Plaintiffs a duty to provide a free and appropriate education to the Plaintiff children.

391. Defendants owe Plaintiffs a duty to evaluate and to determine in good faith the eligibility of Plaintiff children for special education services, and to provide accurate information to Plaintiffs about the IEP process.

392. Defendants breached those duties and, as a result, caused the Plaintiffs serious and irreparable harm.

393. Birkeland, Chronas, and other CSE 1 and DOE representatives acted on behalf of CSE 1 and the DOE. Birkeland and Chronas were responsible for supervising multiple CSE 1 and DOE representatives.

394. Birkeland, Chronas, and other CSE 1 and DOE representatives intentionally caused the egregious delays in the process of evaluating Plaintiff children for special education services and/or caused these delays with reckless disregard for the rights of the Plaintiff children.

395. Birkeland, Chronas, and other CSE 1 and DOE representatives knew or should have known that the Plaintiff children were eligible for special education services, yet

intentionally denied the Plaintiff children the special education services for which they were eligible, and/or did so with reckless disregard for the rights of the Plaintiff children.

396. The alleged wrongdoing of Birkeland, Chronas, and other CSE 1 and DOE representatives occurred in the offices of CSE 1 and/or in DOE public buildings.

397. CSE 1 and the DOE knew or should have known of the propensity of Defendants Birkeland, Chronas, and other CSE 1 and DOE representatives to commit the alleged wrongdoing.

398. Birkeland and Chronas knew or should have known of the propensity of other CSE 1 representatives to commit the alleged wrongdoing.

399. In its correspondence discussed above, Success Academy representatives raised the wrongful conduct of Birkeland, Chronas, Sauls, and other CSE 1 and DOE representatives to CSE 1 supervisors and more senior DOE officials.

400. CSE 1 and the DOE took no action to correct the wrongful conduct of Birkeland, Chronas, and other CSE 1 and DOE representatives.

401. Birkeland and Chronas took no action to correct the wrongful conduct of Sauls and other CSE 1 and DOE representatives.

402. CSE 1 and the DOE failed to properly train, retain, and supervise Birkeland, Chronas, and other CSE 1 and DOE representatives.

403. Birkeland and Chronas failed to properly train, retain, and supervise Sauls and other CSE 1 and DOE representatives.

404. As a result of CSE 1's and the DOE's negligent supervision, Birkeland, Chronas and other CSE 1 and DOE representatives have continued their wrongful conduct.

405. As a result of Birkeland's and Chronas' negligent supervision, Sauls and other CSE 1 and DOE representatives have continued their wrongful conduct.

406. As a result of Defendants' negligent supervision, Plaintiffs have suffered serious and irreparable harm.

407. Defendants' negligent supervision is capable of repetition yet evading review.

408. Declaratory and injunctive relief are appropriate remedies because Defendants' unlawful conduct is ongoing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. That the Court declare that CSE 1's and the DOE's current policy and pattern and practice of conducting the special education process for Success Academy scholars (including Plaintiffs) violates the IDEA, that Birkeland's and Chronas' application of CSE 1's and the DOE's policy and pattern and practice violates 42 U.S.C. § 1983, and that Defendants' conduct violates the New York laws and regulations discussed above and constitutes fraudulent misrepresentations and omissions, negligent misrepresentations and omissions, and negligent supervision;

2. That the Court permanently enjoin Defendants from carrying out their current policy and pattern and practice in conducting the special education process for Success Academy scholars (including Plaintiffs);

3. That the Court order Defendants to develop and implement a new policy and pattern and practice of carrying out the special education process for Success Academy scholars (including Plaintiffs) that complies with all applicable laws;

4. That the Court retain jurisdiction of this case until Defendants have complied with all orders of this Court and that there is a reasonable assurance that Defendants will continue to comply in the future; and

5. Such other and further relief that the Court deems just and proper.

Dated: July 10, 2018
New York, New York

Respectfully submitted,

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