CV 15 6342

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M.W. and Z.W. by N.C., B.B. by A.B., D.W. by D.M., and S.Z. by A.Z., individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ACHIEVEMENT FIRST CROWN HEIGHTS, ACHIEVEMENT FIRST INC., NEW YORK CITY DEPARTMENT OF EDUCATION, NEW YORK STATE DEPARTMENT OF EDUCATION,

Defendants.

KUNTZ, J.
MANN. M.J.

Civil Action No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, as and for their complaint against Defendants Achievement First Crown Heights ("AF Crown Heights"), Achievement First Inc. ("AF Inc.," and together with AF Crown Heights, the "AF Defendants"), the New York City Department of Education ("DOE"), and the New York State Department of Education ("NYSED"), respectfully allege on knowledge as to themselves and their own actions, and on information and belief as to all other matters, as follows:

SUMMARY OF THE ACTION

1. Plaintiffs bring this class action on behalf of students with disabilities enrolled at AF Crown Heights, a charter school in Brooklyn, New York, for relief from Defendants' systemic failure to provide them a free appropriate public education, in violation of their rights under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and N.Y. Educ. Law § 4401 *et seq.*

2. AF Crown Heights is part of a network of schools operated by AF Inc. AF Inc. declares that its schools "sweat[] the small stuff"—punishing even minor disciplinary infractions, such as a student fidgeting or failing to look at the teacher while he or she is teaching, without regard to whether the student's behavior is caused by a disability.

3. AF Crown Heights applies AF Inc.'s rigidly disciplinarian approach to students with disabilities without accounting for their special needs. As one AF Crown Heights official told the parent of an AF Crown Heights student, AF Crown Heights is required to accept students with disabilities but, once enrolled, these students must behave exactly as non-disabled students do. Or, as a teacher told another parent, to accommodate children with disabilities would be to give them "special lenience"—which the AF Defendants' model does not allow. This approach has proven devastating to students with disabilities at AF Crown Heights, stunting their educational progress and emotional growth. And AF Crown Heights also regularly fails to provide students with disabilities other accommodations they need in order to access education.

4. The governmental entities that have an obligation to intervene have, instead, turned a blind eye. DOE is responsible for ensuring that students with disabilities receive a free appropriate public education without regard to whether they attend a charter school or a traditional public school. But DOE appears to view AF Crown Heights and other charter schools as falling outside its scope of responsibility: in the words of one of its representatives, DOE gives AF Crown Heights "free range" to provide its students with the necessary accommodations—or not.

5. The AF Defendants and DOE have violated the rights of AF Crown Heights students with disabilities in at least four general ways:

a. First, the AF Defendants and DOE systematically fail to identify students with disabilities, which they are required to do. The AF Defendants do not refer such students to DOE for evaluation, and DOE does not evaluate such students, even where parents have requested evaluations, or the students are routinely disciplined for behaviors stemming from recognizable disabilities and/or they are failing to make educational progress.

b. Second, for students who are acknowledged to have disabilities, DOE fails to appropriately develop education plans known as Individualized Education Programs ("IEPs"). Instead, DOE convenes meetings to develop IEPs without necessary participants, formulates IEPs based on inadequate and out-of-date information, and approves placements in educational settings that are inappropriate to students' needs because those are the only settings available at AF Crown Heights.

c. Third, for those students who have IEPs, the AF Defendants systematically fail to implement them, including, for example, by failing to inform students' teachers about IEP directives, including those concerning the appropriate management of disability-related behaviors; failing to provide mandated special services like occupational therapy, physical therapy, and paraprofessional support; and failing to educate students in appropriate educational settings. DOE, for its part, fails to take the steps necessary to ensure that students with disabilities at AF Crown Heights receive the educational supports and services mandated by their IEPs.

d. And fourth, the AF Defendants discipline AF Crown Heights students, starting in kindergarten, for behaviors that stem from their disabilities and which they cannot

control, with the effect that these students are excluded from education, confined in timeout rooms and other unsuitable settings, and are shamed and humiliated, in many cases compounding the effects of their disabilities.

6. NYSED has allowed AF Defendants' and the DOE's violations to go unchecked, thereby abdicating NYSED's statutory responsibility to protect students with disabilities by ensuring compliance with the IDEA.

7. To remedy these pervasive violations of federal and state law, the plaintiff class seeks comprehensive injunctive relief, as described more fully below.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331, 20 U.S.C. § 1415(i)(2)(a), 29 U.S.C. § 794, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

9. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 and 18 U.S.C. § 1965 because it is the judicial district in which Plaintiffs reside, in which AF Crown Heights is located, and in which a substantial part of the events giving rise to Plaintiffs' claims occurred.

PARTIES

10. Initials are used throughout this Complaint to preserve the anonymity of the children Z.W., D.W., B.B., M.W., and S.Z. and their mothers, N.C., D.M., A.B. and A.Z., and the confidentiality of information about them, in conformity with Rule 5.2(a) of the Federal Rules of Civil Procedure, the privacy provisions of the IDEA, 20 U.S.C. § 1417(c), and of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

11. Plaintiff Z.W. is a minor residing in Brooklyn and is a student at AF Crown Heights. He brings this lawsuit through his mother, N.C.

12. Plaintiff D.W. is a minor residing in Brooklyn and is a student at AF Crown Heights. He brings this lawsuit through his mother, D.M.

13. Plaintiff B.B. is a minor residing in Brooklyn and is a student at AF Crown Heights. He brings this lawsuit through his mother, A.B.

14. Plaintiff M.W. is a minor residing in Brooklyn and is a student at AF Crown Heights. He brings this lawsuit through his mother, N.C.

15. Plaintiff S.Z. is a minor residing in Brooklyn and is a student at AF Crown Heights. He brings this lawsuit through his mother, A.Z.

16. Defendant AF Crown Heights is a New York education corporation that operates a charter school consisting of an elementary school, a middle school, and a high school in Crown Heights, Brooklyn. AF Crown Heights is a direct recipient of federal and state funds.

17. Defendant AF Inc. is a nonprofit organization incorporated in the state of Connecticut. AF Inc. is a charter management organization that operates AF Crown Heights and other Achievement First network schools, including by providing oversight, training, staffing and curricula for AF Crown Heights. Upon information and belief, AF Inc. receives federal and state funds indirectly, from fees paid to it on a percentage basis by AF Crown Heights.

18. DOE is the local educational agency ("LEA") responsible for AF Crown Heights' compliance with the IDEA, 20 U.S.C. § 1412 *et seq*.

19. NYSED is the state educational agency ("SEA") responsible for IDEA compliance by New York public schools. The governing body of NYSED is the Board of Regents, which issued and oversees AF Crown Heights's charter. 20 U.S.C. §§ 1412(a)(11); N.Y. Educ. Law

§§ 305(1), 2851-52.

BACKGROUND

I. Statutory and Regulatory Framework

A. Education of Children with Disabilities

20. Several overlapping federal and state laws govern the education of children with disabilities in New York State. These laws include the federal IDEA, Section 504 of the federal Rehabilitation Act, and New York Education Law. In combination, these laws impose an overarching obligation on the defendants to provide a "free appropriate public education" ("FAPE") to students with disabilities, including at least four component obligations at issue in this lawsuit:

a. the "child find" obligation, to identify such students;

b. the obligation to develop an appropriate IEP;

c. the obligation to implement an appropriate IEP; and

d. the obligation to refrain from punishing children for disability-related behaviors and from otherwise discriminating against them.

21. The IDEA imposes upon each State that receives federal funds certain obligations to ensure that children with disabilities receive a FAPE. 20 U.S.C. § 1412(a)(1)(A). The IDEA defines a "child with a disability" to include children who require special education because of enumerated conditions including autism, learning disability, emotional disturbance and, for children between the ages of three and nine, because of developmental delays. 20 U.S.C. § 1401(3)(B); *see* N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1(zz)(10).

22. Section 504 provides that individuals with disabilities shall not "be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any

program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Under Section 504, claims may be 1) brought by a "qualified person" (*i.e.*, an individual with a disability) 2) who was excluded from participation in a public entity's programs or was otherwise discriminated against by that entity, 3) if the discrimination was due to his or her disability. Section 504 defines "individual with a disability" to include a person with a physical or mental disability that impedes major life activities such as "learning, reading, concentrating, thinking, and/or communicating." 29 U.S.C. 794(a); 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1), (2)(A). Section 504 requires recipients of federal funds that operate public education programs, such as charter schools and networks, to provide a FAPE to children with disabilities. 34 C.F.R. § 104.33.

23. Likewise, New York law requires that children with disabilities be "offered an opportunity to receive the benefits of an appropriate public education." N.Y. Educ. Law § 3204(4-a). New York law defines a "child with a disability" or "student with a disability" to include "a person under the age of twenty-one who, because of physical, mental, or emotional reasons can only receive appropriate educational opportunities from a program of special education." N.Y. Educ. Law § 4401(1).

24. Under these statutory schemes, the obligation to provide a FAPE means the obligation to educate a child with a disability in the manner directed by the child's IEP, which can include special education and services. *See* 20 U.S.C. §§ 1401(9), 1414(d)(2); N.Y. Educ. Law §§ 3204; 4401.

25. Under the IDEA, LEAs are responsible for developing IEPs and ensuring that students with disabilities receive the educational supports and services called for by those students' IEPs. 20 U.S.C. § 1414.

26. The IDEA also provides that each State have an SEA that is "primarily responsible" for ensuring that IDEA requirements are met throughout the State. 20 U.S.C. § 1401(32); *see* 20 U.S.C. § 1412(a)(11)(A).

27. As the SEA in New York, NYSED is responsible for ensuring that all students within the State receive a FAPE, and that all schools in the state comply with the IDEA. 20 U.S.C. § 1412(a)(11).

28. The Child Find Obligation. Children with disabilities must be "identified, located, and evaluated" to determine whether they need special education and services. 20 U.S.C. § 1412(a)(3)(A); N.Y. Educ. Law § 4401-a. This "child find" duty is triggered whenever there is reason to suspect that a child has a disability and that special education services may be needed to meet the child's unique educational needs. *See* 34 C.F.R. § 300.111(c)(1). A child's poor academic performance and/or a pattern of disruptive behaviors can constitute reason to suspect the child has a disability.

29. Upon a referral, DOE must conduct a full initial evaluation within sixty days. 20 U.S.C. § 1414(a)(1)(A)-(B); N.Y. Comp. Codes R. & Regs. tit. 8, § 200.4(b)(1).

30. NYSED or DOE must ensure that reevaluations of students with disabilities are conducted at least once every three years. 20 U.S.C. § 1414(a)(2).

31. IEP Development. An IEP is a written, up-to-date statement of a child's level of academic achievement; measurable annual goals for the child's progress; and a statement of the services, special education, supplementary supports, and program modifications that will be provided to support the child's progress, among other things. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.

32. An IEP must provide for special education and related services tailored to meet the unique needs of a particular child, and it must be reasonably calculated to enable the child to receive educational benefits. 20 U.S.C. § 1414(d)(1)(B).

33. DOE is responsible for developing, reviewing, and periodically updating each child's IEP by convening a meeting of an "IEP team" that must include the child's parent(s), at least one of the child's general education teachers, at least one of the child's special education teachers or providers, a qualified representative of DOE, and, if appropriate, the child. 20 U.S.C. § 1414(d)(1)(B); N.Y. Educ. Law § 4402(1)(b)(2).

34. DOE may not determine a child's placement or the other provisions of his IEP in advance of an IEP meeting, because to do so would deprive parents of the opportunity to meaningfully participate in the IEP process. *See* 34 C.F.R. 300.322.

35. Each child with an IEP is entitled to receive the education, services, supplementary supports, and program modifications specified in the IEP.

36. Each IEP must specify the educational setting in which the child is to be placed. These settings fall along a continuum from a general education classroom, which is the least restrictive setting, to more restrictive settings like special classes, classes with low student to teacher ratios, and classes at special education schools. 34 C.F.R. § 300.115.

37. For example, a child's IEP may direct that she is to be placed in an Integrated Co-Teaching ("ICT") classroom. To qualify as an ICT classroom, a classroom must have two teachers, one special education teacher and one general education teacher, who collaboratively instruct a group of students consisting of students with disabilities and students without disabilities; up to twelve of the students in an ICT classroom may be students with disabilities. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(g)(1-2).

38. IEPs may also provide for a range of other services and accommodations. For example, they may provide that a child should receive services such as physical or occupational therapy, counseling, and speech and language therapy. They may direct that a child receive the assistance of a paraprofessional, who is a person assigned to an individual student to help with tutoring, classroom behavior, and instructional support, among other things. *See* 34 C.F.R. § 200.59. Or they may direct that a school provide the child extra time to take tests, test him or her in a separate location from other children, or give other testing accommodations. 34 C.F.R. § 300.320.

39. Each IEP must indicate whether the student exhibits behaviors that are disruptive and/or interfere with learning and, if so, whether a functional behavioral assessment ("FBA") should be conducted and a Behavior Intervention Plan ("BIP") developed to support the student's access to instruction notwithstanding the behaviors. 34 C.F.R. § 300.324; N.Y. Comp. Codes R. & Regs. tit. 8, § 200.22.

40. A BIP is a written statement that includes "a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1.

41. Even if the IEP team decides that a FBA need not be conducted for a child, if it finds that the child's behaviors are disrupting learning, the IEP team must consider how to use "positive behavioral interventions and supports, and other strategies." 20 U.S.C. § 1414(d)(3)(b)(i).

42. IEP Implementation. IEPs must be implemented "as soon as possible" following the IEP meeting. 34 C.F.R. § 300.323(c)(2); N.Y. Comp. Codes R. & Regs. tit. 8, § 200.4(e)(1)(i).

43. Like traditional public schools, charter schools must implement their students' IEPs. 34 C.F.R. § 300.209(a); N.Y. Educ. Law § 2854(1)(b). Charter schools may provide special education and services themselves or arrange to have the services provided by an outside contractor or by the school district. 34 C.F.R. § 300.209(a); N.Y. Educ. Law § 2853(4).

44. Limits on Discipline. Under the IDEA and Section 504, schools may not apply disciplinary measures to students with disabilities in a manner that discriminates against those students or in a manner that is inconsistent with those students' IEPs and/or BIPs.

45. New York law explicitly prohibits schools from placing students with disabilities in "timeout rooms" except as specifically authorized in those students' BIPs, and only if staff can continuously see and hear the child and other conditions are met. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.22.

46. New York law further specifically prohibits the use of "aversive" interventions to respond to student behavior. "Aversive" interventions are those that are intended to induce pain or discomfort to change the student's behavior, including restrictions on movement through restraint devices, denial or delay of food, and painful or intrusive stimuli. N.Y. Comp. Codes R. & Regs. tit. 8, §§ 19.5(b), 200.22(e).

47. State and federal law also provides a child certain procedural rights when he or she is repeatedly removed from instruction for disciplinary reasons. When the time away from instruction totals more than ten days in a school year, the child has experienced a "change of placement," and is entitled to a "manifestation determination review" (MDR) to determine whether the problem behavior "was caused by, or had a direct and substantial relationship to, the child's disability." 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.536(a); N.Y. Comp. Codes R. & Regs. tit. 8, § 201.4(a). If it is determined that the behavior was so related, the MDR participants

must conduct a FBA and develop a BIP for the child. N.Y. Comp. Codes R. & Regs. tit. 8, §§ 200.1, 200.22.

B. Charter Schools

48. Charter schools are "independent and autonomous public school[s]." N.Y. Educ. Law § 2853(1)(c).

49. Charter schools in New York receive state and federal funds, paid by the State. Charter schools receive additional funding for students with disabilities, "in proportion to the level of services for [each] student with a disability that the charter school provides directly or indirectly." N.Y. Educ. Law §§ 2856(b); 4410-b(4).

50. Like traditional public schools, charter schools must comply with all laws and regulations regarding health, safety, civil rights, and special education, and they must educate children with special needs. N.Y. Educ. Law § 2854(1)(b). This last obligation requires charter schools to provide a FAPE to children with disabilities and to implement students' IEPs. 34 C.F.R. § 300.209(a); N.Y. Educ. Law § 2853(4); N.Y. Educ. Law § 2854(1)(b) .

51. NYSED is responsible for overseeing each charter school to "ensure that the charter school is in compliance with all applicable laws, regulations and charter provisions," including special education laws. N.Y. Educ. Law § 2853(2). NYSED can take punitive action against a school for noncompliance, including by terminating or refusing to renew the school's charter. N.Y. Educ. Law §§ 2855, 2857.

52. In New York, a charter school's LEA for IDEA purposes is the local school district. N.Y. Educ. Law § 2853(4)(a).

53. DOE has created "Committee on Special Education" ("CSE"), which is responsible for developing IEPs for public and charter students at schools within the CSE's jurisdiction, including charter schools such as AF Crown Heights. *See* N.Y. Educ. Law § 4402(1)(b)(1).

II. AF Defendants

54. AF Inc. views "sweating the small stuff" as integral to its mission. As AF Inc. puts it on its website:

> Sweating the small stuff: In many urban schools, teachers and leaders 'pick their battles,' only addressing egregious instances of poor behavior. Achievement First, on the other hand, has adopted sociologist James Q. Wilson's 'broken windows' theory that even small details can have a significant effect on overall culture, and we believe that students will rise to the level of expectations placed on them.

55. This "sweat[] the small stuff" approach means that AF Inc. expects its schools to accept no excuses for infractions of the code of conduct—namely, to ensure that teachers and school personnel consistently and predictably punish students for every infraction of the school's code of conduct, however minor.

56. AF Inc. ensures that its schools, including AF Crown Heights, execute the Achievement First mission through, among other things, centralized hiring and staffing decisions and training for teachers and other school employees. Teachers' evaluations under the "AF Essentials Rubric" are based in significant part on the extent to which they catch, and punish, all infractions.

57. Consistent with AF Inc.'s philosophy, AF Crown Heights imposes, in an absolute and unwavering manner, a pre-determined punishment for every infraction of the code of conduct, regardless of individual circumstances. AF Crown Heights expects and requires its teachers to punish students for minor infractions of the school's code of conduct, such as the

requirement that students fold their hands atop their desks during most class time, without regard to whether students have disabilities that make it impossible for them to perform those behaviors, and without regard to those students' right to accommodations.

58. This emphasis on rigid discipline clashes with the AF Defendants' legal obligations to students with disabilities.

59. Neither AF Inc. nor AF Crown Heights expects or requires its teachers to comply with students' IEPs or to otherwise accommodate students with disabilities. For example, successful inclusion of students with disabilities in instruction carries almost no weight in teacher evaluations, and the extent to which teachers comply with IEPs is not measured.

60. AF Inc. is legally responsible for AF Crown Heights's violations of law. In AF Inc.'s own words, it "holds schools accountable and ... has the power and expertise to intervene and take corrective action," and has the responsibility to "ensure that special education students achieve at tremendously high levels," and "ensure that all Individualized Education Plans (IEP) requirements are met."

FACTS CONCERNING NAMED PLAINTIFFS

Z.W.

61. Z.W. is a fourth grader at AF Crown Heights who has been subjected to inappropriate discipline, including suspension and isolation, for behaviors caused by his disability that are specifically recognized in his IEP and BIP. He has also been denied a FAPE and deprived of proper accommodations for his disabilities due to the Defendants' failure to properly develop and implement his IEPs throughout his time as a student at AF Crown Heights.

Background

62. Z.W. is a nine-year old boy and the twin brother of Named Plaintiff M.W. He has been continuously enrolled at AF Crown Heights since kindergarten. He has been diagnosed with anxiety, autistic features, likely Attention Deficit Hyperactivity Disorder, socialization problems, processing delays, hypotonia, speech and language delays, and asthma, among other conditions. These diagnosed conditions substantially limit Z.W.'s ability to engage in major life activities, including learning. Accordingly, Z.W. is a child with a disability within the meaning of IDEA and a qualified individual with a disability within the meaning of Section 504.

63. DOE has classified Z.W. as having an "Other Health Impairment" ("OHI"). By definition, having an OHI classification signifies that the student's disability "adversely affects" his or her "educational performance." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1(zz)(10).

64. Z.W. received services before and during preschool, and when he applied for kindergarten in 2011, he had an IEP providing for physical therapy, occupational therapy, speech and language therapy, counseling, and a paraprofessional. The IEP directed that he be placed in a restrictive setting with a ratio of 10 students to one teacher and two aides, and expressly rejected a general education setting. The IEP also contained a BIP.

65. Z.W. was offered a kindergarten placement at AF Crown Heights through the school's lottery. AF Crown Heights assured N.C. that the school could and would implement all of the provisions of Z.W.'s IEP and that the school would assist her with obtaining a paraprofessional to support him. N.C. accepted the placement.

Facts Relating to the Improper Application of Disciplinary Measures to Z.W.

66. Within weeks of Z.W. starting kindergarten, AF Crown Heights informed N.C. that Z.W. was engaging in behaviors that violated the school's code of conduct, that he would be put

on "probation" for 30 days, and that if he continued to engage in the behaviors AF Crown Heights would expel him. These behaviors included moving from his designated spot on the classroom floor, failing to track the teacher with his eyes, fidgeting, responding negatively to loud sounds or bright lights, and fleeing when a teacher confronted him close to his face.

67. These behaviors were all caused by his disabilities, and similar behaviors were described in his BIP and IEP.

68. During Z.W.'s "probation," AF Crown Heights repeatedly directed N.C. to remain with Z.W. all or part of the day at AF Crown Heights or AF Crown Heights would suspend or expel him.

69. During Z.W.'s "probation," AF Crown Heights regularly confined Z.W. for set periods of time in a timeout room—a darkened room barely larger than a closet, with no outdoor windows, and in which the hallway window had been covered. If Z.W. cried or tried to escape, AF Crown Heights added more time to his confinement.

70. On one occasion, N.C. came to AF Crown Heights to find Z.W.'s paraprofessional struggling physically with him to confine him in the timeout room.

71. When N.C. complained to AF Crown Heights about the timeout room, the school told her that the alternative to confinement in the timeout room was suspension. N.C. feared that a suspension during Z.W.'s "probation" would result in his expulsion.

72. Throughout kindergarten, AF Crown Heights confined Z.W. in the timeout room approximately twice per week for approximately 20 minutes at a time. On at least one occasion of which N.C. is aware, Z.W. was confined in the room alone for 50 minutes.

73. During Z.W.'s first, second, third, and fourth grade years, AF Crown Heights continued to discipline Z.W. for behaviors arising from his disabilities, as described in ¶ 66.

Specifically, AF Crown Heights has imposed the following punishments on Z.W. for these behaviors: issuing "corrections"—formal public demerits issued in front of the class to shame the child; imposing detention; suspending him; placing him at a "suspension table" in the back of a classroom and excluding him from classroom activities; sending him to the timeout room and other locations outside his classroom; and requiring N.C. to attend school alongside Z.W.

74. In approximately March-April 2013, AF Crown Heights punished Z.W. by requiring him to wear a weighted vest for up to eight hours per day, every day, for approximately a month, causing stomach pains and other physical health problems. Z.W.'s occupational therapist had prescribed therapeutic use of the vest only twice per day for short periods, and Z.W.'s mother never agreed to any use of the vest by anyone other than Z.W.'s occupational therapist.

75. In approximately January or February 2013, N.C. requested a MDR for Z.W. Neither AF Crown Heights nor DOE provided a MDR for Z.W. in response to that request.

76. Additionally, on information and belief, in each of the years he has been enrolled at AF Crown Heights, Z.W. has been removed from instruction for time totaling more than ten school days. As a result, AF Crown Heights and DOE were required, each of those years, to conduct an MDR and to consider whether to develop a BIP specifying appropriate behavioral interventions for Z.W. Neither AF Crown Heights nor DOE has ever conducted an MDR for Z.W.

77. In approximately 2014, an AF Crown Heights official told N.C. that although AF Crown Heights accepted children with IEPs, those children would be required to behave exactly as non-disabled students do.

Facts Relating to the Failure to Properly Develop Z.W.'s IEPs

78. Z.W. has had an IEP each year he has been enrolled at AF Crown Heights.

79. A DOE representative was present at each of Z.W.'s IEP meetings.

80. The participants at each of Z.W.'s IEP meetings relied on evaluative data from no later than 2008. As a result, at the IEP meetings held in 2012, 2013, and 2014, the IEP meeting participants did not have appropriately updated data upon which to base the IEP.

81. At the IEP meetings held in 2012, 2013, and 2014, DOE and AF Crown Heights failed to ensure compliance with numerous procedural requirements of the IDEA, including those concerning required attendees at the IEP meetings. Taken together, these failures affected the IEP team's decision-making process, deprived Z.W. of educational benefits, and denied Z.W. a FAPE.

82. Z.W.'s mother has made repeated requests to AF Crown Heights and DOE to have Z.W. reevaluated. She requested in writing in September 2012 that the DOE reevaluate Z.W. N.C. repeatedly followed up with both DOE and AF Crown Heights regarding this request, including in writing, at least through April 2013. N.C. requested that Z.W. be evaluated on many other occasions in 2013, 2014, and 2015, in writing, by email, by phone, and in person. Some of these requests were directed to AF Crown Heights, and others were directed to the DOE. For example, in June 2015, N.C. went to the CSE in person to request an evaluation for Z.W.

83. In violation of its legal obligation to re-evaluate Z.W. no less than every three years, and without meaningfully considering whether Z.W.'s IEP was meeting his unique educational needs, DOE told N.C. that because Z.W. was already receiving "all the services that are offered," there was no need for him to be evaluated.

84. DOE failed to re-evaluate Z.W. until late September 2015.

85. On several occasions, the AF Crown Heights and DOE participants at Z.W.'s IEP meetings deprived Z.W.'s mother of the opportunity to participate meaningfully in the IEP

process. For example, at the IEP meeting convened in 2012, before Z.W.'s first grade year, the meeting participants, including Z.W.'s mother, determined to maintain testing accommodations that Z.W. had received the previous year. The IEP that followed that meeting, however, did not provide testing accommodations. Z.W.'s mother was not informed that the IEP would not reflect the meeting participants' determination concerning testing accommodations and did not learn of this alteration until considerably later.

86. Z.W.'s IEP during first, second, and third grade directed that he be placed in an ICT classroom.

87. On information and belief, the AF Crown Heights and/or DOE participants at Z.W.'s IEP meetings during his first, second, and third grade years determined in advance of each meeting, and based on inappropriate criteria, to place Z.W. in a setting available at AF Crown Heights, such as an ICT classroom or general education classroom, even though such settings are not educationally appropriate for Z.W. in light of his disabilities. .

88. On information and belief, the AF Crown Heights and/or DOE participants at Z.W.'s IEP meetings for those years did not adequately consider whether alternative educational settings not offered at AF Crown Heights, such as a class with a smaller student to teacher ratio, would have been more reasonably calculated to enable Z.W. to receive educational benefits.

89. AF Crown Heights offers no settings other than general education classrooms and classrooms that it characterizes as ICT classrooms, but that in fact do not satisfy the legal requirements for ICT classrooms.

Facts Relating to the Failure to Properly Implement Z.W.'s IEPs

90. On information and belief, in first, second, and/or third grade, Z.W. was placed in classrooms that AF Crown Heights held out as ICT classrooms, but that did not meet the legal requirements because they did not include a teacher who was certified in special education.

91. Several times in 2014 and 2015, an AF Crown Heights official admitted to N.C. that the classroom in which Z.W. was placed was not a compliant ICT classroom.

92. AF Crown Heights and DOE have failed to ensure that Z.W. received the occupational therapy, physical therapy, paraprofessional services and speech and language therapy mandated by his IEPs.

93. During Z.W.'s first, second, and third grade years, therapists who were assigned to provide IEP-mandated services to Z.W. routinely failed to appear to provide Z.W.'s services as scheduled and failed to provide make up services. Z.W. frequently went for weeks or more without receiving these services.

94. During Z.W.'s fourth grade year, which began in August 2015, AF Crown Heights and DOE failed to provide any occupational therapy to Z.W. for approximately five weeks, and failed to provide any physical therapy to Z.W. for approximately two months. No makeup services have been scheduled.

95. During his third grade year, approximately five different paraprofessionals were assigned to Z.W.

96. When N.C. complained to a DOE representative in approximately early 2013 that AF was not providing appropriate services to Z.W., the DOE representative told N.C. that DOE does not govern Achievement First, that AF Crown Heights is "free range," and that there is nothing DOE can do to ensure that AF Crown Heights implements the services mandated in Z.W.'s IEP.