

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COALITION FOR EDUCATION REFORM,
M.M., an adult, on behalf of J.W., a minor,
F.C., an adult, on behalf of F.D., a minor, and
T.D., an adult

Plaintiffs,

v.

INDIAN RIVER SCHOOL DISTRICT,

Defendant.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiffs Coalition for Education Reform (“Coalition”), M.M. (on behalf of her minor child, J.W.), F.C. (on behalf of her minor child, F.D.), and T.D. (collectively “individual plaintiffs” and together with the Coalition, “Plaintiffs”) bring this action against the Indian River School District (“Indian River SD”) for declaratory and injunctive relief, as well as monetary damages, and allege as follows:

INTRODUCTION

1. This lawsuit seeks to put an end to unlawful racial discrimination by Indian River SD at George Washington Carver Academy (“Carver”), a special-purpose school operated by Indian River SD on the site of a former segregated “colored” school.

2. While touting Carver as a school that “specializes in the individual,” Indian River SD, in fact, has historically used Carver as a punitive dumping ground for African-American students, removing them from its mainstream schools and sending them to Carver in disproportionate numbers on flimsy pretexts, segregating them at Carver on arbitrary grounds

and for arbitrary periods of time, and neglecting their educational needs, including learning-disabilities support, while they are at Carver. Indian River SD does not treat Caucasian students in the same way. These practices deny the individual plaintiffs equal educational opportunity on account of their race, deprive them of appropriate educational services, and detract from their employment opportunities.

3. Thus, Indian River SD's operation of Carver unlawfully discriminates on the basis of race in three ways: (i) in removing African-American students from mainstream schools and sending them to Carver in the first place; (ii) in holding African-American students at Carver rather than allowing them to return to mainstream schools; and (iii) in the manner in which it treats African-American students at Carver.

4. Issues of racial discrimination have a long history in Delaware, a former slave state. Indeed, in 1867, the U.S. House Judiciary Committee held hearings to determine whether Delaware and other states had a "Republican Form of Government," U.S. CONST. art. iv, sec. 4. The Committee heard testimony that "the majority of the people in Kent and Sussex counties are decidedly opposed to Negro suffrage, Negro education, and Negro political and civil equality." Delaware did not ratify the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution until 1901. Until the Delaware courts intervened in the middle of the twentieth century, the Constitution and statutes of Delaware required racial segregation in public schools. *Gebhart v. Belton*, 87 A.2d 862, 864 (Del. Ch. 1952), *aff'd*, 91 A.2d 137 (Del. 1952) (ordering integration). *See also* Huntington Odom, Constitutional Law—Segregation in Public Schools, 15 La. L. Rev. 204, 204 n.1 (1954). By operating Carver to marginalize, punish, and stigmatize African-American children, Indian River SD is perpetuating a long and disgraceful tradition of

racially segregated education in Sussex County, Delaware—a shameful tradition this lawsuit is intended to expose and finally eliminate.

JURISDICTION AND VENUE

5. Plaintiffs' causes of action arise under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703.

6. The Court has subject-matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §§ 1331, 1343.

7. The Court may exercise supplemental jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367.

8. Venue is proper in the District of Delaware under 28 U.S.C. § 1391(b) because Indian River SD is deemed to reside in the District and all of the events or omissions giving rise to Plaintiffs' claims occurred within the District.

9. The Court has jurisdiction to issue the declaratory relief requested under the Declaratory Relief Act, 28 U.S.C. §§ 2201 and 2202.

10. The Court has authority to award the injunctive relief requested under Rule 65 of the Federal Rules of Civil Procedure.

11. The Court has authority to award money damages under 42 U.S.C. § 1983; Title VI of the Civil Rights Act of 1964; Title II of the Americans with Disabilities Act; and the Rehabilitation Act.

12. The Court has authority to award costs and attorneys' fees under 42 U.S.C. § 1988.

PARTIES

13. Indian River SD is a public school district in Sussex County, Delaware, organized and existing under the laws of the State of Delaware. The district consists of seven elementary schools, three middle schools, two high schools, two special schools, a kindergarten center, and an arts magnet school.

14. In 2015-2016, Indian River enrolled 10,171 students. Its enrollment was 50.9% Caucasian, 13.3% African-American, 30.4% Hispanic, and 5.4% Other Minorities.

15. Carver is a constituent school of Indian River SD, and Indian River SD operates Carver. The school is located in the G.W. Carver Educational Center, 30207 Frankford School Road, Frankford, Delaware.

16. The building where Carver is now located was originally built as the George Washington Carver School, operating as a segregated school for African Americans from the 1920s or 1930s until the late 1960s.

17. In the late 1960s, when Indian River SD was created, the George Washington Carver School was renamed Frankford Elementary School and continued operations as a nominally racially integrated school, pursuant to the United States Supreme Court's 1954 decision in *Brown v. Board of Education*.

18. In the 2000s, Indian River SD closed Frankford Elementary and relocated its operations to another school building using a different name, leaving the former site of the George Washington Carver School temporarily vacant.

19. The Richard Allen School was another segregated school for African Americans dating from the 1920s or 1930s, located in Georgetown, Sussex County.

20. Following nominal racial desegregation, the Richard Allen School was operated by Indian River SD as an “alternative school” for students with special educational needs.

21. By the 2010-2011 school year, Indian River SD transferred the operations and students of the Richard Allen School from Georgetown to the vacant George Washington Carver School/Frankford Elementary School building in Frankford, in the process redesignating the Richard Allen School under its current, ironic name, George Washington Carver Academy.

22. Thus, Carver has not one but two racially segregated schools in its lineage: the original George Washington Carver School and the Richard Allen School.

23. In addition, under the “history” section of its web page for Carver, Indian River SD posts a link to an external web page (<http://preservationde.org/blackwater-colored-school-2/endangered-sites/>) describing the Blackwater Colored School, a segregated school built in 1892 in Blackwater, Sussex County.

24. Plaintiff Coalition for Education Reform (“Coalition”) is an unincorporated association of community members who have devoted their time and resources for the past several years to promoting the educational success of minority students in Indian River SD, including by addressing racial disparities in various aspects of Indian River SD’s operations.

25. The Coalition’s formation was reported by the Delaware Wave newspaper on March 2, 2010. A true and correct copy of the Delaware Wave article is attached hereto as Exhibit A.

26. In its most recent mission statement, adopted in February 2011, the Coalition identifies itself as “a group of concerned citizens and pastors from Sussex County” dedicated to

engaging with Indian River SD to improve the “educational successes of all minority students” and “to help eliminate the achievement gap in underachieving students,” among other concerns. A true and correct copy of the Coalition’s February 2011 mission statement is attached hereto as Exhibit B.

27. The Reverend C. Claudia Waters, pastor of Harmony United Methodist Church, Millsboro, Sussex County, serves as the Coalition’s president, and Ms. Jane Hovington, president of the Lower Sussex County branch of the National Association for the Advancement of Colored Persons (“NAACP”) and treasurer of the NAACP Delaware State Conference, serves as the Coalition’s vice president. Ms. Elva D. Allen, a retired Indian River SD educator, is also an active Coalition member.

28. The Coalition has held regular meetings in Sussex County, usually monthly, since its inception.

29. The Coalition has also, true to its mission statement, engaged directly with Indian River SD officials on many occasions concerning educational and discrimination issues. For example, Coalition representatives met with Indian River SD Superintendent Susan Bunting at Dickerson Chapel AME Church in Millsboro in early 2013. Rev. Waters also addressed the Indian River SD Board of Education on behalf of the Coalition at the regular Board meeting in May 2013.

30. The Coalition has also assisted individual African-American and other minority students and their families in interacting with Indian River SD authorities on a case-by-case basis.

31. The Coalition has no employees or budget and relies exclusively on the volunteer efforts of its members, including donated meeting space and other in-kind donations, to carry out its mission.

32. The Coalition has organizational standing to bring and maintain all of the claims for declaratory and injunctive relief set forth in this Complaint.

33. Plaintiff M.M. is the mother of J.W., a minor. M.M. and J.W. are African-American. M.M. has standing to bring the claims set forth below on J.W.'s behalf.

34. Plaintiff F.C. is the mother of F.D., a minor, and T.D., an adult. F.C. and F.D. are African-American. F.C. has standing to bring the claims set forth below on behalf of F.D.

35. Plaintiff T.D., an adult, was a student at Carver in the 2015-2016 academic year. T.D. is African-American. T.D. has standing to bring the claims set forth below.

RACIAL DISPARITIES AT CARVER

36. Indian River SD disproportionately assigns African-American students to Carver under the pretext that they are "troublemakers."

37. During the 2015-2016 school year, African-American students comprised only 13.3% of the overall student population in Indian River SD, but 42.9% of the Carver population.

38. African-American students, including some with learning disabilities, are significantly overrepresented at Carver, even accounting for the fact that Carver is nominally a special-education school. During the 2015-2016 school year, 20.8% of special education students in Indian River SD overall were African-American students. In contrast, while 42.9% of the Carver population are African-Americans some of whom have been diagnosed with a learning disability.

39. Consistent with this, during the 2015-16 school year, the Howard T. Ennis School – another special education school in the Indian River SD – was only 20.9% African-American.

40. This overrepresentation of African-American students at Carver is long-standing.

41. During the 2014-2015 school year, African-American students comprised only 13.9% of the overall student population in Indian River SD, but 51% of the Carver population.

42. During the 2013-2014 school year, African-American students comprised only 14% of the overall student population in Indian River SD, but 54% of the Carver population.

43. During the 2012-2013 school year, African-American students comprised only 14.6% of the overall student population in Indian River SD, but 52.3% of the Carver population.

44. During the 2011-2012 school year, African-American students comprised only 15.5% of the overall student population in Indian River SD, but 41.2% of the Carver population.

45. Though it is nominally a special-education school, Carver is in reality a “dumping ground” for African-American children whom Indian River SD labels as discipline problems.

46. There are two ways for a student to be removed from an Indian River SD mainstream school and placed at Carver: (a) alternative educational placement; and (b) purely disciplinary, short-term placement in the Character Academic and Motivational Program (“CAMP”).

ALTERNATIVE EDUCATIONAL PLACEMENT AT CARVER

47. In the Indian River SD, a student with an Individualized Education Plan (“IEP”), detailing the student’s special-educational needs and describing how the district will meet those needs, may remain in his or her mainstream school and receive IEP services. Merely having an IEP is not a sufficient reason for Indian River SD to place a student at an alternative school such

as Carver, and many students with IEPs receive the necessary and appropriate educational services in Indian River SD's mainstream schools.

48. In order to be placed at Carver, therefore, a student must not only have an IEP, but must also be found to have a sufficient disciplinary record to justify removal from his or her mainstream school.

49. Thus, there is a disciplinary aspect to placement of a student at Carver, even when the placement is nominally for educational reasons.

50. Indian River SD's procedure for placing a student at Carver is to convene a "special education team" that includes the student's teachers and counselor along with the school nurse, the school psychologist, and the school principal (or his or her proxy). After reviewing the student's records, that team can then make a recommendation to the student's parents or guardians that the student should be placed at Carver.

51. The special education team's recommendation is supposed to be objectively based on a matrix that describes the requisite combinations of disciplinary infractions that justify placement at Carver. In practice, however, Indian River SD special-education teams do not apply that matrix consistently or objectively.

52. Although placement at Carver is nominally supposed to be in the interest of the student so placed, and although a student should not be placed at Carver without the consent of the parents or guardians, in practice Indian River SD does not take "no" for an answer from unwilling parents or guardians. Instead, Indian River SD continues communicating with the parents or guardians, wearing them down until they agree to the placement of their child at Carver.

53. Indian River SD is not truly interested in helping the children placed at Carver. On the contrary, Indian River SD officials, including mainstream school principals, merely want to ship students they have labeled as “troublemakers” to the Carver dumping ground, particularly African-American students.

54. Alternative educational placement at Carver is not supposed to be permanent. After a period of time, each child at Carver is to be re-evaluated for potential return to his or her mainstream school.

55. Nevertheless, some students, mostly African-American, remain immured at Carver for months or even years based on arbitrary decisions by school officials and over the objections of the affected students’ parents or guardians.

THE CAMP PROGRAM AT CARVER

56. The CAMP program began in or about 2007, when the operations now conducted at Carver were located at the Richard Allen School.

57. Jane Hovington, vice president of the Coalition, co-founded CAMP as an intervention program designed to provide educational and behavioral support to students who would otherwise have received out-of-school suspensions for disciplinary infractions. Hovington and other CAMP staff worked intensively with students referred to the program and achieved substantial success in helping the students reintegrate into their mainstream schools and graduate from school.

58. Soon after its inception, CAMP was strictly a ten-day program. A referred student was not permitted to attend the program for more than ten days and was not entitled to participate more than once in any given school semester.

59. Although Indian River SD was supposed to refer to CAMP every child who committed an infraction that would normally result in an out-of-school suspension, some Indian River SD principals did not support the program or its goals and continued to levy out-of-school suspensions on students who could and should have been referred to CAMP.

60. Even so, Indian River SD disproportionately referred African-American students to CAMP. For example, in the 2012-2013 school year, 35% of the students referred to CAMP were African American, though African Americans made up only 14.6% of the Indian River SD student body in that year.

61. Moreover, African-American students were sent to CAMP for alleged fighting in school, whereas Caucasian students were neither sent to CAMP nor given out-of-school suspensions for the same conduct.

62. Further, some school authorities used CAMP as a means of imposing less severe discipline on Caucasian students than on African-American students. For example, white students caught smoking marijuana at school were referred to CAMP instead of being expelled from school, whereas African-American students were typically expelled for the same conduct.

63. Thus, CAMP has demonstrated two kinds of racial disparities: (a) African-American students were disproportionately referred to CAMP as compared to Caucasian students; but (b) Caucasian students were referred to CAMP in instances where African-American students would have been expelled altogether.

64. Following Jane Hovington's resignation from the CAMP program in 2014, Indian River SD continued the program but put it in the hands of administrators who had no role in its creation or early success.

65. Since 2014, Indian River SD no longer operates the CAMP program with the intention of helping at-risk students. Instead, the program has become purely punitive in nature.

66. For example, students sent to CAMP since 2014 spent an excessive amount of time in the so-called “chill room” – a disciplinary measure akin to solitary confinement, in which students do not receive meaningful educational services.

67. Further, since 2014, students are sometimes retained in CAMP for more than the prescribed ten days. CAMP administrators accuse participating students of various additional disciplinary infractions to justify keeping the students at CAMP instead of returning to their mainstream schools.

68. The fact that this phenomenon of keeping students at CAMP for more than ten days for alleged disciplinary reasons did not exist prior to 2014 shows that the post-2014 practice is pretextual.

69. While at CAMP, a student is not continuing to learn at the level that Indian River SD requires for graduation. Although a student’s teachers from his or her mainstream school are supposed to send all required coursework to CAMP so that the student can keep up with his or her peers at the school to which the student will return after completing the program, in practice few teachers do this. Students sent to CAMP and held in CAMP for pretextual disciplinary reasons are thereby also deprived of the educational services they would otherwise receive.

**RACIAL DISPARITIES IN THE SCHOOL DISTRICT’S
PURPORTED DIAGNOSES OF “EMOTIONAL DISTURBANCE”**

70. Indian River SD frequently misdiagnoses unwanted African-American children with an “emotional disturbance” and transfers them on that basis from the mainstream school system to Carver.

71. This is evidenced by the fact that the percentage of students at Carver diagnosed with an alleged “emotional disturbance” is nearly ten times the percentage of special-education students statewide with the same diagnosis, and nearly nine times the percentage of special-education students in Indian River SD with the same diagnosis.

72. During the 2015-2016 school year, only 4.6% of special education students in Indian River SD, and only 4.1% of special education students statewide, were classified with Disability Type “Emotional Disturbance” (Code ED 200). At Carver, 40% of the mostly African-American students were given the same designation.

73. The Carver school has children attending from first grade through twelfth grade – ages 6 through 18 – at one facility. The average student population at Carver is approximately fifty to seventy children at any point in time.

74. Once at Carver, students with an “emotional disturbance” diagnosis typically do not receive adequate services to address their alleged “emotional disturbance” or any other condition that might be responsible for their reported behavioral problems.

75. Indeed, in October 2015, pursuant to its “obligation to address disproportionality in special education that is the result of inappropriate identification,” the Delaware Department of Education informed Indian River SD that it “has been identified with **disproportionate representation** in the identification of African American/Black students with disabilities” and “**disproportionate representation** in the identification of” African-American students in three disability categories: “Emotional Disturbance,” “Mild Intellectual Disability,” and “Learning Disability.”

76. And in February 2016, pursuant to its “responsibility under the IDEA to annually collect and examine data from districts to determine if significant discrepancies are occurring in

the rate of long-term suspensions and expulsions of children with disabilities, including data disaggregated by race and ethnicity,” the Delaware Department of Education informed Indian River SD that it “has been identified as having a **significant discrepancy** between the rates of long term suspensions and expulsions for the following ethnic groups as compared to children without disabilities in your district: . . .African-American children.”

77. The Delaware Department of Education identifies school districts with such a “significant discrepancy” by calculating a “rate ratio” – dividing the percentage of students with disabilities suspended or expelled greater than 10 days by the percentage of general education students within the same race or ethnicity suspended or expelled greater than 10 days. The Department informed Indian River SD that its ratio was “very high comparative [sic] to other districts.” The Department further explained, “We look at Out of School Suspensions. I believe most of the students who were in these counts were from Carver (don’t hold me to that because I don’t have that information in front of me – going from memory when I reviewed it closer).”

FACTS CONCERNING F.C.’S CHILDREN

78. F.C.’s son T.D. is eighteen years old and an African-American. He attended Indian River SD’s Indian River High School until September 2015, when school authorities sent him to Carver for alleged disciplinary “referrals.”

79. If T.D. was accused of misconduct and other students were involved, F.C. and T.D. observed that it was always T.D. who was disciplined, not the other Caucasian students.

80. Nevertheless, F.C. reluctantly agreed to allow T.D. to be sent to Carver for eight weeks in the hope that he could “get himself together” and do better in the mainstream school when he returned.

81. The other students, mostly Caucasian, involved in the incidents that led to T.D.’s assignment to Carver remained at Indian River High School.

82. In spite of F.C. having only agreed to T.D. spending eight weeks at Carver, Indian River SD kept T.D. in Carver for the entire 2015-2016 school year.

83. Instead of returning T.D. to his mainstream school to continue his education, Carver officials continually issued new disciplinary “referrals” against him, making it impossible for T.D. to escape from Carver.

84. The disciplinary referrals against T.D. were pretextual and amounted to intimidation and bullying by school staff. For example, T.D. was given a referral merely for stating to a teacher that he was able to go to the rest room by himself and did not need an escort.

85. T.D. was subjected to other offensive and unprofessional conduct by school employees. For example, on some occasions T.D. was not permitted to go to the rest room for an entire class period. On another occasion, a Carver teacher offered to fight T.D. physically.

86. F.C. and T.D. have observed that African-American students, even for similar conduct, at Carver receive more suspensions (both in-school and out-of-school) than Caucasian students. The principal and the teachers at Carver act as though the African-American students “have a problem.”

87. Indeed, F.C. has seen few Caucasian students at Carver, having observed only two Caucasian children in T.D.’s class of fifteen to twenty-five children.

88. T.D. has an IEP to address some of his special educational needs, but the Carver faculty did not provide the services identified in the IEP.

89. Frustrated by Indian River SD’s renegeing on the agreement to keep T.D. at Carver for no more than eight weeks, F.C. arranged a meeting with the school principal, which T.D. also attended.

90. At that meeting, Carver's principal said she did not believe that T.D. was ready to go back to Indian River High School. When F.C. asked the Caucasian principal the basis for her belief, the principal merely replied, "Well, I think he needs to stay here the rest of the school year," but did not give a reason.

91. T.D. wanted to quit school entirely rather than finishing the 2015-2016 school year at Carver, telling his mother, "I can't do this." F.C. persuaded T.D. to finish out the school year with a promise that she would not allow him to be forced to return to Carver the following year.

92. Nevertheless, F.C. and T.D. fear that Indian River SD will again find a pretext to assign T.D. to Carver for some or all of the 2016-2017 school year.

93. F.C.'s daughter F.D. is fifteen years old and an African-American. She completed ninth grade in Indian River SD in the 2015-2016 school year.

94. F.D. attended East Millsboro Elementary School, Suffolk Middle School, and Indian River High School – all mainstream schools in Indian River SD – where she achieved good grades and did not get into fights.

95. Indian River SD sent F.D. to CAMP for ten days at the very end of the 2015-2016 school year based on an uncorroborated allegation that she was seen with a cell phone in class at Indian River High School. This allegation was, in fact, a pretense, and part of a larger pattern of discriminatory discipline at Indian River schools.

96. In July 2010, the summer before Carver opened, the Indian River Board of Education amended the district-wide Student Discipline Policy to make an extraordinarily common offense—possession of a cell phone—grounds for placement at Carver. The Board of

Education knew that this new policy would be seldom enforced, and that most students who violated it would not be sent to Carver.

97. The Board also knew, and indeed intended, that the cell phone policy would be enforced disproportionately against minority students, and lead to a disproportionate number of minority students at Carver, either at CAMP or as an alternative educational placement.

98. This is precisely what happened to F.D. Normally, if a teacher at Indian River High School observes a Caucasian student using a cell phone during class, the teacher will confiscate the phone and return it to the student at the end of the class period. But when F.D., an African-American, allegedly opened her backpack to retrieve a pencil, her cell phone was visible in the backpack to her teacher, and she was transferred to the CAMP program for ten days.

99. F.D. has observed that Caucasian students at Indian River High School who use their cell phones during class are not sent to Carver and, in fact, are not disciplined at all, to her understanding.

100. While F.D. was in exile at Carver, her regular teachers at Indian River High School were supposed to send over her work so that she could keep up with her classes.

101. One teacher, however, did not send F.D.'s work, with the result that – since it was the end of the school year – F.D. was not able to prepare adequately for the final exam in that class and did not obtain a passing grade. In effect, the teacher failed F.D. because she was sent to Carver for ten days.

FACTS CONCERNING M.M.'S CHILD

102. M.M.'s son J.W. is seventeen years old, having been born in 1999, and is now enrolled in the eleventh grade at Carver.

103. J.W. was diagnosed with ADHD when he was 6 or 7.

104. J.W. has attended Carver from the time he entered school. M.M. attempted to enroll him with Indian River SD, but the school district refused to place him until he had undergone testing. He was immediately placed at Carver and has spent his entire educational experience at Carver.

105. J.W. has never been permitted to attend the mainstream schools, despite multiple requests and attempts by his mother, M.M., to allow J.W. to do so. He has been denied the opportunity to learn in a mainstream school.

106. Though he is in eleventh grade at Carver, J.W.'s reading and academic level is that of a third or fourth grader.

107. M.M. has repeatedly requested that J.W. be allowed to attend a mainstream school because Carver has done "nothing" for him and because he has never experienced any other environment.

108. However, he has been told that, in order to be released from Carver, a student must complete a thirty-day program during which he or she must show improved behavior.

109. J.W. has never been able to fulfill this thirty-day requirement. Carver has always found a reason to refuse to allow him to return to the mainstream school.

110. Carver does very little to control its students. The students often yell, scream, curse, and walk out of classrooms.

111. Many of Carver's teachers are young Caucasian women who are not trained or equipped to deal with the Carver students. In M.M.'s view, Carver seems interested simply in "handling" the students as opposed to creating an environment conducive to education.

112. Some Carver teachers simply babysit rather than teach, for example, by showing a video to the class instead of teaching.

113. During J.W.'s first years at Carver, M.M. would receive two to three phone calls from Carver every week because the school authorities allegedly could not cope with his behavior.

114. J.W. has been suspended from Carver multiple times. Each time, he has been sent to Delaware Guidance School, in Lewes, where he completes an "in-service" program, and has then returned to Carver.

115. There are very few Caucasian students in J.W.'s classrooms.

116. J.W. has observed that Caucasian students at Carver are treated differently than African-American students. He has observed that, when he has had altercations with Caucasian students, the Caucasian students engaging in the same conduct are not punished, but he (J.W.), as an African-American, is punished.

117. When J.W. has had altercations with Caucasian students, M.M. has been called to the school to meet with J.W. and a school official, but neither the Caucasian students nor the Caucasian students' parents have been required to attend such meetings.

118. J.W. also had altercations with a Caucasian Carver teacher named Jeff Daley, who J.W. has perceived to be prejudiced against African-Americans.

119. J.W. has been harmed by his extended and unjustified assignment to Carver because he has been deprived of the opportunity for a meaningful education.

COUNT I

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; 42 U.S.C. § 1983

120. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

121. Section 1983 of the Civil Rights Act of 1964 (“Section 1983”), 42 U.S.C. § 1983, forbids state actors from depriving individuals of rights secured by the Constitution and laws of the United States.

122. Indian River SD is a state actor within the meaning of Section 1983.

123. Indian River SD has violated Plaintiffs’ rights as secured by Section 1983 by acting under color of law, intentionally, willfully, and with deliberate indifference, to deprive Plaintiffs of rights and privileges secured and protected by the Constitution and laws of the United States.

124. Specifically, Indian River SD has disproportionately assigned African-American students, including the individual plaintiffs, to Carver, kept them at Carver, and treated them while at Carver in a racially discriminatory manner, thus depriving them of their right to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

COUNT II

Violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

125. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

126. Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits discrimination in, exclusion from, or denial of the benefits of federally funded programs on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

127. Indian River SD receives federal funding.

128. The individual plaintiffs are members of a protected class; specifically, they are African-American.

129. The individual plaintiffs are, or were at the time relevant to this action, qualified to continue in pursuit of their education.

130. The individual plaintiffs are intended beneficiaries of the federal funds provided to Indian River SD.

131. Defendant makes decisions concerning educational placements and services that it provides on the basis of racial prejudices and stereotypes, and such decisions have operated to deprive the individual plaintiffs and other African-American students of the educational services and benefits to which they are entitled by law and which they need to become productive citizens.

132. Specifically, Defendant has discriminated intentionally against the individual plaintiffs and violated Title VI by:

(a) Denying the individual plaintiffs the benefits of education in regular classes or access to the general education curriculum, in violation of 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(i);

(b) Providing the individual plaintiffs educational services that are different from those provided to their Caucasian peers, in violation of 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(ii);

(c) Subjecting the individual plaintiffs to segregation or separate treatment in the receipt of services and educational benefits that Defendant provides, in violation of 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(iii);

(d) Restricting the individual plaintiffs in the enjoyment of the advantages and privileges provided to their Caucasian peers, in violation of 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(iv); and

(e) Treating the individual plaintiffs differently from their Caucasian peers in determining whether they satisfy any admission, enrollment, quota, eligibility, membership, or other requirement or condition for receiving the benefits of Defendant's educational programs, in violation of 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(v).

COUNT III

Violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.*

133. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

134. Title II of the ADA ("Title II") prohibits public entities from discriminating against individuals with disabilities. It provides:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

135. Indian River SD is a public entity within the meaning of Title II.

136. Some of the individual plaintiffs, including T.D., are individuals with disabilities within the meaning of Title II.

137. Indian River SD has violated Title II by excluding the individual plaintiffs with learning disabilities from participation in, and denying them the benefits of, the services, programs, and activities it provides, by reason of their disabilities, in that it has inappropriately segregated them at Carver from its mainstream educational services and failed to provide appropriate support for their educational needs while at Carver.

COUNT IV

Violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794

138. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

139. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits disability discrimination in federally funded programs. It provides:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, 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).

140. Indian River SD administers programs and activities receiving Federal financial assistance within the meaning of Section 504.

141. Some of the individual plaintiffs, including T.D., are otherwise qualified individuals with disabilities within the meaning of Section 504.

142. Indian River SD has violated Section 504 by excluding the individual plaintiffs with learning disabilities from participation in, denying them the benefits of, and subjecting them to discrimination under the educational programs it administers that receive Federal financial assistance, solely by reason of their disabilities.

143. Specifically, Indian River SD has violated Section 504 and 34 C.F.R. § 104.4, by:

(a) Denying the individual plaintiffs with learning disabilities the opportunity to participate in and benefit from federally assisted regular educational services, programs, and activities, including special education and related services, in violation of 29 U.S.C. § 794(a) and 34 C.F.R. § 104.4(a), (b)(1)(i);

(b) Failing to provide the individual plaintiffs with learning disabilities an opportunity to participate in and benefit from regular educational and other services that is equal to the opportunity afforded students without disabilities, in violation of 34 C.F.R.

§ 104.4(b)(1)(ii);

(c) Failing to provide the individual plaintiffs with learning disabilities with educational and other services that are as effective in providing equal opportunity as the services provided to students without disabilities, in violation of 34 C.F.R. § 104.4(b)(1)(iii), (2); and

(d) Limiting the enjoyment by the individual plaintiffs with learning disabilities of the right and opportunity to receive a public education in the least restrictive environment, in violation of 34 C.F.R. § 104.4(b)(1)(vii).

COUNT V

Violation of the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703

144. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

145. The Equal Education Opportunities Act of 1974, 20 U.S.C. § 1703 (“EEOA”), provides: “No State shall deny equal educational opportunity to an individual on account or his or her race, color, sex, or national, origin, by—(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools”

146. Indian River SD is a state actor, as well as an educational agency, under the meaning of the EEOA.

147. Indian River SD has violated the EEOA by denying the individual plaintiffs equal educational opportunity on account of their race by deliberately assigning them to Carver on a racially discriminatory basis.

148. As a result of Indian River SD's actions, the individual plaintiffs have suffered and will continue to suffer from lack of appropriate educational services and a resulting loss of educational and employment opportunities.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray this Court for an ORDER:

(1) **DECLARING** that:

A. Defendant has violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

B. Defendant has violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*;

C. Defendant has violated Title II of the Americans with Disabilities Act, 42 U.S.C. § 1231 *et seq.*;

D. Defendant has violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and

E. Defendant has violated the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703.

(2) **ORDERING** that appropriate injunctive relief be entered as necessitated and allowed under law;

(3) **AWARDING** money damages in an amount to be determined at trial;

(4) **AWARDING** Plaintiffs' costs and attorneys' fees; and

(5) **AWARDING** such other and further relief as the Court may deem proper and just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

Respectfully submitted this 30th day of September, 2016.

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*Motions for admission *pro hac vice* filed simultaneously with this Verified Complaint

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