

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

J.S. III, a minor, )  
by and through J.S. Jr. and M.S., )  
his parents and next friends, )  
)  
Plaintiff, )  
vs. )  
)  
The Houston County Board of )  
Education, )  
)  
Defendant. )

Case Number: 1:14-cv-1196-WHA

Jury Trial Demanded

**Complaint**

Comes now J.S. III, a minor, by and through J.S. Jr. and M.S., his parents and next friends, and files this Complaint for money damages that alleges violations of United States law.

**Parties**

1. The Plaintiff J.S. III, a United States citizen, is a 13 year-old child, who resides with J.S. Jr. and M.S., who are his parents and next friends, in Houston County, Alabama.<sup>1</sup>

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<sup>1</sup> During the events made the basis of this lawsuit, J.S. III was between 10 and 11 years old.

2. J.S. Jr. is a United States citizen, is J.S. III's father, is over age 19, and resides in Houston County, Alabama.

3. M.S. is a United States citizen, is J.S. III's mother, is over age 19, and resides in Houston County, Alabama.

4. The Defendant Houston County Board of Education ("HCBOE") is a municipal entity that bears exclusive responsibility for the operation, management, and control of the Houston County School System, which includes Wicksburg High School, a kindergarten through twelfth-grade school located in Houston County, Alabama.

#### **Jurisdiction and Venue**

5. Pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), this Court possesses original jurisdiction over the plaintiff's claims under the Americans With Disabilities Act and the Rehabilitation Act of 1973.

6. This case was originally filed in 2012 and was styled *Salinas, et al. v. Faircloth, et al.*, 1:12-CV-666-MEF-TSM ("*Salinas I*").

7. In *Salinas I*, the plaintiff brought claims for violations of the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973 against the HCBOE.

8. Additionally, in *Salinas I*, the plaintiff brought several other federal and state-law tort claims against other defendants, which have been resolved through settlement or voluntary dismissal.

9. In response to the HCBOE's motion to for summary judgment in *Salinas I*, this Court dismissed the plaintiff's ADA and § 504 claims *without prejudice* so that the plaintiff could exhaust his administrative remedies pursuant to the Individuals with Disabilities Education Act.

10. In compliance with this Court's Order, the plaintiff filed an administrative due-process claim against the HCBOE that was styled *J.S. Jr. and M.S. on behalf of J.S. III v. Houston County Board of Education*, Case 2014-96, Ala. Dept. of Ed.

11. The plaintiff and the HCBOE resolved the plaintiff's administrative due-process claim, and, as part of the resolution agreement, the HCBOE acknowledged "that Petitioner has exhausted administrative remedies under the Individuals with Disabilities Education Act."

12. The HCBOE also acknowledged that the IDEA administration resolution did not resolve or preclude the plaintiff's present claim for damages under the ADA and § 504.

13. Pursuant to the scheduling order entered by Judge Fuller, the parties completed all fact and expert discovery in *Salinas I*.

14. Pursuant to 28 U.S.C. § 1391(b), venue in this district is appropriate, because the defendants reside in this district and it is the district in which a substantial part of the acts, omissions, and events occurred that form the basis of this lawsuit.

**Background Facts About the Houston County Board of Education's  
Duties and Responsibilities to Handicapped Students**

15. Through the Alabama Department of Education, the Houston County Board of Education (the "HCBOE") received money from the United States government to ensure that schools in the Houston County School System provide a free, appropriate public education to handicapped children who attend schools in that system.

16. The Individuals With Disabilities Education Act (the "IDEA") is a United States law that makes funds available to states, such as Alabama, for special education on the condition that the recipient's public school systems implement policies that assure a free, appropriate public education for all handicapped children.

17. To the extent possible, Alabama public schools, including schools that fall under the control of the HCBOE, must "mainstream disabled children into regular education settings." 20 U.S.C. §1412(5)(B).

18. The primary mechanism used by the HCBOE to make sure that handicapped children who attend schools under its control actually receive a free, appropriate public education is the creation of, implementation of, and adherence to a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”).

19. The HCBOE’s superintendent and employees are charged with the actual creation of, implementation of, and adherence to a student’s IEP and, thus, act under color of law when they carry out these responsibilities.

20. The Rehabilitation Act of 1973, § 504, prohibits any program or activity that receives federal funds from excluding from the participation in, denying the benefits of, or discriminating against any disabled individual based on his disability.

21. Likewise, the Americans with Disabilities Act (the “ADA”) prohibits any public entity from excluding from participation in or denying the benefits of its services, programs, activities, or discriminating against a disabled individual based on his disability.

22. At all times material to this case, Mr. Timothy Pitchford was the superintendent of Houston County School System and a member of the HCBOE47.

As the superintendent of the HCBOE, Mr. Pitchford supervised all administrators, teacher, and paraprofessional staff.

23. Among other duties and responsibilities, Superintendent Pitchford was obligated to:

a. administer the entire Houston County School System, as prescribed by Alabama law, the Alabama State Board of Education, and the Houston County Board of Education;

b. communicate to Houston County School System employees any action taken by the HCBOE relating to them

c. supervise all members of the instructional and non-instructional staff of the Houston County School System;

d. issue directives and prescribe procedures to carry out the policies of the HCBOE; and

e. develop procedures "which shall be used by persons alleging harassment.

#### **Case Facts**

24. J.S. III is a handicapped minor child who suffers from cerebral palsy.

25. At the age when most children begin walking, J.S. III was unable to walk and has used a wheelchair or rolling walker for his entire childhood.

26. During evenings and on days when he is not in school, J.S. III requires constant help and supervision from his parents and twin brother.

27. Even now, J.S. III relies on his mother and father for substantial assistance with his activities of daily living, which include all aspects of toileting, bathing, grooming, dressing, eating, communication, and transportation.

28. J.S. III's communication skills have also been severely blunted by cerebral palsy.

29. Since age one, J.S. III has undergone continuous physical and occupational therapy and also some psychological therapy.

**Case Facts, Part A:  
J.S. III Enters the Houston County School System  
and His Handicaps Are Identified**

30. In 2006, J.S. III entered the Houston County School System and began attending kindergarten at Wicksburg High School.

31. Wicksburg High School is a kindergarten through twelfth-grade school.

32. When J.S. III entered the Houston County School System, because of the severity of his physical disabilities and cognitive impairments, he required continuous observation and assistance from Wicksburg High School personnel.

33. At all times relevant to this lawsuit, J.S. III qualified as a handicapped individual under the Alabama Exceptional Child Education Act, the Americans With Disabilities Act, and § 504 of the Rehabilitation Act of 1973.

34. For these same reasons, when J.S. III entered kindergarten in the Houston County School System, he received an IEP, through which he attends classes with students in a regular classroom setting and receives personal tutoring and assistance in a special-education classroom with fewer students.

35. J.S. III required and received IEPs during his enrollment in both the third and fourth grades at Wicksburg High School.

36. Through his IEPs, J.S. III was assigned to regular third-grade and fourth-grade classrooms, as well as a special-education classroom.

37. J.S. III's March 7, 2012 occupational therapy re-evaluation revealed that J.S. was having problems with self-feeding skills.

38. He was observed to have "open mouth posture" with "decreased control of his saliva/drooling."

39. At that time, J.S. III did not have age-appropriate eating skills.

40. J.S. III's occupational therapist opined that it "may be beneficial for the school speech therapist to evaluate him and address some oral motor skills related to self-awareness, lip closure, and drooling."



41. J.S. III's occupational therapist also stated that she could "make some recommendations to address his open mouth posture, lip closure, and drooling. Oral motor exercises would help increase his awareness and strength."

**Case Facts, Part B:**  
**HCBOE's Inadequate Anti-Discrimination Policies and Procedures**

42. As a recipient of federal education funding, the HCBOE received a copy of a written advisory published in 2000 by the U.S. Department of Education's Office of Civil Rights ("OCR") and the Office of Special Education and Rehabilitative Services ("OSERS"). This written advisory is often referred to as the "Dear Colleague" memorandum.

43. The "Dear Colleague" memorandum focused on disability harassment in public education.

44. The "Dear Colleague" memorandum informed federal-funding recipients about why disability harassment had come to the forefront of school issues:

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often

devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

Norma Cantu and Judith Heumann, U.S. Dept. of Ed., Office of Civil Rights and Office of Special Education & Rehabilitative Services, "Reminder of responsibilities under § 504 of the Rehabilitation Act of 1973 and Title II of the Americans With Disabilities Act," Dear Colleague (July 25, 2000), p. 1.

45. Despite this warning from the U.S. Department of Education, the HCBOE lacked the appropriate policies and procedures and staff structure to protect students like J.S. III.

46. At all times material to this case, the HCBOE's official written policy was "that no person in the Houston County School System shall, on the grounds of race, color, handicap, sex, religion, creed, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, activity, or employment."

47. This policy appeared in writing in the HCBOE's web page at <http://hcboe.us/HCBOE/CentOff/index.html> and in the HCBOE's *2011-2012 Code of Conduct*.

48. The HCBOE's *2011-2012 Code of Conduct* did not, in any way, define, describe, characterize, or otherwise explain "handicap."

49. The HCBOE's *2011-2012 Code of Conduct* did not, in any way, define, describe, characterize, or otherwise explain "discrimination."

50. Regarding disciplinary actions for "exceptional students," the HCBOE *2011-2012 Code of Conduct* stated, "Exceptional students are those students defined in IDEA 1997 [the 1997 amendments to the IDEA] and Alabama Act 106 [the Alabama Exceptional Child Education Act]. All rules and regulations governing student conduct as related to exceptional students shall comply with the Alabama Administrative Code of the State Department of Education, IDEA 97, Alabama Act 106, and Section 504 of the Rehabilitation Act of 1973."

51. Regarding corporal punishment of students, the HCBOE *2011-2012 Code of Conduct* stated,

The [HCBOE] has no rule against reasonable and proper spanking/paddling of pupils for disciplinary reasons. Before corporal punishment is administered as a disciplinary method, the student will be given the reason for the punishment and an opportunity to explain his/her action. Corporal punishment must be administered by the administrator or teacher in the presence of a certified professional employee (not before a classroom of students). The administrator and/or teacher will prepare a written report for each incident to be sent home on the day the corporal punishment is administered. Parent/guardian must notify school in writing annually if he/she prohibits the school from paddling his/her student/students. (Note

must be delivered in person by the parent by September 1 of each school year.).

52. According to the HCBOE *2011-2012 Code of Conduct*, with regard to a “grievance” that arose under “Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1975,” the entire “grievance procedure” reads as follows: “The grievant, if a student, should present this grievance orally to the principal. Grievance must be filed within twenty (20) days of the time that grievant knew or reasonably should have known of the grievance. Detailed procedures for filing a grievance may be found on file in each principal’s office.”

53. The HCBOE’s *2011-2012 Code of Conduct* did not, in any way, define, describe, characterize, or otherwise explain what a student’s rights are under the “Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1975.”

54. The HCBOE’s *2011-2012 Code of Conduct* did not, in any way, define, describe, characterize, or otherwise explain how a physically-handicapped, cognitively-impaired, and largely non-vocal student like J.S. III would orally report a grievance to his principal.

55. The HCBOE's *2011-2012 Code of Conduct* did not, in any way, provide a "grievance procedure" for the parents of students who may have a grievance under the "Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1975."

56. At all times material to the events made the basis of this lawsuit, the HCBOE published the *HCBOE Policy Manual* on its World Wide Web page.

57. The *HCBOE Policy Manual* "prohibits harassment against any . . . student . . . based upon . . . disability . . . ."

58. The *HCBOE Policy Manual* did not, in any way, define, describe, characterize, or otherwise explain "disability."

59. The *HCBOE Policy Manual* did not, in any way, define, describe, characterize, or otherwise explain "harassment" of a student based on his "disability."

60. The *HCBOE Policy Manual* did not, in any way, define, describe, characterize, or otherwise explain "discrimination."

61. The *HCBOE Policy Manual* did not, in any way, define, describe, characterize, or otherwise explain what a student's rights are under the "Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1975."

62. The *HCBOE Policy Manual* did not, in any way, provide a “grievance procedure” for the parents of students who may have a grievance under the “Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1975.”

**Case Facts, Part C:**  
**The HCBOE Assigns Special Educators**  
**Ms. Alicia Brown and Mr. Andrew Faircloth to J.S. III**

63. The gaps in the HCBOE’s anti-discrimination policies and procedures became more evident when Ms. Alicia Brown and Mr. Andrew Faircloth were assigned to J.S. III.

64. Through J.S. III’s IEP, Ms. Alicia Brown, a special teacher at Wicksburg High School, was chosen to provide special education services to J.S. III during his third-grade and fourth-grade years.

65. Mr. Andrew T. Faircloth, a “paraprofessional” special-education teacher’s aide at Wicksburg High School, was also selected to provide special education services to J.S. III during his third-grade and fourth-grade years.

66. Ms. Cheryl Smith was the principal at Wicksburg High School during J.S. III’s third-grade and fourth-grade years there.

67. In 2010, when Mr. Faircloth first applied for a job at Wicksburg High School; he lacked a college degree, did not possess a teaching certificate, and had no training or experience in the field of special education.

68. However, Superintendent Pitchford hired Mr. Faircloth anyway.

69. Before going to work at Wicksburg, Mr. Faircloth had never worked with handicapped or special-needs children.

70. Mr. Faircloth did not complete college and took only an "Introduction to Education" class while enrolled.

71. With respect to Mr. Faircloth's training, the HCBOE conducted a "special education" institute and "special-education training" in August 2011.

72. Mr. Faircloth's attendance at both was mandatory.

73. However, Mr. Faircloth did not attend the special-education training.

74. Although the HCBOE personnel in charge of the training knew that the training was mandatory for Mr. Faircloth, they did not speak to him about why he was absent.

75. The HCBOE personnel in charge of the training did not provide the training materials to Mr. Faircloth.

76. When Mr. Faircloth was assigned to J.S. III, he did not receive any specific training about how to interact with him.

77. Mr. Faircloth received only general guidance about “how to properly use restraints” and “how to write an IEP.”

78. Likewise, Mr. Faircloth could not recall ever receiving “training, instructions, rules, guidance, or policies or procedures on bullying.”

79. Mr. Faircloth never saw the *Houston County Policies & Procedures Manual*.

80. Mr. Faircloth never read the *Houston County Code of Conduct*.

81. And, Mr. Faircloth never read the *Wicksburg High School Code of Conduct*.

82. Mr. Faircloth did not receive any training from the HCBOE about how to discipline handicapped or special-needs students.

83. Ms. Brown was one of Mr. Faircloth’s supervisors.

81. Ms. Brown’s HCBOE written *Special Education Job Description* stated that she was to “instruct and supervise the work of volunteers and aides when assigned.”

82. Ms. Brown was required to “use on-going assessment to monitor student progress, verify that learning is occurring, and adjust to curriculum and instruction.”

83. Ms. Brown was also required to “monitor learning activities, providing feedback and reinforcement to students.”



84. Additionally, Ms. Brown's job required her to "communicate effectively, orally, and in writing, with other professionals, students, parents, and community."

85. With respect to parents, Ms. Brown was required to provide "accurate and timely information to parents and students about academic behavioral performance of students."

86. Ms. Brown's job description specified that she be able to "recognize overt indicators of stress or abuse and take appropriate intervention, referral, or reporting actions."

87. Additionally, Ms. Brown was supposed to "assist others in acquiring knowledge and understanding particular areas of responsibility."

88. And, not surprisingly, Ms. Brown was required to "comply with [HCBOE] policies, procedures, and programs."

89. Ms. Brown never received the HCBOE's *2011-2012 Code of Conduct* and does not remember ever reading it.

90. Ms. Brown never saw the *HCBOE Policy Manual*.

91. Ms. Brown was a decision maker who possessed the authority to take corrective action to deter and/or stop teacher-on-student discrimination and harassment.

92. Ms. Brown possessed the authority to admonish staff, conduct investigations, report misconduct, and monitor staff members' behavior.

**Case Facts, Part D:  
Principal Cheryl Smith's Involvement  
With J.S. III and Ms. Brown and Mr. Faircloth**

93. Ms. Cheryl Smith, the principal at Wicksburg High School, was Ms. Brown's and Mr. Faircloth's direct supervisor.

94. Principal Smith had direct and primary responsibility for Wicksburg High School and served as the administrative and supervisory head of Wicksburg High School.

95. Principal Smith was responsible for enforcing Alabama statutes, Alabama State Board of Education Rules, HCBOE rules, and any directives from defendant Superintendent Pitchford.

96. Principal Smith was responsible for carrying out all duties set forth in her written HCBOE *High School Principal Job Description*, as prescribed by Alabama law and adopted by the HCBOE, relating to advisory recommendations regarding the appointment, assignment, promotion, transfer, and cancellation of contracts with the Wicksburg High School instructional staff.

97. One of Principal Smith's "performance responsibilities" was to "manage and administer the development, implementation, and assessment of the instructional program" at Wicksburg.

98. Principal Smith was also required to "supervise assigned personnel" *Id.*

99. Principal Smith was also required to "implement school board policy, state statutes, and federal regulations as they pertained to Wicksburg." *Id.* at 34.

100. At Wicksburg, there were no books, written rules, written guidelines, or written policies or procedures that explain how to investigate reports of discrimination against Wicksburg students.

101. Principal Smith's method of investigating reports of discrimination against Wicksburg students was to interview other students and teachers, and to refer to the HCBOE's policies and procedures.

102. Under the HCBOE's *Policy Manual*, Principal Smith was required "to ensure that students are properly supervised while at school and during any school-sponsored activity."

103. Ms. Brown was a decision maker who possessed the authority to take corrective action to deter and/or stop teacher-on-student discrimination and harassment.

104. Ms. Brown possessed the authority to admonish staff, conduct investigations, report misconduct, and monitor staff members' behavior.

105. Superintendent Pitchford, Principal Smith, Ms. Brown, and Mr. Faircloth were, at all times, acting with the express authority and consent of the HCBOE and failed to carry out their respective duties and responsibilities.

**Case Facts, Part E:**

**J.S. III's Third-Grade and Fourth-Grade Years at Wicksburg**

106. Mr. Faircloth began working as a teacher's aide, or, "special education paraprofessional," in the 2010-2011 school year, which was J.S. III's third-grade year at Wicksburg High School.

107. Mr. Faircloth was assigned to the position of teacher's aide to Ms. Brown, who was J.S. III's special education teacher.

108. In her capacity as a Wicksburg High School's special-education teacher, Ms. Brown was one of defendant Faircloth's supervisors.

109. Some of Ms. Brown's responsibilities were to make sure that Mr. Faircloth was informed of the specific accommodations, modifications, and supports that were to be provided to J.S. III and to make sure that she told Mr. Faircloth what his responsibilities were to J.S. III under J.S. III's IEPs.

110. Principal Smith knew that Mr. Faircloth lacked a college degree, did not possess a teaching certificate, and had no training or experience in the field of special education.

111. Ms. Brown knew or should have known that Mr. Faircloth lacked a college degree, did not possess a teaching certificate, and had no training or experience in the field of special education.

112. Immediately before J.S. III enrolled in the third and fourth grades, his physical and cognitive impairments were documented in detail in the IEPs that were to be implemented in those respective years.

113. J.S. III's third-grade IEP, which was for the 2010-2011 school year, said:

- a. J.S. III has poor balance;
- b. J.S. III is in a wheelchair;
- c. J.S. III wears hinged ankle-foot braces on both legs;
- d. for safety, J.S. III requires help transferring from his wheelchair to his rolling walker and to his classroom chair;
- e. J.S. III requires total assistance with toileting, which includes clothing removal and hand-washing;
- f. J.S. III takes Baclofen, which is a muscle relaxer, at lunch to reduce spasticity;

- g. J.S. III suffers from bouts of vomiting;
- h. J.S. III drools slightly, if he is tired or overly excited; and
- i. J.S. III's cognitive impairments substantially and negatively hinder his

reading, math, spelling, and comprehension skills.

114. This IEP was signed by Mr. Faircloth and Ms. Brown.

115. J.S. III's fourth-grade IEP, which was for the 2011-2012 school year, says:

- a. J.S. III has cerebral palsy;
- b. J.S. III requires a wheelchair and a walker;
- c. when using a walker, J.S. III must be told to avoid obstacles and

requires supervision to complete turns and other maneuvers;

- d. J.S. III can stand for one second without falling;
- e. J.S. III cannot buckle or unbuckle the seat belt on his wheelchair;
- f. J.S. III requires assistance with toileting;
- g. J.S. III is often verbal and attentive in class;
- h. J.S. III has days when he neither talks nor works in the classroom;
- i. J.S. III's disability and cognitive impairment negatively affect every

aspect of his school day;

j. J.S. III's disability and lack of fine motor skills negatively affect his success in the general education classroom;

k. J.S. III will work on a modified curriculum in all subject areas; and

l. J.S. III has expressed that he hates school but does not articulate why.

116. J.S. III's fourth-grade IEP also contained Mr. Faircloth's observations about J.S. III.

117. When Mr. Faircloth's observations about J.S. III were noted, Mr. Faircloth still lacked a college degree or any special-education certificates of any kind.

118. Mr. Faircloth's observations about J.S. III were as follows:

- a. "[J.S. III] is lethargic";
- b. "[J.S. III] has to be pushed to stay on task";
- c. "[J.S. III] rarely asks questions";
- d. "[J.S. III's] weaknesses are not having the motivation to try and learn"; and
- e. "[J.S. III] has been catered to and [that J.S. III] has learned to use this to his advantage."

119. This IEP was signed by Mr. Faircloth and Ms. Brown.

120. Neither of J.S. III's IEPs identified that he exhibited any discipline or behavior problems.

121. Neither his third-grade nor his fourth-grade IEP contained a behavior modification plan.

122. J.S. III's performance in school began to decline.

123. Throughout his third and fourth grade school years, J.S. III exhibited signs of physical problems, such as nausea, and he vomited frequently.

124. During J.S. III's fourth-grade year, he began to show signs and symptoms of depression and anxiety.

125. J.S. III's doctors could not determine the source of his problems but concluded that neither disease nor infection were the causes.

**Case Facts, Part F:  
The Events of March 2012**

126. In March 2012, J.S. III's parents learned that during class one day, while confined to his wheelchair, J.S. III dropped his pencil on the floor.

127. J.S. III's parents learned that when that happened, Mr. Faircloth was overheard saying to J.S. III, "I'm not picking it up. You pick it up."

128. J.S. III's parents learned that another student witnessed Mr. Faircloth kicking J.S. III's wheelchair and raising his voice at J.S. III.

129. After talking with this other student and her parents, after taking J.S. III to numerous doctors' offices, after a visit to a psychologist, and because of the



potential the J.S. III's recent problems at school were anxiety-related, J.S. III's parents then decided to place a recorder on J.S. III's wheelchair.

130. J.S., Jr. and M.S. took this action because J.S. III had been unable to articulate why he disliked school, the reasons for some of his disruptive behavior at home, and the reasons for his poor performance at school.

131. Additionally, M.S. wanted to hear what "a true day consisted of for J.S. III at school."

132. The device recorded nearly 20 hours of audio on March 15 and March 19.

133. The audio revealed several occasions during which both Mr. Faircloth and Ms. Brown verbally abused and harassed J.S. III.

134. At one point, Ms. Brown ridicules and teases J.S. III because he drooled on his schoolwork and drooled on her papers.

135. In the audio, Ms. Brown says to J.S. III:

a. "Keep your mouth closed and don't drool on my paper. I do not want to touch your drool. Do you understand that? Obviously, you don't."

b. "Why is my paper wet? Look at me and answer. That's not an answer. That's not even a word."

c. "Do you see anybody else at this table drooling? Then, stop. You have got drool all over your face and it is gross."

136. The audio reveals that for several hours while under Ms. Brown's supervision and responsibility, she neither taught J.S. III nor gave him any instruction.

137. Additionally, the audio reveals several occasions when Mr. Faircloth screamed at J.S. III and harassed, intimidated, assaulted, neglected, and physically struck J.S. III.

138. The audio reveals that for several hours while under Mr. Faircloth's supervision and responsibility, he neither taught nor gave any aid or instruction to J.S. III.

139. At some point on either March 15 or March 19, defendant Faircloth removed J.S. III either from J.S. III's regular classroom or from defendant Brown's special-education classroom, segregated J.S. III from other students, and left him alone.

140. At another time on either March 15 or March 19, Mr. Faircloth shouted at and ridiculed J.S. III for drooling on himself while seated in his wheelchair.

141. At another time on either March 15 or March 19, Mr. Faircloth removed J.S. III either from J.S. III's regular classroom or from defendant Brown's special-education classroom and took J.S. III to the Wicksburg High School weight room.

142. Once there, Mr. Faircloth screamed at J.S. III and physically struck him.

**Case Facts, Part G:**  
**The Disclosure of the Audio**

164. When J.S. III's parents listened to the audio, they became angry, shocked, and upset by what they had heard.

165. They contacted Ms. Denise Whitfield, who was the HCBOE's special education coordinator, and shared the audio with her.

166. Eventually Superintendent Pitchford listened to parts of the audio and then placed Ms. Brown and Mr. Faircloth on administrative leave.

167. The next day, Wednesday, March 21, M.S., Principal Smith and Ms. Whitfield met to discuss J.S. III's IEP.

168. At this meeting, M.S. provided Principal Smith and also Ms. Whitfield with copies of the audio, and M.S. was told that Ms. Brown and Mr. Faircloth had been placed on administrative leave the day before.

169. M.S. then allowed J.S. III to return to school.

170. However, on Friday, March 23, M.S. learned that Ms. Brown and Mr. Faircloth had actually returned to work at Wicksburg High School.

171. M.S. then phoned Principal Smith, who advised her that Superintendent Pitchford reinstated Ms. Brown and Mr. Faircloth to their teaching positions.

172. Principal Smith also told M.S. that Superintendent Pitchford had prohibited her from calling M.S. to alert her to the fact that Ms. Brown and Mr. Faircloth had been reinstated.

173. M.S. immediately withdrew J.S. III from school.

174. Superintendent Pitchford believed that Mr. Faircloth and Ms. Brown were, through their conduct, attempting to reinforce physical therapy plans contained in his IEPs that were intended to help J.S. III control his body.

a. Regarding his need for physical therapy, J.S. III's third-grade IEP states, "[J.S. III] is able to transfer to and from his wheelchair with stand-by assistance to supervise. He requires verbal cues to lock his breaks [sic] and requires assistance to move his footplates. [J.S. III] completes classwork from a desk chair as opposed to his wheel chair. The special education teacher and paraprofessional will will [sic] encourage [J.S. III] to use proper fine and gross motor control throughout his daily activities."

b. Regarding his need for physical therapy, J.S. III's fourth-grade IEP states, "[J.S. III] is able to walk with a walker 150'-200' with verbal guidance to avoid obstacles and persons, supervision for turning or maneuvering walker. He is able to stand without support for 1 second before loss of balance. He requires minimal assistances to propel wheelchair over threshold. He is unable to

consistently buckle seat belt on wheelchair. The special education teacher and paraprofessional will will [sic] encourage [J.S. III] to use proper fine and gross motor control throughout his daily activities.”

175. On information and belief, after learning that M.S. had withdrawn J.S. III and that several other parents had also withdrawn their children from the Wicksburg High School, Superintendent Pitchford placed Ms. Brown and Mr. Faircloth on leave for a second time.

176. J.S. Jr. and M.S. also complained in writing to Principal Smith and Superintendent Pitchford, in compliance with policy 6.40, “Complaints Against Employees,” as set forth in the HCBOE *Policy Manual*.

177. Principal Smith gave Ms. Faircloth and Mr. Brown written reprimands, and Ms. Brown and defendant Mr. Faircloth remained on administrative leave.

178. Principal Smith’s written reprimand of Ms. Brown stated that she was “appalled and disgusted at [defendant Brown’s] lack of interaction, verbal abuse, and neglect toward [J.S. III].”

179. Principal Smith’s written reprimand to Ms. Brown stated that after she had listened to the audio recordings, she “heard little to no academic instruction” being given by Ms. Brown.

180. Principal Smith's written reprimand to defendant Brown stated that she "heard absolutely no positive statements made to [J.S. III] or any other student."

181. Principal Smith's written reprimand when on to say to Ms. Brown that "[t]here are several times on the tape, that the tone and volume in your voice, when addressing [J.S. III], was unacceptable and will not be tolerated. Your lack of caring and compassion is inexcusable."

182. Principal Smith's written reprimand to Mr. Faircloth also stated that she was "appalled and disgusted at [defendant Faircloth's] lack of interaction, verbal abuse, and neglect toward [J.S. III]."

183. Like Principal Smith's written reprimand to Ms. Brown, Principal Smith's reprimand of Mr. Faircloth stated that after she had listened to the audio recordings, she "heard little to no academic instruction" being given by Mr. Faircloth.

184. Regarding Mr. Faircloth's trips to the weight room with J.S. III, Principal Smith said, "You had [J.S. III] sitting in the weight room for around 50 minutes and never addressed him. Tuesday morning, March 20th, I asked you if you had been taking [J.S. III] back to the weight room again (as we have discussed this issue earlier in the year) and you told me that you had not. That was not a true statement."

185. Regarding Mr. Faircloth's discipline toward J.S. III, Principal Smith remarked in her reprimand, "I also asked you about the maximum amount of time you assigned [J.S. III] to 'time out.' You told me 10 minutes. That again was untrue. On the tape early Thursday morning, you tell [J.S. III] that he is up to 30 minutes of 'time out' and that he owes you 25 minutes from yesterday."

186. Principal Smith's reprimand of Mr. Faircloth concluded by saying, "The tone and volume in your voice when addressing [J.S. III] was unacceptable and will not be tolerated. Your lack of caring and compassion is inexcusable. You were hired to assist [J.S. III] with his academic instruction. I was sickened when I heard little to no instruction given to [J.S. III]."

187. After listening to the audio recordings, Principal Smith admitted that J.S. III's IEPs did not permit Mr. Faircloth to shout, scream, or otherwise speak to J.S. III in the manner reflected in the audio recordings.

188. Principal Smith was angered, embarrassed, and shocked by defendant Faircloth's conduct.

189. After Ms. Brown and Mr. Faircloth were put on administrative leave for the second time, J.S. III returned to school.

190. A different special-education teacher and different teacher's aide were then assigned to J.S. III.

191. A few days after the audio was given to Superintendent Pitchford, J.S. III's new special-education teacher and new aide, along with Principal Smith, met with M.S. to re-evaluate J.S. III's fourth-grade IEP and to plan the remainder of J.S. III's school year.

192. During this meeting, Principal Smith admitted to M.S. that the events made the basis of this lawsuit "happened on my watch. I should have checked on J.S. III more."

193. Later, Mr. Faircloth resigned his position, and Ms. Brown was terminated.

194. As a result of the conduct giving rise to this case, Mr. Faircloth was eventually arrested, charged, and pled guilty to attempted harassment.

**Case Facts, Part H:**  
**Other Facts Discovered in *Salinas I***

195. At Wicksburg High School, there are no books, written rules, written guidelines, or written policies or procedures that explain how to investigate reports of discrimination against Wicksburg students.

196. Principal Smith's methods of investigating reports of discrimination against Wicksburg students are to interview other students, interview teachers, and to refer to policies and procedures.



197. Principal Smith knew that Mr. Faircloth had, on occasions before March 15 and March 19, removed J.S. III from his regular classroom or from his special-education classroom and taken him to the Wicksburg High School weight room.

198. At other times on either March 15 or March 19, Mr. Faircloth punished J.S. III by putting him in "time out," which was when Mr. Faircloth left J.S. III by himself for up to 30 to 50 minutes.

199. On occasions before March 15 and March 19, Mr. Faircloth punished J.S. III by putting him in "time out," which was when defendant J.S. III was left alone for up to 25 minutes.

200. On occasions before March 15 and March 19, Principal Smith knew that Mr. Faircloth had punished J.S. III by putting him in "time out."

201. During J.S. III's fourth-grade year, which was the 2011-2012 school year, Angie Boatwright, Mr. Faircloth, Mr. Brandon Sunday, and defendant Brown had access to J.S. III's IEP.

202. Ms. Boatwright was J.S. III's general-education, regular-classroom teacher.

203. Mr. Faircloth was J.S. III's special-needs aide.

204. Mr. Sunday was J.S. III's physical-education teacher.

205. Ms. Boatwright, Mr. Faircloth, and Mr. Sunday were all informed of their responsibility in implementing J.S. III's IEP.

206. Similarly, Ms. Boatwright, Mr. Faircloth, and Mr. Sunday were all informed of the specific accommodations, modifications, and supports that they were to provide to J.S. III.

207. Ms. Brown was the person responsible for informing Ms. Boatwright, Mr. Faircloth, Mr. Sunday, and other school personnel of their responsibilities under the IEP.

208. Ms. Brown provided Mr. Faircloth with a copy of J.S. III's daily class schedules.

209. Except for lunch and P.E., J.S. III's daily schedule for the 2011 and 2012 school year as dictated by his IEP required him to be in his regular classroom, where Ms. Boatwright was his teacher, or in his special education classroom, where Ms. Brown was his teacher.

210. If J.S. III was not in Ms. Brown's special-education classroom, then he should have been in his regular classroom with Ms. Boatwright.

211. The IEP did not permit anyone to take J.S. III to the weight room.

212. The IEP did not permit Mr. Faircloth to take J.S. III out of his regular classroom and to the weight room.

213. Ms. Brown knew that there were no reasons—educational or otherwise—that permitted, required, or necessitated that defendant Faircloth take J.S. III to the weight room.

214. However, Ms. Brown knew as early as October 2011 that Mr. Faircloth was taking J.S. III to the weight room.

215. Ms. Brown learned from Ms. Boatwright that Mr. Faircloth and J.S. III were not in Ms. Boatwright’s classroom when J.S. III’s IEP required them to be there.

216. When Ms. Brown asked Ms. Faircloth why he was taking J.S. III to the weight room, Mr. Faircloth said, according to Ms. Brown, that there was “no room in Ms. Boatwright’s room, and that [J.S. III] was a little bit of a distraction in there, and [J.S. III] wasn’t really doing anything in there.”

217. Ms. Brown did not tell Mr. Faircloth that he was prohibited from taking J.S. III to the weight room.

218. Ms. Brown only told Mr. Faircloth that “Ms. Boatwright is responsible for teaching him [J.S. III] the general education standards and he has to learn those standards.”

219. At some point after Ms. Brown learned from Ms. Boatwright that Mr. Faircloth and J.S. III were not present in Ms. Boatwright’s classroom when they

should have been, Ms. Brown reported to Principal Smith that "J.S. III was not in Ms. Boatwright's room when he was supposed to be."

220. In response, Principal Smith said, "I will take care of it."

221. However, Ms. Brown and Principal Smith never spoke about what action, if any, she took in response to Ms. Brown's report.

222. Later in 2011-2012 school year, after October 2011, Ms. Brown learned from other Wicksburg High School teachers and staff that Mr. Faircloth had resumed taking J.S. III to the weight room.

223. Ms. Brown learned from Ms. Angela Brockman, another special-education teacher whose classroom was located on the sidewalk that led to the weight room, that Mr. Faircloth was taking J.S. III to the weight room.

224. Likewise, Ms. Brown learned from Mr. Matt Barton, a Wicksburg High School coach, that Mr. Faircloth was taking J.S. III to the weight room.

225. Ms. Brown did not ask Coach Barton what defendant Faircloth and J.S. III were doing in the weight room.

226. Additionally, Ms. Brown learned from Mr. Brandon Sunday, another Wicksburg High School coach, that Mr. Faircloth was taking J.S. III to the weight room.

227. Ms. Brown did not ask Coach Sunday what Mr. Faircloth and J.S. III were doing in the weight room.

228. Ms. Brown again reported to Principal Smith that Mr. Faircloth and J.S. III were seen going to the weight room.

229. In response, Principal Smith said, "I will handle it."

230. However, Ms. Brown did not confront Mr. Faircloth with the information she had obtained from Ms. Brockman, Coach Barton, or Coach Sunday.

231. Ms. Brown explained that she did not speak to Mr. Faircloth about his conduct because she "just didn't feel like it was my responsibility to reprimand him or tell him where he was supposed to be."

232. Yet, Ms. Brown has admitted that one of her responsibilities was to make sure that J.S. III's IEP was appropriately implemented.

233. Ms. Brown has also admitted that she knew that J.S. III's IEP did not permit J.S. III to be anywhere other than in her special-education classroom or in his general-education classroom with Ms. Boatwright.

234. Ms. Brown has also admitted that she knew that when Mr. Faircloth took J.S. III to the weight room, he was taking J.S. III to a place not permitted by the IEP.

235. Ms. Brown never tried to talk to J.S. III what was happening in the weight room when Mr. Faircloth took him there.

236. Ms. Brown never told J.S. III's parents that Mr. Faircloth was taking J.S. III to the weight room.

237. Ms. Brown never told J.S. III's parents that his IEP had been violated.

238. According to Principal Smith, she first learned in October 2011 from Ms. Brown that Mr. Faircloth had been taking J.S. III to the weight room.

239. Principal Smith met with Mr. Faircloth about this.

240. Principal Smith was Mr. Faircloth's immediate supervisor.

241. According to Principal Smith, Mr. Faircloth told her that he was taking J.S. III to the weight room because it had a private restroom, the weight room was quiet, J.S. III was less likely to be distracted than in his regular classroom with Ms. Boatwright, and J.S. III was likely to distract the other students in his regular classroom.

242. In *Salinas I*, Mr. Faircloth testified that he took J.S. III out of Ms. Boatwright's classroom because J.S. III's behavior was, supposedly, "disruptive" and could be "a distraction."

243. However, Ms. Boatwright disagreed that J.S. III was a distraction.

244. In her deposition in *Salinas I*, Ms. Boatwright said:

- a. she never told Mr. Faircloth to take J.S. III out of her room;
- b. she never believed that J.S. III had any behavior problems;
- c. she never told Ms. Brown or Mr. Faircloth that J.S. III's behavior was a problem;
- d. she never had to discipline J.S. III;
- e. she never discussed disciplining J.S. III with Ms. Brown or with Mr. Faircloth;
- f. she never told Mr. Faircloth to remove J.S. III from her classroom because J.S. III was a "distraction"
- g. she never told Mr. Faircloth to remove J.S. III from the classroom because she thought J.S. III was distracted or was not learning effectively;

245. Principal Smith did not ask Mr. Faircloth how often he had taken J.S. III to the weight room before October 2011.

246. Afterward, Principal Smith told Mr. Faircloth that she "would rather him not take [J.S. III] back to that weight room."

247. In response to this, Mr. Faircloth said, "Okay."

248. Principal Smith admitted that she did not possess any information that J.S. III was a distraction to the students in his regular classroom at any time.

249. Principal Smith never asked J.S. III what was happening in the weight room when Mr. Faircloth took him there.

250. Principal Smith never told J.S. III's parents that Mr. Faircloth was taking J.S. III to the weight room.

251. According to Principal Smith, after October 2011 she never personally got any other information that Mr. Faircloth had taken J.S. III back to the weight room, despite Ms. Brown's testimony that she had informed Principal Smith in October 2011 and later that Mr. Faircloth had been taking J.S. III back to the weight room.

252. Principal Smith admitted that during J.S. III's fourth-grade year that Ms. Brown, Ms. Boatwright, and Mr. Faircloth were responsible for implementing, complying with, and otherwise enforcing J.S. III's IEP.

253. Principal Smith admitted that Ms. Brown had a responsibility to tell Mr. Faircloth about the specific accommodations, modifications, and support that he, as a handicapped and special-needs student, was entitled to under the law.

254. However, after the incidents involving J.S. III were discovered, Principal Smith did not interview any other students, although she had heard that one of J.S. III's classmates had witnessed Mr. Faircloth kick J.S. III's wheelchair and tell J.S. III to pick up a pencil that J.S. III dropped.



255. According to Principal Smith, no one in the Houston County school system has ever asked J.S. III what happened to him.

256. On information and belief, defendants Brown and Faircloth will not teach in any school within the Houston County school system.

257. Superintendent Pitchford later admitted, "I'm responsible for whatever goes on in the system, regardless of what a teacher, an aide, or a bus driver does. I feel like I failed everybody involved, the child, the parents, the community."

258. In May 2012, M.S., who is J.S. III's mother, met with Wicksburg High School personnel to plan J.S. III's fifth-grade, 2012-2013 school year IEP.

259. That IEP was approved by everyone involved in the process, and M.S. and J.S. Jr. re-enrolled J.S. III at Wicksburg High School in the fall of 2012 for his fifth-grade school year.

260. J.S. III has remained in Wicksburg High School.

261. He has since received several new IEPs.

**Claims**

**Count 1:**

**Claims for Damages Under § 504 of The Rehabilitation Act and  
The Americans With Disabilities Act  
Against the Houston County Board of Education**

262. J.S. III re-alleges, and incorporates by reference here, all of the preceding paragraphs.

263. Count 1 is a civil-rights claim against the HCBOE for money damages.

264. Because he suffers from cerebral palsy, J.S. III is physically handicapped, cognitively impaired, and, thus, is “disabled” within the meaning of both the Americans With Disabilities Act and under § 504 of The Rehabilitation Act.

265. J.S. III falls into the class of persons whose rights are specifically protected by the above-referenced federal laws.

266. At all times material to this case, the HCBOE knew that J.S. III was physically handicapped, cognitively impaired, and, thus, disabled within the meaning of both the Americans With Disabilities Act and under § 504 of The Rehabilitation Act.

267. The HCBOE is an entity charged with the provision of a free, appropriate public education to J.S. III.

268. The HCBOE receives money from the United States government to assist with the provision of a free, appropriate public education to students like J.S. III.

269. Because the HCBOE receives this money, the HCBOE cannot discriminate against J.S. III on the basis of his disability.

270. As is set forth in the preceding fact sections, the HCBOE failed to reasonably accommodate J.S. III's condition and discriminated against him on the basis of his disability.

271. The HCBOE's conduct was purposeful, done in bad faith, carried out with a discriminatory animus, and amounted to intentional discrimination against J.S. III on the basis of his disability and in violation of the Americans With Disabilities Act, § 504 of The Rehabilitation Act, and their implementing regulations.

272. This discriminatory conduct effectively excluded J.S. III from participating in, and receiving full access to, the benefits of the programs and activities of the defendant HCBOE.

273. Defendant HCBOE acted unlawfully or failed to act lawfully in the following ways:

- a. the HCBOE failed to create a policy that explained or defined handicap, as it pertains to physical or cognitive impairments exhibited by students enrolled in the Houston County school system and the accommodations required by those students;

- b. the HCBOE failed to create a policy that explained or defined discrimination, as it pertains to unlawful or illegal conduct by an HCBOE employee toward an HCBOE student that is based on that student's handicap;
- c. the HCBOE failed to create a policy that explained or defined harassment, as it pertains to unlawful or illegal conduct by an HCBOE employee toward an HCBOE student that is based on that student's handicap;
- d. the HCBOE failed to create a policy that explained or defined a handicapped student's rights under the Americans With Disabilities Act;
- e. the HCBOE failed to create a policy that explained or defined a handicapped student's rights under the Rehabilitation Act of 1973;
- f. the HCBOE failed to create a policy that explained or defined a handicapped student's rights under the Alabama Exceptional Child Education Act;
- g. the HCBOE failed to create a policy or procedure that would permit a physically-handicapped, cognitively-impaired student to report harassment or discrimination;

- h. the HCBOE failed to create a policy or procedure that would permit a physically-handicapped, cognitively-impaired student to report harassment or discrimination in the form of a grievance, as that term is used in the HCBOE's *2011-2012 Code of Conduct*;
- i. concerning handicapped students, failed to issue directives to carry out its non-discrimination and non-harassment policies;
- j. concerning handicapped students, failed to prescribe procedures to carry out its non-discrimination and non-harassment policies;
- k. failed to develop procedures to be used by handicapped students who allege harassment against HCBOE employees;
- l. failed to create policies or procedures dealing with the discipline and/or punishment of handicapped students;
- m. permitted corporal punishment to be administered to a handicapped student;
- n. failed to follow the existing policies and procedures dealing with student discipline;
- o. failed to follow policies and procedures dealing with the administration of corporal punishment to students;

- p. appointed unqualified personnel to the position of “paraprofessional” and/or special-education teacher’s aide;
- q. assigned unqualified personnel to the position of “paraprofessional” and/or special-education teacher’s aide;
- r. failed to supervise the members of the Wicksburg High School instruction staff who were responsible for instructing handicapped students;
- s. failed to supervise handicapped students during school and/or school-related activities;
- t. failed to hire persons who were reasonably qualified to protect the bodily integrity of handicapped students;
- u. failed to train persons to become reasonably qualified to protect the bodily integrity of handicapped students;
- v. failed to supervise persons who were charged with the protection the bodily integrity of handicapped students;
- w. allowed J.S. III to be removed from his regular classroom, based on discriminatory reasons and for no purpose related to his education;

- x. allowed J.S. III to be removed from his special-education classroom, based on discriminatory reasons and for no purpose related to his education;
- y. failed to comply with the HCBOE *Policy Manual*;
- z. failed to comply with the HCBOE *2011-2012 Code of Conduct*;
- aa. failed to properly or adequately investigate the incidents made the basis of this lawsuit by allowing defendants Brown and Faircloth to return to work;
- bb. failed to recognize systemic deficiencies in the harassment and discrimination policies;
- cc. failed to make systemic and structural changes to the harassment and discrimination policies;
- dd. allowed HCBOE employees to perform non-discretionary acts; and
- ee. its decision makers failed to take reasonable steps to deter or stop discrimination and harassment.

274. By acting unlawfully or by failing to act lawfully, in the above-listed ways, the HCBOE deprived J.S. III of the required supervision and services required by law, excluded him from and denied him the benefits of public, federally

supported programs and facilities operated by HCBOE, and, ultimately, led to and caused his discrimination and harassment.

275. As is described below, the HCBOE's conduct damaged J.S. III.

**Plaintiff's Damages**

276. As a result of the HCBOE's conduct, J.S. III sustained the following damages:

- a. physical pain;
- b. nausea and vomiting;
- c. mental anguish and emotional distress, including fear, nervousness, sadness, fright, anxiety, humiliation, shock, shame, embarrassment, apprehension, and ordeal;
- d. loss of enjoyment of life;
- e. loss of the same educational opportunities as other handicapped and non-handicapped kids;
- f. loss of freedom;
- g. loss of bodily integrity; and
- h. loss of dignity.

**Prayer for Relief**

277. Based on the foregoing, J.S. III asks:

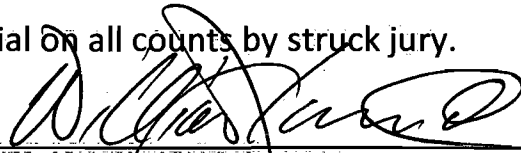
- a. for the Court assume jurisdiction of his federal claims;



- b. for the Court to order a trial before a struck jury on all claims;
- c. for the jury to award for his compensatory damages against the HCBOE;
- d. when allowed by law, for the jury to award for punitive damages against the HCBOE;
- e. for the Court to enter judgment against the HCBOE;
- f. when allowed by law, for the Court to award attorneys' fees and costs against HCBOE; and
- g. as justice dictates, for the Court to grant any other relief deemed necessary or appropriate by the Court.

**Jury Demand**

The plaintiff demands a trial on all counts by struck jury.



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