IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JARRON DRAPER, Plaintiff, v. ATLANTA PUBLIC SCHOOL DISTRICT; DR. ICEY JOHNSON, individually and in her capacity as Director of Program Services for Exceptional Children; FAUSTINA HAYNES, individually and in her capacity as Program Assistant for Special Education at Mays High School. Defendants.	)	CASE NO. 1:07-CV-0224-MHS

FIRST AMENDED COMPLAINT

Plaintiff Jarron Draper ("J.D.") files this First Amended Complaint against Defendants Atlanta Public Schools District ("APS"), Dr. Icey Johnson and Faustina Haynes, and shows as follows.

INTRODUCTORY STATEMENT

1.

J.D. is African-American and at all relevant times herein has been a student in APS. He is eligible to receive, and APS is obligated to provide him with,

special education services under the Individuals with Disabilities Education Act (IDEA) as amended, 20 U.S.C. § 1400 *et seq.* ("IDEA").

2.

APS has failed J.D. and violated its obligations under IDEA through a persistent pattern of intentional discrimination. Starting at least in September 1994, APS was aware that J.D. had educational difficulties, but failed to assess or to properly assess J.D. for special education eligibility, even as his academic progress fell further and further behind his peers. Finally, in 1998, after a belated and deficient evaluation, APS mis-diagnosed J.D., labeling him as mentally retarded, when he in fact he was not, but instead had dyslexia, a specific learning disability. As a result, APS placed J.D. in the most restrictive and inappropriate environment possible – a self-contained special education classroom for children with intellectual disabilities.

3.

APS compounded its errors by failing to re-evaluate J.D. for five years, violating the requirement under IDEA that special education students be re-evaluated at least every three years, while he fell yet further behind academically and otherwise. During this period, APS ignored several requests from J.D.'s mother and teachers for a reevaluation.

4.

In 2003, after APS's belated reevaluation – consisting of essentially a single, inappropriate test – APS again misdiagnosed J.D. as mentally retarded and continued his placement in the most restrictive environment, wholly inappropriate for his disability and designed not to provide educational benefit for J.D. At this point, J.D., then a 9th grader, was reading at only the 3rd grade level – threatening his dreams of going to college and earning a degree in computer technology. Unwilling to acquiesce in APS's labeling of him as retarded, J.D.'s family enrolled J.D. in the Sylvan Learning Center for after-school tutoring and began demanding an independent evaluation.

5.

By August, 2003, the Sylvan Leaning Center had raised J.D.'s reading level by two grade levels in five months – using techniques often helpful to those challenged by dyslexia. A subsequent comprehensive evaluation performed by an independent psychologist and based on an array of testing data correctly diagnosed J.D. for the first time as having a specific learning disability consistent with dyslexia, and dismissed the false diagnosis of mental retardation.

6.

J.D. is now 20 and has lost forever the opportunity to acquire certain fundamental reading and academic skills, while facing a daunting challenge to overcome over 10 years of APS' abject neglect.

7.

In November 2004, J.D. filed a request for administrative hearing seeking relief under the IDEA. After a multi-day hearing, Steven D. Caley, Special Assistant Administrative Law Judge ("ALJ") for the Office of State Administrative Hearings for the State of Georgia issued a Final Order on January 30, 2006 ("Due Process Order"). A true and correct copy of the Due Process Order is attached hereto as Exhibit A, and by this reference incorporated herein. The ALJ found that APS had denied J.D. a free and appropriate education ("FAPE"), beginning with the 2002-2003 school year, and ordered both reimbursement and compensatory education as remedies.

8.

Both APS and J.D. filed appeals of the Due Process Order. In the March 19 Order, the district court affirmed the substantive findings and conclusions in the Due Process Decision regarding the denial of FAPE and modified the remedy in

various ways, including ordering APS to pay for the full cost of attending The Cottage School.

THE PARTIES

9.

J.D. was born on February 2, 1987. J.D. resides within the boundaries of the educational jurisdiction of APS, and is currently not attending school, having completed 11th Grade at Benjamin E. Mays High School. J.D. is eligible for special education services under the IDEA, and is also a qualified person with a disability within the meaning of 29 U.S.C. § 794, 29 U.S.C. § 705(2), and 34 C.F.R. § 104.3(j), and is entitled to be free of discrimination based on a disability under Section 504.

10.

Defendant ATLANTA PUBLIC SCHOOL DISTRICT ("APS") is a public entity organized and existing under the laws of the State of Georgia, with the capacity to be sued. APS receives federal funds from the United States Department of Education pursuant to the IDEA, and is required to provide FAPE in the least restrictive environment to all children with disabilities residing within its educational boundaries. APS is a "person" as that term is used in Section 1983.

11.

DR. ICEY JOHNSON ("Johnson") is, and at all relevant times herein was, Director of Program Services for Exceptional Children for APS. As part of her duties, Johnson has the power and obligation to provide all students who attend APS and are eligible for special education and related services under the IDEA, with FAPE, and to take appropriate steps to assure that APS does not discriminate against disabled students in violation of Section 504. Based upon information and belief, she is a resident of Fulton County, Georgia.

12.

FAUSTINA HAYNES ("Haynes") is, and at all relevant times herein was, the Program Assistant for Special Education at Mays High School, within APS. As part of her duties, Haynes has the power and obligation to provide all students who attend Mays High School and who are eligible for special education and related services under the IDEA, with FAPE, and to take appropriate steps to assure that Mays High School does not discriminate against disabled students in violation of Section 504. Based upon information and belief, she is a resident of Fulton County, Georgia.

JURISDICTION, VENUE AND EXHAUSTION

13.

This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331, 1343(a)(3) and 1343(a)(4) in that it arises under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Section 504"), as well as under 42 U.S.C. § 1983 ("Section 1983"). This court has jurisdiction to hear pendent state claims under the doctrine of supplemental jurisdiction set forth at 28 U.S.C. § 1367.

14.

Venue in this Court is proper under 20 U.S.C. § 1391(b) because the defendant, APS, is located within Fulton County, which is within the jurisdiction of this judicial district, and all of the events or omissions that are the subject of this complaint occurred within the jurisdiction of this judicial district.

15.

J.D. has exhausted his administrative remedies and to the extent he is deemed not to have exhausted such remedies, his failure to exhaust should be excused.

PROCEDURAL HISTORY

16.

In November 2004, J.D. filed a complaint requesting a due process hearing. The complaint alleged that APS had denied J.D. his procedural and substantive rights to a FAPE under the IDEA. Among other things, J.D. requested the following relief: compensatory education, reimbursement for the cost of private educational services incurred to remediate J.D.'s academic deficits, and reimbursement for reasonable attorneys' fees incurred by J.D. in connection with the due process hearing.

17.

The ALJ ruled in favor of J.D. on all issues, holding that APS had denied J.D. a FAPE in violation of the IDEA during the 2002-2003, 2003-2004 and 2004-2005 school years.

18.

In addition to ordering APS to reimburse J.D. for private educational costs incurred in 2003 and all litigation costs, including attorneys' fees incurred in connection with the due process proceedings, the Due Process Order fashioned two alternative remedies:

(a) If J.D. elects to remain enrolled in the APS, he will be entitled to receive 60-minutes per day, 5-days per week, of multi-sensory reading services to be provided either by Sylvan Learning Center or Lindamood-Bell Learning Processes at J.D.'s election. APS must pay for such reading services, including roundtrip transportation, until J.D. has graduated from high school with a regular high school diploma or until June 2009, whichever is earlier; or,

(b) If J.D. desires placement outside the APS, J.D. shall provide APS with a list of three private schools located in Georgia to provide regular education and special education services. APS must pay for J.D. to attend the private school chosen by APS from such list, including roundtrip transportation, until J.D. has graduated from high school with a regular high school diploma or until June 2009, whichever is earlier. The tuition for such private school shall not exceed $15,000 per year.

19.

APS appealed the Due Process Order as to all issues. J.D. appealed the Due Process Order only as to the adequacy of the relief awarded. The district court ruled on the cross appeals, Civil Action No. 1:06-CV-0487-MHS, on March 19, 2007 ("March 19 Order"), and affirmed the substantive findings in the Due Process Decision. Exhibit B, attached hereto and incorporated herein by reference.

FACTUAL ALLEGATIONS

20.

Commencing in February 1995, when J.D. was in 2nd Grade (i.e., 1994-1995 school year), J.D.'s teachers recommended that J.D. be assessed by APS personnel for eligibility for special education and related services because J.D.'s academic skills and proficiencies were insufficient for him to access or master grade level, academic curriculum.

21.

APS did not assess J.D. until June, 1998. At that time, J.D. was completing 4th Grade, having been retained in either 2nd Grade or 3rd Grade APS did not conduct a comprehensive assessment. APS did not measure J.D.'s phonological processing skills (which are essential to reading). APS did not review J.D.'s receptive and expressive language skills. APS did not complete an appropriate adaptive behavioral assessment of J.D. APS did not follow state specified procedures for assessing whether a student is mentally retarded. Based upon J.D.'s recorded performance on a standardized I.Q. test, the APS psychologist who conducted the limited, procedurally flawed, evaluation concluded that J.D. was mentally retarded.

22.

On January 25, 1999, when J.D. was enrolled in 5th Grade (i.e., 1998-1999 school year), a meeting was held to review the assessments conducted in June 1998 and to determine the services which J.D. needed to make educational progress. APS placed J.D. in the most restrictive educational environment available, a self-contained special education classroom for children with mild intellectual disabilities ("M.I.D."). The M.I.D. program is focused on functional skills and does not lead to a high school diploma.

23.

On April 19, 2000, when J.D. was enrolled in 6th Grade (i.e., 1999-2000 school year), an IEP team meeting was convened. The IEP team determined that J.D. was functioning at the 3rd Grade level in reading comprehension and word recognition, at the 1st Grade level in spelling, and at the 4.7 Grade level in math.

24.

J.D. continued in the M.I.D. self-contained classroom at Usher Middle School during 6th Grade, 7th Grade and 8th Grade (i.e., the 1999-2000, 2000-2001 and 2001-2002 school years, respectively), and made no academic progress, and continued to function at the 2nd to 3rd Grade level in reading.

25.

J.D. was not provided with access to the general education curriculum while placed in the self-contained M.I.D. classroom; instead, he was only provided with access to a functional curriculum.

26.

APS did not reevaluate J.D. until April 3, 2003, when J.D. was enrolled in 9th Grade (i.e., the 2002-2003 school year) at Benjamin E. Mays High School. The school psychologist who conducted the assessment reported that J.D.'s teachers had determined that J.D. was performing at the 2nd to 3rd Grade level in most academic subjects. The school psychologist also reported that J.D.'s performance on an I.Q. test might not be an accurate reflection of J.D.'s true cognitive ability. Accordingly, the school psychologist recommended that APS conduct further assessments.

27.

On April 17, 2003, when J.D. was still enrolled in 9th Grade, the IEP team declined to conduct any further assessments as recommended by the school psychologist and continued to classify J.D. as mentally retarded.

28.

In April 2003, J.D.'s family disagreed with APS' determination that J.D. was mentally retarded and requested additional assessments.

29.

In July 2003, when J.D. was about to enter 10th Grade (i.e., 2003-2004 school year), APS conducted another assessment and concluded that J.D. was not mentally retarded, and instead was eligible for special education and related services based upon a "specific learning disability." That assessment showed that J.D. was functioning at a 3rd Grade level in reading, at a 2nd Grade level in spelling, and at a 3rd Grade level in math.

30.

J.D. was a minor until his 18th birthday on February 2, 2005. In 2003, J.D. learned for the first time that: (a) APS had made J.D. eligible for special education and related services based on an erroneous classification of J.D. as mentally retarded; (b) APS had placed J.D. in self-contained M.I.D. classrooms based on APS' erroneous misclassification of J.D. as mentally retarded; and (c) that, because he was in the M.I.D. program, J.D. was not on track for a high school diploma.

31.

The Due Process Order included findings and summaries of testimony, each of which constitute a violation of the IDEA and which were affirmed in the March 19 Order. These findings together with the additional factual findings in the March 19 Order and the additional allegations in this Complaint, further establish that APS, Johnson and Haynes (in their official capacity) subjected J.D. to discrimination solely by reason of his disability, and intentionally discriminated against and retaliated against J.D., in violation of Section 504, and that Johnson and Haynes knowingly and intentionally violated the IDEA, thus giving rise to personal liability for damages under Section 1983. Among the relevant findings are the following:

a. Although APS "was aware that J.D.'s problems had existed at least since September 1994" APS "did essentially nothing to determine the nature of the problem." Due Process Order at 2.

b. "Although J.D.'s teachers recommended in February 1995 that he be tested to determine the cause of his difficulties" APS did not promptly test J.D. for special education eligibility. Id.

c. Between late November 1996, and June 1998, J.D.'s teachers repeatedly documented his significant delays in reading and math, and repeatedly recommended that he be assessed for special education, but no such assessment was conducted. Due Process Order at 4-5.

d. APS finally assessed J.D. for special education eligibility in June 1998, however the IEP team did not meet to discuss the assessment until six months later, in January 1999. Due Process Order at 5

e. The 1998 assessment, which concluded that J.D. was mentally retarded, was "spectacularly deficient." Nevertheless, based on this assessment, the IEP team placed J.D. in the M.I.D. program. Due Process Order at 5.

f. APS did not inquire sufficiently into J.D.'s learning problem in conducting its evaluation in 1998 and the 1998 evaluation did not include any behavioral information from J.D.'s family. March 19 Order at 22-23.

g. J.D.'s family did not have reason to know that he had been injured by the placement in the MID class until 2003. March 19 Order at 18.

h. APS failed to reassess J.D. for five years, in violation of state and federal requirements. Due Process Order at 5.

i. Although J.D.'s family insisted that he be re-evaluated in early 2003, APS delayed doing so until April 3, 2003. Due Process Order at 5-6.

j. The Georgia State Department of Education ("GDOE") hearing officer found that the April 2003 assessment was also inappropriate. Due Process Order at 6. In fact, the GDOE found that APS had failed to follow eligibility guidelines, which are specified in state regulations.

k. Relying on the April 2003 assessment, the IEP team continued to classify J.D. as M.I.D. Due Process Order at 6.

l. After finally agreeing to the demands of J.D.'s family for a private assessment, J.D. was reassessed in July 2003. In August 2003, an IEP team met and determined that J.D. was not retarded, but was of average intelligence although suffering from dyslexia. In September 2003, the IEP team met again and, "despite an acknowledgment that J.D. was not achieving in a manner commensurate with his age and ability in all academic areas and that he had a severe discrepancy between achievement and cognitive ability that was not correctable without

clinical/specialized techniques," as well as "language deficits ranging from six years and one month to nine years and seven months," the only recommendation the IEP team made "was to provide 1.5 hours of speech tutoring to J.D." Due Process Order at 7.

m. In October 2003, the IEP met again and agreed that "J.D. would attend regular classes for the first time since the third grade." His program was changed from M.I.D. to college prep. The IEP provided that he would receive "after-school assistance two hours per week." Due Process Order at 8. Although a suggestion was made to consider a reading remediation program, J.D. was not provided with any such program to address his reading deficits at that time.

n. Despite his poor grades during 9th grade, including a failing grade in math, J.D. was promoted to the tenth grade for the following year. Due Process Order at 8.

o. J.D. was finally offered the Lexia reading program as the result of a mediation that took place on November 17, 2003. Although the program was to begin "by no later than November 21, 2003" the program "was not implemented until December 9, 2003, and by January

12, 2004, J.D. had received only two and one-half hours of instruction with it." Due Process Order at 9. Thus, "APS dragged its feet" by delaying in offering the Lexia program for five months. Due Process Order at 32.

p. In response to a complaint filed by J.D., on January 27, 2004, the GDOE found "that APS was not in compliance with state and federal requirements for providing a free and appropriate public education to J.D." Specifically, the report "noted that J.D. was below grade level in reading, spelling, and math and that no in-depth instruction had been provided in J.D.'s IEP to address his academic deficits." Due Process Order at 10.

q. In April 2004, an IEP team met and determined that despite having received the Lexia program for five months, "J.D.'s reading level had dropped somewhat from grade level five to grade level four to five." Nevertheless, APS insisted on continuing the unsuccessful Lexia program and refused to provide the Sylvan Learning Center program requested by J.D.'s parents and in which he had previously made demonstrated progress. Due Process Order at 11.

r. In May 2004, J.D. was evaluated for the Lindamood-Bell reading program, and it was determined that he "had a grade three reading level, a grade three spelling level, and a grade five arithmetic level." On May 26, 2004, the IEP team met and was informed that J.D. had made little or no progress with the Lexia program. Nevertheless, APS continued to insist on the unsuccessful Lexia program and, again, refused to provide the Sylvan Learning Center program. Due Process Order at 12.

s. J.D. was reassessed in August 2004 by Dr. Judy Wolman, who found that J.D. had made little or no educational progress since his last assessment a year earlier. On September 10, 2004, the GDOE "acknowledged that J.D.'s grades had not improved despite using the Lexia reading program." On November 18, 2004, the IEP team met again, and APS again insisted on continuing the demonstrably unsuccessful Lexia program. Due Process Order at 13-15.

t. Dr. Icey Johnson, "admitted that J.D. was not timely re-evaluated after he was initially evaluated in 1998" and "that the school system did nothing to assist J.D. with catching up his reading skills while he was in

the ninth grade and offered no actual reading program." Due Process Order at 16.

u. Haynes "acknowledged that in order to survive in high school, a J.D. must be able to read at the fifth or sixth grade level. She could not explain how J.D. could expect to graduate from high school when he was reading at a third grade level." Due Process Order at 17.

v. When J.D. and his aunt challenged his placement in the M.I.D. Program, "Faustina Haynes made [it] clear that he would always be M.I.D. and would never graduate from high school." Due Process Order at 22.

w. The paraprofessional assigned to assist J.D. with the Lexia program, "did not know how to set up the program, and it took several weeks before the school officials figured out how to use it." Due Process Order at 22.

x. APS "has repeatedly encouraged [J.D.] to drop out of school and get a job." Id.

y. "Both J.D.s and teachers have called [J.D.] derogatory names due to being in special education." Id.

z. APS did not provide J.D. with the tutoring services required by his IEP. Instead, "a football coach serves as his tutor and spends much of the allotted time looking at football sites on the computer. Moreover, he was not allowed to begin taking algebra during the summer session until only two weeks were left for the session, contrary to the requirements in his IEP." Id.

aa. J.D. has been tested by APS without the consent of his parents, in violation of the IDEA. Due Process Order at 15, 23.

bb. Haynes told J.D. that "he could not enroll in regular high school classes unless he paid for the reading program at the Sylvan Learning Center and increased his reading level. Haynes also told him that the school had no program to help him catch up and that he had to find his own program outside of school." Due Process Order at 23, 32. At the time Haynes made these statements she knew or should have know that they were not true and that APS had a legal obligation under the IDEA to

provide J.D. with an appropriate program to address his reading deficits.

cc. During the course of the due process hearing, Johnson and Haynes engaged in overt behavior that manifested an "air of disdain and tone of contempt" towards J.D.'s "efforts to acquire a program of reading instruction that will give him a fighting chance to read." The ALJ concluded that this conduct at the hearing reflected personal hostility towards J.D. by these "professional educators" and made credible J.D.'s testimony about the treatment he had received from APS. The ALJ concluded that "[a] lesser spirit would have been crushed long ago." Due Process Order at 31, n.6.

dd. APS "continued to insist on the same IEP despite the lack of any progress" and insisted "upon a reading program that has not resulted in even a minimal educational benefit to J.D. in almost a three year period." Due Process Order at 33.

ee. APS, by its persistent and unlawful pattern of neglect, "has forfeited its right to continue to 'educate'" J.D. Due Process Order at 35.

ff. APS "has shown an inability and an unwillingness to provide appropriate services for J.D. for several years." Id.

32.

With respect to each and every violation of law described in paragraph 31 above that occurred after J.D. transferred into Mays High School, both Johnson and Haynes, by virtue of their positions with APS, had the power and authority to prevent these violations of the IDEA, and furthermore, they knew or should have known that such acts and failures to act were in violation of the IDEA, Section 504, and the Fourteenth Amendment to the U.S. Constitution, but, nevertheless, failed to take appropriate steps to assure that such violations did not occur.

33.

J.D. further alleges that, with respect to each and every violation of law described in paragraph 31 above that occurred after he requested that he be reassessed in early 2003, the actions and failures to act on the part of Johnson and Haynes were in retaliation for the efforts by J.D. and his Aunt Denice Morgan to advocate for his rights under the IDEA and Section 504.

34.

The hearing officer was "incredulous that anyone, let alone supposedly trained professionals, could have deemed [J.D.] mentally retarded as late as 2003."

Decision at 23. In fact, J.D. was classified as mentally retarded because he is an African-American male who is unable to read.

35.

The 1998 assessment, which concluded that J.D. was mentally retarded, was "spectacularly deficient" in that it relied "on essentially one test to arrive at an M.I.D. diagnosis without any behavioral information from the student's family and friends." Decision at 31. This was contrary to clearly established state law procedures that are mandated before a student is determined to be mentally retarded. These procedures provide for certain substantive and procedural safeguards to avoid labeling a student as mentally retarded when the student is not, in fact, mentally retarded. The procedures include providing the student's family with the opportunity to provide their input before any such determination is made.

36.

The acts and omissions on the part of APS, Johnson and Haynes, and each of them, as herein alleged, were knowing, intentional, willful, wanton, malicious, and oppressive.

FIRST CLAIM FOR RELIEF

(AGAINST APS AND INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL CAPACITIES FOR VIOLATION OF SECTION 504)

37.

J.D. realleges and incorporates by reference as though fully set forth herein, paragraphs 1-36 inclusive, of this Complaint.

38.

In committing the acts and omissions described herein, APS, Johnson and Haynes (in their official capacities), and each of them, have acted in bad faith, with gross misjudgment and deliberate indifference and have thereby intentionally discriminated against J.D. solely on the basis of his disability by denying him the benefits of school in violation of Section 504 and, furthermore, have retaliated against J.D. for the advocacy for his rights by himself and by his Aunt Denice Morgan, also in violation of Section 504.

SECOND CLAIM FOR RELIEF

(AGAINST APS AND THE INDIVIDUAL DEFENDANTS, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, FOR VIOLATION OF SECTION 1983 (IDEA))

39.

J.D. realleges and incorporates by reference as though fully set forth herein, paragraphs 1-38 inclusive, of this Complaint.

40.

APS, Johnson and Haynes, in their official and individual capacities, have each acted under color of state law to deny denied J.D. FAPE, to which he is entitled under the IDEA, by knowingly and intentionally disregarding J.D.'s rights under the IDEA, in violation of Section 1983.

THIRD CLAIM FOR RELIEF

(AGAINST APS AND AGAINST THE INDIVIDUAL DEFENDANTS, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, FOR VIOLATION OF SECTION 1983 (FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION))

41.

J.D. realleges and incorporates by reference as though fully set forth herein paragraphs 1-40 inclusive, of this Complaint.

42.

By the acts and omissions described herein, including: failing to properly assess J.D.; mislabeling and mischaracterizing him as mentally retarded even though it was obvious, particularly to trained professionals, that J.D. was not, in fact, mentally retarded; improperly placing him in an M.I.D. program; failing to timely reassess him, as required by law; and failing to timely implement services to which J.D. was entitled under his IEP; APS, Johnson and Haynes, in their official and individual capacities, have deprived J.D. of his substantive and procedural due process rights and his right to equal protection under the Fourteenth Amendment to the U.S. Constitution.

43.

By mislabeling and mischaracterizing J.D. as mentally retarded beginning in 1998, by failing to comply with state requirements for assessing a student as mentally retarded, and by failing to timely reassess J.D. after three years as required by the IDEA, APS, Johnson and Haynes, in their official and individual capacities, have stigmatized J.D. and subjected him to public ridicule such as that

reflected in Exhibit C to this Complaint, in violation of his procedural and substantive due process rights and his right to equal protection under the Fourteenth Amendment to the U.S. Constitution.

DAMAGES SUSTAINED AS A RESULT OF THE ABOVE REFERENCED CLAIMS

44.

As a direct and proximate cause of the acts and omissions alleged in this Complaint, J.D. has suffered substantial educational and developmental losses, causing a permanent decline in his future development, which adversely impacts his future earnings and earning potential, and which has resulted in humiliation, both private and public, pain and suffering, and damage to his social development and interpersonal relations, and has incurred legal fees in an amount subject to proof at trial.

PRAYER FOR RELIEF

WHERFORE, Plaintiff requests judgment as follows:

On Plaintiff's First Claim for Relief

(1) Declare that APS, and Johnson and Haynes in their official capacities, and each of them, have acted with bad faith, gross misjudgment and deliberate

indifference and thereby intentionally discriminated against J.D. based on his disability, and have, in addition, retaliated against J.D. for his and his Aunt Denice Morgan's advocacy, all in violation of Section 504.

(2) Award compensatory damages according to proof.

On Plaintiff's Second and Third Claims for Relief

(1) Declare that APS and Johnson and Haynes, in their official and individual capacities, and each of them, have acted in violation of Section 1983 to deprive J.D. of his rights under the IDEA, his procedural and substantive due process rights under the Fourteenth Amendment to the U.S. Constitution, and his rights under the Equal Protection Clause in the Fourteenth Amendment

(2) Award compensatory damages according to proof.

(3) Award punitive damages.

On All Claims for Relief

(1) Award all costs of suit, including attorneys' fees, as authorized pursuant to 42 U.S.C. § 1988;

(2) For such other and further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38(b).

Dated: May 11, 2007	Respectfully submitted, /s/ David M. Monde Wyner & Tiffany Marcy J.K. Tiffany (SBN 78421) *(Pro Hac Vice Application Pending)* Steven Wyner (SBN 77295) *(Pro Hac Vice Application Pending)* 970 W. 190th Street, Suite 400 Torrance, California 90502 Phone: (310) 792-8999 Fax: (310) 792-8988
	David M. Monde Ga. Bar No. 515710 JONES DAY 1420 Peachtree Street, N.E. Suite 800 Atlanta, GA 30309-3053 Telephone: (404) 521-3939 Facsimile: (404) 581-8330 Attorneys for Plaintiff Jarron Draper

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing, Plaintiff's First Amended Complaint, was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to the following counsel of record:

Marcia Fishman
ATLANTA INDEPENDENT SCHOOL SYSTEM
130 Trinity Avenue, 8th Floor
Atlanta, GA 30303

Audrey E. Moog
HOGAN & HARTSON
555 Thirteenth Street, NW
Washington, DC 20004

This 11th day of May, 2007.

/s/ David M. Monde
An Attorney for Plaintiff