IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

CONNOR SCOTT,
and his parents,

JASON SCOTT, and
MARQUETTE TYNER ,

Plaintiffs,

v.

No. _____

A JURY IS DEMANDED

WILLIAMSON COUNTY
BOARD OF EDUCATION; and

WILLIE DICKERSON.

Defendants.

VERIFIED COMPLAINT

COME NOW, THE PLAINTIFFS, by and through counsel, and file this Verified Complaint. They respectfully show:

I. PARTIES, JURISDICTION AND VENUE

1. Connor Scott (referred to as "C.S.") is a senior high school student who was denied reentry to the Franklin Public High School. He resides in Williamson County and is a citizen of the United States.

2. Jason Scott ("J.S.") and Marquette Tyner ("M.T.") are the parents of C.S. They reside in Williamson County, Tennessee.

3. Willie Dickerson is the principal of the Franklin High School in Williamson County, Tennessee and the person who has denied C.S. reentry to regular public high school for his diploma due to a concern of how that would hurt Franklin High's "statistics."

4. The Williamson County Board of Education is a governmental subdivision of the State of Tennessee, duly authorized to administer public schools within Williamson County, including Franklin High School. It receives federal financial assistance and is a public entity as defined in Title II of the Americans with Disabilities Act, and is obligated under Federal and Tennessee law to comply with special education laws, which includes identifying students eligible for special education, providing notices of procedural safeguards, and providing them with a free and appropriate public education.

5. This action is a Complaint under Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 et. seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1415(e)(2) and its state counterpart, Tenn Comp. R. & Reg § 0520-01-09. This court has jurisdiction under 28 U.S.C. 1343(a)(3) and (4), because this is an action to redress the deprivation under Section 504, the ADA, and the IDEA. Because this action arises under these laws, this Court also has jurisdiction under 28 U.S.C. 1331.

6. Venue is proper in this Middle District of Tennessee under 28 U.S.C. 1391(b) because some or all of the Defendants reside in this jurisdictional district, the Plaintiffs reside in this jurisdictional district, and the cause of action arose in Williamson County which is within this Court's district.

II. SUMMARY

7. C.S. has epilepsy, a chronic neurological condition characterized by recurrent seizures. Control of these seizures, even with medication, is unpredictable. Moreover, C.S.'s medication itself sometimes causes side effects of drowsiness, irritation, difficulty concentrating, loss of focus, and memory problems. His seizures are not "completely controlled."

8. In 2011, C.S. experienced great difficulties with seizures. Mini-seizures, lasting only seconds at a time, occurred in great numbers: sometimes over 200 per day. Medication management was unpredictable at best.

9. As a result, in September of 2011, C.S. was placed on homebound instruction by WCS (Franklin High School) where he received only limited instruction—about three days per week for a handful of hours. Despite this, WCS did not place C.S. on an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act. Instead, it just maintained him on what it termed a Section 504 plan.

10. Homebound services failed miserably for C.S. He was not adequately served and he fell behind. In fact, the situation was so severe that WCS advised C.S. and his parents that private school ("Keystone Online") was necessary for C.S.'s

education. WCS did not mention the IDEA, an IEP, or funding that can occur through WCS, or issue any procedural safeguards to C.S. or his parents.

11. Unaware of any procedural safeguards under IDEA, C.S. parent's accepted this advice and enrolled C.S. in Keystone for 2011 and 2012. The parents, not the school with IDEA funding, had to pay for the private placement. They bore that expense.

12. While in Keystone, WCS provided no services to C.S. at all, as if he were not WCS's responsibility because he was in private school. However, the plan was for Keystone to be a stop-gap measure, at the urging of WCS, and with the intention for C.S. to return to Franklin High.

13. In the fall of 2013, C.S. did decide to return to Franklin High School at WCS. By this time, he still had not been given an IEP, and he had never (continuing to this day) been given his procedural safeguards under the IDEA.

14. In October of 2013, despite falling behind, WCS held a meeting to update his situation. In this meeting, attended by school officials, by C.S., and his parents, WCS used criteria under the IDEA, not 504, and found that C.S. had a "chronic or acute health problem," epilepsy, which "adversely affected his educational performance in the classroom or learning environment." 34 C.F.R. §300.8(c)(9). WCS's team, C.S. and his parents agreed he was "affected in the classroom or learning environment."

15. Although WCS's team was willing to allow C.S. to re-enter school for his senior year, WCS, through its principal, Defendant Dickerson, and despite the

findings of WCS's team, barred C.S. from re-entering the regular high school program with his peers because she did not want to hurt Franklin High School's "statistics" of graduating students in 4.5 years or less.

16. At November 7, 2013 due process hearing, WCS argued, successfully, that C.S. had no IEP and, therefore, it could send him to a GED program instead of allowing his return to high school to get a diploma. WCS conceded that it was concerned with statistics and how that would look.

III. ADMINISTRATIVE EXHAUSTION

17. On November 7, 2013, Plaintiffs completed a one-day due process hearing.

18. At this hearing, C.S. and WCS made the following two stipulations:

a. "At no time did WCS offer an IEP to Connor or his parents.

b. "At no time did WCS inform Connor or his parents of their rights under the IDEA." (Ex. 1 to Due Process)

19. Even though C.S. did not have an IEP, and he was never given his rights under the IDEA, the hearing officer placed the burden of proof upon C.S. instead of WCS.

20. In the expedited hearing, WCS did not call any teachers, counselors, school psychologists, or administrators for testifying. WCS's 504 Coordinator, Jill Merritt, did testify in Plaintiffs' case-in-chief, but Merritt was not involved in any decisions made in 2011. Both parties called expert witnesses.

21. On the record, WCS's expert witness, Dr. David Rostetter from West Virginia, claimed "this is Oz, the wizard, the wizard," and threatened potential

career harm to Plaintiff's witness, Dr. Alex Hurder, by writing a critical letter to his employer, Vanderbilt University.[1]

22. The hearing officer made his decision immediately after the November 7, 2013 hearing.

23. The hearing officer ruled that the notice of rights under 504 are "virtually identical to a student's rights under the IEP," even though there are substantial differences.[2]

24. Even though WCS had already determined that C.S.'s epilepsy "adversely affected his educational performance in the classroom or learning environment," the hearing officer determined that C.S. failed to satisfy his burden of proof under the IDEA.

25. The hearing officer mistakenly believed that by merely locating a child under section 504, WCS also satisfied its child find obligation under IDEA even though "child find" under IDEA requires WCS not merely to "locate," but also to "evaluate" and, where proper, implement an "individualized education plan." 20 U.S.C. §1412(a)(3)(A).

---

1. Dr. Hurder teaches public education law at Vanderbilt under the IDEA and Section 504. He is listed in Tennessee's procedural safeguards as a source for parents and children needing assistance. He teaches the clinic at Vanderbilt which assists children with disabilities with their disputes with school systems—going to IEP meetings, etc.

2 The 504 notice is two pages long and principally concerns non-discrimination. The IDEA procedural safeguards are more than forty pages long and include comprehensive obligations.

26. The hearing officer mistaken believed that a two-page generalized notice under 504 satisfied the detailed and comprehensive notice of procedural safeguards under IDEA.

27. The hearing officer mistakenly found that C.S.'s enrollment in a private online high school (Keystone) that would allow him to proceed at his pace was merely a "choice" by the parents when, in fact, WCS advised the parents that Keystone was appropriate because WCS *could not* educate C.S.

28. As for barring C.S.'s reentry to the Franklin High school I 2013, so that he could graduate with a regular diploma, the hearing officer found that WCS's reasoning about statistics "crappy," but did not violate any laws. In his final Order, the hearing officer determined: "This policy would not be enforceable if a student receives special education services under the IDEA. It would be enforceable as to a student who receives 504 services such as Petitioner."

29. For all these reasons, Plaintiffs are parties aggrieved by the decision and seek review and reversal consistent with applicable federal laws as set forth in detail below.

IV. FACTS

30. C.S. has the impairment of epilepsy which causes seizure activity. During seizure activity, C.S. loses focus, concentration, and has trouble learning. He also experienced crippling anxiety.

31. WCS has stipulated, and it is the fact, that it has never issued the procedural safeguards informing C.S. or his parents of their rights under the Individuals with Disabilities Education Act (IDEA) to C.S. or his parents. (Ex. 1 to Due Process, para. 9).

A. 2011-2012: Homeschool and Then Private School

32. Relevant to this case, C.S. was served through a basic 504 plan during his 8th, 9th, and 10th grade years of public school in Williamson County, not an Individualized Education Program (IEP) under the IDEA.[3]

33. Beginning C.S.'s junior year, 2011, C.S.'s seizure activity progressively worsened. WCS should have initiated "child find" procedures under IDEA, given C.S. and his parents notice of their procedural safeguards, and evaluated C.S. for special education services through an IEP team, and provided him special education services. [4]

34. To be evaluated under the IDEA, WCS must have "reasonably *suspected*" that C.S. had a disability, as defined in 34 C.F.R. §300.8, and was in need of special education. 34 C.F.R. §300.111(c).[5]

---

[3] The basic 504 accommodations included preferential seating in the classroom, opportunity to test in smaller settings or take tests orally, and extended time on tests.

[4] The United States Supreme Court, in the *Rowley* case, stated "adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Rowley*, 458 U.S. at 206; *see also Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 59-60, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). "The core of the statute . . . is the cooperative process that it establishes between parents and schools." *Schaffer*, 546 U.S. at 53.

2. Tennessee, through its Special Education Manual produced by the Tennessee Department of Education, educates schools and teachers about "child find" and the referral process for evaluation of a student as eligible for special education under the IDEA. The Manual states: "Typically, referrals are made by teachers who recognize that a child is having difficulty and may need special services." (Tennessee Special Education Manual, p. 10). Once an IEP team is assembled, it must consider "the strengths of the child," "the concerns of the parents for enhancing the education of their child," "the results of the initial evaluation or most

35. By 2011, C.S.'s junior year, WCS disregarded clear signs that C.S. should be *evaluated* with appropriate team members under 34 C.F.R. §300.8's "other health impairment" criteria for epilepsy and C.S. and his parents should have been given notice of the procedural safeguards under IDEA such that C.S could obtain the necessary services.

36. First, WCS already knew and documented, in its early 504 evaluations, that C.S. was substantially limited in the major life activity of "learning" due to his impairment of epilepsy (which is one of the defined "other health impairments" under 34 C.F.R. §300.8).

37. Second, on September 30, 2011, Jill Casada, Defendant's Health Services Coordinator, notified Principal Willie Dickerson that C.S. would be educated through homebound services and to make this known to "his IEP team members and any other staff member who will need to know this information for [C.S.]."

38. Third, WCS approved the very restrictive "homebound services" for C.S. for September 29, 2011 through October 14, 2011 because he was unable to learn in the classroom. This homebound provided only about three days of teacher-instruction per week, for a handful of hours per day, no tutoring, no aide, no counseling, and no other assistance. Moreover, the homebound services teacher, Thomas, was not always available.

39. Fourth, once C.S. was in homebound, WCS's homebound teacher (Patricia "Trish" Thomas) indicated she had "seen very few students on homebound who were

---

recent evaluation of the child," and "the academic, developmental, and functional needs of the child." 20 U.S.C. § 1414(d)(3)(A).

as sick as [C.S.] was." It was so bad that Thomas would describe it as follows: "[I]t was impossible for him to accomplish anything. **He was unable to focus, retain and recall information and concentrate on his academics, although he wanted to.**"

40. Fifth, On November 3, 2011, C.S.'s regular classroom teacher wrote, "[C.S.] has been on homebound for the majority of the semester," in response to a question of whether "there are any known medical issues that may be impacting learning?"

41. Sixth, on November 7, 2011, WCS once again gave C.S.'s parents the limited two-page "Section 504 Parent Rights," not the highly detailed and specific procedural safeguards under the IDEA which are more than forty pages in length.

42. Seventh, WCS's school counselor, Leticia Varela, wrote a memorandum on November 7, 2011, in the context of 504, which stated: "He became anxious every time he stepped into the building and **was not able to attend school since then.**"

43. Eighth, WCS's school counselor, Varela, considered a "shortened schedule" for C.S. so that he would attend only first and second period (English and Physics) until Thanksgiving which was put into a 504 Plan only.

44. Ninth, on November 11, 2011, WCS's Health Services Coordinator, Jill Casada, documented that C.S. would need more homebound from November 4, 2011 through November 9, 2011. Casada then asked school personnel, via an email, to "help determine that all accommodations that may be needed for him are developed, revised, or are in place for his needs in the school setting."

45. Tenth, on November 15, 2011, C.S.'s parents authorized WCS to obtain his medical records by executing a "Release of Information." These medical records documented, *inter alia*:

a. That, by June of 2011, C.S.'s neurologist conducted an EEG and determined that C.S. was suffering frequent high amplitude spikes of four seconds or less. His neurologist attributed this to juvenile myoclonic epilepsy which, typically, does not remit.

b. That, by September 29, 2011, C.S.'s neurologist documented that the parents had observed "brief episodes of staring" and "seizures increased when school started."

c. That on November 14, 2011, C.S. saw his neurologist who documented the status of his seizure disorder, noted the medications being taking, and stated that C.S. "**continues to have brief episodes of staring on a daily basis**" and "brief body jerks each morning." At this time, C.S. was also noted to be seeing a psychiatrist, trying anti-anxiety medication, and sleeping well only 3 to 5 times each week.

d. That on December 1, 2011, C.S. was noted to have increased seizures "whenever he physically slows down" and more when he is tired. He is seeing a psychiatrist and taking sleep medication. His parents still see seizures daily. He cannot drive.

46. Eleventh, on November 15, 2011, when C.S. attempted to return to school at Franklin High School, WCS's guidance counselor, Ms. Varela, documented: **"He was here at school, but could not get himself to go to class. Ms. Patton and I met with him for a while. I walked with him throughout the building, but he could not get himself to go to class. He was extremely anxious."**

47. Twelfth, on November 15, 2011, Jill Casada and WCS's Assistant Principal, Christian Niemeyer, together planned to extend the very restrictive homebound services through the end of the semester. Such homebound placement for children with disabilities contemplates an IEP in accordance with the IDEA. State of Tennessee special Education and Programs, at Tenn Comp. R. & Reg, § 0520-01-090520-01-09.07.

48. Thirteenth, the homebound teacher, Trish Thomas, disagreed with continuing homebound services. She believed that private school ("homeschool," not homebound) was "his **only option** under the circumstances."

49. Fourteenth, without being given their procedural safeguards, or an evaluation for services under IDEA, C.S.'s parents asked Thomas, the homebound teacher, and WCS's counselor, Leticia Varela, what exactly they were supposed to do.

50. Fifteenth, in one last effort before withdrawing C.S. from the public school, C.S.'s aunt, along with his mother, met with WCS's counselor, Ms. Varela. C.S.'s aunt stated that C.S. needed to be under an "IEP" and asked why one had not been

provided to him. Ms. Varela responded that WCS had already determined that C.S. did not qualify.

51. Despite the clear signs to at least *evaluate* C.S. under the criteria set forth under the IDEA for the "other health impairment" of epilepsy and the need for special education, not a single person at WCS—Thomas, Varela, Casada, Neimeyer, or Dickerson—initiated an evaluation for special education or even gave C.S. or his parents notice of the IDEA's procedural safeguards.

52. Overlapping and extending beyond Section 504, the IDEA provides for "supplementary aids and services," 34 C.F.R. 300.42 which includes assistance inside and outside the classroom. Additionally, if funding is required, unlike 504, such funding is available through IDEA. WCS was obligated to make known the procedural safeguards under the IDEA to C.S. and his parents.

53. Services to address C.S.'s epilepsy and his loss of focus, concentration, and thinking could include, for example, a smaller classroom, an aide, education at different times, separate or additional instruction, supplementary aides, and/or options even less restrictive than just keeping him on "homebound."

54. Instead of evaluating C.S. for special education under IDEA, Thomas and Varela, in consultation with Sherry Fewell, who also works for WCS, told C.S.'s parents to remove C.S. from public school altogether and place him in a private online high school program known as "Keystone."

55. C.S. and his parents had never even heard of Keystone. Keystone is an online private school that allows education to be directed in conformity with an

individual's own pace, ability, or schedule and it touts "flexible scheduling," which was more compatible with C.S's episodic disability. WCS recommended Keystone, in particular, because C.S.'s credits could transfer back to Franklin High school upon reentry.

56. Thomas, the homebound teacher, believed the regular classroom was not an option for C.S. She stated in an email: "Everyone involved felt that homeschool was his only option to try to pass his classes. The hope was that he would get better and be able to work at his own pace. I strongly felt that homeschool was his only option under the circumstances."

57. Faced with the school's inaction under IDEA, the failure of homebound, C.S.'s ongoing medical condition, and C.S.'s continuing educational needs, C.S. and his parents removed C.S. from public school and into private school. As Varela and Thomas directed, C.S.'s parents placed him in at Keystone. Accordingly, WCS is liable for the costs of that placement -- $10,514 paid by the parents and continuing.

58. Because M.T., who is not a teacher, was not qualified to assist C.S. with junior-level subjects like Physics and Algebra II, C.S.'s parents spent even more money hiring tutors.

59. On December 13, 2011, WCS documented the reason for C.S.'s withdrawal as being due to "Medical Condition."

60. While at Keystone, WCS did not provide C.S. any services under 504 and/or IDEA and did not even check on his progress at all. Thus, he continued to fall

behind educationally, to the point that he now requires compensatory education to catch up.

Denial of Return to Public School at Franklin High

61. As C.S.'s condition improved, in early 2013, C.S.'s parents sought to get him back in the public school at Franklin High.

62. On April 9, 2013, Ms. Varela, the Guidance Counselor, advised J.S. that Defendant Dickerson, the principal, agreed to allow C.S. to return in the fall of 2013.

63. On or about September 9, 2013, after a brief and unsuccessful attempt at Christ Presbyterian school during August, C.S. asked to be enrolled for his senior year at Franklin High School.

64. Even though WCS had recommended the private online school known as Keystone in the first place, WCS later declined C.S.'s re-enrollment.

65. J.S., his father, telephoned Mrs. Dickerson, the principal. Mrs. Dickerson explained that she did not want to re-enroll C.S. because he would negatively affect Franklin High's school statistics of graduating students in 4.5 years or less. That was because, due to his disability which occasioned departing private school, it would take C.S. greater than 4.5 years to graduate.

66. J.S. telephoned Assistant Superintendent, Donna Wright. Mrs. Wright indicated that the 4.5 rule was an unwritten but flexible rule. However, she said she would follow the decision of the principal, in this case, Mrs. Dickerson.

67. Therefore, J.S. requested an in-person meeting with Mrs. Dickerson and Mrs. Wright. The three met on or about September 12, 2013.

68. J.S. reminded Mrs. Dickerson that C.S. was not able to be schooled in the regular classroom, was not able to be schooled in homebound services, and so C.S. was removed to private online school at the suggestion of WCS for his junior year.

69. Mrs. Dickerson stated that if Connor were allowed to return to school for his senior year in 2013, he would exceed the 4.5 years to graduate because he first enrolled in high school in 2009. Mrs. Dickerson said that his enrollment would reflect negatively on the school's graduation rate and that is something she would never do.

70. That same day, on or about September 12, 2013, Bill Wilson, Assistant General Counsel for Special Education for the State of Tennessee, advised: "[C.S.] has the right to enroll in the [local education agency] where he resides. The 4.5 years is the time within which a student must complete high school without adversely affecting the school's graduation rate. However, it has nothing to do with the right of an individual to pursue a high school education."

71. C.S. was not too old to return to school under any state law. In fact, upon information and belief, WCS, Franklin High School, and Defendant Dickerson have admitted an able-bodied homeschooled student who excelled at basketball even though he would be over the age of 18.

72. Additionally, the "statistical barrier" of persons graduating in 4.5 years is not required, is discretionary, and is certainly subject to modification.

73. On September 16, 2013, C.S. filed for due process under Section 504 because he and his parents had not received his comprehensive procedural safeguards under IDEA.

74. On or about October 4, 2013, WCS gave C.S. the very same 504 notification.

75. However, in October of 2013, WCS held a meeting with a team of school officials and the parents. It had not gathered medical records. It had not monitored C.S. while he was at Keystone—even though WCS had recommended that placement. Instead, it had treated him as if he had "gone private," and had no obligations to him under IDEA or 504.

76. In this meeting C.S. explained that he has over 250 seizures per day, lasting but seconds at a time

77. In this meeting, the team recognized and agreed that C.S.'s "learning" was substantially impacted because he was not able to focus.

78. In this meeting, the team proceeded to apply the criteria under the IDEA, not section 504, as to whether C.S. was eligible for special education. Specifically, WCS team determined that, under 34 C.F.R. §300.8(c)(9), C.S. had a "chronic or acute health problem," his epilepsy, which "adversely affected his educational performance in the classroom or learning environment." The team agreed he was affected in the classroom or learning environment. It also found that his disability affected his ability to maintain concentration, to focus, and to read.

79. The team proceeded to address accommodations or supplementary services.

80. Despite his eligibility to return to school under IDEA and 504, WCS, through Defendant Dickerson, acting under color of state law, barred him re-entry to regular education with his peers. Instead, WCS said C.S. could only obtain a GED degree. This would exclude the teachers who know C.S., exclude him from his peers, exclude him from socialization in the classroom and halls, and exclude him from walking at graduation to obtain a high school diploma.

81. WCS, acting through Dickerson, said that she was barring C.S. from obtaining a regular degree and returning to school because she did not want to "hurt statistics."

82. WCS's actions have cost C.S.'s parents significant out-of-pocket expenses including private tuition and damages. It has caused C.S. tremendous emotional distress, humiliation, and embarrassment.

V. VIOLATIONS OF THE IDEA

83. Plaintiffs reallege and incorporate by reference the foregoing facts.

84. C.S. has, and WCS agrees he has, an "other health impairment, epilepsy, under 34 C.F.R. §300.9(c)(i), which causes him "limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment."

85. C.S. required appropriate identification, referral and evaluation ("child find") under the IDEA which was never given.

86. C.S. has, and WCS agrees he has, a condition which "adversely affected his educational performance in the classroom or learning environment." 34 C.F.R.

§300.8(c)(9). WCS's team, C.S. and his parents agreed he was "affected in the classroom or learning environment."

87. C.S. needs special education ("specially designed instruction," per 34 C.F.R. 300.39) and related services either inside or outside the classroom including "supplemental aids and services." 34 C.F.R. 300.42 ("supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate"); see also, 34 C.F.R. 34(a).

88. C.S. was entitled to, and never received, notice of his procedural safeguards under IDEA.

89. C.S. was denied his procedural safeguards and a free appropriate public education when placed in homebound (2011), when WCS instructed he go to private school (Keystone in 2011-2012), and when WCS refused to allow him to return to public school (2012-2013).

90. Accordingly, C.S. seeks reversal of the hearing officer's decision concerning child find compliance, and an order that C.S. not be excluded from WCS regular education program; that he receive his procedural safeguards; that an IEP team be constructed to properly evaluate C.S. for his current needs for special education and related services (with an appropriate IEP); injunctive relief to restrain Defendants from excluding C.S. from enrolling at Franklin High and obtaining his diploma; and that he be provided the appropriate transition services ("transition plan") for

adulthood; all out-of-pocket expenses and monetary losses; for appropriate compensatory education (to catch up); and for his attorneys fees and costs of due process and this suit.

VI. VIOLATIONS OF TITLE II OF THE ADA

91. Plaintiffs reallege and incorporate by reference the foregoing facts.

92. Title II of the ADA covers programs, activities, and services of public entities.

93. WCS is a public entity because it is a state or local government or a department or instrumentality of a State or local government.

94. Title II of the ADA prohibits discrimination against any "qualified individual with a disability."

95. CS is an individual with a disability because he has an impairment, epilepsy, which substantially limits one or more major life activities. In C.S.'s case, the major life activity stipulated by Defendant is "learning," though CS is also limited in neurological functions, thinking, concentration, brain function, and other mental processes.

96. Under the amendments to the ADA, an impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Thus, CS's epilepsy, in its active phase, which includes sporadic and unpredictable seizure activity which limits focus, concentration, thinking, and learning, is disabling to CS.

97. C.S. is a "qualified" individual because, "with reasonable modifications to a public entity's rules, policies, or practices," he can participate in Defendant's programs, activities, or services.

98. Defendant has refused to modify or extend its "4.5 year graduation rule" even though such rule is not required by state law, is a matter of discretion, and has been exercised in favor of persons without a disability at the very same high school C.S. sought to attend.

99. With such modification, C.S. can return to Franklin High and participate in the programs of public education, extracurricular activities, sports, clubs, receipt of a high school diploma from Franklin High, accompaniment of his peers at school, attending and walking at graduation with his peers, being part of the "class of 2013," being part of class reunions, etc. But by maintaining the rule, even if facially neutral, it disparately impacts C.S.

100. A public entity, like WCS, is required to "make *reasonable modifications* in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." *Id.* § 35.130(b)(7) (emphasis added).

101. It does not fundamentally alter the nature of the service, program, or activity because the 4.5 rule is not a state law, it has not been a barrier to persons without disabilities, and, in any event, perceived concerns about "statistics" are no fundamental alteration.

102. Plaintiffs seek injunctive relief to restrain Defendants from excluding C.S. from enrolling at Franklin High and obtaining his diploma.

103. WCS and Dickerson acted with deliberate indifference or with intentional discrimination toward C.S.'s rights under the ADA.

104. Plaintiffs seek monetary damages against WCS and Dickerson to include the emotional distress, humiliation, embarrassment suffered by C.S., and his parents, due to the Defendants' deliberate actions and inactions. They seek attorneys fees for due process and this suit.

VII. VIOLATIONS OF 504

105. WCS receives federal funding assistance and is therefore also covered by 504.

106. CS is an individual with a disability because he has an impairment, epilepsy and ADHD, which substantially limit one or more major life activities. In C.S.'s case, the major life activity stipulated by Defendant is "learning," though CS is also limited in neurological functions, thinking, concentration, brain function, and other mental processes.

107. Under the amendments to the ADA, applicable to section 504, an impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Thus, CS's epilepsy, in its active phase, is disabling to C.S.

108. C.S. is a "qualified" individual because, "with reasonable modifications to a public entity's rules, policies, or practices," he can participate in Defendant's programs, activities, or services.

109. WCS denied C.S. a free appropriate public education at WCS, first in 2011, by (requiring him to attend, at his own expense, a private school known as Keystone); second, it denied him a free appropriate public education while he remained in private school in 2011-2012; and third, it denied him a free appropriate education once he attempted to *return to public school* in 2012-2013.

110. Under a regulatory provision implementing Title II of the ADA, and similar to "reasonable accommodations," [a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7) (2001)(emphasis added).

111. Moreover, public schools must design programs for students with disabilities to meet their "individual educational needs . . . as adequately as the needs of non[-disabled] persons are met." 34 C.F.R. § 104.33(b)(1)(i).

112. Modifying the 4.5 rule, due to C.S.'s disability, and allowing him to complete high school, is necessary to provide him equal access to a high school diploma from Franklin High, accompaniment of his peers at school, attending and walking at graduation with his peers, being part of the "class of 2013," being part of class

reunions, and enjoying the benefit of a high school diploma from Franklin High School (and not a lesser degree through a GED or adult education program). .

113. Allowing C.S. re-entry to Franklin High does not fundamentally alter the nature of the service, program, or activity of high school enrollment. Indeed, Defendant has done this for the non-disabled.

114. Plaintiffs allege Defendants violated 504 by denying C.S. meaningful access to the benefits of a public education by: (1) informing C.S. that he could not be educated in the public school system due to his disability and that he must withdraw and seek private online school; (2) by denying him any services once withdrawn and undergoing that private online school; and (3) barring him reentry into public school with specific services or reasonable modifications. Accordingly, Plaintiffs seek injunctive relief to restrain Defendants from excluding C.S. from enrolling at Franklin High and obtaining his diploma.

115. WCS and Dickerson acted with deliberate indifference, bad faith, gross misjudgment and/or with intentional discrimination to C.S.'s rights under 504.

116. Plaintiffs' seek monetary damages from WCS and Dickerson to include out-of-pocket expenses for the private tuition (recommended by WCS), damages suffered, out-of-pocket expenses, and damages for the emotional distress, humiliation, embarrassment suffered by C.S., and his parents, due to the Defendants' deliberate actions and inactions. They seek attorneys fees for due process and this suit.

117. Plaintiffs demand a jury.

Respectfully Submitted,

GILBERT RUSSELL McWHERTER, PLC

/s Justin S. Gilbert
Justin S. Gilbert (TN Bar No. 017079)
5409 Maryland Way, Suite 150
Brentwood, Tennessee 37027
Telephone: 615.554.1144 (tel)
Facsimile: 731-664-1540 (fax)
jgilbert@gilbertfirm.com

ATTORNEY FOR PLAINTIFFS

VERIFICATION

Connor Scott, and his parents, Jason Scott and Marquette Tyner, being duly sworn, attest: We have read the above Verified Complaint and the factual statements in the Plaintiffs' Motion for Permanent Injunction and Memorandum of Law in Support. The Complaint and statements therein are true and correct.

Connor Scott

Connor Scott

Jason Scott

Jason Scott

Marquette Tyner

Marquette Tyner

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

Sworn to before me and subscribed in my presence this 13th day of December, 2013.

NOTARY PUBLIC

My Commission Expires: 11/28/2016

STEPHANIE WEAVER
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF WILLIAMSON

MY COMMISSION EXPIRES:
NOVEMBER 28, 2016