

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

M.H., a minor, by and through  
CHRISTOPHER HARRIS and DEBBIE  
HILL, his parents; Q.G., a minor, by and  
through COKETHIA GOODMAN, his  
mother; J.R., a minor, by and through  
ANTOINETTE RUFF, her mother; R.W., a  
minor, by and through ALGERNON  
WEEMS, his legal guardian; T.P.W., a minor,  
by and through PATTI WELCH, his mother;  
R.J., a minor, by and through TIFFANY  
JOHNSON, his mother; B.P., a minor, by and  
through ALKINI PATTERSON, her mother;  
and all others similarly situated,

Plaintiffs,

v.

ATLANTA INDEPENDENT SCHOOL  
SYSTEM; and COMMUNITY EDUCATION  
PARTNERS, INC.,

Defendants.

**CIVIL ACTION  
FILE NO.  
1:08-cv-1435-BBM**

**VERIFIED SECOND AMENDED COMPLAINT — CLASS ACTION**

The Plaintiffs and each of them, for their claims against Defendants, and each of them, state and allege as follows:

## NATURE OF THIS ACTION

1. The Atlanta Independent School System (“AISS”) has retained Community Education Partners (“CEP”) to run an alternative school (“the AISS-CEP School” or “the School”) with public funds. It is the policy and practice of Defendants (a) to deprive children of their right to an adequate public education by removing them from regular public school and transferring them — with inadequate or no notice or opportunity to be heard — to the AISS-CEP School, where they are provided with fundamentally inferior academics in an environment so violent and intimidating that learning is all but impossible; (b) to subject children at the School to daily invasive, humiliating and dehumanizing searches that serve no justifiable purpose; and (c) to subject them to discipline without prior notice and opportunity to be heard.

2. This is a civil rights class action brought pursuant to the Fourth and Fourteenth Amendments to the United States Constitution on behalf of all students currently enrolled or who will be enrolled in the AISS-CEP School. Plaintiffs seek a declaration that: (a) Referral to the AISS-CEP School is tantamount to expulsion from the public school system; (b) Defendants’ policy and practice of referring Plaintiffs to the School without first affording them notice and opportunity to be

heard violates their rights under the Due Process Clause of the Fourteenth Amendment; (c) the searches to which Defendants routinely subject Plaintiffs at the School are an invasion of privacy that violates their right to be free from unreasonable searches under the Fourth Amendment; and (d) Defendants' policy and practice of subjecting Plaintiffs to discipline without prior notice and opportunity to be heard violates their right to due process under the Fourteenth Amendment.

3. Plaintiffs also seek specific injunctive relief against Defendants AISS and CEP to prevent future violations of Plaintiffs' constitutional rights enumerated herein.

### **INTRODUCTION**

4. Georgia law gives every child in the state the right to an adequate public education. All children in the state therefore have a property right to an adequate public education. Georgia law also requires that AISS provide alternative educational services to all children who require them. AISS has made the AISS-CEP School the only disciplinary alternative school in that public school system.

5. AISS delegated to CEP the essential government function of providing an adequate public education to the children at the School. Defendants

operate the School jointly and are both accountable to Plaintiffs as state actors. CEP would not have the authority to refer, discipline or search students in the Atlanta public school system but for its contract with AISS.

6. Being referred to the AISS-CEP School is tantamount to expulsion from the public school system. Violence is rampant at the School; there were 69 reported instances of battery in 2007-2008, which do not include the multiple instances of staff members physically assaulting the students in their care. Students are subjected to invasive and unreasonable daily searches, which are ineffective at making the School safe, but contribute to the atmosphere of violence and intimidation. The School is far too large for its intended purpose and yet CEP has an economic incentive to maximize the number of students enrolled. Student-to-teacher ratios are unreasonably high, while teacher qualifications are too low. There is no library at the School. Ninety-three percent of students did not meet competency in mathematics in 2007-2008 and 95% of students did not meet competency in science. Teachers provide playing cards and change cash for students to gamble in class, while students' urgent needs and parental requests for services such as anger management and counseling are ignored. Children referred to the School are deprived of their property right to an adequate public education.

7. When Defendants refer children to the School without affording them prior notice and opportunity to be heard, Defendants violate the right of children so referred to due process under the Fourteenth Amendment.

8. Defendants further violate the Fourteenth Amendment rights of students at the School by subjecting them to discipline without the prior notice and opportunity to be heard to which they are entitled. Defendants routinely mete out suspensions, expulsions, and *de facto* suspensions in which students are not permitted to enroll at the School, with no notice or opportunity to be heard.

9. Defendants violate the Fourth Amendment rights of every student at the AISS-CEP School every day, by subjecting each of them to invasive personal searches in the absence of individualized suspicion. Defendants' articulated purpose for conducting such searches is not merely to keep weapons and drugs out of the school, but also to enforce the School's prohibition on items such as money (in excess of five dollars), jewelry, combs, lip balm, house keys, and even sanitary napkins and other personal hygiene products. The humiliating searches fail to create a safe environment at the School, but contribute to the pervasive atmosphere of intimidation and violence at the School that makes learning all but impossible.

10. Defendants' policy and practice of not providing appropriate training,

supervision or monitoring for their employees has resulted in a chaotic and unsafe environment in which many students — such as Named Plaintiffs — have suffered from Fourth and Fourteenth Amendment violations, and all students are at imminent risk of suffering additional such violations.

11. Thousands of children in the Atlanta public school system are at imminent risk of being deprived of an adequate education by being summarily transferred from their regular public school into this unconstitutional and unconscionable program.

12. The relief Plaintiffs seek is supported by satisfactory proofs, including the public records, facts and other documentation referenced throughout the Complaint.

### **PARTIES**

13. Plaintiff M.H. is 15 years old and enrolled in the 7th grade at the AISS-CEP School.

a. M.H. was a good student in a regular Atlanta public school before he was referred to the AISS-CEP School in 2006. Although he was given notice of a tribunal hearing for the referral, neither he nor his parents were given any opportunity to speak on his behalf at the hearing itself.

b. M.H. was released from the School in 2007, but Defendants subsequently referred him a second time without due process. When his father inquired about the referral at M.H.'s regular school, he was informed by the school principal that the decision to refer M.H. had already been made.

c. Defendants have since forced M.H. to repeat the sixth grade twice. On at least two occasions, M.H. has been the victim of violence at the School at the hands of teachers employed by the School who punched him in the chest. Because of the chaotic and dangerous environment and lack of opportunity to obtain an adequate education at the School, M.H.'s referral to the School has been tantamount to expulsion from the public school system.

d. M.H. has also been deprived of his right to notice and opportunity to be heard upon being disciplined by the School. In November 2007, Defendants imposed on him a three day out-of-school suspension, for allegedly taking the Assistant Principal's keys, without affording him any opportunity to be heard.

e. Later that month, Defendants imposed on M.H. a nine day out-of-school suspension for alleged bullying, again without giving him any

opportunity to be heard. When he returned to the School with his parents after the nine days, he was denied re-admission and told to return the following day. His parents attempted to schedule a meeting with School officials, who rescheduled the meeting several times. Defendants functionally imposed a ten day out-of-school suspension on M.H. without the constitutionally required formal notice and opportunity to be heard for a suspension of that length.

f. In August 2008, Defendants imposed on M.H. a semester-long bus suspension but provided his parents with no notice of the suspension until days after it had been imposed.

g. After returning from a three day suspension in December 2008, M.H. walked out of a meeting with his mother and a School Assistant Principal. The Assistant Principal immediately and summarily suspended him for six additional days without any opportunity to be heard, much less the informal hearing required for a suspension of that length.

h. As a result of Defendants' policies and practices, M.H. is in constant imminent danger of being disciplined again with no notice or opportunity to be heard.



i. M.H. has been and continues to be subjected to the School's unreasonable daily search process. School employees regularly compel him — in the absence of individualized suspicion — to lift his shirt above his waistband, grab his pants pockets, rub the bottoms of his feet, and shake his pants. Each day he attends the School, he is in continued imminent danger of being subjected to additional such unreasonable searches. Despite those searches, he is also at constant imminent risk of violence inflicted by other students and School personnel.

j. M.H. has standing to appear in this action because, as a result of Defendants' policies and practices, he was referred to the School without meaningful notice and opportunity to be heard; he has been and continues to be at imminent risk of being disciplined without notice or opportunity to be heard; and he has been and continues to be at imminent risk of being subjected to unreasonable daily searches. M.H. appears in this action by and through his parents, Christopher Harris and Debbie Hill.

14. Plaintiff Q.G. was a 17 year old who was enrolled in the 8th grade at the AISS-CEP School at the time of filing of the Original Complaint in this action.

a. Q.G. was referred to the AISS-CEP School in April 2005. He

was referred at least once more over a period of three years and was ultimately pushed out of the School by its chaotic, dangerous and otherwise inadequate educational environment. He is currently in the Coweta County detention facility. Although he received good grades in his regular Atlanta public school, Defendants forced him to repeat the 8th grade three times. His referral to the School was tantamount to expulsion from the public school system.

b. Q.G. received no notice from Defendants about the tribunal hearing that resulted in his initial referral to the School; he found out about the hearing from the Assistant Principal at his regular school. In January 2007, Q.G. was transferred to the Crim Open Campus School. In September 2007, Defendants referred him again to the AISS-CEP School for an alleged “student contract” violation, but gave him no opportunity to be heard.

c. While he was at the School, Defendants subjected Q.G. to unreasonable daily searches. Defendants regularly required Q.G. — in the absence of individualized suspicion — to put his hands up on a wall, with his arms and legs spread, while he was frisked by School personnel. Every day he was there, he was in constant imminent danger of additional such

daily searches. Despite those searches, he remained in constant imminent danger of violence at the hands of other students and School personnel.

d. Q.G. finally stopped attending the School in September 2007 because of its chaotic and dangerous environment and lack of opportunity to obtain an adequate education. If conditions at the School were fixed, he would return.

e. Q.G. has standing to appear in this action because at the time of the filing of the Original Complaint he was enrolled at the AISS-CEP School, had no option to attend any other Atlanta public school, and his claims are capable of repetition but evading review; as a result of Defendants' policies and procedures, he was referred twice to the School without notice or opportunity to be heard; and, while he was at the School, he was subjected by Defendants to daily unreasonable searches and was in constant danger of being subjected to additional such searches. Q.G. appears in this action by and through his mother, Cokethia Goodman.

15. Plaintiff J.R. is a 16 year old who was enrolled in the 8th grade at the AISS-CEP School when the Original Complaint in this action was filed. She is currently enrolled at the Crim Open Campus School.

a. J.R. was first referred to the School on March 28, 2006. After a brief stay in juvenile detention following an argument with her mother, J.R. was informed by her regular school that she was criminally trespassing by coming to school and that she would have to enroll at the AISS-CEP School. She was not afforded any notice or opportunity to be heard prior to her referral.

b. J.R. left the School to give birth and was referred to the School a second time on May 21, 2007, again without any opportunity to be heard. This second time, she was referred to the School for a full year with no explanation or tribunal hearing.

c. As a result of Defendants' policy and practice of referring students to the School without prior notice and opportunity to be heard, J.R. is at constant imminent risk of being referred to the School again without due process. The principal of the Atlanta public school at which J.R. is currently enrolled has told her that she is at imminent risk of being referred back to the AISS-CEP School.

d. In August 2007, J.R. was placed in a classroom at the AISS-CEP School with several girls who had previously physically assaulted her.

Defendants ignored her requests to be moved to a different classroom. Fearful for her safety and unable to defend herself because she was pregnant, J.R. stopped attending the School in September 2007. At the time of the filing of the Original Complaint in this action, she had not completed the term of her referral to the AISS-CEP School and therefore was prohibited by Defendants from attending any other Atlanta public school. Because of the chaotic and dangerous environment and lack of opportunity to obtain an adequate education at the School, her referral was tantamount to expulsion from the public school system.

e. Defendants suspended J.R. for three days without prior notice and opportunity to be heard after she had a disagreement with one of her teachers. When she tried to tell her side of the story to the Assistant Principal in charge of discipline, she was directed to “close [her] mouth” and summarily sent home. J.R. was never told what evidence supported the suspension.

f. Defendants subjected J.R. to unreasonable daily searches, including searches that required her to be frisked underneath her shirt around her bra, in the absence of individualized suspicion. Each day she was there,

she was in constant imminent danger of additional daily searches in violation of the Fourth Amendment. Despite these searches, J.R. was also in constant danger of being subjected to violence inflicted by other students and School personnel.

g. J.R. has standing to appear in this action because at the time of the filing of the Original Complaint she was still enrolled at the AISS-CEP School, would not have had the option to attend any other Atlanta public school, and her claims are capable of repetition but evading review; because she has been and is at continued imminent risk of being referred back to the School without notice or opportunity to be heard; because as a result of Defendants' policies and practices she was disciplined and at continued risk of being disciplined without notice or opportunity to be heard while she attended the School, and subjected to and at continued imminent risk of being subjected to unreasonable daily searches. J.R. appears in this action by and through her mother, Antoinette Ruff.

16. Plaintiff R.W. is 16 years old and enrolled in the 8th grade at the AISS-CEP School.

a. Defendants referred R.W. to the School without any notice or

opportunity to be heard. He was on the football team at his regular school and received average grades. When he moved with his family from Decatur to Atlanta in March 2007, Defendants summarily referred him to the AISS-CEP School along with two of his siblings without prior notice or opportunity to be heard. R.W. had been unable to attend regular school the previous month because of a series of deaths in his family and lack of money for transportation. Defendants did not make any finding that the School would be a more appropriate educational environment for him than a regular school. The lack of due process resulted in R.W.'s erroneous placement in the AISS-CEP School.

b. Although the term of his referral to the School was for ten months, Defendants prevented R.W. from enrolling at the School for three months after his referral, because, Defendants said, the School was full. Defendants thereby imposed a *de facto* three month suspension on R.W. without giving him an opportunity to be heard, much less the formal hearing to which he was entitled. In the winter of 2007, R.W. was arrested and held for a month in juvenile detention. Although the charges were dismissed, Defendants told his grandmother he could not return to the School until after

the holidays. In the beginning of January 2008, they told her he could not enroll until January 22, again because the school was full. On January 22, R.W. was not picked up by the school bus and his grandmother was told he would have to wait until January 29. R.W. missed at least two additional months of school and was wholly deprived of his right to an education during that time. He was not given any opportunity to be heard for this *de facto* two month suspension either.

c. Because of the chaotic and dangerous environment at the School and lack of opportunity to obtain an adequate education, R.W.'s referral was tantamount to expulsion from the public school system.

d. From April 1, 2008, until May 14, 2008, R.W. was suspended multiple times for the same underlying incident without notice and opportunity to be heard. Another student passed an item to R.W., who passed it back. Marijuana fell out of the other student's shirt, and Defendants summarily suspended R.W. from April 2, 2008 until April 14, without the informal hearing to which he was entitled for a suspension of that length. They suspended him again from April 14 until April 22 for the same incident, again with no opportunity to be heard. R.W. did not receive a



formal hearing, as required by law, until May 14, 2008, at which time a third suspension was imposed on him, from May 19 until May 23. Defendants thus suspended R.W. from school for at least 21 days without any formal hearing or process whatsoever.

e. R.W. has been and continues to be subjected to the School's unreasonable daily search process. Each day he attends the School, he is in continued imminent danger of being subjected to invasive searches without individualized suspicion. Despite these searches, R.W. is also in constant danger of being subjected to violence inflicted by other students and School personnel.

f. R.W. has standing to appear in this action because as a result of Defendants' policies and practices, he was referred to the School without an opportunity to be heard; he has been and is at continued risk of being disciplined at the School without notice or opportunity to be heard; and he has been and is at continued risk of being subjected to daily unreasonable searches at the School. R.W. appears in this action by and through his grandmother and legal guardian, Algernon Weems.

17. Plaintiff T.P.W. is 16 years old and was a 10th grader at the AISS-

CEP School at the time of the filing of the Original Complaint in this action. His mother withdrew him from the School in the fall of 2008 because of the chaotic environment and lack of opportunity to obtain an adequate education. He is currently enrolled in a non-traditional private program.

a. Defendants referred T.P.W. to the School without notice or opportunity to be heard. He had been referred to an alternative school in Douglasville for fighting in September 2007, and his mother was induced to waive his right to a hearing by school authorities who told her that her son would be expelled if found guilty. After moving to Atlanta, his mother attempted to enroll T.P.W. in a regular school but was told by Defendants that he was required to attend the AISS-CEP School because he had previously attended an alternative school. He received no notice or opportunity to be heard upon his referral.

b. Because of the chaotic environment and lack of opportunity to obtain an adequate education at the School, his referral was tantamount to expulsion from the public school system.

c. Defendants imposed a three day out-of-school suspension on T.P.W. without notifying his mother until after the suspension had already

been served.

d. At the time of the filing of the Original Complaint and throughout the time he was enrolled at the School, T.P.W. was subjected to unreasonable daily searches conducted by School personnel without individualized suspicion. Each day he was there, he was in constant imminent danger of additional such searches. Despite these searches, T.P.W. remained in constant danger of being subjected to violence inflicted by other students and School personnel.

e. T.P.W. has standing to appear in this action because he was enrolled at the School at the time of the filing of the Original Complaint in this action and his claims are capable of repetition but evading review; because, as a result of Defendants' policies and practices, he was referred to the School without an opportunity to be heard, and while he was enrolled at the School, he was subjected to and at imminent risk of being subjected to daily unreasonable searches. T.P.W. appears in this action by and through his mother, Patti Welch.

18. Plaintiff R.J. is 15 years old and enrolled in the 9th grade at the AISS-CEP School.

a. Defendants referred R.J. to the School on October 9, 2007.

Although R.J. and his mother wanted to present a case against his referral, neither was given an opportunity to speak at his tribunal hearing. R.J.'s mother attempted to appeal the referral by sending AISS a letter and following up with several phone calls. AISS never responded to the letter or calls.

b. Because of the chaotic environment and lack of opportunity to obtain an adequate education at the School, R.J.'s referral was tantamount to expulsion from the public school system.

c. In May 2008, Defendants suspended R.J. for approximately a month without prior notice and opportunity to be heard. A school bus driver accused R.J. and another student of possession of marijuana seeds, even though no marijuana seeds or any other illegal substances were found on his person. Three students who did possess the seeds falsely told school administrators that they belonged to R.J. The Assistant Principal in charge of discipline at the School gave R.J.'s mother the wrong date for the tribunal hearing, which in effect was no notice at all. When R.J.'s mother went to the School to speak with the Assistant Principal about R.J.'s suspension and

what she believed, on the basis of the Assistant Principal's misinformation, to be an upcoming hearing (which had already taken place without R.J. and unbeknownst to her or R.J.), she was asked to sign a document. Without fully understanding what it was, she signed her name and had begun to sign on behalf of R.J. when she realized that it was a waiver of tribunal hearing — for the hearing that had already taken place without them. She attempted to retrieve the document, but the Assistant Principal took it from her hands. R.J.'s mother has since called the AISS tribunal office repeatedly concerning this matter and to request a tribunal, but AISS has not responded.

d. R.J. has been and continues to be subjected to the School's unreasonable daily search process. Defendants have twice forced R.J. to strip down to his underpants and spread his legs, near the general search area in view of other students, to see if he had a cellular phone. (Both times they found no cellular phone.) Defendants subject R.J. to unreasonable daily searches, without individualized suspicion. On cold days, Defendants require R.J. to remove clothing he wears underneath his uniform, such as shorts or extra pants. They require him to do so in the general search area, exposing him to being seen in nothing but his underwear by any school

personnel or students of both genders who happen to be in the area. Each day, School personnel grab his trousers and shake them; stick their fingers inside the waistband of his underwear, against his skin; and require him to lift up his shirt and expose his bare chest. Each day that R.J. is at the School, he is in constant imminent danger of additional unreasonable searches in violation of the Fourth Amendment. Despite these searches, R.J. is also in constant danger of being subjected to violence inflicted by other students and School personnel.

e. R.J. has standing to appear in this action because, as a result of Defendants' policies and practices, he was referred to the School without an opportunity to be heard; he has been and is at continued risk of being disciplined at the School without notice or opportunity to be heard; and he has been and is at continued risk of being subjected to unreasonable searches at the School. R.J. appears in this action by and through his mother, Tiffany Johnson.

19. Plaintiff B.P. is a 14 year old girl who is enrolled in the 8th grade at the AISS-CEP School.

a. B.P. has been absent from school recently because she gave

birth earlier in January 2009. She remains enrolled at the AISS-CEP School and intends to resume attending when her maternal duties permit.

Defendants referred B.P. to the School without notice or opportunity to be heard. In the summer of 2008, her family moved to Atlanta from East Point, where she attended an alternative school. Her mother attempted to enroll her at the Crim Open Campus School, but AISS informed her that B.P. would have to attend the AISS-CEP School because she was previously enrolled in an alternative school. Defendants kept her out of school for two weeks because of the timing of the School's orientation and Defendants' requirement that she collect all of her school records from her previous school before being permitted to attend school. Defendants gave B.P. no opportunity to be heard either prior to referring her to the CEP School or prior to imposing this *de facto* two week suspension.

b. Because of the chaotic environment and lack of opportunity to obtain an adequate education at the School, her referral was tantamount to expulsion from the public school system.

c. In October 2008, Defendants suspended B.P. for three days without prior notice or opportunity to be heard, after a verbal dispute with

two CEP-employed teachers, one of whom called B.P. a “bitch.” She was not told what the basis of the suspension was and was not given meaningful opportunity to be heard. Although she spoke with a school official prior to her suspension, she was not permitted to explain what happened. To her family’s knowledge, the teacher who called her a “bitch” was not disciplined.

d. B.P. has been and continues to be subjected to the School’s unreasonable daily search process, including searches that require her to grab the sides of her bra, pull it away from her body and shake it, and snap it back in, in the absence of individualized suspicion. B.P. was subjected to this indignity even while she was 9 months pregnant and could not lift her bra from her sides without difficulty. School personnel search inside the waistband of her pants, against her skin, without wearing gloves during the search. She has been required to take her hair down so school personnel can conduct a search of her hair. On cold days, she is also required to take off clothing she has on underneath her uniform pants, such as shorts or extra pants she wears for warmth. Sometimes the clothing is returned to her, but she is often forced to go home cold without it. Each day she is at the School,



she is in constant imminent danger of additional daily searches in violation of the Fourth Amendment. Despite these searches, B.P. is also in constant danger of being subjected to violence inflicted by other students and School personnel.

e. B.P. has standing to appear in this action because as a result of Defendants' policies and practices, she was referred to the School without an opportunity to be heard; she has been and is at continued risk of being disciplined at the School without notice or opportunity to be heard; and she has been and is at continued risk of being subjected to daily unreasonable searches at the School. B.P. appears in this action by and through her mother, Alkini Patterson.

20. The defendants are as follows:

a. Defendant ATLANTA INDEPENDENT SCHOOL SYSTEM (previously defined as "AISS") is charged by Article VIII, Section I of the Georgia Constitution with establishing and maintaining the public schools of Atlanta. It is also charged with ensuring that students in those schools are provided with an adequate education, including a safe environment conducive to learning, see O.C.G.A. §§ 20-2-131; 2-2-140-148; 2-2-735(c);

& 2-2-737-738; see also Georgia Board of Education (“GBOE”) Rule 160-4-8-.12. The AISS-CEP School is one of the schools under the control and supervision of AISS.

b. Defendant COMMUNITY EDUCATION PARTNERS, INC. (previously defined as “CEP”) is a for-profit corporation formed under Delaware law, whose principal office is at 2636 Elm Hill Pike, Nashville, TN 37214. CEP conducts business in the State of Georgia at 2930 Forrest Hills Drive SW, Atlanta, GA 30315. Its registered agent in Georgia is the C T Corporation System, at 1201 Peachtree Street, NE, Atlanta, GA 30361. CEP has contracted with AISS to provide alternative educational services for children in Atlanta in exchange for \$6.975 million a year. The contract requires CEP to operate the AISS-CEP School in compliance with all applicable federal and state constitutional requirements and federal, state and local laws, statutes, ordinances, rules, and regulations, and AISS policies and procedures.

### **JURISDICTION AND VENUE**

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs allege that Defendants have violated and will continue to violate Plaintiffs’ rights under the Fourth and Fourteenth Amendments

to the U.S. Constitution.

22. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391 because Defendants removed the action filed under the Original Complaint to this Court and this Court accepted jurisdiction.

23. Plaintiffs have no adequate remedy at law or access to any administrative scheme that would adequately redress the grievances they bring in this complaint.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2).

25. The proposed class to be maintained in this action consists of all children currently enrolled or who will be enrolled in the future at the AISS-CEP School. The representatives of this class are Q.G., M.H., J.R., R.W., T.P.W, R.J., B.P.

26. The Plaintiff Class is so numerous that joinder of all members is impractical. At any point in time, hundreds of students are enrolled at the AISS-CEP School and the AISS-CEP Contract contemplates an enrollment of 750 students. The average enrollment at the School is 450 students.

27. There are questions of law and fact common to the members of the

Plaintiff Class, including, but not limited to:

- a. Whether, as a result of Defendants' policies and practices, referral to the AISS-CEP School is tantamount to expulsion from the public school system;
- b. Whether Defendants' policies and practices have resulted and are likely to continue to result in the referral of members of the Plaintiff Class to the AISS-CEP School without due process;
- c. Whether Defendants' policies and practices have resulted and are likely to continue to result in members of the Plaintiff Class being disciplined without due process;
- d. Whether Defendants' policies and practices of subjecting all students to intrusive searches without individualized suspicion are unreasonable.

28. The claims of the Plaintiff Class representatives are typical of claims of the putative class members and, by pursuing their own interests, the class representatives will advance the interests of the class members.

29. The fact that the individual Named Plaintiffs may have experienced different types of searches, or that some of the Named Plaintiffs may have received some amount of process upon being referred to the School or being disciplined at

the School, is irrelevant. Just as in a prison conditions case, where the fact that some plaintiffs will not be in need of medical care and others may have received adequate care does not defeat class certification, Plaintiffs here are subject to a common regime of risk created by Defendants: all Plaintiffs have suffered harm and are at continued risk of suffering additional imminent harm because of Defendants' policies and practices and their failure properly to administer the School.

30. The Plaintiff Class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of the class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys employed by the American Civil Liberties Union ("ACLU"), the ACLU of Georgia, and the ACLU Southern Regional Office, nonprofit legal organizations whose attorneys have substantial experience and expertise in civil rights and education reform matters. Plaintiffs are also represented by Covington & Burling LLP, a law firm with offices in New York, the District of Columbia and elsewhere, which has lawyers with substantial experience and expertise in constitutional, civil rights and class action litigation.

31. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Class. This is a classic class action in which Defendants have administered a system — the School and the system by which students are referred to the School — in such a way as to place all Plaintiffs at imminent danger of deprivation of their constitutional rights, and further such deprivation in the future.

### **STATEMENT OF FACTS**

#### **I. AISS-CEP School Background**

32. The AISS-CEP School is located at 2930 Forrest Hills Drive SW, Atlanta, GA 30315. Defendants sometimes refer to the School as the “Forrest Hills Academy.” Approximately 450 students are currently enrolled at the School. Over the course of 2006-07, approximately 844 students were enrolled. At any given time during the school year, roughly 400 children are enrolled, but students come and go, accounting for the annual enrollment number. Both middle and high school students are sent there.

33. Other alternative schools in the Atlanta metropolitan area with similar student populations include the McClarin Alternative School in Fulton County, and the DeKalb Alternative School in DeKalb County, neither of which is operated by AISS or CEP.

34. The contract pursuant to which CEP operates the School provides for its compensation to be based on the number of students enrolled. It provides that CEP is entitled to an annual fee of \$6,975,000 per school year on the basis of enrollment of 750 students; that AISS is to use reasonable efforts to enroll 750 students at the School at all times; that if more than 750 students are enrolled, CEP is entitled to an additional \$51.97 per day for each “excess” student; and that if average daily enrollment is less than 750, CEP’s fee may be reduced. The contract also provides CEP with power to affect the number of students enrolled by, for example, requiring that enrollment procedures be based on standards proposed by CEP, and by vesting CEP with discretion as to how long a student must remain at its school before being released to return to a regular public school.

35. Prior to contracting with CEP, AISS operated several alternative programs at different locations for students with behavioral and disciplinary problems. In 2002, AISS consolidated these programs into one school and granted CEP Defendants the contract to run that school, which is the only disciplinary alternative school in the Atlanta school district.

36. AISS entered into a First Amended and Restated Agreement with CEP on August 29, 2003; a Second Amended and Restated Agreement on September 3, 2004; and a Third Amended and Restated Agreement on July 1, 2006 (“the AISS-

CEP Contract”). These contracts cost Atlanta taxpayers a total of \$36,570,941 between November 2002 and June 2007. The current contract will expire on June 30, 2009, but may be renewed in five-year terms.

**II. Defendants Subject Plaintiffs to Unreasonable Daily Searches in Violation of Their Fourth Amendment Rights.**

37. The Fourth Amendment to the United States Constitution protects children in school from unreasonable searches. School children have a constitutionally protected right to privacy in their persons — including an expectation that they should be able to avoid the unwanted exposure of their body, especially their “private parts” — that they do not relinquish while attending school.

38. A search of school children without individualized suspicion is reasonable only if the privacy interest invaded is minimal and the government interest would be jeopardized by a requirement of individualized suspicion. The injury or harm that students suffer upon being subjected to an unreasonable search is being subjected to the search itself and the attendant violation of their right to privacy. To have standing to bring a Fourth Amendment claim, a plaintiff need allege no other injury.

39. The searches described by a current Assistant Principal at the School, as set forth in the CEP Operations Manual, and as attested to by Named Plaintiffs,



are unreasonable.

**A. Defendants Conduct the Invasive Searches at the School in the Absence of Individualized Suspicion.**

40. All students at the School, including Named Plaintiffs, are searched each and every school day prior to entering the School without individualized suspicion that they have weapons, drugs or other banned items.

41. All students at the School are subjected to these invasive search procedures, including students who were referred to the School for reasons other than disciplinary or behavioral problems. For example, Plaintiff R.W., who was referred to the School because his family was new to Atlanta, has been and will continue to be subjected to the same intrusive search process with no individualized suspicion as students referred to the School for disciplinary reasons.

**B. The Searches to which Defendants Subject Plaintiffs are a Gross Invasion of Plaintiffs' Privacy Interests.**

42. The Named Plaintiffs and all children at the AISS-CEP School have a reasonable expectation of privacy in their persons and, in particular, around their waistbands and bras, in their mouths, on their scalps and the soles of their feet, and in their "private parts."

43. As described by the Assistant Principal in charge of supervising the daily search process, all students are required to take off their belts and shoes and

untuck their shirts. All students are then required to pass through a metal detector. Regardless of whether the machine detects anything, all students must extend their hands out, palms straight down and spread their legs. Staff members then make a circle with their hands around the students' collars, a circle around the cuffs of their shirts, a T across their backs, straight down their backs, check the waistband of their pants, pat down along the back of each leg, and pat the bottoms of their feet. Staff members require students to open their mouths and lift their heads back so the insides of their mouths can be inspected. Staff members reach underneath students' shirts with their hands to search inside students' waistbands, next to the skin, roughly an inch deep into the waistband.

44. Staff members require female students to grab the sides of their bras, extend them out, shake them, and snap them back in. Female students may be required to perform these humiliating acts in front of at least one male faculty member, a staff member who circulates through the search areas for both girls and boys.

45. The School staff member currently responsible for supervising the search process was previously an instructional assistant at the School with responsibilities relating to the orientation process. He is one of the staff members who punched Plaintiff M.H. in the chest. He is supervised by the Assistant

Principal of Student Services, but the CEP Operations Manual mandates that he is to be supervised by the Assistant Principal of Operations. The supervising Assistant Principal did not receive any training on how to supervise the search coordinator.

46. In addition to the process described by the Assistant Principal, the CEP Operations Manual provides that search team members must collect “contraband” prior to the search, instruct students to turn their pockets out and remove their shoes, search the shoes, and ask students to open their mouths and move their tongues. The Manual explicitly states that students should not be touched in the “do not touch” areas — including the area below the waistline inside the pelvic genital region or buttocks region, and the breast area for females — and prohibits staff members from asking students to “lean against the wall.”

47. Items deemed “contraband” by the Student Handbook include book bags, combs, brushes, house keys, watches, jewelry, lip balm, rubber bands, and purses. Students are allowed to bring money to school, but not more than five dollars. Female students are even prohibited from possessing feminine hygiene products. Menstruating girls must ask their teachers for sanitary pads. Defendants search students for all such items each day.

48. The procedures described by the Assistant Principal and the CEP

Operations Manual are routinely exceeded. Defendants forced one student to pull down her pants and underwear in front of an Assistant Principal, a teacher, and a “Learning Community Instructional Leader Monitor” — not because she was suspected of having drugs or weapons — but because she was suspected of having jewelry. She pulled down her pants and underwear only after they attempted to do so themselves and she objected. Defendants routinely frisked Plaintiff J.R. underneath her shirt around her bra, with staff members touching her breast area. Defendants routinely required Plaintiffs M.H., T.P.W., R.W., and R.J. to lift their shirts up to expose their belly buttons. Defendants routinely forced Plaintiff Q.G. to stand up against a wall to be searched.

49. Despite the School’s practices, the Assistant Principal responsible for supervising the searches concedes that the privacy interests implicated by the searches are serious, that students should not be asked to lift their shirts because it causes embarrassment, that students should not be asked to lean against a wall while being searched, that students should not be treated as if they were in jail, that female students should not have their chest areas searched, and that it is “inhumane” to allow searches underneath students’ shirts.

**C. Defendants’ Government Interests Would Not be Jeopardized by a Requirement of Individualized Suspicion.**

50. Requiring Defendants to have individualized suspicion prior to

subjecting students at the School to a search more intrusive than walking through a metal detector would not jeopardize any legitimate government interest.

51. School personnel search Plaintiffs for the purpose of finding and confiscating items the School deems prohibited other than drugs or weapons, and have a practice of conducting strip searches in their efforts to do so. For example, Defendants strip searched one female student in an effort to find jewelry. They strip searched R.J., in an effort to find a cell phone, stripping him down to his underwear and telling him to spread his legs, in the main search area in front of classmates and school personnel. Their interest in finding a student's jewelry or cell phone does not justify such a gross invasion of privacy, and no jewelry or cell phone was found. Another female student was searched on multiple occasions by a male staff member; those searches included pat downs of her buttocks area. School personnel forced another student to drop his pants and searched inside his underwear to see if he had a cell phone on his person. Their interest in finding a cell phone does not justify such a gross invasion of privacy, and no phone was found. Neither does Defendants' interest in finding contraband such as chewing gum justify the practice of School personnel to inspect inside students' mouths.

52. Nor does Defendants' interest in keeping drugs or weapons out of the School justify the intrusive and suspicionless search process to which students are

routinely subjected.

53. In 2008, there have been approximately 200 school days, and on each school day, an average of 450 students was enrolled at the School. Thus, the AISS-CEP School conducted at least 90,000 searches of students. Yet, according to statistics reported to the Georgia Department of Education in 2008, drugs were found at the School on only 26 occasions and only once was a weapon found (a knife). These figures are comparable to other Atlanta Public Schools that do not subject students to such daily intrusive searches. For example, in 2008, Mays High School students were caught with drugs on thirty-one occasions and weapons once (a handgun), while Grady High School students were caught with drugs on fifteen occasions and weapons on two occasions (a handgun and a knife).

54. Other alternative schools designed for students with disciplinary and behavioral problems do not utilize such an intrusive search process. The McClarin School in Fulton County, for example, does not employ either a metal detector or a pat-down process.

55. The search process at the AISS-CEP School is ineffective at keeping drugs and weapons out of the school building. Students are able to circumvent the process by sneaking items in or manufacturing weapons at the School. Students who are friendly with staff members are permitted to bring in contraband.

56. Despite the unreasonable search process to which students are subject, the School remains unsafe and chaotic. Although the AISS-CEP School is exempt from the Unsafe School Choice Option provided by Georgia, it meets the State's statutory definition of a persistently dangerous school, reporting 22 qualifying offenses in 2005, 24 in 2006, and 12 in 2007. None of the other alternative schools in the area serving similarly situated students would so qualify.

57. In 2008, the AISS-CEP School reported 4 incidents of arson, 69 of battery, 22 of fighting, 32 of threat/intimidation, 1 of knife possession, and 136 other discipline incidents. The numbers for preceding years are similar or worse.

58. In 2006, the AISS-CEP School made 274 delinquency referrals to the Fulton County Juvenile Court, or about two referrals for every three students. In contrast, the McClarin School made 64 such referrals, or about two referrals per *eight* students.

59. Moreover, these figures do not include violence inflicted upon students by teachers and administrators. Teachers (and at least one administrator) routinely hit students, throw books at them, and throw students against walls or to the floor. Nor do these reports reflect the violence inflicted by school resource officers and police officers, who are often physically aggressive, and have a practice of using chokeholds on the students. The search procedures cannot and do

not protect students at the School from violence at the hands of the adults who are supposedly there to educate and protect them.

**D. Plaintiffs Have Standing to Bring This Claim to Vindicate Their Fourth Amendment Rights.**

60. As a result of Defendants' policies and practices, each and every Named Plaintiff has been subjected, at a minimum, to the official search process described by the Assistant Principal of the School and has suffered the harm of being subjected to a constitutionally unreasonable search each day he or she was searched.

61. As a result of Defendants' policies and practices, each Named Plaintiff currently attending the School is in constant imminent danger of being subjected to additional unreasonable searches and of suffering the harm of being subjected to a constitutionally unreasonable search each day he or she continues to be enrolled in the School because such searches are conducted every day.

62. Although some students may have been subjected to more invasive and humiliating searches than others, all students are at equal risk of being subjected to the unreasonable official search process described by the Assistant Principal. They are all, moreover, at equal risk of being subjected to additional unreasonable search practices that are expressly prohibited by the official CEP Operations Manual, such as female students being searched in the breast area.



63. Individual variations in the search process do not change the fact that all students at the School are subject to the common regime created by Defendants, who have acted and will continue to act on grounds generally applicable to all students at the School. Defendants have subjected all such students, including the Named Plaintiffs, to the harm of unreasonable searches and placed all of them at continued risk of additional searches each day they attend the School.

**IV. Defendants Refer Plaintiffs to the AISS-CEP School Without Appropriate Notice or Opportunity to be heard.**

**A. Referral to the AISS-CEP School deprives students of their property right to an adequate public education.**

64. Because the Georgia Constitution guarantees Plaintiffs a free and adequate public education, Plaintiffs have a property interest in such an education that Defendants may not deprive them of absent fundamentally fair procedures. The education available to students at the AISS-CEP School is vastly inferior to that available at other Atlanta schools, and falls far below the minimum requirements of state law. Assignment to the AISS-CEP School is tantamount to expulsion from the public school system. Any referral of a student to the School in the absence of due process violates that student's rights under the Fourteenth Amendment.

**1. The School is so unsafe that it cannot provide an adequate education.**

65. The School is patently unsafe for the children attending, as evidenced by the officially reported levels of violence, *see, e.g., supra* at ¶¶ 57-58, and by the unreported experiences of Named Plaintiffs. Two teachers at the School punched Plaintiff M.H. on two separate occasions, and M.H. has witnessed numerous other incidents of teachers assaulting students. Police officers posted to the School and under Defendants' supervision have hit at least one child on the leg with a police baton and threw another against a wall. Another student was struck on the back of the neck and dragged across the floor by a teacher. Upon information and belief, none of the staff involved in these incidents was investigated, disciplined, subjected to future monitoring, or given training on how to avoid physical confrontations with students.

**2. The School does not have a sufficient number of qualified teachers or staff to provide an adequate education.**

66. Defendants have failed to staff the AISS-CEP School with an adequate number of sufficiently qualified teachers to provide its students with an adequate education. Federal law requires that all teachers of core academic subjects be "highly qualified." 20 U.S.C. § 6319. Only three of the nineteen teachers currently employed by the School satisfy this standard. According to the Georgia Department of Education, 55% of core classes at the School were not

taught by Highly Qualified Teachers in the 2006-2007 school year; and 80% of core classes were not taught by Highly Qualified Teachers in 2005-2006 school year. In contrast, there were *no* classes at the McClarin Alternative School in Fulton County not taught by Highly Qualified Teachers in 2006-07 and only 3% in 2005-06.

67. Defendants have also failed to staff the School with a sufficient number of teachers or paraprofessionals for the provision of an adequate public education. The Georgia Department of Education (“DOE”) recommends a maximum student-to-teacher ratio of 10:1 for alternative education programs. According to the personnel information in the 2006-07 State of Georgia K-12 Report Card for the AISS-CEP School, the most recent available, the overall ratio of students to teachers was roughly 20:1 that year, with only one full-time support person on staff. The AISS-CEP Contract provides: “Classroom staffing will meet the Georgia teacher-student staff ratios for alternative education programs in effect during the term of this Agreement.”

68. Defendants are either unaware of these requirements, do not enforce them, or do not believe they should apply. The AISS official in charge of supervising the School until May 2008 acknowledged that the student-to-teacher ratio at the School should be low because students at alternative education

programs need additional services and attention. She was unaware that the School did not meet the recommended ratio. The current principal of the School believes that the student-to-teacher ratio for alternative schools and regular schools should be the same.

69. Teachers at the AISS-CEP School are very inexperienced, averaging just 0.94 years of experience as of 2006-07. Teachers at the McClarin Alternative School averaged 19.07 years of experience, and teachers at the DeKalb Alternative School averaged 10.58 years.

70. There are no tutors on staff, and AISS provides the School with the services of only five tutors (at no cost to CEP), which is grossly inadequate for the approximately 450 students enrolled at any given time, many of whom are behind in their schoolwork. The Assistant Principal of Student Services testified that any tutoring that takes place at the student's home or at an outside agency "has nothing to do with us."

71. The teacher-to-support person ratio at the School is 11:1, which is also inadequate. Support personnel are defined to include special education personnel, student services personnel, paraprofessional/teacher aides, librarians, teacher support specialists, and lunchroom monitors. While these figures indicate a distressingly low number of teachers per student and an insufficient number of

support staff, there is an abundance of administrators at the School; there is one administrator for every three teachers.

72. Other alternative schools in the area have more teachers per student, and more support personnel per teacher, and fewer administrators per teacher. At the DeKalb Alternative School, the student-to-teacher ratio in 2006-07 was 7:1, the teacher-to-support person ratio was 7:1, and the teacher-to-administrator ratio was 9:1. At the McClarin Alternative School in Fulton County that year, the student-to-teacher ratio was 12:1, the teacher-to-support person ratio was 5:1, and the teacher-to-administrator ratio was 8:1. Support personnel represent only 6.3% of staff at the AISS-CEP School, but 16% at McClarin, and 11.5% at DeKalb.

73. Those other alternative schools also spend far more money than CEP does at the AISS-CEP School on teacher salaries, and allocate less money in their budgets to administrator salaries. For example, in 2006-07, the McClarin School spent nearly twice as much as the AISS-CEP School on teacher salaries and nearly \$95,000 less than the AISS-CEP School on administrator salaries for a smaller student enrollment.

74. Defendants have also failed to limit class sizes at the AISS-CEP School, which exceed those permitted by State Board of Education rules limiting class sizes, as of the 2007-08 school year, to 18 students at an alternative program

without a paraprofessional.

**3. The AISS-CEP School provides little or no classroom instruction or resources necessary for teaching and learning.**

75. Georgia law requires that alternative education programs include objectives of the Quality Core Curriculum (a set of standards for Georgia educators) and provide instruction that enables students to return to regular education as soon as possible. O.C.G.A. § 20-2-154.1. Georgia BOE Rule 160-4-8-.12 additionally requires that course credit at alternative schools be earned in the same manner as in other education programs. The Georgia DOE's alternative education program guidelines further require that the instructional materials provided be the same as those supplied in the regular school program.

76. Defendants blatantly violate these requirements at the AISS-CEP School, where students spend the majority of their time in class filling out worksheets without receiving teaching. Most teachers do not return completed worksheets or provide other feedback. Many teachers simply sit in their classrooms, sometimes on a cell phone or computer, while students fill out worksheets. It is the rare teacher who provides actual lessons, in which information is conveyed by teachers to students.

77. Defendants have failed to provide appropriate training to staff

members on how to provide instruction, and have not supervised or monitored staff to ensure that instruction is actually provided. Some students at the School are permitted to spend their class time gambling — while teachers not only fail to stop them, but actually supply them with playing cards.

78. Students from as many as three different grades are often combined in the same room, all working on the same worksheets. Sometimes School personnel hand out crossword puzzles instead of worksheets.

79. It is the School's policy not to require that homework be completed. Until this lawsuit was commenced, it was the School's policy and practice not to assign homework at all. Students are not permitted to take books home, or to bring school supplies to and from school.

80. AISS-CEP School personnel conduct no individualized review of student records to address students' specific needs or develop individualized academic plans. Students who struggle academically receive no guidance. Students who are not struggling become bored.

81. To the extent tests are administered at the School, preparation is nearly impossible because students cannot take their textbooks home. The ban on taking school materials home deprives students of the opportunity to develop good study habits.

82. The AISS-CEP School has failed to ensure that students have the materials necessary for learning. There is no library. Many textbooks at the school are missing pages or otherwise damaged. Some teachers never hand out textbooks. There are no supplementary materials or teaching aids.

83. Students at the AISS-CEP School have no art, music, or regular physical education classes. Nor are they provided with the opportunity to participate in consistent and regular extracurricular activities.

**4. The AISS-CEP School relies inappropriately on the Programmed Logic for Automated Teaching Operation (“PLATO”) Program.**

84. Rather than providing classroom instruction and measuring student academic progress with standardized tests, Defendants rely heavily on computer programs marketed by a company called PLATO for assessment and instruction.

85. PLATO’s own manuals recommend active guidance of students using the programs. Studies have shown these programs to be of limited value without adequate staff training and supervision.

86. Defendants fail to provide the supervision necessary for PLATO to be effective or for its test results to be accurate indicators of academic progress. Students at the School work on PLATO with minimal supervision and often ask each other for the correct answers to reach the next level of questions. Many



students do not work on the programs at all, but rather play computer games.

**5. The AISS-CEP School fails to provide students with the support services to which they are entitled.**

87. The provision of an adequate public education requires that certain support services be available. Georgia law requires alternative education programs to provide appropriate supervision and counseling. O.C.G.A. § 20-2-154.1; GBOE Rule 160-4-8-.12. Georgia DOE guidelines also note that such programs should customize intervention programs and support services to meet the needs of individual students.

88. Defendants have failed to ensure that the AISS-CEP School provides the services students need. Students lack adequate access to guidance counselors, psychologists, social workers, and career counselors. There are no behavioral specialists, anger management counselors, or any educational or psychological counselors on staff. There is no student service coordinator.

89. Although CEP contracts with outside counseling service providers to provide services covered by Medicare and Medicaid at no cost to CEP, Defendants do not supervise, monitor or otherwise oversee the services provided. School personnel responsible for ensuring that services are provided at the School cannot even name all eight of the outside service providers. CEP does not send AISS reports about the length of time for which students received services, or any

counseling services provided in-house at the School. Defendants do not require service providers to provide a log of student contacts.

90. CEP personnel do not involve themselves with the provision of psychological or psychiatric services and do not even keep track of which students are receiving such services. Defendants make no efforts to inform personnel at the School when a student is receiving psychological or psychiatric services. No School personnel with daily contact with the students are informed whether a student is in substance abuse counseling, or if misbehavior in a classroom is caused by a family issue, such as a recent death in the household.

91. Students with personal, home, school, or community adjustment issues — *i.e.* the population the School is intended to serve — lack access to social workers. Defendants fail to offer appropriate social skills instruction or a behavioral management program to students. Per AISS policy, students who struggle academically or have behavioral issues, *i.e.*, the majority of those enrolled at the School, are to receive support from student support teams (“SST”). Of 127 AISS-CEP students represented by the Fulton County Juvenile Court Educational Advocate between August 2004 and August 2007, 60 had never had an SST intervention.

92. Defendants disregard repeated requests by parents for special

assistance for their children, such as for anger management counseling. Students with lengthy disciplinary histories do not receive evaluations for special needs or other intervention services.

**6. Record-keeping at the AISS-CEP School is so lax that the school cannot provide an adequate public education.**

93. Basic record-keeping is essential to the provision of adequate educational services. GBOE Rule 160-4-8-.12 requires school systems to maintain records on enrollment, disciplinary referrals, grades, pass rates, and entry/exit dates.

94. Defendants have failed to maintain these records accurately. Attendance records often fail to reflect the extent to which students are truant. The course list does not accurately reflect the courses actually available or taught. Grades are given out haphazardly. Disciplinary records are poorly maintained and sometimes inaccurate.

**7. Defendants' policies and practices operate to push Plaintiffs out of the school system altogether.**

95. Defendants' policies and practices operate to push Plaintiffs out of the public school system altogether, by failing to enforce attendance policies, by suspending and expelling students repeatedly, by inappropriately referring students to the juvenile justice system, and by otherwise encouraging students to drop out.

96. Defendants have failed to improve the abysmal attendance rates at the School since its inception. In 2007-08, 45.3% of students were absent for 15 days or more. By comparison, in the Atlanta school system as a whole, the percentage of students who were absent for 15 days or more was 4.6% in 2007 and 5.4% in 2008. Defendants' failure to keep proper records suggests that even these attendance rates may be artificially inflated.

97. Defendants subject students who attend the School to an extraordinarily high rate of suspensions. Over the course of the 2006-07 school year, there were 165 out-of-school suspensions, 93 of which were for ten days or more. If each of these 165 suspensions were given to a different child, one out of every five of the 844 total enrolled students was suspended. Twenty students were suspended for disruption, 3 for disrespectful behavior, and 9 for unauthorized items. One was suspended for 10 or more days for "chronic problem studying."

98. Those students who continue to attend the School are subject to Defendants' policy and practice of inappropriately referring them to the juvenile justice system. In 2006-07, the school referred 165 students to juvenile court, with an average of 4.17 charges per child. With a total enrollment that year of 844, the school referred nearly one out of every five students. Eighty-four students were referred once, and 81 students at least twice. Twenty-nine students faced 8 or

more charges. More than a fifth of all charges brought were dismissed.

99. In contrast, the McClarin School made 31 referrals to juvenile court in 2006-07.

100. Defendants refer students to the juvenile justice system for offenses that other schools deal with in the principal's office. Roughly 30% of the students referred to juvenile court by Defendants in 2006-07 were referred for public order offenses, like disrupting school or disorderly conduct, compared to only 18% of juveniles charged statewide in 2006. While far more likely than juveniles statewide to be charged with public order offenses, AISS-CEP students are far less likely to be charged with status offenses (14.1% of referrals compared to 27.1% statewide), property offenses (9.3% of referrals compared to 26.2%), traffic offenses (3.2% compared to 10.3%), and sex offenses (0.3% compared to 3.6%). They are equally (10%) as likely to be charged with drug offenses and slightly *less likely* to be charged with violent offenses (17.3% compared to 18.6%).

101. As a result of Defendants' policies and practices to push students out, dropout rates in 2007-08 were five times higher than in AISS generally, with roughly 17% of students dropping out. In the 2006-07 year, more than 38% of the students enrolled "left early." Nearly 95% of those "leaving early" were male.

102. Students who are not expelled, referred to the juvenile justice system,

or pressured into dropping out rarely make it back to regular schools. Defendants' policies and practices routinely keep children at the School for longer than the 90 to 180 days of attendance contemplated by the AISS-CEP Contract, for longer than their referrals require, or for longer than is educationally appropriate. Some children are retained at the school for no pedagogical reason whatsoever but only because of inaccurate record-keeping. Many fall too far behind academically while at the AISS-CEP School to be able to catch up at regular school. The longer a child is at the AISS-CEP School, the less likely it is that he or she will ever return to a regular public school.

**8. Although Defendants have long been on notice about the failure of the AISS-CEP School to provide an adequate public education, they have done nothing to improve the quality of the education provided.**

103. AISS has long been aware that the AISS-CEP School is nothing more than a dumping ground for the school district's unwanted children. Long before AISS consolidated its alternative schools and retained CEP in 2002, education experts had made it clear that one of the keys to providing adequate education in the alternative school context was having small classrooms and very low student-to-teacher ratios. Between 2004 and 2006, when AISS most recently renewed CEP's contract, AISS was aware of or recklessly disregarded, in derogation of its statutory and constitutional responsibilities, the School's failure to provide an adequate education. For example, a series of articles in the Atlanta Voice in September-November 2004 highlighted problems at the school, and included an acknowledgement by the then-principal that students did not receive homework or books to take home as a matter of school policy.

104. On July 1, 2006, AISS renewed CEP's contract to run the School for another three years, until June 30, 2009, with terms that provide for subsequent renewals five years at a time.

105. The AISS-CEP School moved to a new building in the fall of 2007, but the educational services provided remain grossly inadequate. Defendants have

failed to take any actions to improve the School, instead allowing it to become a “State-Directed” school in its fifth year of “needs improvement” status under No Child Left Behind (“NCLB”). “Needs improvement” schools are underperforming schools that have not met Adequate Yearly Progress (“AYP”), which is an annual measure of student achievement, as defined by NCLB.

106. NCLB requires schools in “needs improvement” status to undertake specific actions for each year the school remains in “needs improvement.” Over the last five years, Defendants have consistently failed to take any of the actions mandated by law. For example, Defendants failed to develop a school plan incorporating strategies based in scientific research; failed to provide students with the option of transferring to a non-failing school; failed to provide students at the School with supplemental services, like tutoring; failed to inform parents about the reasons for the School’s identification as “needs improvement” or about their right to transfer their children to a better school; and failed to replace staff relevant to the failure, implement a new curriculum, appoint an outside expert, or restructure the school.

107. The AISS official tasked with monitoring the AISS-CEP School until May 2008 was wholly unaware of any steps Defendants should have taken as required by federal and state law. She did not know what was in the school



corrective action plan mandated by law, what types of instructional extension services are offered to students at the School, or how many students at the School received such services. She did not know whether a school restructuring plan was in effect, whether Defendants ever considered reopening the School as a charter school, whether Defendants ever considered replacing all or most of the School's staff, or whether Defendants ever considered major restructurings at the School.

108. In 2007-08, 93% of the AISS-CEP students evaluated did not meet standards in math, not a single student met standards in science, and only one student met standards in social studies. These numbers are a decline even from the previous school year.

109. By contrast, 55% of students at the DeKalb Alternative School met or exceeded standards in 2006-07, a gain of roughly 19% over the prior year. Even at the McClarin Alternative School, where percentages declined by nearly 20%, close to 54% of students still met or exceeded expectations in 2006-07.

110. Defendants failed even to meet the meager performance improvements they sought between the 2004-05 and 2005-06 school years. AISS called for a decrease by two percentage points in the proportion of students not meeting the standard on the Reading test, but the Governor's Office of Student Achievement ("GAOSA") figures indicate that the failure rate among 6th graders

actually rose from 71% to 73%, and that the rate among 7th graders rose from 56% to 78%. Likewise, AISS called for a three percentage point increase in the proportion of students scoring 70 or above on the End of Course Test (“EOCT”) in 9th grade literature, but whereas 25% passed that test in 2004-05, only 2% did the following year.

111. Only six students sat for the Georgia High School Graduation Test (“GHSGT”) in the 2007-2008 school year. Seven students sat for it the previous year, compared to seventeen in the 2004-05 school year. Even when children are retained at the AISS-CEP School for years at a time, Defendants fail to educate them sufficiently even to sit for the GHSGT.

112. At the DeKalb Alternative School, there were 20 eleventh graders in the spring of 2007 and 15 twelfth graders — 14 of whom completed high school. More than 100 students completed high school at the McClarin Alternative School in Fulton County in 2006-07.

**B. Defendants Deny Plaintiffs Notice and Opportunity to be Heard Prior to Referring Them to the School.**

113. The AISS-CEP Contract specifically requires CEP to develop with AISS the enrollment procedures to be used in enrolling students in the School based upon standards proposed by CEP and as approved and established by AISS.

114. As a result of Defendants’ policies and practices, students referred to

the AISS-CEP School are regularly denied due process prior to their referral. Students are routinely referred to the school without any process at all, such as an opportunity to be heard at a tribunal hearing. Plaintiff J.R., for example, was summarily referred to the School without any informal or formal hearing and no formal notice whatsoever.

115. Some students are inappropriately referred for disciplinary reasons without a tribunal hearing because they or their parents were forced or induced to sign student contracts purporting to waive their right to contest a referral. Such students receive no notice or opportunity to be heard even with respect to whether they committed the act by which they allegedly violated the contract.

116. Other students, such as Plaintiff T.P.W. and B.P., are referred without any process at all because they attended an alternative school in another county, with no notice or opportunity to be heard to determine whether an alternative school placement would be appropriate in Atlanta.

117. Some students, like Plaintiffs Q.G. and M.H., receive a tribunal hearing but are not given constitutionally adequate notice and opportunity to be heard. Notice is sometimes not provided until only days prior to the hearing, or not provided at all, as in Plaintiff Q.G.'s case. Plaintiff M.H. attended his tribunal with his parents, but neither he nor his parents were given an opportunity to speak at the

hearing.

118. Students referred to the school for administrative reasons fare no better. Many, like Plaintiff R.W., are summarily transferred to the School, despite not even having been accused of violating any code of conduct, simply because they are new to the school district. During the 2005-06 school year, 30% of the students assigned to the School were sent there for non-disciplinary reasons.

119. No students who are referred receive a review of the strategies and interventions used by the referring school to address instructional and behavioral issues as required by the GBOE. Defendants do not assess students to determine their specific needs, or whether they have academic, medical, emotional, behavioral, physical or other concerns that may interfere with their ability to benefit from appropriate educational interventions, much less whether the School will address their needs.

120. None of the Named Plaintiffs received an evaluation to determine whether the School would be appropriate to meet his or her needs, or a finding that he or she would be more likely to succeed in a nontraditional setting.

**C. Plaintiffs Have Standing to Bring this Claim to Vindicate Their Right to Due Process Upon Referral to the School.**

121. The injury suffered by Plaintiffs who are referred to the School without due process is the violation of their federal constitutional right to due

process. That injury occurs and is redressable irrespective of whether referral to the School was the “correct” outcome, just as a person sentenced to prison without due process suffers a redressable injury — a violation of his constitutional right to due process — even if it is certain he committed the crime.

122. All Named Plaintiffs referred to the School without proper notice and opportunity to be heard, including M.H., Q.G., J.R., R.W., T.P.W., R.J., and B.P., have suffered the injury of being deprived of their constitutional right to due process.

123. As a result of Defendants’ policies and practices, these Plaintiffs’ claims are all capable of repetition but evading review. Plaintiffs remain residents of Atlanta and have a property right to an adequate public education. As students in the Atlanta public school system, they are in the involuntary custody of Defendants and cannot avoid exposure to Defendants’ failure properly to afford them notice and opportunity to be heard prior to being referred to the School. Plaintiffs’ past injuries — their referral to the School without due process — constitute evidence that Defendants have a custom and practice of administering the referral process to the School in a way that denies children notice and opportunity to be heard. There is a substantial likelihood that Named Plaintiffs and other members of the proposed class will suffer additional such injuries in the

future.

124. Moreover, as a result of Defendants' policies and practices, students at the School are often referred to the School multiple times over the course of their educational careers. For example, Named Plaintiffs M.H., Q.G., and J.R. have each been referred to the School twice. Plaintiffs who are no longer at the School, such as J.R., are at continued risk of being referred again to the School without due process.

125. Although some Named Plaintiffs may have received more notice or opportunity to be heard than others, all Plaintiffs are subject to Defendants' practice of administering the referral process in such a way as to place all students referred to the School at risk of being denied their due process rights. Defendants have acted or refused to act on grounds generally applicable to all Plaintiffs.

**IV. Defendants Discipline Plaintiffs at the AISS-CEP School Without Affording Them Notice or Opportunity to be Heard.**

126. Defendants discipline Plaintiffs without providing them with prior notice and opportunity to be heard. The injury Plaintiffs suffer as a result is the deprivation of the process that is constitutionally due to them, regardless of whether the discipline was warranted.

127. For suspensions of ten days or less, students are constitutionally entitled to an informal hearing that includes formal notice of the charges against

them with an explanation of the accusation and its basis, an explanation of the evidence against them, and an opportunity to present their side of the story. Where appropriate, school officials should summon witnesses, permit students to cross-examine them, and allow the student to present witnesses.

128. For suspensions of more than ten days, students are constitutionally entitled to a formal hearing presided over by an impartial decision-maker; written notice of the charges against them explaining the accusation and its basis; reasonable notice of when the formal hearing will occur; an explanation of the evidence against them; an opportunity to present their side of the story at the formal hearing; an opportunity to present witnesses and cross-examine witnesses presented against them; the opportunity to obtain counsel; the right to appeal the decision; and details about the applicable procedures, including the right to appeal.

**A. Defendants Have a Policy and Practice of Denying Plaintiffs Notice and an Opportunity to be Heard Prior to Imposing Discipline.**

129. Defendants routinely suspend students for more than ten days at a time without the formal notice or hearing to which they are entitled. For example, Plaintiff M.H. was suspended for nine days but not permitted to return to the School until the eleventh day. Another student was expelled from the School for half a semester for allegedly breaking a window. She was provided with no prior notice of the tribunal hearing, which expelled her *in absentia*. When her mother called the tribunal officer, she was informed that there was no possibility of convening another tribunal. This student was removed from school for two months. Another student received three suspensions for the same alleged offense and denied an opportunity to be heard each time.

130. Defendants have a policy and practice of imposing *de facto* suspensions on students by refusing to permit them to attend the school after they have been referred. Plaintiff R.W., for example, was suspended for more than three months upon being referred to the School, before he was even allowed to enroll, and again for two months for various reasons such as needing to wait until after the holidays and school bus route adjustments. Parents are also sometimes told they cannot register their children with the school because an orientation



session or the School is full — even when fewer than the 750 students contemplated by the AISS-CEP Contract are enrolled. One student missed a week of school because orientation only takes place on Mondays and he was removed from his regular school on a Tuesday.

131. No alternatives are provided to these children, who receive no educational services at all and therefore whose stay in the wholly inadequate educational facilities of the School is prolonging, delaying and making less likely their return to regular school. Defendants have a policy and practice of denying these children any opportunity to be heard whatsoever.

132. When Defendants discipline students at the AISS-CEP School, they fail even to maintain records that would indicate whether discipline at the school is meted out properly. Discipline is routinely imposed without any record-keeping to document the precipitating incident, the procedures followed, or the discipline meted out.

133. An Assistant Principal at the School acknowledges that discipline procedures at the School do not comply with the CEP Operations Manual and that she must “stay on top of” some teachers who mete out suspensions before consulting her.

134. To the extent that records are maintained at the school, they are often

inaccurate. For example, Plaintiff M.H. received a notice for a bus suspension when he was brand new to the School on the ground that he had received three prior verbal warnings. Defendants have failed to track crimes occurring at the school. For example, the School referred 358 students to the juvenile justice system in 2004-05, but reported no crimes for that period.

135. Defendants have failed to ensure that parents are notified when their children are victimized by other students, or when disciplinary citations are issued. Students are routinely suspended and sent home without any advance notice to their parents or written explanation. Such students are left to go home unsupervised. For example, Plaintiff J.R. was sent home from the School with only a bus token and no notice was provided to her mother. When Plaintiff T.P.W. was suspended, no one from the School left any messages for his mother to inform her of the suspension and she was not notified until after the suspension had already been served.

136. The Assistant Principal at the School responsible for discipline has stated that the School has a policy and practice of keeping children in “In School Support,” which is functionally in-school suspension, for up to three days after their official out-of-school suspension has ended if their parents are unavailable for a conference or if a teacher or witness is unavailable for the conference. It is the

School's policy not to provide any notice or opportunity to be heard for those days children are kept in "In School Support."

137. The effect of all of these suspensions and expulsions imposed upon students at the School is to extend the length of time they must remain at the School and thereby extend the length of time for which they are deprived of their right to an adequate public education.

138. Students are routinely subjected to corporal punishment in violation of the Atlanta Public School prohibition on such punishment. Plaintiff M.H., for example, was punched by two teachers at the School to punish or discipline him for failing to obey their orders to take his seat. A police officer under the supervision of the School hit another student on the leg with a police baton to punish him for leaving a classroom without the teacher's permission.

139. Defendants have a policy and practice of failing to train staff at the School on how properly to mete out discipline to students in compliance with the Constitution, and of failing to monitor and supervise staff to ensure that students' rights are protected. The Assistant Principal in charge of discipline at the School has never received any such training and is wholly unfamiliar with what due process requires. Learning Community Instructional Leaders are permitted to discipline students without approval from a more senior staff member, even though

the CEP Operations Manual prohibits this practice.

**B. Plaintiffs Have Standing to Bring this Claim to Vindicate Their Right to Due Process Upon Being Disciplined at the School.**

140. As a direct result of Defendants' failure to provide training and supervision, Plaintiffs have suffered the injury of being deprived of their due process rights and are at imminent risk of suffering additional such injuries every day they are at the School.

141. Plaintiffs who were enrolled in the School at the time of the filing of the Original Complaint in this action, including T.P.W., J.R., and Q.G., were at imminent risk of being disciplined again without notice or opportunity to be heard at the time of that filing. Their claims relate back to the time of the filing of the Original Complaint.

142. All Plaintiffs currently enrolled at the School — including M.H., R.W., R.J., and B.P. — are at continued imminent risk of being disciplined again without notice or opportunity to be heard. They remain in the involuntary custody of Defendants and cannot avoid exposure to Defendants' policy and practice of disciplining students without due process. Plaintiffs' past injuries of being deprived of due process upon being disciplined constitute evidence that Defendants have a policy and practice of administering the discipline process at the School in a way that denies children notice and opportunity to be heard. All of the Named

Plaintiffs remaining at the School are likely to be disciplined again. There is a substantial likelihood that Named Plaintiffs and other children will suffer additional future injury.

143. Although some Named Plaintiffs may have received more notice or opportunity to be heard than others, all Plaintiffs are subject to Defendants' policy and practice of administering the discipline process in such a way as to place all students at the School at risk of being denied their due process rights. Defendants have acted or refused to act on grounds generally applicable to all Plaintiffs.

**V. Plaintiffs have Suffered Harm as a Result of Defendants' Policies and Practices.**

144. Plaintiffs have suffered irreparable harm and are at imminent and serious risk of suffering additional such harm because of Defendants' pattern and practice of failing to provide training to staff members and to supervise and administer the AISS-CEP School. Defendants' policies, practices and procedures create an imminent risk that students will be referred to a school that is tantamount to expulsion without notice or opportunity to be heard, deprived of due process upon being disciplined, and deprived of their right to be free from unreasonable searches.

145. Plaintiff M.H. was deprived of his right to due process upon being referred to the School, has been deprived of his right to due process upon being

disciplined at the School, and has had his legitimate expectation of privacy violated by unreasonable searches while at the School. He is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

146. Plaintiff R.W. was deprived of his right to due process upon being referred to the School, has been deprived of his right to due process upon being disciplined at the School, and has had his legitimate expectation of privacy violated by unreasonable searches while at the School. He is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

147. Plaintiff J.R. was deprived of her right to due process upon being referred to the School, was deprived of her right to due process upon being disciplined at the School, and had her legitimate expectation of privacy violated by unreasonable searches while at the School. She is at imminent risk of being referred again to the School without due process.

148. Plaintiff T.P.W. was deprived of his right to due process upon being referred to the School and had his legitimate expectation of privacy violated by unreasonable searches while at the School. At the time of the filing of the Original Complaint, he was at imminent risk of being subjected to additional unreasonable

searches and of being disciplined without due process.

149. Plaintiff Q.G. has had his legitimate expectation of privacy violated by unreasonable searches while at the School.

150. Plaintiff R.J. was deprived of his right to due process upon being referred to the School, has been deprived of his right to due process upon being disciplined at the School, and has had his legitimate expectation of privacy violated by unreasonable searches while at the School. He is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

151. Plaintiff B.P. was deprived of her right to due process upon being referred to the School, has been deprived of her right to due process upon being disciplined at the School, and has had her legitimate expectation of privacy violated by unreasonable searches while at the School. She is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

152. Failure to grant Plaintiffs the relief requested herein will result in continued and irreparable harm.

**REQUEST FOR RELIEF**

**COUNT I**

**DENIAL OF RIGHT TO BE FREE FROM UNREASONABLE SEARCHES  
U.S. CONST. AMEND. IV; 42 U.S.C. § 1983**

153. Paragraphs 1 through 154 are hereby incorporated by reference.

154. Defendants' search policies and practices at the AISS-CEP School are both unnecessary and unreasonable. These policies and practices violate Plaintiffs' right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution. The Fourth Amendment violation in turn provides Plaintiffs with the right to obtain declaratory and injunctive relief and attorney fees, pursuant to 42 U.S.C. § 1983.

**COUNT II**

**DENIAL OF DUE PROCESS RIGHTS  
UPON REFERRAL TO THE SCHOOL  
U.S. CONST. AMEND. XIV; 42 U.S.C. § 1983**

155. Paragraphs 1 through 154 are hereby incorporated by reference.

156. Defendants' practices and policies of referring Plaintiffs to the AISS-CEP School without notice and opportunity to be heard violate Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment violation also entitles Plaintiffs to obtain declaratory and injunctive relief and attorneys' fees, pursuant to 42 U.S.C. § 1983.

**COUNT III**

**DENIAL OF DUE PROCESS RIGHTS**



**UPON DISCIPLINE AT THE SCHOOL  
U.S. CONST. AMEND. XIV; 42 U.S.C. § 1983**

157. Paragraphs 1 through 154 are hereby incorporated by reference.

158. Defendants' practices and policies of imposing discipline on Plaintiffs without notice and opportunity to be heard violate Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment violation also entitles Plaintiffs to obtain declaratory and injunctive relief and attorneys' fees, pursuant to 42 U.S.C. § 1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court:

159. Assume jurisdiction of this case.

160. Certify a class of all students who currently are or who in the future will be enrolled in the AISS-CEP School.

161. Issue a declaratory judgment that:

a. CEP is a state actor.

b. The following search policies and practices employed by Defendants or as a result of Defendants' policies and practices at the AISS-CEP School violate Plaintiffs' Fourth Amendment rights to be free from unreasonable searches:

(1) any search of any students other than a metal detector search, in the absence of individualized suspicion that such student has a concealed weapon;

(2) searching the inside of any student's mouth in the absence of individualized suspicion that such student has a concealed weapon in his or her mouth;

(3) any manual searches inside any student's pants waistband in the absence of individualized suspicion that such student has a concealed weapon;

(4) any search requiring any student to grab the sides of her bra and shake in the absence of individualized suspicion that such student has a concealed weapon in her bra;

(5) any strip search of any student in the absence of suspicion such student is in possession of a weapon;

(6) any search of any female student underneath her shirt in the area of her breasts in the absence of individualized suspicion that such student has a concealed weapon in that area of her body;

(7) any search of any student requiring such student to lift his or her shirt to expose his or her navel in the absence of individualized

suspicion that such student has a concealed weapon in that area of his or her body;

(8) any search of any student requiring him or her to stand up against a wall while being frisked, in the absence of individualized suspicion that such student has a concealed weapon and that he or she poses a threat to the safety of the person conducting the search that can be ameliorated by requiring such student to assume such pose during the search;

(9) any search of any student in the pelvic and buttocks area in the absence of individualized suspicion that such student has a concealed weapon in that area of his or her body; and

(10) any search of any student conducted by opposite sex staff members.

c. Referral of a Plaintiff to the AISS-CEP School is tantamount to expulsion from the public school system and a deprivation of his or her property right to an adequate education in light of the violence at the School; the atmosphere of violence and intimidation; insufficient number of qualified teachers and staff; lack of classroom instruction and resources; reliance upon a computer learning system with inadequate adult supervision;

lack of support services; lax record-keeping; policies that push students out of school; and continued failure to take steps to address the educational failings of the School.

d. The following referral policies and practices employed by Defendants to refer Plaintiffs to the AISS-CEP School deny Plaintiffs their Fourteenth Amendment right to notice and opportunity to be heard:

(1) referring students without any process at all;

(2) failing to provide each student being referred and their parents or legal guardian prior notice of the referral that sets forth Defendants' reasons for seeking to refer the student to the AISS-CEP School; the time and place of a formal hearing convened in advance of the proposed referral date to determine on the basis of evidence presented on behalf of Defendants and the student the propriety of the referral; and all evidence Defendants will present at such hearing in support of the referral;

(3) failing to provide to each student being referred and such student's parents or legal guardian a formal hearing prior to the referral, as set forth in such prior notice, before an impartial decision-maker to determine the propriety of the referral, at which such student

and his or her parents or legal guardian is afforded the opportunity to challenge Defendants' evidence through cross-examination and otherwise, and to present evidence on behalf of the student in opposition to the referral;

(4) referring students to the AISS-CEP School for any alleged violations of any "student contract" without prior notice and opportunity to be heard before an impartial decision-maker on the basis of such evidence; any administrative reasons; or because such student is new to the school district or attended an alternative school previously.

e. Defendants' policy and practice of preventing students from enrolling in the AISS-CEP School immediately upon being referred to it without affording them prior notice or opportunity to be heard with respect to such delay violates their Fourteenth Amendment right to due process.

f. The following policies and practices of and by Defendants in connection with disciplining Plaintiffs at the AISS-CEP School deny Plaintiffs' Fourteenth Amendment right to notice and opportunity to be heard:

(1) denying them an informal hearing for suspensions of 10

days or less, with formal notice of the charges, an explanation of the accusation and basis for the accusation, an explanation of the evidence against them, and an opportunity to present their of the story;

(2) denying them a formal hearing for suspensions of more than 10 days, with an impartial decision-maker, written notice of the charges against them that explain what they are accused of doing and what the basis of the accusation is, reasonable prior notice of the hearing, an explanation of the evidence against them, an opportunity to present their side of the story, an opportunity to present and cross-examine witnesses, an opportunity to obtain counsel, and an explanation of the proceedings as well as the right to appeal the decision; and

(3) adding days of in-school-suspension onto suspensions that have already been imposed without any additional notice or opportunity to be heard.

162. Issue injunctive relief requiring Defendants to undertake the following steps within a period of time to be determined by the Court:

a. Develop and implement a search protocol prohibiting searches beyond a metal detector search in the absence of reasonable individualized

suspicion that a student is in possession of a weapon. The basis for any such suspicion must be presented in writing to an Assistant Principal or Principal of the School, who must certify the basis for such suspicion in writing before any search more intrusive than a metal detector or metal detector hand wand is conducted. Defendants must maintain a log of any searches beyond these metal detector searches, with the names of the students searched, the dates the searches were conducted, the names of the staff members conducting the searches, the basis for the searches, and any items recovered during the searches.

b. Develop and implement a procedure to be followed in connection with referring students to the School that includes:

(1) a requirement that a formal hearing be convened with an impartial decision-maker who has received training on the constitutional due process rights of children being referred to the School and of the requirements imposed by this Court's Order Granting Injunctive Relief;

(2) a requirement that at least X days prior to such formal hearing, the student and his or her parents or legal guardian be provided with formal written notice setting forth:

(A) an explanation of the nature of the AISS-CEP School and a description of the School consistent with that description required by the School's status as a school in its fifth year of "needs improvement" under NCLB;

(B) the time and place of the formal hearing and the identity of the member(s) of the tribunal before whom the hearing will be convened;

(C) all of Defendants' reasons for the referral, including a detailed description of each act on the part of the student that forms any part of Defendants' reasons for the referral, the identity of the individuals who have accused the student of committing such acts, all evidence that Defendants will present in favor of referral at the formal hearing, and the identity of all witnesses whose testimony Defendants will present at the hearing and an accurate summary of the testimony of each such witness;

(D) formal written notice of the student's right to have to counsel at the hearing, to bring witnesses to testify at the hearing, and otherwise to present evidence on his or her behalf



at the hearing, and to appeal the decision of the impartial decision-maker;

(3) permission for the student whose referral is sought to attend his or her regular school prior to and up until the date of the hearing unless there is reason to believe such student poses an immediate danger to others, in which case an informal hearing to establish that finding shall be convened no later than 2 days after the precipitating incident with the finding made in writing and immediately appealable to the school district;

(4) provision ensuring at the formal hearing that:

(A) the student whose referral is sought by Defendants shall be provided with a full explanation of the evidence against him or her;

(B) the student receives an explanation of the nature of the AISS-CEP School and a description of the School consistent with that description required by the School's status as a school in its fifth year of "needs improvement" under NCLB;

(C) the student receives an explanation of the student's

right to counsel at the hearing, to bring witnesses to testify at the hearing, and otherwise to present evidence on his or her behalf at the hearing, and to appeal the decision of the impartial decision-maker;

(D) the impartial decision-maker undertakes all reasonable efforts to ensure that the charges and the student's rights are understood by the student and his or her parents or legal guardian,

(E) a transcript is created of the formal hearing and made available to students and their parents or guardians upon request at a reasonable charge, or free of cost if the student qualifies for a free lunch;

(5) a requirement that the impartial decision-maker shall issue a decision in writing no later than 5 business days after the formal hearing and that such written decision will be sent to the student and his or her parents or legal guardians via Certified Mail;

(6) a requirement that unless the impartial decision-maker has found the student to pose an immediate and serious danger to others, the student shall be permitted to remain enrolled in his/her regular

school if an appeal is taken.

c. Develop and implement a discipline protocol for providing due process to students at the School in connection with detentions and suspensions (including in-school-support, in-school-suspensions, and out-of-school suspensions) of nine days or less that includes:

(1) informal notice to the student and student's parents or guardians as soon as practicable;

(2) formal written notice to the student and student's parents or guardians within 1 business day of the discipline imposed that provides the reason the discipline was imposed, an explanation of the student's due process rights, and provides an opportunity for a parent conference with an Assistant Principal or Principal of the School;

(3) a provision that if the suspension is a bus suspension, notice must be given to the student and student's parents or guardians prior to the date the suspension takes effect;

(4) a provision that discipline may not be imposed without the prior written approval of an Assistant Principal or the Principal of the School;

(5) an opportunity to be heard by the student prior to the

discipline being imposed before an Assistant Principal or the Principal of the School;

(6) a provision that records of all such discipline, including the names of the students disciplined, the date of the discipline, and the staff member at whose request the discipline was made, must be maintained by the School; and

(7) a provision that discipline may not be imposed more than one time for any given underlying disciplinary incident without additional notice and opportunity to be heard.

d. Implement a discipline protocol for suspensions (including in-school-support, in-school-suspensions and out-of-school suspensions) and expulsions of ten days or more that includes:

(1) all of the components of the formal hearing process described above in ¶ 159(e) for the referral process to the School; and

(2) a provision that records of all such discipline, including the names of the students disciplined, the date of the discipline, and the staff member at whose request the discipline was made, must be maintained by the School.

e. Provide regular and periodic training to all staff employed by or

posted to the AISS-CEP School on the provision of instruction, the avoidance of physical confrontation with students, the needs of children in an alternative educational setting, the needs of children with disciplinary and behavioral issues, the constitutional rights of children to be free from unreasonable searches and to due process upon being disciplined at the School, and the requirements of this Court's Order Granting Injunctive Relief.

f. Provide regular and periodic training to all staff involved with the referral of students to the School regarding the constitutional due process rights of children referred to the School and the requirements of this Court's Order Granting Injunctive Relief.

g. Provide regular and periodic training to all staff involved with the supervision, monitoring or oversight of the School regarding the state and federal laws applicable to the School and to children enrolled at the School, and the requirements of this Court's Order Granting Injunctive Relief.

163. Appoint a special master or independent monitor to oversee, and to report to the Court and Plaintiffs' Counsel, as to Defendants' implementation of and compliance with this Court's requirements, and directing Defendants to:

a. Grant such special master or independent monitor access to any and all records of Defendants and such access to the School and students enrolled in the School as he or she may request, until such time as such master or monitor advises the Court and Plaintiffs counsel in writing that Defendants have abandoned the policies and ceased and desisted from the practices declared unconstitutional hereby and are in full compliance with the judgment issued by the Court in this matter;

b. submit to such special master or independent monitor and to Plaintiffs' counsel a written plan to implement and comply with the Court's requirements and injunctions, including without limitation the plans set forth in this Request for Relief with respect to searches, referrals and imposition of discipline;

c. submit to such special master or independent monitor and to Plaintiffs' counsel, on such periodic basis and for so long as he or she may instruct, reports as to their implementation of and compliance with the requirements of this Request for Relief; and

d. bear all fees and costs of such special master or independent monitor incurred in connection with such matters.

164. Award to Plaintiffs, pursuant to 42 U.S.C. § 1988, the reasonable

costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees.

165. Retain jurisdiction to enforce all relief granted by the Court in this matter.

166. Such other and further relief as the Court deems necessary or proper.

Respectfully submitted this 30th day of January, 2009.

/s/ Emily Chiang  
Emily Chiang  
Reginald Shuford  
India Geronimo  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 549-2500  
Fax: (212) 549-2680

Chara Fisher Jackson  
Georgia Bar No. 386101  
American Civil Liberties Union of  
Georgia  
75 Piedmont Ave., Ste. 514  
Atlanta, GA 30303  
Phone: (404) 523-6201  
Fax: (404) 577-0181

Nancy G. Abudu  
Georgia Bar No. 001471  
American Civil Liberties Union  
Southern Regional Office  
2600 Marquis One Tower  
245 Peachtree Center Ave.  
Atlanta, GA 30303  
Phone: (404) 523-2721  
Fax: (404) 653-0331

Eric Hellerman  
Ethan Jacobs  
Covington & Burling LLP  
620 Eighth Avenue  
New York, NY 10018  
Phone: (212) 841-1000  
Fax: (212) 841-1010  
ATTORNEYS FOR PLAINTIFFS

Mawuli M. Malcolm Davis  
Georgia Bar No. 212029  
Robert O. Bozeman  
Georgia Bar No. 073561  
The Davis Bozeman Law Firm PC  
4153 B Flat Shoals Law Firm, Ste 204  
Decatur, GA 30034  
Phone: (404) 244-2004  
Fax: (404) 244-2020

Brandon Jamison  
Shannon A. Lang  
Covington & Burling LLP  
1201 Pennsylvania Avenue NW  
Washington, DC 20004  
Phone: (202) 662-6000  
Fax: (202) 662-6291



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 6, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael Eric Ross  
Brett T. Lane  
Greenberg Traurig, LLP  
The Forum, Suite 400  
3290 Northside Parkway NW  
Atlanta, GA 30327

Rodney G. Moore  
Aja N. Diamond  
Adorno & Yoss, LLC-GA  
1349 W. Peachtree St. NE  
Two Midtown Plaza, Suite 1500  
Atlanta, GA 30309

*Counsel for Defendant Atlanta Independent School System*

Bruce P. Brown  
James A. Washburn  
Petrina A. Hall  
McKenna Long & Aldridge LLP  
303 Peachtree Street, Ste. 5300  
Atlanta, Georgia 30308

*Counsel for Defendant Community Education Partners, Inc.*

/s/ Shannon A. Lang  
Shannon A. Lang  
Covington & Burling LLP  
1201 Pennsylvania Ave. NW  
Washington, DC 20004  
Phone: (202) 662-6000  
Fax: (202) 662-6291