

**BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF CIVIL RIGHTS**

**A, and Parent of A; B, and Parent of B;
C, and Parent of C; D, and Parent of D;
E, and Parent of E; F, and Parent of F;
G, and Parent of G; H, and Parent of H;
J, and Parent of J; K, and Parent of K;
L, and Parent of L; M, and Parent of M;
N, and Parent of N; Letitia James,
The Public Advocate for the City of
New York;
Council Member Daniel Dromm;
The Legal Aid Society;
MFY Legal Services, Inc.;
Partnership for Children’s Rights; and
New York Legal Assistance Group,**

Complainants,

-against-

Success Academy Charter Schools, Inc.,

Respondent.

COMPLAINT

The undersigned individual complainants; Public Advocate of the City of New York; Council Member Daniel Dromm, Chair of the Education Committee for the New York City Council; and organizational complainants bring this complaint against Success Academy Charter Schools, Inc. (“Success Academy” or “Success”).¹

1. INTRODUCTION

The complainants allege that Success Academy has engaged in ongoing systemic policies and practices that violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and the Individuals with Disabilities Education Act (“IDEA”).

Legal Services NYC represents eight of the individual complainants. Legal Services NYC is the largest provider of free civil legal services in the country. Its neighborhood-based offices and outreach sites across all five boroughs help more than 80,000 low-income New Yorkers

¹ To protect and preserve the confidentiality of the minor children, names of students and parents are replaced by pseudonyms throughout. OCR will be provided with signed consent forms for the individual clients under separate cover.

annually. Legal Services NYC has an education law practice in every New York City borough.

The Public Advocate, Council Member Daniel Dromm, and organizational complainants are:

- The Public Advocate for the City of New York, Letitia James, is a citywide elected official, the immediate successor to the Mayor, and an *ex-officio* member of the New York City Council. The Public Advocate is charged with monitoring, investigating, and reviewing the actions of City agencies. She is also responsible for identifying systemic problems, recommending solutions, and publishing reports concerning her areas of inquiry. She has the power to introduce legislation and hold oversight hearings on legislative matters. N.Y.C. Charter (“Charter”) at §24. The Office of the Public Advocate was created to serve as a “watchdog” against the inefficient or inadequate operation of City government. *Green v. Safir*, 664 N.Y.S.2d 232 (N.Y. Sup. Ct. 1997). She joins this complaint because the practices it challenges have a deleterious effect on the City’s traditional public school system by forcing it to bear a disproportionate cost for educating children with more intensive needs. Furthermore, allowing the practices challenged in this Complaint to go unchecked runs the risk of creating a two-tiered system of education. Having two separate systems, one which serves children with disabilities, and one which in large part does not, hurts children throughout New York City’s educational system whether they are enrolled in a Charter school or attend a traditional public school.
- Daniel Dromm has represented the communities of Jackson Heights and Elmhurst in the New York City Council since 2010. He has over two decades of experience as a NYC public school teacher and has served on the Council's Committee on Education for over six years. Since becoming the Committee's Chairperson in 2014, Council Member Dromm has lead the way in improving NYC public education and has helped advance legislation benefiting students with special needs. Most notably, Council Member Dromm authored Local Law 27 which mandates that the New York City Department of Education (“DOE”) report data on all public school students receiving special education services. This law effectively brings much-needed transparency to the special education system so that lawmakers, education advocates, and the DOE can continue to work to improve the entire educational experience for children with disabilities. Council Member Dromm has dedicated his tenure to advocating for the rights of New York City public school students, and joins this complaint against Success Academy Charter School. Council Member Dromm demands that Success Academy be held accountable for its enrollment, discipline and special education policies which appear to violate federal law. He strongly believes that the stories of discrimination against students with disabilities warrant this complaint.
- The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. The

Society handles 300,000 individual cases and matters annually and provides a comprehensive range of legal services in three areas: the Civil, Criminal and Juvenile Rights Practices.

- MFY Legal Services, Inc. (“MFY”) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, MFY provides free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. MFY currently provides legal assistance on housing, government benefits, consumer, employment, education, foreclosure, bankruptcy, civil and disability rights, and family law matters.
- Partnership for Children’s Rights (“PFCR”) is a not-for-profit law firm that provides free legal services to disabled children from low-income families throughout New York City in the areas of special education and children’s Supplemental Security Income disability benefits. PFCR is staffed with salaried and volunteer attorneys and social service professionals who work as a team to provide legal representation to more than 250 families of children with disabilities annually.
- New York Legal Assistance Group (“NYLAG”) is a free civil legal services organization that provides low-income New Yorkers with needed representation in areas including immigration, family law, housing, employment discrimination and special education. The Special Education Unit provides free legal services to ensure that low-income children with disabilities receive the free appropriate public education they are entitled to under law.

Complainants allege that Success Academy engages in policies and practices throughout their network which violate students’ rights under Section 504 and the IDEA, including but not limited to:

- Success Academy discriminates against students with disabilities by failing to identify them or provide them with reasonable accommodations;
- Success Academy discriminates and retaliates against students with disabilities by taking measures to coerce them to leave Success Academy when they require or may require services related to a disability;
- Success Academy fails to comply with the disciplinary due process rights of students;
- Success Academy fails to refer students who have or may have a disability for appropriate evaluations at public expense; and
- Success Academy fails to provide parents with meaningful notice regarding their rights, *inter alia*, to programs, supports and accommodations.

The complainants submit that these violations have resulted in a denial of educational access and/or services at Success Academy schools to students with disabilities or suspected of having disabilities.

2. SUCCESS ACADEMY MANAGEMENT AND POLICIES

Success Academy is New York City's largest charter school network. It currently operates thirty-six schools with a total enrollment of approximately 11,000 students.² Success Academy's current enrollment figures rank it as the twenty-first largest school district in New York State, ahead of over six hundred other school districts.³ There are currently seven Success schools in the Bronx, ten in Brooklyn, seventeen in Manhattan, and two in Queens. Success Academy aims to open and operate sixty-four schools by 2020 which would serve more than 26,000 students.⁴

All of the assets and liabilities of the individual Success schools are governed by one education corporation, which provides management and administrative support to schools within its network.⁵ Success Academy is located at 95 Pine Street, 6th Floor, New York, New York. Success Academy receives federal and state funding to provide educational services to the students enrolled in its schools.⁶ In addition to direct funding from the federal and state governments, Success Academy receives space for all of its schools free of charge from New York City.⁷

All Success schools impose a rigorous discipline policy which disproportionately impacts students with disabilities. Success Academy has a "zero-tolerance approach" when it comes to discipline.⁸ In 2014-15, Success's Code of Conduct ("Code") encompassed an extensive list of sixty-six possible disciplinary infractions listed in Levels 1 to 4, from least serious to most

² The number of students is based on data from 2014-15 school year. There are varying reports on the number of schools in the Success network. The Success Academy website lists thirty-six schools, but the New York Times reported that there would be thirty-four Success schools by fall 2015 and that by 2016, there would be forty-three schools. See Taylor, Kate, *Success Academy Gets \$8.5 Million to Add Charter Schools in New York City*, N.Y. Times at A20 (July 30, 2015) available at <http://www.nytimes.com/2015/07/31/nyregion/success-academy-receives-gift-for-new-schools.html> (hereinafter "NYT Success Gift"); and see Taylor, Kate, *At Success Academy Charter Schools, High Scores and Polarizing Tactics*, N.Y. Times at A1 (April 6, 2015) available at <http://www.nytimes.com/2015/04/07/nyregion/at-success-academy-charter-schools-polarizing-methods-and-superior-results.html> (hereinafter "NYT Polarizing Methods").

³ NYS Educ. Dep't, Public School Enrollment available at <http://www.p12.nysed.gov/irs/statistics/enroll-n-staff/home.html> (last accessed Dec. 22, 2015).

⁴ Success Academy Charter Schools – NYC Application For Grants Under the Grants for Replication and Expansion of High-Quality Charter Schools, Form GEPA 427 at p. e19 available at <https://www2.ed.gov/programs/charter-rehqcs/2014/successacademyapp.pdf> (hereinafter "Expansion Grant Application").

⁵ Belluck, Joseph, Approval of Revisions to Merge Various Charter School Education Corporations into Success Academy Charter Schools – NYC (Manhattan) available at <https://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/D2%20-%20Success%20Academy%20Charter%20School%20Merger%20Reso.pdf>.

⁶ In 2015, Success will receive \$13,777 per-pupil in public funding. See Expansion Grant Application.

⁷ Success Academy is also unprecedented in its fundraising efforts, with more than \$28 million raised in private donations for the fiscal year 2014. See NYT Success Gift.

⁸ See, e.g., Family Handbook for the 2014-15 school year ("Handbook"). Nearly five of the fifteen substantive pages of the Handbook are devoted to discipline in the Success Academy schools.

serious.⁹ This list was “not exhaustive” and school leaders were permitted to supplement the Code as needed.¹⁰

Success’s discipline policies punish students who break the Code by “not engaging in learning and not following directions” or by engaging in “minor disrespectful behavior” such as failing to make eye contact, getting out of the student’s seat, and not keeping hands folded in laps.¹¹ These, and even the more serious infractions, are actions that students with disabilities may have trouble controlling. Students whose disabilities affect their ability to comply with this one-size-fits-all approach to discipline face repeated suspensions, other discipline, and removal.¹² As exemplified in this complaint, many of the students who are repeatedly suspended or held back are children with IEPs or children who are exhibiting academic and/or behavioral issues which might indicate a disability.

Mounting evidence highlights the inappropriate, illegal, and discriminatory practices the organization utilizes to achieve “success” and the costs, sacrifices and shortcuts that students experience in the process. Parents of children attending Success schools have expressed concerns about Success’ disciplinary policies, its lack of accommodations for children with actual or perceived disabilities, and its practice of pushing students out.¹³ In a recent expose by the *New York Times*, parents reported that “while their children attended Success, their lives were upended by repeated suspensions and frequent demands that they pick up their children early or meet with school or network staff members.”¹⁴ Several parents told the *Times* that “school or network employees told them explicitly that the school . . . was not right for their children and that they should go elsewhere.”¹⁵ Nine of sixteen of the students on a “Got to Go” list kept by one principal eventually withdrew from Success.¹⁶

Current and former Success employees confirmed to the *Times* that they had observed practices like these at other Success schools. These individuals revealed that “school leaders and network staff members explicitly talked about suspending students or calling parents into frequent meetings as ways to force parents to fall in line or prompt them to withdraw their children.”¹⁷ At

⁹ This Code of Conduct applied to every individual complainant. See Handbook pp. 13-17.

¹⁰ *Id.* at p. 14.

¹¹ *Id.*

¹² See, e.g., Remarks of U.S. Secretary of Education Arne Duncan at the Release of the Joint DOJ-ED School Discipline Guidance Package (Jan. 8, 2014) available at <http://www.ed.gov/news/speeches/rethinking-school-discipline> (“[S]chools should be seeking to provide differing levels of support and interventions to students, based on their needs—we know some students need more intensive support than others. The one-size-fits-all mentality simply doesn’t work.”).

¹³ See, e.g., Taylor, Kate, *At a Success Academy Charter School, Singling Out Pupils Who Have ‘Got to Go’*, N.Y. Times at A1 (Oct. 30, 2015) available at http://www.nytimes.com/2015/10/30/nyregion/at-a-success-academy-charter-school-singling-out-pupils-who-have-got-to-go.html?_r=0 (“Success employees at five schools suggest that some administrators in the network have singled out children they would like to see leave.”) (*hereinafter* “NYT Success Got to Go List”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

least one principal directed teachers not to send re-enrollment letters to students the school wanted to withdraw.¹⁸

Questions about Success's practices are not new. Data from 2011-14 shows that Success schools suspended students at a rate roughly seven times greater than the New York City public schools.¹⁹ In February 2013, Success Academy's authorizer, the State University of New York, noted that "alternative instruction for suspended students was not consistently presented to parents as mandatory" and expressed concerns about whether live alternative instruction was actually provided at one Success school.²⁰ Success Academy lags behind public schools in serving students with disabilities²¹ and English language learners.²²

3. THE EXPERIENCES OF THE COMPLAINANTS

The individual complainants' experiences with Success Academy schools exemplify the unlawful policies and practices which are the subject of this complaint.

¹⁸ *Id.*

¹⁹ Strauss, Valerie, *The startling way NYC's largest charter network handles student discipline*, Wash. Post Answer Sheet Blog (Oct. 20, 2015) <https://www.washingtonpost.com/news/answer-sheet/wp/2015/10/20/the-startling-way-nycs-largest-charter-network-handles-student-discipline/> (last accessed Dec. 22, 2015); Casey, Leo, *Student Discipline, Race And Eva Moskowitz's Success Academy Charter Schools* (Oct. 19, 2015) <http://www.shankerinstitute.org/blog/student-discipline-race-and-eva-moskowitz%E2%80%99s-success-academy-charter-schools> (last accessed Dec. 22, 2015) (*hereinafter* Shanker Discipline).

²⁰ SUNY Charter Schools Institute, Renewal Recommendation Report, Success Academy Charter School—Harlem 2 at p. 10 (Feb. 11, 2013) *available at* <http://www.newyorkcharters.org/wp-content/uploads/SA-Harlem-2-Renewal-2013.pdf>; *see also* Gonzalez, Juan, *Gonzalez: Boy, 9, expelled from Harlem charter school after an 'ambush' disciplinary hearing, mother claims*, N.Y. Daily News (April 1, 2015) *available at* <http://www.nydailynews.com/new-york/education/gonzalez-boy-expelled-harlem-charter-ambush-article-1.2169154>.

²¹ A review of the percentages of students with disabilities in schools that are co-located with Success Academy is illustrative of this inequality. For example, Harlem 1 is co-located with P.S. 149 also an elementary school, but 28.2% of the students at P.S. 149 are classified as having disabilities compared to only 14.7% of students at Harlem 1 in 2014-15 and 30.7% versus 14.3% in 2013-14. Harlem 2 is co-located with P.S. 030, also an elementary school, but only 10.1% of the student population at Harlem 2 was classified as having a disability in 2014-15 compared to 29.3% of the population at P.S. 030. In 2013-14 those numbers were 27.8% at P.S. 030 and 12.0% at Harlem 2. P.S. 123 Mahalia Jackson is co-located with Harlem 5 but in 2014-15 23.0% of the students at P.S. 123 were classified as having disabilities versus 13.7% of students at Harlem 5. In 2013-14 those numbers were 22.9% at P.S. 123 and 16.3% at Harlem 5. Bronx 3 is co-located with P.S. 146. In 2014-15 9.8% of Bronx 3's students were classified as having disabilities versus 18.6% at P.S. 146. In 2013-14 those numbers were 11.8% at Bronx 3 versus 20.4% at P.S. 146. These numbers are based on the annual enrollment snapshots from 2011 through 2014 kept and provided by the New York City Department of Education *available at* <http://schools.nyc.gov/Accountability/data/default.htm> (last accessed Jan. 14, 2016).

²² *See, e.g.,* Shanker Discipline ("While 18 percent of New York City public school students have 'learning disabilities,' 14 percent of Success Academy students fall into that category; and while 15 percent of New York City public school students are English language learners, only 5 percent of Success Academy students fall into that category."). Amendments to the Charter Schools Act in 2010 require all charter schools to meet enrollment and retention targets for students with disabilities, English language learners, and students eligible for the free and reduced price lunch program. N.Y. Educ. Law § 2851(4)(e). Targets must be comparable to the population of students attending public schools in the district where the charter school is located.

a. A, and Parent of A

A is a twelve year old boy who attended Success Academy – Harlem 4 (“Harlem 4”). A entered Harlem 4 during the 2011-12 school year and, though he had previously completed second grade at a different school, Harlem 4 mandated that A repeat the second grade because they said he was behind in reading. The following school year, 2012-13, Harlem 4 required A to complete the second grade for a third time after claiming that he had not performed well enough on practice State tests. A was finally promoted to the third grade during the 2013-14 school year.

During the 2013-14 school year, A’s mother noticed that he was having some trouble speaking and asked Harlem 4 to evaluate him for special education services. The resulting Individualized Education Program (“IEP”) mandated that A receive Special Education Teacher Support Services (“SETSS”) five times per week and speech therapy three times per week.

A entered the fourth grade in the 2014-15 school year. In January 2015, A’s mother began raising concerns to Harlem 4 that her son was not receiving services as they were laid out in his IEP. In response to A’s mother’s concerns, the principal met with A’s mother and informed her that A might be held back and that she should remove him from the school if she wanted him to proceed to the fifth grade the following year. In March 2015, A’s mother met again with school officials and was told that her son would benefit from a 12:1:1 self-contained class and that he should leave Harlem 4 because they would not provide the appropriate classroom setting.²³

Harlem 4 made no efforts to determine which academic supports could help A remain at Harlem 4, nor did they offer him a seat in a 12:1:1 program in a Success school.

During the 2014-15 school year, Harlem 4 suspended A seven times. They also twice asked A’s mother to keep him home from school for a day but did not call those days “suspensions” or provide his mother with suspension letters. The suspension notifications Harlem 4 did send to A’s mother informed her that A was suspended but provided no information about the right to dispute the suspension, present evidence regarding it, or seek legal assistance. The suspension notifications made no mention of the disciplinary due process rights of students with disabilities or suspected of having a disability and did not provide information about where and when A could receive alternative education. Alternative education was never provided to A during any of the suspensions or other removals. On top of these removals, school officials at Harlem 4 sent A home early (sometimes as early as 10 a.m.) at least once a week and up to three times a week beginning in March 2015 until the end of the school year. A was never referred for or provided with a Manifestation Determination Review (“MDR”).²⁴

²³ A 12:1:1 program is a self-contained classroom that has a special education teacher and a paraprofessional for every 12 students in the room.

²⁴ Generally, when a child with a disability or presumed to have a disability engages in behavior or breaks a code of conduct and the school proposes to remove the child, the school must hold a meeting to determine if the child’s behavior was caused by or related to the child’s disability. *See, e.g.,* Brownley, Bill, *Handling a Manifestation Determination Review*, Wright’s Law (Sept. 22, 2014) available at <http://www.wrightslaw.com/info/discipl.mdr.strategy.htm#sthash.WEn3ki39.dpuf> (last accessed Jan. 19, 2015).

In May 2015, the principal of Harlem 4 told A's mother that her son might be left back again and urged her to remove him from Success. While repeatedly counseling him to leave, the school offered nothing in the way of appropriate academic services or other supports to help him succeed at Success. Finally, in June, the school told A's mother that A would be held back in the fourth grade if he remained at Success. Because of Success's continued failure to help her son, A's mother withdrew him from Harlem 4.

b. B, and Parent of B

B is a six year old boy who began in kindergarten at Success Academy – Harlem 3 (“Harlem 3”) during the 2014-15 school year. B had received special education services through Early Intervention during preschool but was decertified from special education prior to entering Harlem 3.

B began having behavioral problems in school in April 2015 and B's mother asked Harlem 3 to evaluate him for special education services because she believed his behavior was due to a disability. The resulting IEP recommended that B be placed in a 12:1:1 self-contained class with related services. B's mother was told that Harlem 3 does not provide self-contained settings and that she should remove him from Harlem 3 and place him in a DOE community school. B's mother informed Harlem 3 that she believed her son would do well if he remained at the school, but asked for the reasonable accommodation of a paraprofessional to help provide behavioral support. She was told several times that this was not an option because “Success Academy does not provide paraprofessionals.”

Between April 2015 and June 2015, B was suspended ten times. The suspension notifications Harlem 3 sent to B's mother informed her that B was suspended but provided no information about the right to dispute the suspension, present evidence regarding it, or seek legal assistance. Except for the final notice, dated June 4, 2015, the suspension notifications made no mention of the disciplinary due process rights of students with disabilities or suspected of having a disability and did not provide information about where and when B could receive alternative education. The final notice informed B's mother that a MDR would be scheduled by the Committee on Special Education (“CSE”) but did not contain a date for the MDR and no MDR was ever held.

In addition to the suspensions, beginning in April, 2015, and continuing until the end of school, the school asked B's mother to observe B's behavior in school approximately once or twice a week. The school also called B's mother frequently to ask her to come pick him up early, and threatened to call emergency medical services (“EMS”) if she did not come to the school quickly after she was called. In or about May 2015, Harlem 3 called B's mother and told her to come to the school immediately or they would call EMS because B was allegedly exhibiting “unsafe” behavior. B's mother requested that the school wait forty-five minutes for her to arrive because she was working and asked that the school not call EMS until she arrived. Instead of waiting for B's mother, Harlem 3 called EMS. Despite Harlem 3's insistence that B's mom come to the school immediately, she was ultimately forced to wait approximately three hours at the school. During that time period, she asked to leave with her child but the school refused and told her that B had to remain there until EMS arrived. Even when B's mother told school officials that she

needed to pick up her other children from school, the assistant principal told her that if she left the school the Administration for Children's Services ("ACS") might bring a case against her. EMS ultimately did not come to the school and apparently told the administrator that EMS does not pick up children just because they are misbehaving. During these removals and suspensions, B never received alternative instruction.

School officials at Harlem 3 continued to urge B's mother to remove him from the school to a DOE public school that would provide B with a smaller setting. When re-enrollment letters were sent out to other students in B's class in May 2015, B did not receive one. When B's mother spoke with the principal to request that B be re-enrolled, the principal again urged her to remove B from Harlem 3. Only after B's mother insisted that B remain in the school did the principal relent; however, the principal informed B's mother that B would have to repeat kindergarten if she chose to keep him at the school. Other than suggesting that she remove her son or insisting that he repeat kindergarten, Harlem 3 did not address B's mother's concerns and offered nothing in the way of appropriate academic intervention services or supports to help B succeed. Faced with this, B's mother withdrew him from Harlem 3.

c. C, and Parent of C

C is a five year old student who was enrolled to attend kindergarten at Success Academy – Crown Heights ("Crown Heights") for the 2015-16 school year. His IEP recommends a 12:1:1 classroom setting and mandates that he receive speech and occupational therapy.

C arrived at Crown Heights' kindergarten class dress-rehearsal on or about August 11, 2015. Crown Heights' vice principal called C's mother about fifteen minutes after she dropped her son at the school. She was advised that C could not remain enrolled at Crown Heights because he ran around the cafeteria and failed to follow commands. His mother was instructed to take C home that morning. The next day, C's mother returned to Crown Heights with her husband and sister for a meeting with school officials concerning C's behavior. Crown Heights officials asked C's mother to attend the first full day of class, scheduled for August 17, with C. She agreed to stay for half of the first day of school. C's mother requested a paraprofessional for her son to help with the behavior issues but none was ever provided.

C and his mother arrived at Success Academy for the first full day of school on or about August 17. C went to the cafeteria to eat breakfast and his mother was asked by school officials to remain outside the cafeteria during this time. Ten minutes later, the assistant principal informed her that C was running around the cafeteria. She entered the cafeteria, immediately calmed him down and returned him to his seat. About two or three minutes later C got up from his seat and again ran around the cafeteria. The assistant principal called for the intervention of School Safety Agents and then told C's mother that she needed to take him home. His mother refused and asked to sit with her son in class. The assistant principal told her that she could not sit in the class with C, but could wait for him inside the main office. C's mother went to the main office while C and a few other students went upstairs to their classroom. Soon thereafter, school officials asked C's mother to visit his classroom. When C's mother arrived at the classroom, she

observed her son alone, playing with toys, while the other students were seated and receiving instruction.

C's mother then returned to the main office and met with Crown Heights' principal and vice principal to discuss her son's behavior. She was informed that because of his behavior he could not remain enrolled at the school. The Crown Heights officials informed her that he needed a smaller class and that they neither had a 12:1:1 class nor an integrated co-teaching ("ICT") class.²⁵ C's mother was then asked to sign a withdrawal form, consenting to dis-enroll her son from Crown Heights. When C's mother refused to sign the form, Crown Heights officials told her that C could never be in the school building unless she accompanied him at all times. School officials then summoned Success Academy's special education administrator to further pressure C's mother to remove her child from the school. The special education administrator did not provide C's mother with information regarding academic supports and services that would allow C to remain at the school. Instead, she reiterated the schools position that C could not remain at Crown Heights and invited his mother to tour neighboring DOE public schools. In response to Success Academy's demonstrated unwillingness to educate C, his mother withdrew him from Crown Heights.

d. D, and Parent of D

D is a kindergarten student at Success Academy – Harlem 2 ("Harlem 2"). D attended a neighborhood preschool, where she received special education services that included a one-to-one special education teacher for four hours per day to help her with developing pre-academic skills, communicating her thoughts, appropriately interacting with other students, and transitioning between activities. This teacher also helped make sure that D used the bathroom on a schedule, since she had difficulty understanding when she had to go and she sometimes had accidents.

At D's turning-five meeting the IEP team created a plan that mandated an ICT classroom with two individual weekly sessions of counseling, as D needed a setting that would provide challenging academics with social and emotional support. In addition, the IEP provided D with a full-time one-to-one health paraprofessional to continue working on toilet training.

In August 2015, D enrolled at Harlem 2. She was placed in a general education classroom even though her IEP mandated an ICT classroom. D was given SETTS several times per week outside of the classroom. Harlem 2 also told D's mother that they would not provide a toileting paraprofessional and that D's mother should send D to school in diapers. As a result, the parent contacted the CSE directly to request a paraprofessional but none was ever provided. Instead, D's teacher - the only one in a class of thirty students - told D to signal her when she had to use

²⁵ "Integrated Co-Teaching (ICT) classrooms include students with and without disabilities and have two teachers, a general education teacher and a special education teacher. The teachers work together throughout the day to adapt and modify instruction for your child and make sure the entire class has access to the general education curriculum. Students may be in an ICT classroom all day or for a portion of the day." NYC Dep't of Educ., Integrated Co-teaching, <http://schools.nyc.gov/Academics/SpecialEducation/programs/environment/ict.htm> (last accessed Dec. 21, 2015).

the bathroom. Sometimes this was successful, but D still had accidents every day. On top of the toileting issues, D was exhibiting behavior that landed her in a time-out or detention room regularly. Several times per week at pickup, D's mother was told that D ended the day on "red", meaning that she was not following school rules.

In or around late October, the school held an IEP meeting at which the toileting paraprofessional was reduced from full-time, to ".2" of the day because the school believed D was only soiling herself at the end of the day. There was no discussion about D's behavioral issues, no Functional Behavior Assessment ("FBA") or Behavior Intervention Plan ("BIP") was developed, and the school failed to offer any other appropriate behavioral supports. In addition, Harlem 2 tried to remove D's ICT recommendation from the IEP against the recommendation of the CSE representative. D's mother continues to observe that more often than not she is wet at pickup time and she continues to receive reports about behavior issues most days of the week.

e. E, and Parent of E

E is a ten year old girl who attends Success Academy – Bronx 1 ("Bronx 1"). E was born with a severe medical condition that continues to affect her health. She receives ongoing treatment from a specialist and is prescribed multiple medications for this condition and the side effects of those medications affect her mood and behavior. Prior to entering kindergarten, E had been evaluated, recommended for special education services, and given an IEP.

After successfully completing kindergarten in a NYC public school, E was selected by lottery for placement in a Success Academy Charter School and was placed at Success Academy – Bedford Stuyvesant 1 ("Bedford-Stuyvesant 1") for the 2011-12 school year. As a pre-condition for her acceptance to Bedford-Stuyvesant 1, Parent of E had to sign a document authorizing Success Academy to place E in kindergarten again despite the fact that E had already successfully completed kindergarten. E repeated kindergarten at Bedford-Stuyvesant 1 and was then given a transfer to Bronx 1 for the 2012-13 school year and placed in the first grade.

As soon as E started at Bronx 1, E's mother started receiving calls about E's behaviors. E was given multiple suspensions during those first few months and by November school officials told E's mother that E could only attend school on a half day schedule due to her behaviors. This half day schedule continued for four months in 2012-13 school year. Following these exclusions from class, Bronx 1 did not conduct a MDR. The school did not properly document the number of days E had been removed from her educational program due to discipline. In addition, the school refused to provide E with modified promotion criteria on the IEP for the 2013-14 school year, despite the fact that E was now repeating the first grade. At the IEP meeting, Bronx 1 officials claimed that all students must adhere to Bronx 1 promotion criteria regardless of disability status. At another meeting at the end of the 2013-14 school year, an attorney for Success Academy openly chastised E's mother for having retained a lawyer to represent E regarding her special education needs.

Although E was promoted to the second grade in the 2014-15 school year, Bronx 1 officials told E's mother at the IEP meeting that year that E required a more restrictive class setting given her academic and behavioral needs. Although E's mother agreed that E required more assistance,

she did not accept the recommendation for a smaller class because Bronx 1 officials had made it clear that Bronx 1 does not have smaller classes. Therefore, accepting this recommendation in lieu of other supports and/or modifications would have required E to leave Bronx 1. School officials also never informed E's mother that smaller classes are available in other Success Academy schools.

E is currently repeating the second grade for the 2015-16 school year while her same age peers are in the fifth grade.

f. F, and Parent of F

F is a nine year old boy. He began first grade at Success Academy – Harlem 2 (“Harlem 2”) during the 2011-12 school year at the age of five. He matriculated to second grade for the 2012-13 school year and to third grade for the 2013-14 school year. F was held back at the end of the 2013-14 school year and had to repeat third grade during the 2014-15 school year because Harlem 2 determined that he had not performed well enough on the New York State English Language Arts and Math Tests. F was not offered summer school or an opportunity to retake the tests during the summer. Furthermore, despite his retention in the grade and “poor performance” on the State tests, F received no academic intervention services, nor was he referred for any sort of intervention under Section 504 of the Rehabilitation Act or the IDEA.

During the 2014-15 school year, Harlem 2 suspended F thirteen times without providing him with a single hour of alternative education. F's mother never received suspension notices for most of the suspensions and the two that she did receive came after the suspensions were over. The suspension notices did not inform F's mother that she had a due process right to challenge the suspensions in any way. The notices did not inform her of the right to a conference with the principal at which she has the right to question or call witnesses, to present evidence concerning the suspension of her son or otherwise challenge any suspension, nor did they provide F's mother with information regarding where and when F could receive alternative education.

As the year progressed, network and school employees placed increasing pressure on F's mother to remove him from school rather than devising strategies to help him succeed. In addition to suspending F, which became more frequent when his mother did not succumb to pressure to remove him, Harlem 2 resorted to EMS removals. F was taken to the emergency room for alleged behavioral issues on two occasions and both times hospital personnel released him without any medical intervention. Despite the school's claims of repeated behavioral difficulties, indicating that F might be a child with a disability, Harlem 2 never referred him for a 504 plan, special education supports or services including an IEP, or other appropriate supports or interventions, nor did they provide F's mother with notifications regarding these rights. F was ultimately expelled from Harlem 2.

g. G, and Parent of G

G is a nine year old girl who attends Success Academy – Cobble Hill (“Cobble Hill”). G enrolled at Cobble Hill for the third grade. On or about August 7, 2014, G completed a Success Academy

assessment. None of the enrollment materials sent to G's mother discussed the results of the assessment test. After G took the assessment, G's mother continued to receive notices stating her child would be entering the third grade.

On or about August 21, 2014, just prior to the start of school, G and her mother were told that G would be held back and would have to repeat the second grade. In response, G's mother requested a meeting with the school to discuss her daughter's needs. After multiple requests for a meeting, G's mother sought assistance from the office of Assembly Member Felix W. Ortiz. Assembly Member Ortiz's office contacted Success Academy several times before Cobble Hill scheduled the meeting. Cobble Hill staff finally met with G's mother in February 2015.

At the meeting, G's mother told Cobble Hill that her daughter has a diagnosis of autism, and provided a copy of an evaluation from G's doctor supporting the diagnosis. Prior to receiving this information, Cobble Hill had failed to identify G as a student with a disability and had not referred G to be evaluated for possible special education supports and services. At the meeting, Cobble Hill failed to provide G's mother with meaningful information regarding G's rights to programs, supports, and accommodations pursuant to Section 504 and the IDEA. Cobble Hill staff did not discuss the possibility of any modification or accommodation in light of the child's diagnosis of autism. In fact, the Cobble Hill staff did not respond at all to G's autism diagnosis; they simply gave G's mother G's assessment score and told her that score was lower than allowed for promotion at Success. After this meeting, G continued the rest of the 2014-15 school year in the second grade.

In or about May 2015, concerned about G's continued difficulties with self-expression in school and fearful that poor academic performance could result in her daughter being held back again, G's mother requested special education services. At the IEP meeting on or about June 23, 2015, the Cobble Hill teacher submitted a Teacher Report and said nothing in support of G's mother's request for special education services for G. G was denied special education supports and services and received no special education supports or services for the entire year at Cobble Hill. G remains at Cobble Hill but, to date, Cobble Hill has not provided G with any special education services.

h. H, and Parent of H

H is a nine year old boy who attends Success Academy – Harlem 2 (“Harlem 2”). He entered Harlem 2 in kindergarten in the 2011-12 school year. At the end of first grade, H was evaluated and recommended for special education services due to academic delays. He was placed in an ICT class and required to repeat first grade. While H can decode on grade level, he struggles with comprehension, writing, attention, and math word problems.

During his second year of first grade, H's mother asked Harlem 2 for more services but was consistently told that the school had nothing more to offer. By the end of that year, H's mother suggested to the school that her son might need to be in a smaller class setting. She was told that Harlem 2 did not have a self-contained special education class and that H would be placed on a waiting list for a seat at a different Success Academy school.

H entered second grade during the 2014-15 school year. H's skills continued to lag behind those of his peers and his grades were low. His mother again suggested that her son should be in a self-contained class, and she was again told that he was on a waiting list. Harlem 2 never offered to provide SETSS or other appropriate supports or services.

At the beginning of third grade, during the 2015-16 school year, H's mother began receiving calls about H's behavior. Teachers reported that H became very frustrated when doing work he did not understand. On one occasion, H's mother saw him holding a school paper with a large "F" on it while he was standing in line with other students at dismissal time. H was upset. H's mother confronted the teacher and the principal and was told that Success policy states that students who fail a quiz cannot put the paper away until the parent picks the student up. The next day, H was teased by other students who had seen his failing grade. After that, H's mother renewed her request for a change in H's class size.

At an IEP meeting in or around November 2015, the IEP team recommended that H be placed in a 12:1:1 self-contained class program at a DOE community school because Harlem 2 does not provide small class settings. His mother asked about the waiting list for a 12:1:1 class at another Success Academy school but was simply told that H would have to move to a DOE community school. Further, the team informed her that the IEP had already been written and that the community school 12:1:1 recommendation had already been processed. After the IEP meeting, Harlem 2 informed H's mother, without seeing how he performs over the next year, that if he returns to Harlem 2 instead of transferring to a community school in September 2016 he will be retained in third grade.

i. J, and Parent of J

J is a nine year old girl who attended Success Academy – Bronx 1 ("Bronx 1") for part of the 2014-15 school year. In 2013, the year before J started at Bronx 1, her mother had obtained an evaluation from the Rose F. Kennedy Center ("Kennedy Center") which recommended, among other things, a small self-contained classroom, SETSS, and speech and language therapy twice a week. In the summer of 2014, J's mother requested an IEP meeting for the team to consider changes to J's IEP including a small classroom and adding related services as was recommended by the Kennedy Center evaluation. The IEP team did not do so and instead developed an IEP that recommended an ICT class and no related services.

J's mother applied for a spot at Bronx 1 and J was admitted off of a waiting list in October 2014. J's mother immediately enrolled J at Bronx 1 in the hope J would receive the academic support she needs. On the first day J attended Bronx 1, J's mother informed Bronx 1 that J had special needs and they assured her that they had special education classrooms. J's mother provided Bronx 1 with a copy of the Kennedy Center evaluation and recommendations and asked Bronx 1 to provide the services recommended by the evaluation. Instead of immediately convening an IEP review meeting to consider the mother's concerns, Bronx 1 placed J in an ICT classroom.

J struggled in that classroom and came home in tears every day. When J's mother requested another IEP meeting, Bronx 1 informed her that new evaluations had to be conducted before a new IEP could be developed. A new IEP was finally created in February 2015 which recommended a 12:1 self-contained classroom and speech and language services three times a week.

Immediately after the IEP with those recommendations was completed, Bronx 1 told J's mother that they could not accommodate J at their school because they did not have a 12:1 self-contained class. They told J's mother that J would have to leave Bronx 1 and that they would help J's mother find a school that did have a 12:1 class. That month, J left Bronx 1 for a New York City public school in her zone.

j. K, and Parent of K

K is a thirteen year old student who attended Success Academy – Harlem Central (“Harlem Central”) from 2008 to 2015. K entered Success Academy during the 2008-09 school year as a first grade student. In second grade, Harlem Central told K's parents that she should repeat second grade, which she did.

In or about October 2014, during sixth grade, K began experiencing psychotic symptoms. She was hospitalized during the 2014-15 school year, and later diagnosed with a psychiatric illness. After taking medication, she was able to return to Harlem Central, though she continued to struggle with significant anxiety. Harlem Central reported that this anxiety prevented K from completing classwork and assessments, despite her ability to perform at or above grade level.

Following an incident at school, Harlem Central called K's mother and told her that she must take K to the emergency room. Harlem Central told K's mother that if she did not take K to the emergency room, they would send her there themselves. K's mother picked K up from school and took her to the emergency room, where K's treating psychiatrist evaluated her and determined that K did not need to be at the hospital and could return home.

Thereafter, throughout the spring and fall of 2015, in sixth and seventh grade, Harlem Central constantly required that K's father pick her up early from school, causing K to miss substantial amounts of class. Harlem Central told K's father that they could not handle her mood. During the fall of 2015, in seventh grade, Harlem Central required K's father to pick K up from school before her classmates went on a field trip. When K's father asked why K was not allowed to participate, he was told that the school was worried that “something might happen” on the field trip.

During the fall of 2015, in seventh grade, Harlem Central placed increasing pressure on K's parents to remove her from the school. Administrators told K's father that Harlem Central was unable to serve K's emotional needs. Harlem Central then encouraged K's father to enroll her in an alternate school. In October 2015, Harlem Central requested that the IEP team meet again to discuss K's educational needs. At that meeting, Harlem Central told the parents that it was unable to provide K with supports recommended by her treating psychologist, including a

smaller class size. In December 2015, in seventh grade, K's parents withdrew K from Harlem Central.

k. L, and Parent of L

L enrolled in the first grade at Success Academy – Upper West Side (“Upper West Side”) for the 2011-12 school year. L had difficulty adhering to Upper West Side’s academic and behavioral standards early on. L received a two-day suspension during his second week of school. The school reported that he was often unable to complete classwork and tests within the time allotted and would cry and throw tantrums after receiving unsatisfactory grades. Upper West Side staff frequently called his mother, demanding that she pick him up from the school, sometimes within two hours of his arrival in the morning.

Despite L’s behavioral issues and his mother’s requests for services and accommodations, Upper West Side failed to identify L as a child with a potential disability. L was diagnosed with attention-deficit/hyperactivity disorder (“ADHD”) in 2011. L’s mother immediately notified Upper West Side of L’s diagnosis, but school officials failed to provide any information about L’s eligibility to be evaluated or to receive services or accommodations for L’s disability. As a result, L was privately evaluated at his mother’s expense in 2011. Although L entered Upper West Side for the 2011-12 school year above grade level in all subjects, he was below grade level in all subjects except one by the end of the school year. An IEP was finally created in May 2012 after L’s mother finally went directly to the CSE to request special education evaluations. Nonetheless, Upper West Side officials claimed at that time that it was too far into the school year to provide L with special education services.

Upper West Side did not begin providing L with special education services until the following school year, in November 2012. Upper West Side also failed to provide L with any reasonable accommodations or supports to manage his disability. According to his May 2012 IEP, L’s sustained attention deficit made it difficult for him to focus on lessons, complete challenging tasks and follow directions. The school developed a BIP for L, but none of the interventions in the BIP helped L to function in a classroom with twenty-nine students.

In November 2012, L’s mother asked Upper West Side to provide her son with a testing accommodation, allowing him to take exams in a secluded environment and with additional time, because L’s May 2012 IEP noted that L experienced difficulty remaining on task in an overstimulated environment. During L’s first year at Upper West Side, the school required L’s mother to sit with him during timed exams. Nonetheless, Upper West Side denied her request for a testing accommodation, claiming that only the CSE could authorize a testing accommodation and that the CSE would not approve a testing accommodation for a student below third grade.

L’s mother also requested that L receive a paraprofessional. A teacher who participated in the development of L’s May 2012 IEP noted that L required constant attention and recommended that he receive a paraprofessional. According to Upper West Side officials, however, L did not need a paraprofessional so none was ever provided. Nevertheless, Upper West Side barred L

from participating in any field study trips unless he was accompanied by his mother or another adult if she was unavailable.

During the 2011-12 school year, Upper West Side suspended L for three days and dismissed him early nine times. L was suspended for six days and dismissed early twelve times during the 2012-13 school year. L's mother never received suspension notifications from Upper West Side when her son was dismissed early. She did receive notifications from Upper West Side when the school imposed out-of-school suspensions. These suspension notifications informed her that L was suspended but provided no information about the right to dispute the suspension, present evidence regarding it, or seek legal assistance. The suspension notifications made no mention of the disciplinary due process rights of students with disabilities or suspected of having a disability and did not provide information about where and when L could receive alternative education. Alternative education was never provided to L during any of the suspensions or other removals. L also was also never referred for or provided with a MDR.

The rate at which L was dismissed early or suspended increased the following school year. Within the first six months of the 2013-14 school year, Upper West Side suspended L for five days and dismissed him early at least eight times. Despite their more frequent determinations to suspend him,, Upper West Side continued to claim that L did not need a testing accommodation, paraprofessional or any other additional supports and services. In response Upper West Side's unwillingness to support L, his mother withdrew him from the school.

I. M, and Parent of M

M is a six year old boy who attended Success Academy – Union Square (“Union Square”) since kindergarten when he entered as a general education student in the 2014-15 school year. During the school year, M was repeatedly disciplined for behavioral issues which resulted in M being removed from class and the school. Union Square officials disciplined M for leaving the classroom without permission, running through hallways, and having tantrums.

M's first suspension came on or about August 26, 2014, shortly after the start of classes. M was suspended on or about September 3, 2014 for the same behavioral issues. M was also suspended on or about October 27, 2014. At one point, officials at Union Square recommended that M go to a partial day schedule. On or about November 5, 2014, officials at Union Square called for EMS to take M by ambulance to the emergency room after M was allegedly involved in an outburst at school. This incident occurred in the wake of weekly requests by school officials for M's parents to pick M up early due to his consistent class work avoidance and ongoing behavioral problems.

In November 2014, M was suspended nine out of the seventeen school days in the month. Before the end of November, M had already been suspended twelve times that school year. School officials did not provide any accommodations or modifications to address M's behavioral needs during this time. During this time, despite all of the removals and Union Square's knowledge that M was a student with a disability, Union Square did not at any time conduct a MDR to determine if M's behaviors were a manifestation of his disabling condition.

In early 2015, an IEP with a BIP was developed. The IEP team recommended that M be placed in a 12:1:1 class program. M's mother disagreed with this recommendation because she believed M's needs could be addressed in a less restrictive environment, with the support of a paraprofessional. Ultimately, M's mother understood that the 12:1:1 program recommendation would mean that M could not remain at Union Square because they do not offer classes with that staffing ratio. During the remainder of the 2014-15 school year, when M's purported behavior problems persisted despite stated implementation of M's IEP and BIP, Union Square failed to request a review of his IEP and BIP.

Throughout the school year, Union Square officials frequently made calls to M's parents during the school day, with calls starting shortly after M had been dropped off to school. On one occasion, Union Square officials made a call to M's parent at as early as 7:43 a.m. In addition to incessant calls, school officials made implied threats to call ACS and did call ACS at least once. As a result, ACS officials visited M's home around 1am one evening. Later, on another occasion, ACS requested that the local Sheriff's Office in South Carolina check a family residence, where M's mother had left her children to be cared for while she was undergoing cancer treatment, to ensure M and his younger sister were there. Ultimately, ACS determined that Union Square's allegations were unfounded.

In the end, school officials put more energy into making a case for M's transfer out of Union Square than into helping him learn and remain in the classroom by supporting his needs. M is now enrolled at his zoned school, an underperforming school in the Bronx.

m. N, and Parent of N

N is an eleven year old student who began attending Success Academy – Harlem 1 (“Harlem 1”) in kindergarten during the 2010-11 school year. Prior to entering Harlem 1, N had received related services, including Speech Therapy, Occupational Therapy and Physical Therapy, through the Committee on Preschool Special Education.

When N began kindergarten at Harlem 1, she was receiving speech therapy and physical therapy. During that school year, SETSS were added to her IEP. Nonetheless, N was held back and was retained in kindergarten. During the 2011-12 school year, physical therapy was added to N's IEP. After two years in kindergarten, N was promoted to first grade during the 2012-13 school year. During that year, an FM unit was added to her IEP.²⁶ Once again, Harlem 1 retained N and she repeated first grade during the 2013-14 school year.

Harlem 1 never referred N for additional evaluations to further assess her learning difficulties. However, in April of 2014, N's parent obtained an independent evaluation which diagnosed N with several conditions that had not previously been identified by Harlem 1. N was diagnosed with oculomotor dysfunction, perceptual dysfunction, dyslexia and dysgraphia. Moreover, the

²⁶ An FM unit is a type of wireless system that helps students better understand speech in noisy situations. FM units often work together with hearing aids but are sometimes also used for those with otherwise normal hearing, such as students with ADHD.

evaluation indicated N’s potential to perform much better academically. Despite her chronological age, which would have placed her in 4th grade for the 2014-15 school year, N was found to be functioning at the first grade level in reading and second grade level in math.

At N’s IEP meeting in 2014, N’s parent shared the evaluation with Harlem 1. The team documented some of the evaluation results in the IEP but did not note any of N’s diagnoses, especially those related to her learning. They did not change N’s classification from Speech or Language Impairment to Learning Disability to better reflect the diagnoses. They did not place modified promotion criteria on her IEP. The team also failed to incorporate many of the recommendations made in the evaluation. The new IEP mandated N’s placement in a classroom with a 12:1:1 ratio. Harlem 1 told N’s parent that they would not be able to provide the 12:1:1 classroom as mandated on the IEP, and that N should enroll in a DOE school instead. Harlem 1 threatened to hold N over yet again in first grade if she did not leave the school.

4. SUCCESS ACADEMY VIOLATES SECTION 504 AND THE IDEA

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits discrimination against individuals on the basis of disability or presumed disability. 29 U.S.C.A. §794, *et seq.*; 34 C.F.R. §104, *et seq.* The law provides that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C.A. §794. The statute protects any student who “(i) has physical and mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment.” 34 C.F.R. §104.3(j).

As part of its mandate, Section 504, like the Individuals with Disabilities Education Act, 20 U.S.C.A §1400, *et seq.*, requires local education agencies to locate and identify students suspected to have disabilities, known as “Child Find.” 34 C.F.R. §104.35. In addition to mandated compliance with Child Find, Section 504 requires compliance with the right to a free appropriate public education (“FAPE”); least restrictive environment protections; “evaluation and placement” procedures; and implementation of “procedural safeguards”. 34 C.F.R. §§104.32-36. Charter schools, such as Success Academy schools, that receive federal funding are required to comply with these mandates and inform parents of their rights under the law. *Id.*

The experiences of the students named in this complaint exemplify systemic discriminatory failure to comply with the law. The violations include but are not limited to the following:

- Success Academy does not offer the reasonable accommodations of self-contained or smaller class settings, paraprofessionals, student aides, or modified promotion criteria for most students who require them.²⁷ By failing to offer these reasonable accommodations

²⁷ The spectrum of classes discussed herein ranges from self-contained classes with one teacher and paraprofessional (12:1:1), Integrated Co-Teaching (ICT) with a general education and special education teacher in one classroom, and Special Education Teacher Support Services (SETSS). The continuum of offerings for providing the Least

when Success Academy can reasonably do so given its size and funding, Success denies students with disabilities equal access to Success Academy's schools and curriculum.

- When students who are known or suspected to have a disability experience academic or behavioral issues, Success Academy fails to engage in appropriate interventions, referrals for initial evaluation and possible identification for Section 504 or IDEA supports or programs, or for re-evaluations, nor does it provide written notification of students' rights and procedural safeguards.
- As a result of its failure to identify and evaluate and its consistent denial of reasonable accommodations, students with disabilities attending Success Academy are often retained in their grades for multiple years. This results in emotional harm to students, leaves students less likely to graduate high school, and often causes students to withdraw from Success Academy.²⁸
- Success Academy discriminates and retaliates against students who have disabilities or perceived disabilities by repeatedly disciplining those students, calling EMS, subjecting them and their families to numerous suspensions and calls to parents to pick students up from school early in order to discourage parents from keeping their children enrolled at the school.²⁹
- Success Academy discriminates and retaliates against students whose parents attempt to assert their rights by using a variety of methods that result in students with disabilities or perceived disabilities withdrawing from Success schools. When students may require additional support Success Academy engages in an effort to persuade the parents of those students to remove their children from the school, a process commonly referred to as "counseling out."³⁰

5. SUCCESS ACADEMY VIOLATES THE DISCIPLINARY DUE PROCESS RIGHTS OF STUDENTS

Under both Section 504 and the IDEA, students with disabilities and students who are presumed to have disabilities are entitled to disciplinary due process protections. 29 U.S.C.A. §794; 34 C.F.R. §104.35-36; 20 U.S.C. §1415(k). These protections ensure that students with disabilities and students presumed to have disabilities are not inappropriately disciplined for behaviors

Restrictive Environment to children with disabilities is available at <http://schools.nyc.gov/Academics/SpecialEducation/programs/environment/default.htm>.

²⁸ Students who repeat a year between kindergarten and fifth grade are sixty percent less likely to graduate high school than those with similar backgrounds who do not repeat a grade and even sixty percent less likely to graduate high school than siblings in the same family who do not repeat a grade. Andrew, Megan, *The Scarring Effects of Primary-Grade Retention? A Study of Cumulative Advantage in the Educational Career*, Social Forces (Sept. 26, 2014) available at <http://sf.oxfordjournals.org/content/early/2014/09/03/sf.sou074.full> ("Based on the research . . . grade retention in primary school leaves lasting scars on students' educational careers, lowering the odds of completing a high school credential with the best hopes for recovery relatively early in the educational career.").

²⁹ See, e.g., Success Got to Go List.

³⁰ *Id.*

related to their disabilities and that students with disabilities are not denied access to their specialized educational services. These due process protections are triggered when a student is removed for disciplinary reasons from her/his class for more than ten school days. 29 U.S.C.A. §794; 34 C.F.R. §300.530-537; 20 U.S.C. §1415(k)(4)(B),(C). Schools are therefore required to account for the days in which a student with a disability is removed from her/his class for disciplinary reasons and to conduct a MDR meeting before a student with a disability is excluded from her/his placement for an extended period of time. *Id.* Schools must also convene a meeting to review a student's current educational placement and determine if it is appropriate. *Id.*

The experiences of the students named in this complaint exemplify the systemic discriminatory failure to provide procedural protections to students with disabilities and those students suspected of having a disability, including the following violations:

- Success Academy does not properly account for the days of removal by a student with a disability or a student presumed to have a disability, or assess the existence of a pattern of short-term removals resulting in a change of placement, depriving students of access to the procedural safeguards to which they are entitled.
- Success Academy does not conduct manifestation determination reviews for its students with disabilities or students suspected of having a disability.
- Success Academy has no mechanism in place to identify students suspected of having a disability and provides no due process or other protections to those students with disabilities who have not yet been identified.
- Success Academy utilizes various illegal exclusionary and disciplinary responses to remove students with disabilities or students suspected of having a disability from class. Success Academy often dismisses students before the end of the school day after a behavioral incident. On other occasions, Success Academy implements a partial school day schedule for students who exhibit disruptive behaviors. Furthermore, Success Academy fails to properly document these exclusionary removals as days of removals for purposes of determining disciplinary change in placement.
- Success Academy routinely fails to provide sufficient notice of the right to alternative education to students who are suspended. The limited notification Success provides does not inform the parent that the child has a right to be educated during the suspension and does not set up a time and place for such education.
- Success Academy routinely fails to provide proper prior written notice regarding disciplinary due process rights. The limited notification that Success Academy does provide in short term suspension merely informs the parent, without sufficient detail, that the student has been suspended, provides no information about the right to dispute the claim, present evidence, or seek legal assistance. The suspension letter makes no mention of the disciplinary due process rights of students with disabilities or suspected of having a disability.

6. REQUEST FOR REMEDIES

Based on the foregoing, the complainants ask the Office of Civil Rights to (1) accept jurisdiction and fully investigate their claims; (2) require that Success Academy comply with Section 504 and the IDEA; (3) require that Success Academy identify and fully evaluate children who are suspected or should be suspected of having a disability; (4) require that Success Academy provide reasonable accommodations to students who have or are suspected to have disabilities; (5) prohibit Success Academy from discriminating against students who have or are suspected to have disabilities; (6) prohibit Success Academy from retaliating against students who have or are suspected to have disabilities; (7) require that Success Academy provide all legal disciplinary due process rights to students including the right to challenge accusations against them and receive appropriate alternate education; (8) require that Success Academy provide parents with meaningful notice regarding their rights to, *inter alia*, programs, supports and accommodations; (9) monitor Success Academy record keeping practices relating to discipline; (10) order Success Academy to provide relief for individual complainants, including remediation and all other appropriate remedies; and (11) provide any other remedies that may be appropriate.

Respectfully Submitted,

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