

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 10 2012
J. T. NOBLE, CLERK
BY: DEPUTY

_____)
E.H., by and through his next friend, Lula Henry,)
_____)

students,)
_____)
Plaintiff,)
_____)

Case No. 3:12 CV 474 NDR/EB

_____)
v.)
_____)
MISSISSIPPI DEPARTMENT OF EDUCATION,)
_____)
Defendant.)
_____)

COMPLAINT

1. This is a class action lawsuit filed on behalf of children with disabilities in the Jackson Public School District ("JPS") to hold the Mississippi Department of Education

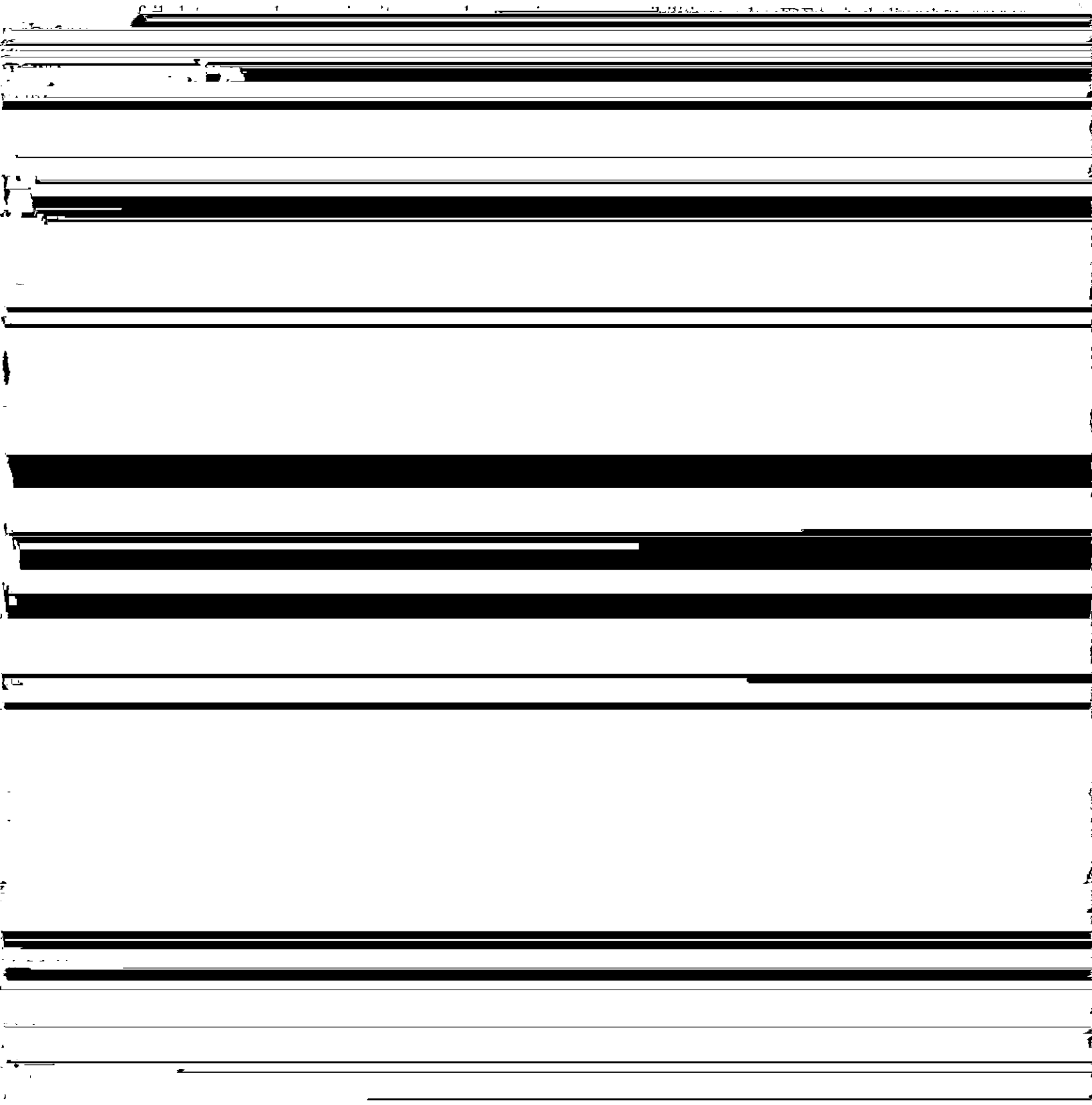
substantiated each and every one of the violations detailed in Plaintiff's administrative

situated students.

2. Over the past twenty-two months, JPS has sought only to evade responsibility for these violations, and has openly and defiantly refused to provide the Plaintiff and similarly

failure of schools to meet the educational needs of students with disabilities. The statute is aimed at correcting the historic exclusion of students with disabilities from the classroom, and ensuring the provision of an appropriate education to all students with disabilities. To achieve this goal, the statute requires that an MDP be developed to ensure that local school districts

response to a class-wide state administrative complaint filed by the Plaintiff and a class of similarly situated students, MDE documented a host of systemic IDEA violations within JPS that resulted in the denial of FAPE to potentially thousands of students. Since that time, MDE has



agents, representatives and/or employees, is permanently enjoined from continuing its unlawful practices. This Court is authorized to grant declaratory and injunctive relief to Plaintiff and the proposed class under 28 U.S.C. § 2201 and § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

VENUE

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a “substantial part of the events or omissions giving rise to the claim occurred” in this district.

PARTIES

10. **Plaintiff E.H.** is a sixteen year old JPS student who will enroll in the tenth grade in August 2012. E.H. initially enrolled in JPS in the first grade, but was then home-schooled for
~~months of the Court ordered the return second grade. He returned to JPS in August 2004 to begin~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

education. 20 U.S.C. § 1412(a)(11)(A).

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action on behalf of himself and all those similarly situated

16 The claims of the Plaintiff are typical of the claims of the class. As a result of

Defendant's unlawful policies and practices, Plaintiff and the class he seeks to represent have been denied the benefits of a program of special education and related services as required by the IDEA.

17. The Plaintiff will fairly and adequately represent the interests of the class because

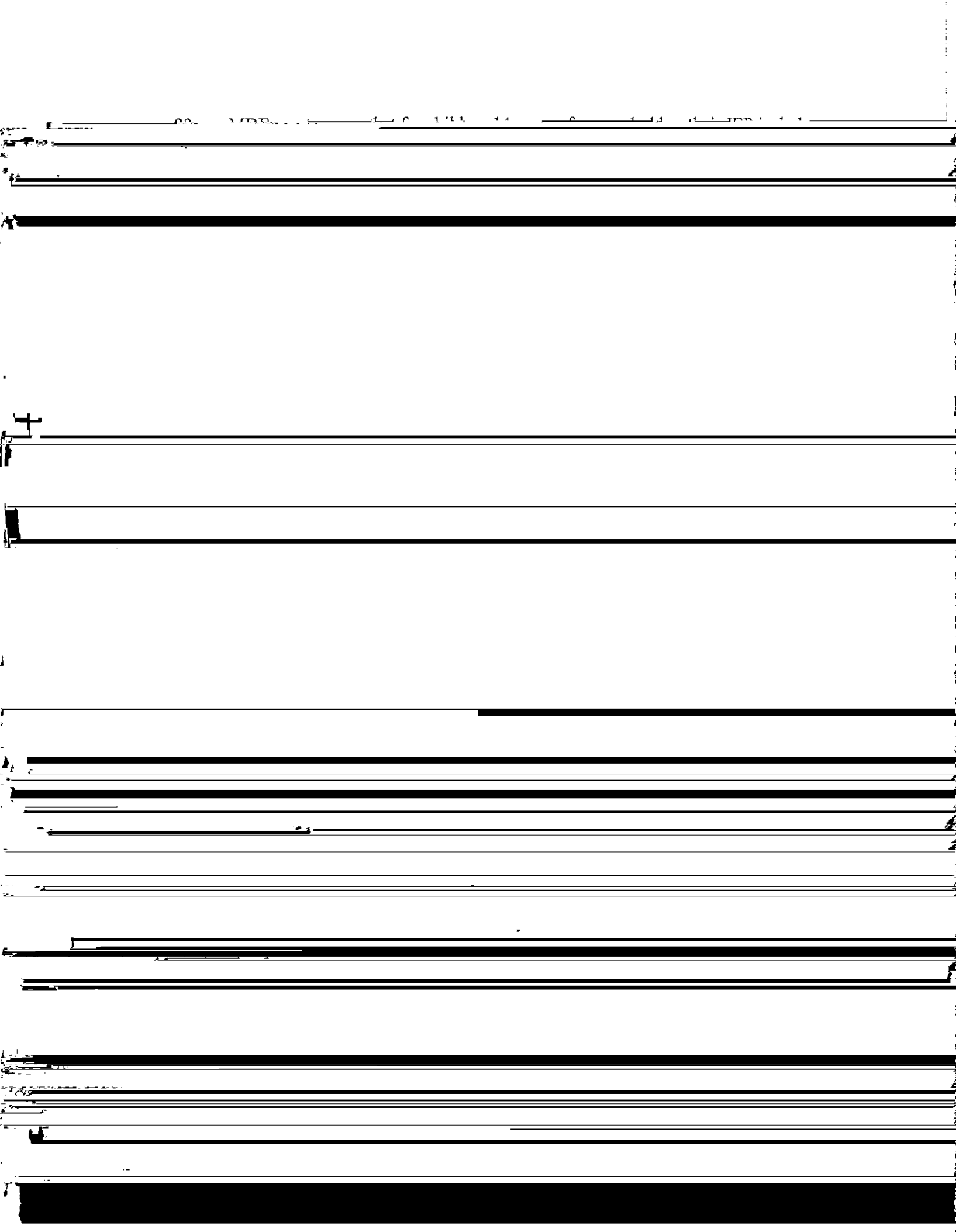
he seeks relief on behalf of the class as a whole and has no interests antagonistic to other members of the class. The Plaintiff possesses a strong personal interest in the subject matter of the lawsuit, and is represented by experienced counsel with expertise in special education and disability law, class action litigation, and civil rights proceedings.

18. The Defendant has acted and refused to act on grounds generally applicable to the class in that Defendant's unlawful failure to properly exercise its general supervisory

20. MDE must ensure that all eligible students receive an IEP that is developed, reviewed and revised to confer meaningful educational benefit 20 U.S.C. § 1412(a)(4). 20

U.S.C. § 1414(d). The IEP must include, among other things, a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual

goals, a statement of the special education and related services, and supplementary aids and services to be provided to the child to help him/her participate in the general curriculum and make progress in the general curriculum and toward achieving his/her annual goals. 20 U.S.C. § 1414(d)(1)(A)(i). The child's IEP team is required to review the child's IEP periodically to determine whether the annual goals for the child are achieved and revise the IEP as appropriate



and supports, and procedural safeguards to ensure that the state is in compliance with the IDEA.

20 U.S.C. § 1412(a)(22); 34 C.F.R. § 300.170.

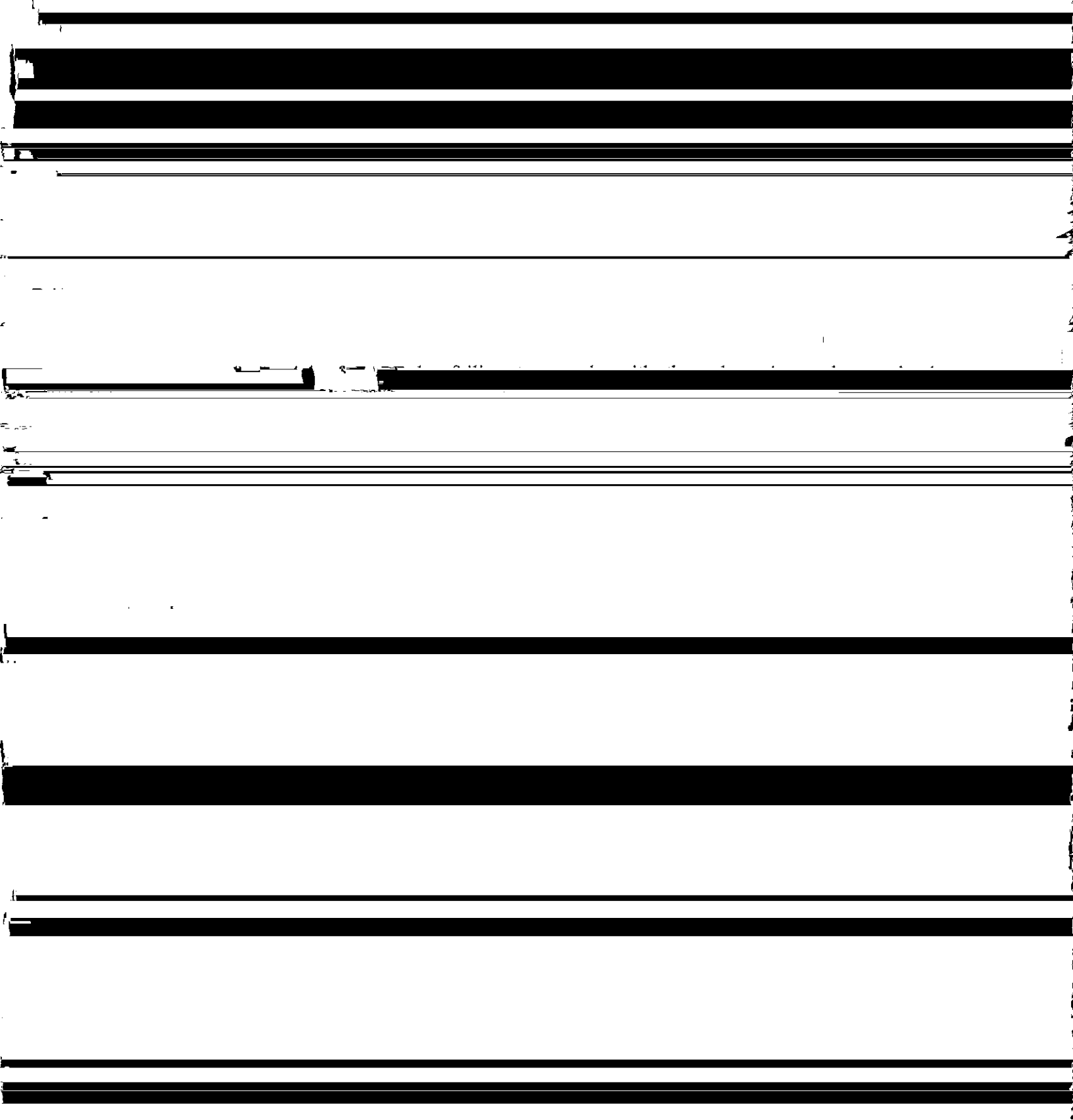
mandates of the IDEA and provides all eligible students with FAPE. 20 U.S.C. § 1412(a)(1), (11)(A). MDE is responsible for implementing policies and procedures to ensure that local educational agencies (“LEA”) are monitored for implementation and compliance with the IDEA.

When a LEA is in non-compliance, it must ensure that non-compliance is corrected

behalf of the named petitioners³ and all other similarly situated special education students who

b) Denial of FAPE by failing to comply with the IDEA's discipline regulations with regard to FBAs, BIPs, and MDRs;

c) Denial of FAPE by failing to confer meaningful educational benefit:



a) JPS denied FAPE to petitioners and all similarly situated students by failing to provide them with an appropriate level of related services to address their

provide many students with *any* related services.

particular, JPS failed to properly align students' academic goals and objectives

integrity and competence to improve behavior. failed to

technical advisor and deliberately excluded the technical advisor from implementation of most of the proposed corrective actions in the CAP it submitted to MDE in late December 2010.

34. ~~IPS's proposed corrective action plan suffered from several glaring deficiencies~~

among them a failure to acknowledge MDE's findings; a failure to address several of MDE's findings and required corrective actions; a failure to acknowledge that MDE's findings substantiated systemic, and not just individual, violations of the IDEA; and an outright refusal to follow the corrective actions prescribed by MDE.

35. Despite having the obligation and authority to do so under state and federal law,

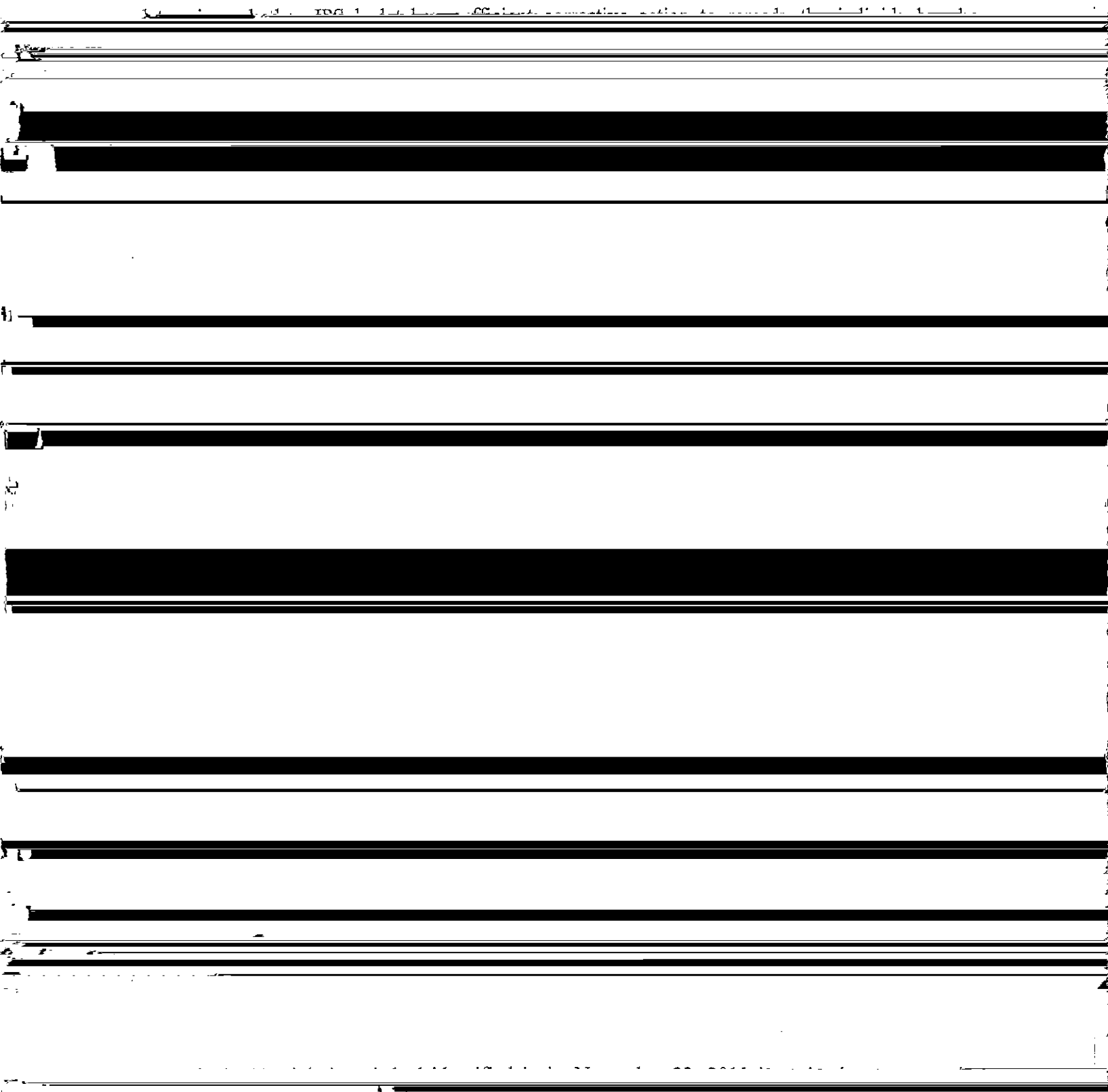
~~MDE's failure to require IPS to submit a proposed CAP that satisfied MDE's~~

obligation to do so under state and federal law. MDE took no action to ensure the provision of FAPE to E.H., the named petitioners or any other similarly situated students during this time.

CAP, MDE waited until late May 2011 – six months after it issued its findings – to request that the technical advisor conduct a targeted review of the original named petitioners to assess

action to compel JPS to implement an appropriate CAP and correct the individual and systemic violations of the IDEA. MDE took no action to ensure the provision of FAPE to E.H., the named petitioners and similarly situated students during this time.

42. In mid-November 2011, MDE conducted a follow-up monitoring visit to



instructed the technical advisor to remain silent throughout the IEP meeting and refrain from

IDEA. The Office, which is housed within MDE, made this determination despite testimony from the technical advisor that JPS's violations are so systemic and JPS is so far behind in implementing appropriate corrective action that it will take JPS several years to obtain full compliance.

46. MDE's monitoring and enforcement continues to be insufficient and inadequate. Although MDE documented in its May 15, 2012 report that JPS had failed to implement any

Other mainstream schools within TDS that would serve only students with emotional disabilities

Students in this day treatment program would not even have the benefit of receiving live

amounts to a violation of MDE's duty to monitor and supervise JPS to ensure compliance with the IDFA. Systemic violations will continue unabated throughout JPS if MDE continues to

abdicate its monitoring and enforcement mandate.

Plaintiff E.H.

51. E.H. is 16 years old and will start the tenth grade next year at JPS. E.H. is a very

of JPS. E.H. is a very bright student who has been a member of the National Honor Society since high school.

52. JPS has denied FAPE to E.H. for several years, as demonstrated by his lack of

Three years later, his IEP stated that his reading skills were at a 2.3 grade level and his math skills were at a 2.6 grade level. During that three year period. E.H.

increased his reading skills by only 1 grade level and his math skills actually

regressed. E.H. also fell behind due to removals from his regular education classes and placement in a self-contained classroom where he did not receive appropriate instruction.

e) JPS denied E.H. ESY services during the summer of 2009 despite a clear need for ESY services.

54. JPS continued to violate E.H.'s rights throughout the 2010-2011 and 2011-2012 academic years, as confirmed by MDE's most recent monitoring report from April 18-20, 2012 documenting JPS's ongoing failure to correct the individual and systemic violations documented in JPS's November 22, 2010 findings.

55. Despite a directive from MDE in November 2010 to provide E.H. with compensatory related services, JPS did not even include any related services on his IEP until February 2012, and only did so after Plaintiff's counsel made several requests.

been vindicated in the administrative process, E.H.'s educational program suffered from the

summer session. E.H. was able to make up two of these days, but still lost 4 days of ESY

