



EDUCATION AND HEALTH LAW CLINIC
(formerly the Special Education Clinic)

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August 17, 2018

VIA FACSIMILE AND FEDEX

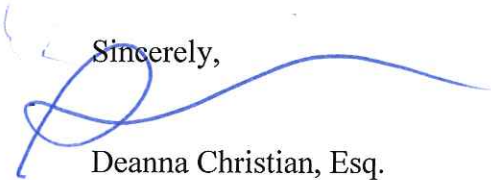
John Worthington, Director
Office of Special Education Policy and Procedure
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625
Fax: 609-984-8422

Dear Mr. Worthington,

Enclosed please find a complaint investigation form filed by the Education & Health Law Clinic against North Star Academy Charter School. A copy of the complaint form and a letter of support from the Education Law Center have been faxed to your office. A hardcopy of these documents along with parent/student handbooks referenced in the complaint have been mailed to your office via Fedex Overnight Express.

If you have any further questions or need additional information, please feel free to contact me directly at (973) 353-5665. Thank you.

Sincerely,



Deanna Christian, Esq.

Encl.

cc: Teresa Moore, Esq., Counsel
Michael Ambriz, Chief Operating Officer

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION POLICY AND PROCEDURE
COMPLAINT FORM**

*Date: August 17, 2018

To: **John Worthington, Director**
Office of Special Education Policy and Procedure
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500
Fax: 609-984-8422

The Office of Special Education Programs will NOT accept a request for mediation, a due process hearing, emergent relief, a complaint investigation, or enforcement of a mediation agreement or due process hearing decision through electronic mail or other electronic submission. All requests must be mailed or faxed to the OSEP to be accepted and processed.

*Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate Other: _____

Name: **Education & Health Law Clinic, Rutgers Law School-Newark**

Address: Center for Law & Justice , 123 Washington St., Newark, NJ 07102

*with Endorsement of the **Education Law Center** (please see attached letter of support)

(In the case of a homeless child please provide available contact information)

Phone: (973) 353 - 5665 Fax: (973) 353 - 3397 Email address: Deanna.christian@rutgers.edu

Provide the name of the student or specify the group of students affected by the alleged violation(s):

All students with disabilities in North Star Academy Charter School

School where the alleged violation(s) occurred: District-Wide

*District: North Star Academy Charter School *County: Essex

* Items marked with an asterisk are not required; however, providing the requested information will assist in expediting your request.

*1. Please check which statement applies:

I am currently involved in, or have recently requested, a due process hearing. I have enclosed a copy of the request.

I am considering filing for a due process hearing. I will send a copy of the request.

I am not planning on filing for a due process hearing.

Note: Any issues contained in a request for a complaint investigation that are also the subject of a due process hearing will be set aside until the conclusion of the hearing. If the Administrative Law Judge makes a ruling on the issue(s), that ruling is binding.

*2. Briefly state the specific violation(s) of **special education law or regulation** that you believe occurred. If you choose to attach additional information or documentation, **you must nevertheless summarize the alleged violations**, as you see them.

Failure to provide a free and appropriate public education (FAPE) to children with disabilities, including those suspected of having a disability and those suspended from school. 34 C.F.R. 300.101, N.J.A.C. 6A:14-1.1(b). Failure to identify, locate and evaluate children with disabilities who are in need of special education and related services. 34 C.F.R. 300.111, N.J.A.C. 6A:14-3.3. Failure to use positive interventions and supports to address behavior. 34 C.F.R. 300.324(a)(2)(i), N.J.A.C. 6A:14-3.7(c)(5). Failure to maintain a continuum of placements. 34 C.F.R. 300.115, N.J.A.C. 6A:14-4.3(b). Failure to consider the unique circumstances of students with disabilities in imposing discipline. N.J.A.C. 6A:14-2.8.

3. Specify the period of time or dates when the alleged violation(s) occurred.

2017-18 school year

Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.

*4. Is/Are the alleged violation(s) continuing at present? Yes No

5. **State the relevant facts**, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, *please include a copy of the entire IEP*. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request).

The Education & Health Law Clinic (hereinafter "Clinic") represents low income parents of children with disabilities. During the 2017-18 school year, we have received an increase in calls and referrals with complaints from parents about North Star Academy Charter School's (hereinafter "NSA") exclusionary discipline policies and practices, which have prevented many children with disabilities from receiving a free and appropriate public education (FAPE) and also act to discriminate against them on the basis of their disability. According to parent reports, NSA has been suspending children with disabilities and removing them from class for minor violations of their disciplinary policies. These removals result in a loss of instructional time and segregate disabled students from their non-disabled peers, which is against the letter and spirit of the IDEA. Rather than pursue legal options to enforce their children's rights, many of the parents referred to the Clinic have chosen instead to transfer their children out of NSA as a result of their discipline policies.

As a result of the increased discipline referrals, the Clinic reviewed 2016-17¹ suspension data from various New Jersey Department of Education sources, including New Jersey School Performance Reports, 2016 Special Education Data and data reported through the Electronic Violence and Vandalism Reporting System. While total suspension rates are readily accessible through the New Jersey Department of Education website, suspension rates for classified students are not included; therefore, the Clinic requested this information for all New Jersey School districts through an Open Public Records Act (OPRA) request. The OPRA custodian provided the Clinic with total suspension counts and unduplicated suspension counts for classified students for all school districts in the state. The Clinic calculated the special education suspension rates² by dividing the unduplicated suspension count by the special education enrollment count.³

The Clinic compared total suspension rates and special education suspension rates in New Jersey K-12 charter schools and the traditional schools in the city in which the charters were located. New Jersey has only five municipalities with K-12 charter schools: Hoboken, Camden, Newark, Paterson and Trenton. The Clinic found that a general trend statewide in the traditional school districts was a lower suspension rate for classified students compared to the overall school suspension rate. For example, suspension rates for classified students were lower than the total suspension rate in Hoboken (3.3% total, <2.3% classified) Camden (10.3%, 2.3%), Paterson (9.9%, 1.3%) and Trenton (8.6%, 4.1%) public school districts.⁴ NSA's data reflected the opposite trend, with NSA suspending classified students at a higher rate than the overall population. According to the 2016-17 Performance Report Database, NSA suspended 23% of its student population during the 2016-17 school year. According to the Clinic's calculations, the suspension rate at NSA for classified students was higher than the school's overall suspension rate, with NSA suspending 29.1% of its classified students in the 2016-17 school year. According to the data reported to the state, all other K-12 charter schools in Newark suspended less than 9% of their special education students, with Newark Public Schools suspending only 1.3%. NSA's special education suspension rate was more than triple the rate of all other K-12 school districts in Newark. During the 2016-17 school year, NSA issued a total of 269 suspensions to 96 classified students. Further, according to the Clinic's calculations for special education suspension rates statewide during the 2016-17 school year, NSA placed as the ninth highest suspending school district for classified students. Notably, during that school year, North Star's classification rate of 7.3% was the lowest of any other K-12 school district in Newark and about half of the state average.

NSA's disciplinary policies and codes are not available on-line for the public to view. On January 25, 2018, the Clinic, through OPRA, submitted a request to NSA for parent/student handbooks for all grade levels and schools, including their disciplinary codes and policies.⁵ According to NSA's parent/student handbooks, each school has a version of a **paycheck** (or points) system that is used to manage classroom behavior.⁶ Under the paycheck system, students may earn or lose points based on whether their behaviors fulfill NSA's values. (M9-13;

¹ 2017-18 data is not yet available, therefore, we reviewed data from the most recent school year. Based on review of data from prior years, there is no reason to suspect that the 2016-17 data is an outlier.

² This same method is used to calculate the overall suspension rates listed on the School Performance Reports.

³ The source of the enrollment count is "2016 Special Education Data", New Jersey Department of Education, Office of Special Education Programs (Oct. 15, 2016).

⁴ Based on the suspension counts that Newark Public Schools provided to the state, they suspended 1.1% of their total student population and 1.3% of classified students.

⁵ A copy of NSA's Elementary, Middle and High School parent/student handbooks are attached. Page numbers correlating with each handbook have been referenced through the complaint for convenience. The letter "M" refers to the middle school handbook and "H" to the high school handbook. Since most suspensions occur on the middle and high school level, the Clinic did not reference NSA's elementary handbook.

⁶ School Culture and Code of Conduct can be found generally at M9-15, 33-40; H8-11,37-44.

H9-10) Students are given a set amount of dollars (points) at the start of each week and are expected to maintain a minimum amount of dollars (points) by the end of the week. (M13; H9) Dollars are gained or lost depending on adherence to the rules and also based on the student's academic performance (M15; H9-10). "Teachers are trained to identify and correct even the slightest infractions of school cultural norms." (M15). Implementation of the paycheck system is left to the discretion of the teachers and administrators. Minor infractions, such as poor posture, off-task behavior, not tracking the teacher, not actively participating in class, poor or incomplete work, and uniform infractions, result in a paycheck deduction. (M11,13; H10) Missing, poor or incomplete homework, not only affect a student's grade, but also result in a same-day detention and a paycheck deduction. (M19; H10). Only students who earn high paychecks are allowed to participate in school trips or earn other rewards (M13). Those students who have not met the weekly paycheck goal must "serve the consequences of daily silent detentions at lunch and afterschool until 5pm. These detentions will last until the next paycheck period." (M13; H9).

Behaviors that trigger a paycheck deduction can also result in removal from class. (H11) Students who are removed from class must report to the Dean of Students, who will assign a consequence based on the infraction. (H11) Regardless of the infraction, all students who are sent to the Dean, automatically receive a five-point deduction and a "silent detention for the rest of the class period in the Dean's office." (H11) Additionally, the Dean may also assign in-school-suspension or out-of-school suspension, depending on the severity of the offense. (H11) A student may be assigned an in-school or out-of-school suspension for minor and/or non-safety related infractions including, "accruing many office referrals or excessive [paycheck] deductions," "repeated uniform violations," "skipping detention or tutorial," "failure of the parent to live up to other requirements of the covenant," and "significant lack of preparation for school." (M42; H46) Students are not allowed to make up work during a suspension, and they are not allowed to return to school unless and until a parent has the ability to meet for a conference. (M41; H45) Students are not allowed to rejoin the school community unless they publicly apologize and their apology is accepted by school leaders (M12; H45).

On information and belief, NSA does not consider the unique circumstances of a student with a disability in imposing discipline. The Clinic's understanding is that these policies are applied without regard to a student's disability status and that few classified students receive modifications to, or exemptions from, these policies.

These discipline policies have a disproportionate and discriminatory impact on students with certain disabilities because many of the behaviors warranting a paycheck deduction may be related to their disability. For example, we have received complaints that NSA penalizes and frequently removes children with attention deficit hyperactivity disorder (ADHD) from the classroom for off-task behavior, not tracking the teacher and lack of intellectual engagement, all behaviors which can be attributed to their disability. Also, some children with disabilities cannot achieve the positive behaviors at the same rate and frequency as their non-disabled peers. For instance, a student with a learning disability may struggle to achieve high scores on assessments to qualify for positive dollars on their paycheck.

The impact of NSA's disciplinary policies has been detrimental to children with disabilities who attend NSA schools. The Clinic has received complaints from parents of children with disabilities about numerous suspensions and classroom removals for minor infractions. Some report more than thirty out-of-school suspensions in a year, in addition to in-school suspensions and referrals to the dean. As a result, these students are unable to make meaningful progress in school. Parents also report that their children have been excluded from school events, activities, trips and sports and are forced on a daily basis to sit in lunch and after school detention for the duration of the school year. Additionally, the Clinic has also been informed about children with known disabilities, who are denied child study team evaluations, yet have been repeatedly

suspended and otherwise excluded from their learning environment for behaviors that may be indicative of a disability.

Further, NSA's discipline policies are a contributing factor for retention. Due to the loss of instructional time associated with these policies, the majority of the NSA special education students referred to the Clinic have also experienced at least one retention; some with as many as three.⁷ The loss of instructional time as a result of suspensions and other classroom removals denies children with disabilities, who attend NSA, the opportunity to advance from grade to grade.

Additionally, the lack of supports and placement options at NSA only exacerbate the discipline issue. Parents report that there are very few placement options for classified children and minimal special education teachers to support the students' needs. A chief complaint is that the special education teachers often do not remain in the in-class-support or resource classrooms for the duration of the period or that in-class support or resource instruction has been delivered by a general education teacher. On May 22, 2018, the Clinic requested all special education certifications and contracts for all certified special education teachers currently employed by NSA. The Clinic received twenty-five contracts and corresponding credentials; however, not all of the teachers identified as special education teachers had completed their special education certification. Additionally, some of NSA's schools had only one certified special education teacher.

The Clinic respectfully requests that OSEPP:

- (1.) Immediately investigate NSA's discipline policies and practices and the effect they have on children with disabilities, including excessive suspensions and removals. OSEPP should review the attached parent/student handbooks containing NSA's discipline policy and should review all suspension records, attendance records, RNC (return to next class) logs (documentation produced after a referral to the Dean), itemized paycheck logs (reflecting the specific infraction), paycheck detention logs and reflection logs for all classified students, in all NSA schools;
- (2.) Investigate the number of retentions of classified students in all NSA schools and the corresponding suspensions and exclusions those students received during the year they were retained; and
- (3.) Investigate special education supports, special education teachers, related services and continuum of placements offered to classified students in all NSA schools.

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

- (1.) NSA must immediately revise its disciplinary policies and practices to prevent a disproportionate and discriminatory impact on children with disabilities and ensure that these policies are not excluding children with disabilities from the classroom for minor and/or non-safety related infractions or otherwise prohibiting them from receiving a FAPE. In the interim, NSA should review and revise all individualized educational programs to include modifications to, or exemptions from, the discipline policy, as appropriate, to account for each child's disability.

⁷ On June 7, 2018, the NJ Department of Education's OPRA Custodian informed the Clinic that retention data was unavailable because it has never been through quality control review.

- (2.) Additionally, NSA must revise its discipline policy to ensure that all suspended students receive academic instruction and are allowed to complete assignments missed during the time of their suspension.
- (3.) Moreover, NSA must ensure that a certified special education teacher provides daily support for the duration of the period for all special education placements including in-class support classrooms, resource rooms and self-contained placements, if any exist. If this is not possible with the current staff, NSA must hire certified special education teachers to provide support to the special education students who attend NSA.
- (4.) All teachers and administrators employed by NSA should receive professional development training to address the behavioral needs of children with disabilities using positive interventions and supports.
- (5.) To ensure that the level of support is adequate to address student needs and to alleviate problem behaviors, NSA must review the placements of all children with special needs and increase additional placement options for students who are not making meaningful progress in the general education setting.
- (6.) NSA must create policies and procedures to identify children who have difficulty conforming their behavior to the discipline code because of an unaddressed disability.
- (7.) NSA must provide compensatory education to all classified students, who during the 2017-18 school year, as a result of NSA's disciplinary policies, were (1.) retained or (2.) excluded from their learning environment for 10 or more cumulative school days for behavior related to their disability.

*7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

Many parents have brought this matter to the District's attention and the Director of Special Education, Ms. Kathleen Lane, is aware about these concerns; yet the problem is ongoing.

Complainants are required to forward a copy of the complaint to the Chief School Administrator of the district/education agency against which the complaint is directed at the same time the complaint is filed with the Department of Education.

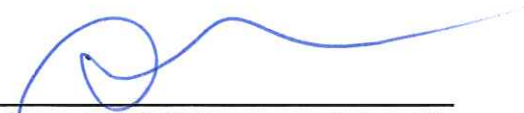
Check below to verify whether:

 X A copy of the complaint request, along with attachments, was mailed to: Michael Ambriz, Chief Operating Officer for North Star, and Teresa Moore, Esq., Counsel for North Star (name) on 8/17/18 (date);

or

 A copy of the complaint request, along with attachments, was hand-delivered to: _____ (name) on _____ (date).

Pursuant to N.J.A.C. 6A:14-9.2(b), please note that a complaint cannot be processed until the OSEPP is notified that a copy was provided to the appropriate education agency.

Signature: 

**(Person(s) Submitting Request)
Deanna Christian, Esq.
Education & Health Law Clinic**

ELC EDUCATION LAW CENTER

August 17, 2018

John Worthington, Esq., Director
Office of Special Education Policy and Procedure
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Dear Mr. Worthington:

As you know, Education Law Center (ELC) works to secure the legal rights of New Jersey's 1.37 million public school children to high quality education under state and federal laws, particularly our state's at-risk students, students with disabilities, and students of color. As an advocate for students in New Jersey's high need school districts, ELC serves as counsel to the class of urban school children in the landmark Abbott v. Burke education equity case and provides legal services to students in education cases, including special education and student discipline matters.

We are writing to endorse the attached complaint investigation request filed by Rutgers Education & Health Law Clinic (Rutgers) against North Star Academy Charter School (NSA) and to urge the Office of Special Education Policy and Procedure (OSEPP) to undertake the requested investigation. As explained briefly below, we find both the data and information presented by Rutgers to be reliable and consistent with our knowledge of what is occurring at NSA. As a result, we concur with Rutgers that systemic violations of the Individuals with Disabilities Education Act by NSA are very likely to be substantiated through a complaint investigation.

With regard to data, we find Rutgers' analysis of the suspension data provided by the New Jersey Department of Education (NJDOE) to be sound and compelling. That data strongly makes the case that classified students at NSA are subject to disproportionate suspensions, both relative to their non-classified NSA peers and relative to classified students in other charter and traditional public school districts.

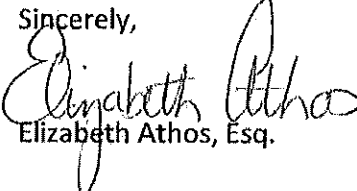
As to the types of violations alleged, over the past year, parents have made similar complaints to ELC as those set forth in the Rutgers complaint. NSA's implementation of its discipline policy has been described to us as "zero tolerance," and we have received complaints that NSA has inappropriately suspended and retained students with disabilities. In some of our

intakes, parents of children with disabilities have chosen to withdraw their child from NSA as a result of the treatment received there.

Notably, NSA's rate of enrollment of students with disabilities is significantly lower than comparable rates of Newark Public Schools (NPS). For example, ELC's examination of student demographics in a charter expansion appeal in which both ELC and NSA are parties revealed the following: during 2013-14, NSA enrolled 8% special education students compared with 18% enrolled by NPS. See NSA 2013-14 Performance Framework Report, submitted to NJDOE in support of NSA's October 15, 2015 Charter Renewal Application. Comparable statistics exist for the most recent data publicly available from NJDOE: during 2016-17, NSA enrolled 7.34% special education students while NPS enrolled 15.48%. See Classification rates for 2016-17, NJDOE Special Education Data, available at <https://www.state.nj.us/education/specialed/data/2016.htm>. This disparity in special education enrollment rates within the same district of residence raises the question of whether NSA is appropriately serving students with disabilities and lends further support to the need for an investigation of the violations alleged here.

Thank you for your attention to this matter. If I can answer any questions, or you would like to discuss this matter by telephone, please do not hesitate to call me at (973) 624-1815, ext. 20.

Sincerely,



Elizabeth Athos, Esq.

Cc: Deanna Christian, Esq.
Teresa Moore, Esq.