

REPORT OF
DR. THOMAS HEHIR

Doe, et al. v. Ohio, et al.
Civil Action 2:91-cv-00464

I. INTRODUCTION AND EXECUTIVE SUMMARY

I have been asked to make findings and offer my opinions as to whether students with disabilities in Ohio's largest, highest poverty school districts are receiving the free and appropriate public education (FAPE) to which they are entitled under the Individuals with Disabilities Education Act (IDEA).

I have concluded that there are systemic denials of FAPE in these districts.

I have worked in the field of special education for almost 40 years. I am currently a professor of special education at Harvard University. Before that, I served as the Director of the Office of Special Education Programs (OSEP) in the United States Department of Education; in this role I oversaw the federal government's efforts to review state efforts to implement IDEA, including ensuring that students receive FAPE. I have been the special education director in the Chicago Public Schools and the Boston Public Schools. I have written more than 20 books, book chapters, and articles about the education of students with disabilities.

For this report, I conducted quantitative analyses of Ohio's state, school district, school, and student data. I have performed similar analyses for several school districts, and for the states of Massachusetts, Texas, Louisiana, and Rhode Island. I have made two key findings based on Ohio's data:

- 1. Students with disabilities in Ohio's largest, highest poverty school districts are far more likely to be educated in segregated settings for some or all of the school day than are students with disabilities elsewhere in the state.**
- 2. Among students with disabilities, placement in segregated settings for some or all of the school day is a contributing factor for lower performance on standardized tests, including the Ohio Achievement Assessment and Ohio Graduation Test.**

The picture painted by the data is disturbing. Ohio students with disabilities in its largest, highest poverty districts are far more likely to be educated in segregated settings for some or all of the school day. The vast majority of students with disabilities could and should be educated in general education settings, with services and accommodations that enable them to access the general education curriculum.

Moreover, students with disabilities in these districts are far less likely to achieve proficiency on state academic achievement tests. Except for students with the most significant cognitive disabilities, whose performance must be measured against alternate achievement standards, these students can meet the same challenging academic content standards as all other students in the state, with appropriate instruction, services, and accommodations.

Based on my findings, in my opinion students with disabilities in Ohio's largest, highest poverty districts appear to be receiving an education so inferior as to be a denial of FAPE. The systemic denial of FAPE in these districts disproportionately affects Ohio's low income students and its

students of color, who represent significant percentages of the student populations in these schools.

My quantitative analysis has been confirmed by the work of Dr. Mary Jo Dare and her colleagues, who conducted a qualitative review, including classroom observations and student record review, of █████ of Ohio's largest school districts (████████████████████). Using methods that are widely accepted in the special education field, and that other state education agencies use, their investigation provides overwhelming evidence that there are systemic denials of FAPE in each of these █████ districts. My analyses of data for Ohio's other large and high poverty school districts indicate similar systemic denials of FAPE.

I have also reviewed the report of Dr. Thomas Parrish, which I find logical and credible. I agree with Dr. Parrish that Ohio's largest, high poverty districts lack the fiscal and other resources they need to consistently provide FAPE to students with disabilities. These districts will need additional resources to change their practices, so that their students can receive the FAPE to which they are entitled.

Based on my review of documents related to Ohio's monitoring of special education in its school districts, I conclude that Ohio has not met its supervisory responsibilities under the IDEA. There is little indication that Ohio has analyzed its own data, nor conducted other meaningful interventions, to correct systemic denials of FAPE in its largest, highest poverty school districts. Ohio's failure to assure that students with disabilities receive FAPE will do profound and long-lasting harm to many Ohio children and their families.

II. QUALIFICATIONS¹

I am currently a Professor in the School of Education at Harvard University. I received my Doctorate degree in Education in Administration, Planning, and Social Policy from Harvard University in June 1990.

I served as Director of the Office of Special Education Programs in the United States Department of Education from 1993-1999. As director, I was responsible for federal leadership in implementing the Individuals with Disabilities Education Act (IDEA), and oversaw federal efforts to review state and local education agencies' special education activities. I was also responsible for developing the Clinton administration's proposal for the 1997 reauthorization of the IDEA, 90% of which was adopted by Congress.

From 1990-1993, I was associate superintendent for the Chicago Public Schools, where I was responsible for special education services and student support services. In this role, I implemented major changes in the special education service delivery system, which enabled Chicago to reach significantly higher levels of compliance with the IDEA and resulted in the termination of the U.S. Department of Education's Office for Civil Rights' oversight of the school district. I also served in a variety of positions in the Boston Public Schools from 1978 to 1987, including as director of special education from 1983 to 1987. In both Chicago and Boston,

¹ My curriculum vitae is attached as Appendix A.

I was responsible for the day-to-day administration of special education services to thousands of students with disabilities.

I have written extensively about special education, education reform as it pertains to students with disabilities, and inclusion issues. I have written more than 20 published articles, books, and book chapters on the education of students with disabilities. I have also contributed to more than a dozen government publications regarding education and special education. My books include New Directions in Special Education: Eliminating Ableism in Policy and Practice (2005); Effective Inclusive Schools: Designing Successful Schoolwide Programs (2012); and How Did You Get Here? Students with Disabilities and Their Journeys to Harvard (2015). These books are widely available to the public, including through the Amazon.com website.

I have worked as a consultant, mediator, or expert in a number of class action lawsuits involving special education. I have served as a consultant to the Office of the Independent Monitor in *Thompson v. Los Angeles Unified Sch. Dist.* (“*Chanda Smith*”), No. 93-7044 (C.D. Cal.). My work as a mediator in that case resulted in the Modified Consent Decree signed by the parties on May 14, 2003 and later approved by the Court. Since then, I have facilitated subsequent agreements by the parties, including modifications to the Consent Decree. I also worked on *Blackman v. District of Columbia*, Nos. 97-1629/97-2402 (D.D.C.) (Consultant’s report, 2001); *Vaughn G. v. Mayor and City Council of Baltimore*, No. MJG-84-1911 (D. Md.) (Mediator, 2002); and *Jose P. v. Mills*, Nos. 79-560/79-2562/96-1834 (E.D.N.Y.) (Consultant’s report re the reorganization of special education in New York City Public Schools, 2005).

I have served as a consultant to the National Association of State Directors of Special Education and been hired by state and local agencies and officials to evaluate special education programs and services, including:

- the public school districts for Chicago, Illinois; San Diego, California; Houston, Texas; Cambridge, Massachusetts; Palo Alto, California; and New York, New York;
- the departments of education for the states of Texas and Louisiana;
- the office of the Governor of Rhode Island.

More recently, at the request of the State of Massachusetts, my associates and I prepared several reports on the status of special education in Massachusetts. These reports identify ways to improve outcomes for students with disabilities. The most recent report was issued in August 2014.

I have also consulted with the United States Department of Justice, Civil Rights Division, on civil rights enforcement matters.

III. METHODOLOGY

This report is based on my quantitative – i.e., statistical – analyses of Ohio’s state, school

district, school and student data. I also rely on the reports of Mary Jo Dare and her colleagues, who collected qualitative – i.e., observational and document review – data, and Thomas Parrish, who reviewed student performance data, education expenditure data, and other state financial information. In my opinion, the findings and conclusions in the Dare and Parrish reports are important and credible.

For my quantitative analyses, I reviewed data on Ohio’s public school students contained in the Ohio Department of Education’s (ODE’s) Education Management Information System (EMIS), as imported into the Ohio Longitudinal Data Archive (OLDA), including student background information and information on student performance for the most recent available school year, 2013-2014, on the Ohio Achievement Assessments (OAA) and the Ohio Graduation Tests (OGT).² Out of a total of 1,670,652 student entries for students in grades 1-12, my study sample included 1,301,759 entries. I excluded data for students in kindergarten and pre-kindergarten, students in charter schools and single-school school districts, and students with missing or incomplete EMIS data.

I also reviewed additional data sets available from the ODE website. I reviewed state reports on student enrollment, annual performance reports for school districts, state reports on student test results, district report cards containing disaggregated data, state reports on student discipline, district “Typology” data (described further below), district financial profiles, and National Assessment of Educational Progress (NAEP) data.

In this report, the term “district” or “school district” refers to traditional, multi-grade, academically-focused school districts only. I excluded charter schools and single-school districts from my analysis because, as discussed later in this report, ODE has not assigned these schools to a “Typology.”³

I also reviewed a number of documents provided to me by attorneys for the plaintiffs in this litigation. Among these, I reviewed documents issued by the ODE describing its policies and practices for supervising local school districts in their provision of special education services to students with disabilities, and documents describing whether and how ODE has monitored the delivery of special education and enforced the IDEA in specific school districts. I have also reviewed the transcript from the deposition of Sue Zake, Director of ODE’s Office of Exceptional Children.⁴

² Ohio replaced the OAA and OGT with other assessment instruments in the 2014-2015 school year. ODE, “Ohio Achievement Assessments,” <http://education.ohio.gov/Topics/Testing/Ohio-Achievement-Assessments> (last visited Aug. 8, 2016); ODE, “New Testing Options for Students Required to Take the Ohio Graduation Tests (OGT),” <http://education.ohio.gov/Topics/Ohio-Graduation-Requirements/Graduation-Requirements-2014-2017/New-Testing-Options-for-Students-Required> (last visited Aug. 8, 2016). The Ohio Department of Education (ODE) did not make student performance data for the new assessments available for my review.

³ Additional information about the data reviewed and methods used in making my findings is presented in Appendices B and C.

⁴ A list of the documents I reviewed for this report is presented in Appendix D.

IV. COMPENSATION

I am being compensated at the rate of \$375 per hour for my work on this matter, inclusive of expenses.⁵

V. DISCUSSION OF FINDINGS

Ohio has failed to exercise its general supervisory responsibility under the IDEA to ensure that students with disabilities receive a free and appropriate public education (FAPE). As a result, students with disabilities in the state's largest, highest poverty districts, and other districts, are not receiving the special education services they need and to which they are entitled.

Below, I briefly outline the general supervisory responsibilities of states under the IDEA, including, critically, ensuring that FAPE is provided to students with disabilities in local school districts. I then describe the qualitative and quantitative analyses supporting my conclusion that Ohio is failing to exercise its supervisory authority, with the result that there are systemic denials of FAPE in its large urban school districts.

Statutory framework and relevant history

Through the passage of the Education for All Handicapped Children Act (now referred to as the IDEA) in 1975, Congress sought to address the exclusion of hundreds of thousands of students with disabilities from our nation's schools, and the lack of appropriate education for millions more. The IDEA requires states to establish their eligibility for federal special education funds by ensuring that schools identify all children with disabilities who need special education services, that all students with disabilities are provided a free appropriate public education (FAPE), including being educated in the least restrictive environment (LRE), based on the student's Individualized Education Program (IEP) plan, and that schools provide certain procedural safeguards to each student and parent.

To provide FAPE to a student with a disability, a school district must provide specialized instruction and services based on a student's unique needs, aligned with grade-level state academic standards, designed to prepare students for further education, employment and independent living, and provided in the least restrictive environment (LRE) appropriate to the student's needs.⁶

The LRE requirement means that students with disabilities must be educated with peers who do not have disabilities to the maximum extent appropriate.⁷ Students should be educated in the same general education classrooms, and other spaces in the school, as students without disabilities, and have access to the same academic curriculum based on state content standards, electives, and extracurricular activities.⁸ My studies in Massachusetts and elsewhere indicate

⁵ I was assisted in my work on this report by my associates from Thomas Hehir and Associates. For this work, Thomas Hehir and Associates was compensated at a rate of \$150 per hour.

⁶ See 20 U.S.C. §§ 1400(d)(1)(A), 1401(9), 1412(a)(1), 1412(a)(5); 34 C.F.R. §§ 300.101, 300.114.

⁷ 20 U.S.C. §§ 1412(a)(5)(A), 1412(a)(5); 34 C.F.R. § 300.114.

⁸ *Id.*; see also 34 C.F.R. § 300.117 (LRE requirement applies to "nonacademic settings," including extracurricular activities). *Cf.* 20 U.S.C. § 1400 ("Short title; findings; purposes" of the IDEA, explaining that, "[a]lmost 30 years

that students with disabilities who are in general education classrooms for most or all of the day have better academic and other outcomes than students with disabilities segregated in separate classrooms, schools, or other facilities (which I will refer to hereafter as “segregated placements” or “segregated settings”).⁹

The IDEA requires that each student with a disability have a written “Individualized Education Program” (IEP) plan.¹⁰ The IEP plan identifies the special education services needed to provide the student with FAPE. The IEP must include: a statement of the student’s present levels of academic achievement and functional performance; measurable annual goals (and for students taking alternate assessments, a description of benchmarks or short-term objectives); a description of how the student’s progress will be measured and when progress reports will be provided; descriptions of the specialized instruction and related services the school will provide to the student; details about the frequency, location, and duration of the instruction and services; an explanation of the extent to which, if at all, the student will not be included with students who do not have disabilities in general education classrooms, extracurricular activities, or nonacademic activities; and a statement of any individual accommodations the student needs to participate in standardized assessments, or an explanation of why an alternate assessment is appropriate.¹¹ When students reach “transition age” – meaning by no older than sixteen under the IDEA and by no older than fourteen under Ohio law¹² – the IEP must include appropriate and measurable postsecondary goals related to training, education, employment, and, if needed, independent living, as well as “transition services” to help the student achieve those goals.¹³ The services set forth in the IEP must enable the child to advance appropriately towards attaining the annual goals in the IEP, be involved in and make progress in the general education curriculum based on the state’s academic content standards for the grade in which the student is enrolled, participate in extracurricular and nonacademic activities, and be educated alongside students without disabilities.¹⁴

In enacting what is now the IDEA, Congress envisioned a system whereby states ensure that local school districts meet these requirements. The flow of funds from the federal government to states is contingent on each state’s guarantee that it has in place effective systems for supporting,

of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . ensuring their access to the general education curriculum in the general education classroom, to the maximum extent possible”).

⁹ See, e.g., Thomas Hehir et al., “Review of Special Education in the Commonwealth of Massachusetts,” 1, 5 (Apr. 2012) [hereinafter Hehir Review]; Thomas Hehir et al., “Review of Special Education in the Commonwealth of Massachusetts: A Synthesis Report,” 9-10 & n.14 (Aug. 2014) [hereinafter Hehir Synthesis].

¹⁰ 20 U.S.C. §§ 1401(14), 1414(d); 34 C.F.R. § 300.320.

¹¹ 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a).

¹² 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b); ODE, “Secondary Transition Planning for Students with Disabilities,” <http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Secondary-Transition-Planning-for-Students-with-Di> (last visited Aug. 9, 2016). Ohio law began requiring postsecondary goals as part of transition planning for students age 14 and older on July 1, 2014. ODE, “Ohio Operating Standards for the Education of Children with Disabilities,” 120 (Jul. 1, 2014),

<http://education.ohio.gov/getattachment/Topics/Special-Education/Federal-and-State-Requirements/Operational-Standards-and-Guidance/2014-Ohio-Operating-Standards-for-the-Education-of-Children-with-Disabilities.pdf.aspx>.

¹³ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b).

¹⁴ 20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); see also U.S. Dep’t of Education, Office of Special Educ. and Rehabilitative Services, “Dear Colleague” letter 4 (Nov. 16, 2015), www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf.

monitoring, and enforcing the law's mandates in its school districts.¹⁵ The IDEA encourages states to help local school districts to comply with the law, through various mechanisms such as providing direct technical assistance, awarding local capacity development grants to districts, and helping them access federal technical assistance centers.¹⁶ However, the statute also requires states to intervene with districts when students are not receiving FAPE or when other important aspects of IDEA are not implemented.¹⁷ States may require districts to develop corrective action plans, direct how districts use their special education funds, withhold these funds, or assume responsibility for providing FAPE by placing a district in some form of receivership. Withholding funds or placing a district in receivership are significant interventions, but they have taken place regularly since the IDEA was enacted, including in Illinois (where the state threatened to withhold funds in 1989), Pennsylvania, Washington state, and elsewhere.¹⁸

The IDEA requires states to take such actions when school districts fail to provide FAPE to their students with disabilities.¹⁹ In addition, since the 2004 reauthorization of the IDEA, the Department of Education has required states to create state performance plans based on indicator data provided by districts.²⁰ In developing these plans, states are to address problems impeding educational opportunities for students with disabilities, such as failures by school districts to educate students in the LRE. Congress intended that states develop these plans in addition to, and not instead of, supervising and ensuring that local districts meet the fundamental requirements of the IDEA, including the fundamental requirement to provide FAPE.²¹

Quantitative Analyses

My review of student-level data from the ODE's EMIS database, and other publicly-available data, focused on Ohio's largest, highest poverty school districts. The ODE classifies each of

¹⁵ 20 U.S.C. § 1412(a); *see also id.* at § 1412(a)(11)(general supervision requirement); 34 C.F.R. §§ 300.100 (eligibility), 300.119 (technical assistance), 300.120 (monitoring), 300.149 (general supervision), 300.600 (monitoring and enforcement).

¹⁶ 34 C.F.R. § 300.704(b)(4).

¹⁷ 20 U.S.C. §§ 1412(a), 1416(f); 34 C.F.R. §§ 300.149, 300.600(a), 300.608.

¹⁸ *See, e.g.*, Pennsylvania Dep't of Education, Chester-Upland School District: Historical Perspective (Aug. 2015), <http://www.education.pa.gov/Teachers%20-%20Administrators/School%20Finances/Pages/Chester-Upland-Historical-Perspective.aspx#tab-1> (describing various state efforts to address poor academic performance in district, including receivership); Kyle Stokes, State Freezes Part of Seattle's Special Ed Funding As District Takes Step to Improve (Oct. 1, 2014), <http://www.kplu.org/post/state-freezes-part-seattles-special-ed-funding-district-takes-step-improve>.

¹⁹ *See supra* note 15.

²⁰ 20 U.S.C. § 1416(b); 34 C.F.R. §§ 300.601-300.602. Since 2004, state performance plans have been based on data including graduation rates, drop-out rates, rates of suspension and expulsion, LRE, identification (and significant racial disproportionality in identification), and transition services. *See* U.S. Dep't of Educ., Part B State Performance Plan (SPP) and Annual Performance Report (APR) Part B Indicator Measurement Table, <http://www2.ed.gov/policy/speced/guid/idea/bapr/2015/partbmeasurementtable5-14-14.pdf> (last visited Aug. 9, 2016). More recently, the Department has also required states to report student achievement data, including the performance of students with disabilities on the National Assessment of Educational Progress (NAEP). *See* U.S. Dep't of Educ., How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2015: Part B at 1, <http://www2.ed.gov/fund/data/report/idea/partbspap/2015/2015-part-b-how-determinations-made.pdf> (last visited Aug. 9, 2016).

²¹ *See* 20 U.S.C. §§ 1400(d)(1)(A) (listing first, among purposes of IDEA, "to ensure that all children with disabilities have available to them a free appropriate public education"), 1416(a)(3)(A) (listing first, among state's monitoring priority areas, "provision of a free appropriate public education in the least restrictive environment").

Ohio's local school districts into one of eight "typologies" covering every district in the state, based on size, urbanicity, and poverty level.²² It classifies eight urban school districts as having a "very large" student population and "very high" student poverty.²³ These districts are Akron Public Schools, the Canton Local School District, Cincinnati Public Schools, the Cleveland Metropolitan School District, Columbus City Schools, Dayton Public Schools, Toledo Public Schools, and the Youngstown City School District. The ODE refers to these districts as "Typology 8" districts; according to the ODE website, they educate approximately 200,000 students each year.²⁴ Approximately 36,500 of these students are students with disabilities.²⁵ My analyses of the data focused on disparities between what happens in the Typology 8 districts and what happens in the state's smaller districts.²⁶ I also focused on the "Typology 7" districts, which are smaller than the Typology 8 districts but also educate a high poverty student population. The Typology 7 districts educate approximately 210,000 students annually.

In the 2013-2014 school year, Ohio classified 85% of students in Typology 8 school districts as "low income" (or "economically disadvantaged"), compared to only 33% of students in the less urban, lower poverty Typology 1-6 districts. Typology 8 districts also enroll much higher proportions of African-American/Black and Hispanic/Latino students than the rest of the state, with African-American students representing the majority of students, 57%, in these districts. Overall, nearly half, or 48% of the state's African-American/Black students were educated in Typology 8 districts, and almost three-quarters, or 72% were educated in either Typology 7 or Typology 8 districts.

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²² See ODE, 2013 School District Typology, <http://education.ohio.gov/Topics/Data/Report-Card-Resources/Ohio-Report-Cards/Typology-of-Ohio-School-Districts> (last visited Aug. 9, 2016).

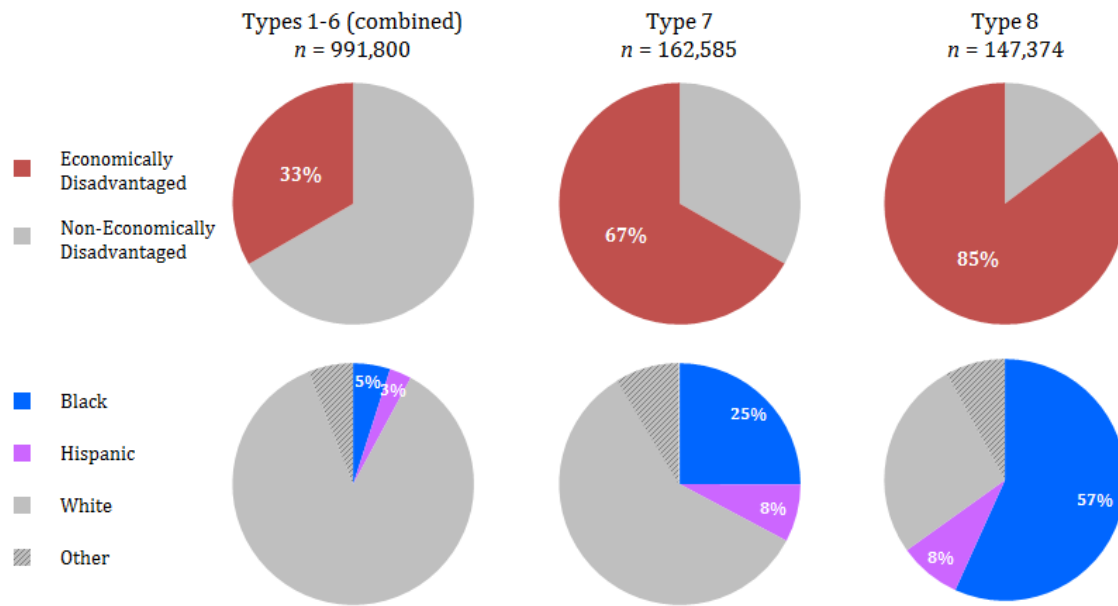
²³ Ohio measures school district poverty levels by identifying the percentage of "economically disadvantaged" students in the district. ODE, 2013 School District Typology Methodology 3, <http://education.ohio.gov/Topics/Data/Report-Card-Resources/Ohio-Report-Cards/Typology-of-Ohio-School-Districts> (last visited Aug. 9, 2016). Ohio classifies students as economically disadvantaged if they are eligible for free or reduced price lunch (FRPL); have a sibling who is eligible for FRPL; either they or their parents or guardians receive public assistance; or meet the income guidelines under Ohio's "Title I Application." ODE, EMIS Manual: Student Attributes – Effective Date Record (FD) 7-8, https://education.ohio.gov/getattachment/Topics/Data/EMIS/EMIS-Documentation/Current-EMIS-Manual/2-5-Student-Attributes_Effective-Date-Record-v3-0.pdf.aspx (last visited Aug. 9, 2016).

²⁴ See *supra* note 22.

²⁵ ODE, Ohio School Report Cards: Download Data, <http://reportcard.education.ohio.gov/Pages/Download-Data.aspx> (last visited Aug. 9, 2016).

²⁶ The 131 districts in Typologies 1 and 2 are "rural" districts; the 200 districts in Typologies 3 and 4 are "small town" districts; the 123 districts in Typologies 5 and 6 are "suburban" districts; and the 55 districts in Typologies 7 and 8 are "urban" districts. See *supra* note 22.

Figure 1. Economic disadvantage status and race/ethnicity for Ohio district typologies.*



*Statistics from EMIS data obtained from defendants. Ohio figures may not match publicly reported numbers due to dataset exclusions.

Ohio’s statewide district-, school-, and student-level special education data, including that reported to the federal government in its state improvement plans, resembles national special education data. For example, my review of six years of special education data available through the ODE website indicates that, as a whole, the state of Ohio has similar patterns of placement in the LRE for students with disabilities as the rest of the country, according to measures developed by the U.S. Department of Education. As Table 1 shows, the percentage of Ohio students with disabilities who are included in general education settings for 80% or more of each school day (60.8%) is similar to that of such students nationwide (61.8%).²⁷ These and other data may explain why, until recently and during many of the years for which I reviewed data, the U.S. Department of Education found that Ohio met the requirements and purposes of the IDEA.²⁸

²⁷ At least since the 1990s, when I directed the federal Office of Special Education Programs, the U.S. Department of Education has required states to report annually to the U.S. Department of Education the percentage of special education students in each state who are included in general education classrooms 80% or more of each school day; the percentage of students who are partially included (and partially segregated), spending between 40-79% of each school day in general education classrooms; and the percentage educated in “substantially separate” settings, spending less than 40% of the school day in a general education classroom.

²⁸ U.S. Dep’t of Education, Part B State Performance Plans (SPP) Letters and Annual Performance Report (APR) Letters, <http://www2.ed.gov/fund/data/report/idea/partbspap/allyears.html#oh> (last visited Aug. 9, 2016). The Department’s “meets requirements” determinations are based the “totality of the state’s data and information.” See, e.g., Letter from Melody Musgrove, Ed.D., Director, U.S. Dep’t of Educ., Office of Special Education Programs, to Dr. Richard A. Ross, Superintendent of Public Instruction, Ohio Dep’t of Educ. (Apr. 30, 2015) at 1, <http://www2.ed.gov/fund/data/report/idea/partbspap/2014/oh-acc-aprldr-2014b-revised.pdf>. The Department found

Table 1. Placement of students with disabilities: Ohio vs. National, 2013-14

Placement category	Ohio (Grades 1-12)		National (Age 6-21)
	N	Pct	Pct
Included (80%+)	107,266	60.8%	61.8%
Partially included (40-79%)	39,186	22.2%	19.4%
Substantially separate (< 40%)	20,642	11.7%	13.8%
Other*	9,250	5.2%	5.0%
TOTAL	176,344	100.0%	100.0%

*Ohio figures may not match publicly reported numbers due to dataset exclusions. National data provided by NCES (Fall 2013).
* 99% of Ohio students in this category (9,148 of 9,250) are in separate placements (Separate school, Separate residential facility, Parentally placed in regular private school, Homebound/hospital, Correctional facility).*

I disaggregated the publicly available LRE data, along with the EMIS student-level data provided to plaintiffs by ODE, and compared rates of segregated placement and measures of academic performance for students with disabilities in the Typology 8 districts, and in some Typology 7 districts, to those of students with disabilities elsewhere in the state. The disaggregated analysis reveals significant disparities in segregated placements between the Typology 8 districts and districts elsewhere in the state, as shown in Table 2.

Table 2. Placement of students with disabilities, Typology 8 vs. Typology 1-7.

	Typology 8		Typology 1-7		Total	
	N	Pct	N	Pct	N	Pct
Included (80%+)	11,088	38.7%	96,178	65.1%	107,266	60.8%
Partially included (40-79%)	9,633	33.7%	29,553	20.0%	39,186	22.2%
Substantially separate (< 40%)	6,089	21.3%	14,553	9.9%	20,642	11.7%
Other	1,810	6.3%	7,440	5.0%	9,250	5.2%

Ohio figures may not match publicly reported numbers due to dataset exclusions.

My analyses, informed by other information I reviewed, indicate systemic denials of FAPE in these districts. This finding is supported by the work of Mary Jo Dare and her colleagues, who investigated special education practices in ██████████ Typology 8 districts, and Thomas Parrish, who has concluded that Ohio’s large urban districts do not receive sufficient state resources to provide FAPE to their students with disabilities.

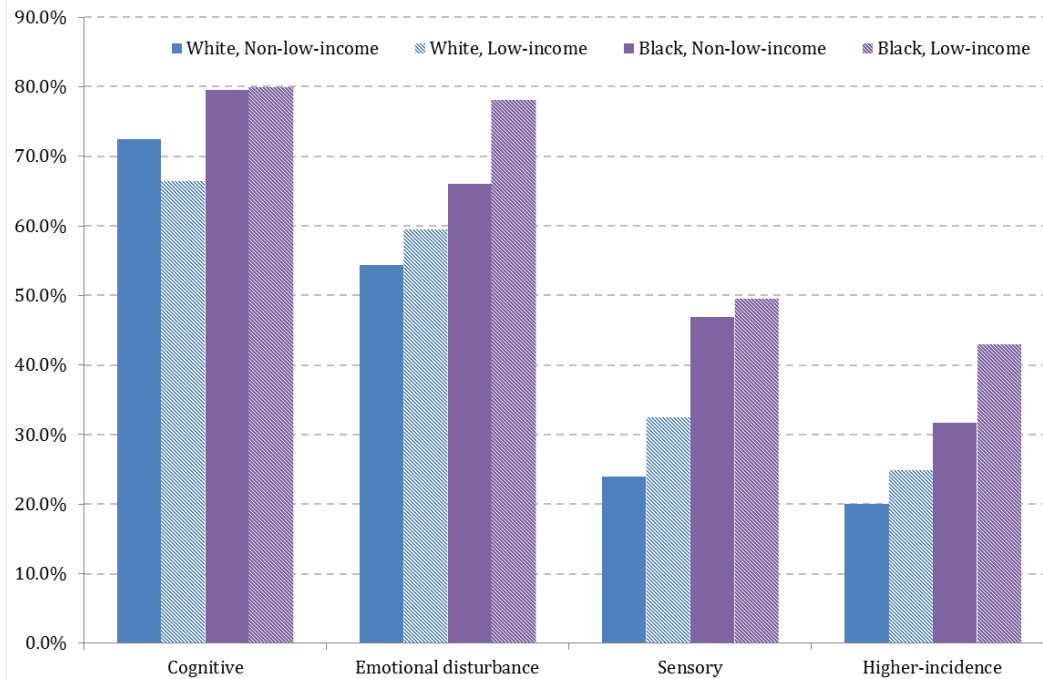
I note that the data I reviewed is available to the state, most of it being the state’s own data. It

that Ohio “needs assistance” in 2015 and 2016, after the Department began considering additional student achievement data in determining whether states were complying with their IDEA supervisory responsibilities.

should have provoked on-site monitoring and enforcement of IDEA requirements by Ohio in these districts.

Below I describe my findings based on my analyses of data concerning LRE and academic performance, which, in addition to the work of Dr. Dare’s team and of Dr. Parrish, have persuaded me that there are systemic denials of FAPE in Typology 8 districts and at least three Typology 7 districts.

Figure 2. Percentage of special education students educated in segregated educational settings, by race, income, and type of disability, 2013-14.



“Low-income” indicates students classified as Economically Disadvantaged. See text for description of inclusion and disability categories.

Finding 1. Students with disabilities in Typology 8 districts, and in three Typology 7 districts, are far more likely to be educated in segregated settings for some or all of the school day than students with disabilities in Typologies 1-6. This disparity cannot be accounted for by differences in race, income, or disability category. Enrollment in a Typology 8 district is a stronger predictor of placement in a segregated setting than either race or income status.

As Figure 2 indicates, on a statewide basis factors such as race, income, and type of disability matter with respect to whether an Ohio student is educated in a segregated setting during some or all of the school day. When I controlled for these factors (race, income, type of disability), I found that students in the eight Typology 8 districts, and in at least three Typology 7 districts, are

far more likely to be educated in segregated settings than students with disabilities in Typology 1-6 districts.²⁹

In Typology 8 districts, 61.3% of students with disabilities were educated in segregated settings for more than 20% of the school day (21-100%), compared to 33.7% of students with disabilities in Typology 1-6 districts and 40.3% of such students across the Typology 7 districts.

These differences in segregation rates for students with disabilities cannot be accounted for by demographic differences alone. In other words, they are not explained by race, income, or type of disability.

I reached this finding, based on my analysis of the EMIS data, through the following methodological approach:

- First, I restricted the dataset to students with disabilities, in order to focus solely on differences in placement among such students. This subset included 176,344 Ohio students with disabilities.
- Second, I assigned each student with a disability to a unique combination of race (African-American/Black, White, Other), income status (economically disadvantaged, non-economically disadvantaged), and disability category (cognitive disability, emotional disturbance, sensory disability, higher incidence disability, and other), producing a total of 30 race/income/disability groups.³⁰
- Third, for each race/income/disability group, I computed the percentage of students within each of three typology categories (Typology 8, Typology 7, Typologies 1-6) who were placed in segregated settings for between 21-100% of the school day. Groups with fewer than 20 students enrolled in the typology category were excluded, resulting in 84 percentages (out of 90 possible).

²⁹ My analysis compares students who are educated in general education settings 80% or more of the school day to students who are educated in such settings less than 80% of the school day. As Table 1 indicates, the latter group includes students who partially segregated and partially included (included in general education settings between 40-79% of the school day); students in substantially separate settings (included less than 40%); and students in “other” settings, including separate schools, separate residential facilities, private schools, at home, in the hospital, in other community settings; or in correctional facilities. I included students who are partially segregated and partially included in this group because, in my experience, generally these students receive instruction in core academic subjects in segregated settings, and this instruction is generally inferior to that provided in general education classrooms. The proficiency of these students in core subjects tends to be worse than that of students receiving instruction in these subjects in general education classrooms. As discussed later in this report, the Dare team’s investigation confirms that this is the case, based on a sample of [REDACTED] Typology 8 schools. In this report, I use the term “segregated” or “segregation” to refer to students who spend some or all of the school day in segregated settings in public schools. This includes students who are partially segregated and partially included, students who are substantially separate, and students who are in “other” settings.

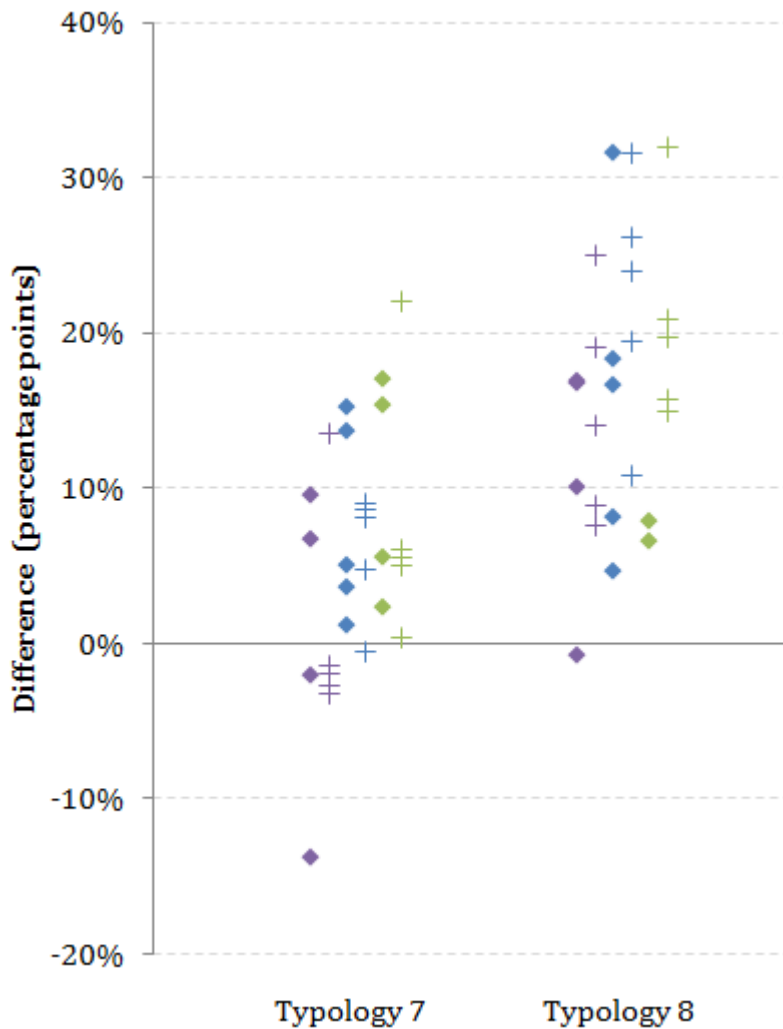
³⁰ For purposes of my analysis, I assigned students to 1 of 4 disability categories, based on their IDEA category of identification: cognitive disability; emotional disturbance; “sensory” disability, including hearing impairments/deafness, visual impairments, and deaf-blindness; and “higher incidence” disabilities, including speech and language impairments, specific learning disabilities, and “other health impaired,” which often includes ADD or ADHD. I did not include students in the following IDEA disability categories in this analysis: orthopedic impairments, traumatic brain injury (TBI), autism, or “multiple disabilities.”

- Finally, for each race/income/disability group, I subtracted the Typology 1-6 percentage from the Typology 7 percentage, to produce the difference in segregation rates within each group. I then subtracted the Typology 1-6 percentage from the Typology 8 percentage. This resulted in 54 differences-in-percentages, each reflecting, for one particular race/income/disability combination, the difference in segregation rates between Typology 8, or Typology 7, and Typologies 1-6.

This “subclassification” approach demonstrates the probability of assignment to segregated settings in Typology 7 and 8 school districts, relative to districts in Typologies 1-6. In this analysis, any differences among the typologies are attributable to factors *unassociated* with race, income status, and disability category.

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Figure 3. Difference between Typology 1-6 districts and other districts in percentage of special education students educated in segregated settings, within race/income/ethnicity groups, 2013-14.



Each point represents a unique combination of race/ethnicity, income status, and disability category. Value associated with each point indicates, for that race/income/disability group, the difference between the indicated Typology and Typology 1-6 in the percentage of students educated in segregated educational settings. Groups with fewer than 20 total students are excluded.

Diamonds indicate Non-low-income groups. Plus symbols indicate low-income groups. African-American/Black groups are indicated in purple, White groups in blue, and all other race/ethnicities in green.

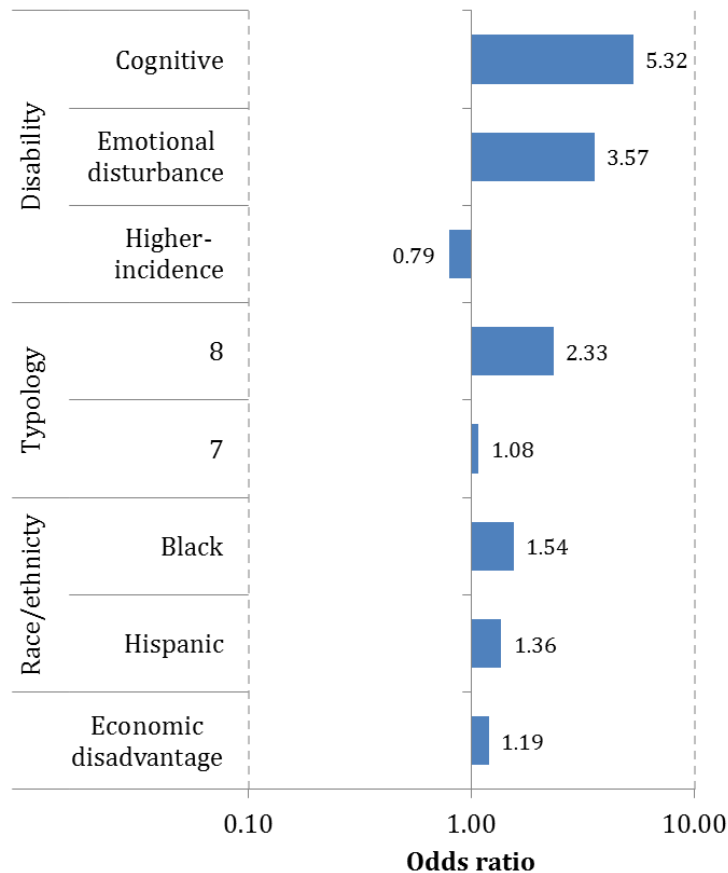
Figure 3 illustrates that students with disabilities in Typology 8 districts, and to a lesser extent across Typology 7 districts, are far more likely to be segregated, i.e., educated outside general education classrooms for some or all of the school day, than students with disabilities in Typology 1-6 districts. If the elevated segregation rates in Typology 8 districts were attributable primarily to their higher proportions of low-income students, African-American/Black students,

or students with cognitive disabilities or emotional disturbance, then the points in Figure 3 would cluster around a value of zero: on average, students with the same race, income status, and disability should be no more likely to be segregated in Typology 8 districts than in Typology 1-6 districts.

Instead, we see that students of the same race/ethnicity, income status, and type of disability were substantially more likely to be educated in a segregated setting in Typology 8 districts than in Typology 1-6 districts. This result is consistent across nearly every race/income/disability group I studied.³¹

To confirm this result, I developed a series of logistic regression models estimating the probability of assignment to a segregated educational setting, using a wide array of race/ethnicity, income, disability type, and typology combinations as predictors. Figure 4 illustrates the results.

Figure 4. Estimated odds ratios for selected factors associated with assignment to a segregated educational setting among students with disabilities, 2013-14.



Odds ratios reported relative to non-economically disadvantaged White students with Sensory disabilities (deafness, blindness, deaf-blindness) in Typologies 1-6. All reported odds ratios are statistically significant ($p < 0.05$).

³¹ Non-low income Black students with cognitive disabilities, with a value of -0.8%, represent the lone exception.

My logistic regression analysis results confirm the impact of typology on segregation. After controlling for race/ethnicity, income, and disability type, the odds of segregated placement (i.e., spending between 21-100% of each school day in a segregated educational setting) for students in Typology 8 districts were 2.3 times higher than for students in Typology 1-6 districts. Enrollment in a Typology 8 district was a stronger factor (odds ratio = 2.3) than either race (1.54, 1.36) or economic disadvantage (1.19) in predicting a segregated placement.

I found at least three Typology 7 school districts that resemble the Typology 8 districts in how much they segregate students with disabilities outside the general education classroom: East Cleveland City Schools, Lima City Schools, and Zanesville City Schools. These schools educate among them approximately 10,000 students annually, of which approximately 2,100 are students with disabilities.³² I found that enrollment in these Typology 7 districts was also a much stronger factor than race/ethnicity, income status, or disability type in determining how likely a student with a disability was to be educated in a segregated setting.

I conclude that race and income differences cannot adequately account for the disparities in segregation between Typology 8 districts and Typology 1-6 districts. Neither do they adequately account for the differences in segregation between the three Typology 7 districts and students in Typology 1-6 districts. As shown in Figure 4, substantial disparities in the type of disability identified, especially for students with cognitive disabilities and emotional disturbance in Typology 7 and 8 districts, contribute to this disparity in segregated placement.³³ But there remain significant disparities in segregated placement among students of the same disability type between Typology 8 districts and Typology 1-6 districts, and between the three identified Typology 7 districts and the Typology 1-6 districts.

As discussed above, in our statewide sample of over 1.3 million students in Ohio, about 39% of all of Ohio's students with disabilities spend more than 20% (between 21-100%) of the school day in segregated settings, in public schools or other settings. Nationwide, about 38% of students with disabilities are segregated for some or all of the school day. It is remarkable that such a high percentage of students in the Typology 8 school districts, 61.3%, spend between 21-100% of the school day in segregated educational settings. In the Typology 7 district of East Cleveland 79% of students are in segregated placements; in Zanesville 64% are. These high rates of segregated placement in these districts are striking and disturbing. They exceed what I have seen in other districts across the country.

It should be further noted that even if the differences in segregation were explained by poverty and race, the absolute numbers of children spending some or all of the school day in segregated

³² See *supra* note 25.

³³ My analysis of the EMIS data indicates that students with disabilities are substantially more likely to be educated in a segregated setting for some or all of the school day if they have a cognitive disability or emotional disturbance rather than another IDEA disability type. For example, students identified with an emotional disturbance are more than twice as likely to be educated in segregated settings than are students with a sensory disability, and those with a cognitive disability are nearly three times more likely to be segregated than students with a higher-incidence disability. This pattern applies within all race/ethnicity and income groups; for all groups, a student with a cognitive disability or emotional disturbance is far more likely to be segregated outside the general education classroom than are other students with disabilities.

settings would give me grave concern, as these settings are associated with poorer outcomes. The point in showing the differences in typology, not explained by race or income, is to underscore the impact of enrollment in one of the eight Typology 8 or three Typology 7 school districts. The fact that a child is poor or a student of color should not affect whether a child is segregated or whether that child receives FAPE.

Finding 2. Among students with disabilities, placement in segregated settings for some or all of the school day is a contributing factor for lower performance on the Ohio Achievement Assessment (OAA) and Ohio Graduation Test (OGT).

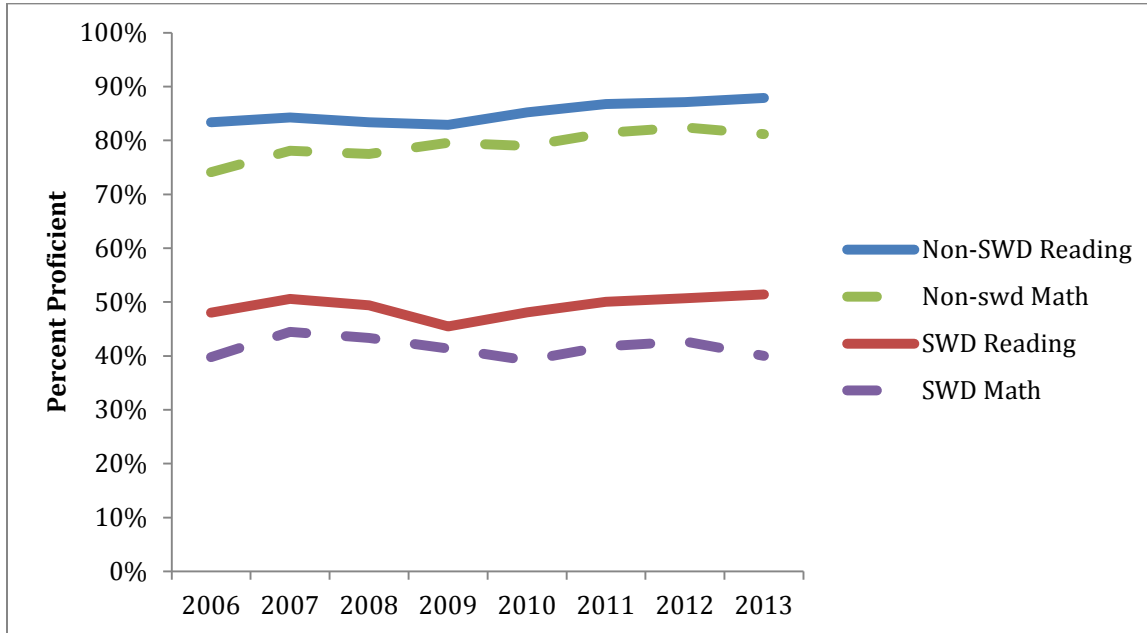
In general, the segregation of students with disabilities for some or all of the school day results in poorer academic outcomes. This has been documented repeatedly in my own research and that of others, including longitudinal studies sponsored by the U.S. Department of Education.³⁴

My analysis of the most recent EMIS/OLDA data, and publicly available data from six recent school years, shows that in Ohio the segregation of students with disabilities results in lower academic achievement. Throughout the state of Ohio, there are significant disparities between the academic performance of students with disabilities and that of students without disabilities. These disparities are even greater when students who are segregated (i.e., who spend between 21-100% of the school day outside general education classrooms) are compared to students without disabilities. And the disparities are especially pronounced in the Typology 8 school districts and in the three Typology 7 districts. The academic performance of segregated students in these districts is generally far lower than that of students with disabilities elsewhere in the state.

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³⁴ See Hehir Review 1-5, *supra* note 9; Hehir Synthesis 9-10 & n.14, *supra* note 9; Jose Blackorby et al., What Makes a Difference? Influences on Outcomes for Students with Disabilities 7-7, 7-17 (Feb. 2007); Mary Wagner & Jose Blackorby, Overview of Findings from Wave 1 of the Special Education Elementary Longitudinal Study (SEELS) 24 (Jun. 2004); Mary Wagner et al., What Makes a Difference? Influences on Postschool Outcomes of Youth with Disabilities: The Third Comprehensive Report from the National Longitudinal Study of Special Education Students 4-4 & Table 4-5 (Dec. 1993).

Figure 5: State performance trends: Proficiency rates on the Ohio Achievement Assessment, grades 3 – 8.



I began my analysis by reviewing state- and district-level data on academic performance available through the ODE website. As illustrated in Figure 5, my analysis of this publically available data showing student performance on the Ohio Achievement Assessment (OAA) for the years 2006-2013 shows that in Ohio the performance of students with disabilities was flat during this period. There was a significant proficiency gap between students with disabilities and students without disabilities that persisted throughout these six school years.

My analysis of 2013-2014 student level data from ODE’s EMIS database demonstrates that, across the state, students with disabilities educated in segregated settings for some or all of the school day achieved lower scores in reading and in math on the Ohio Achievement Assessments (OAA). This association held true across all eight typologies, but has resulted in remarkably low scores in Typology 8 districts.

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Figure 6: Average scale reading scores on the Ohio Achievement Assessment, grades 3 – 8, by inclusion by typology

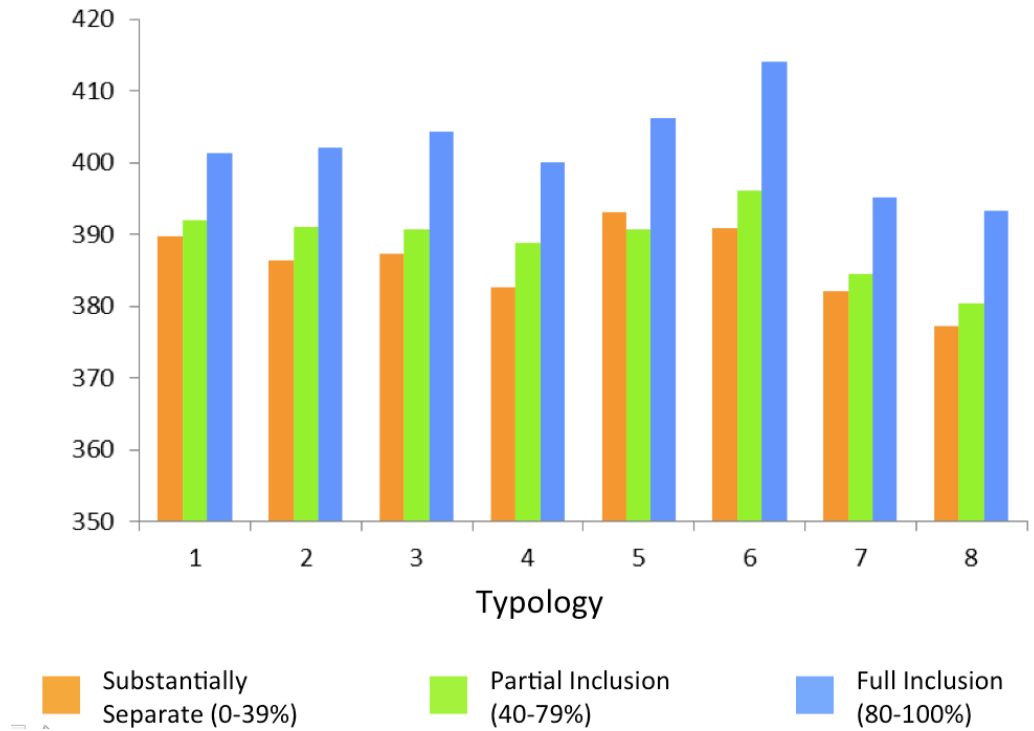
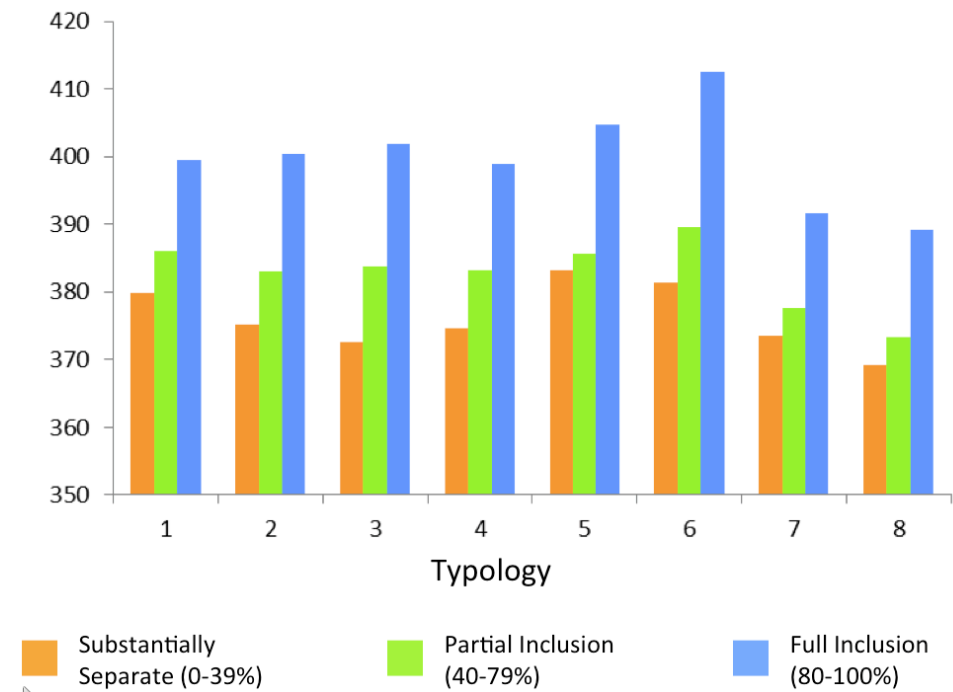
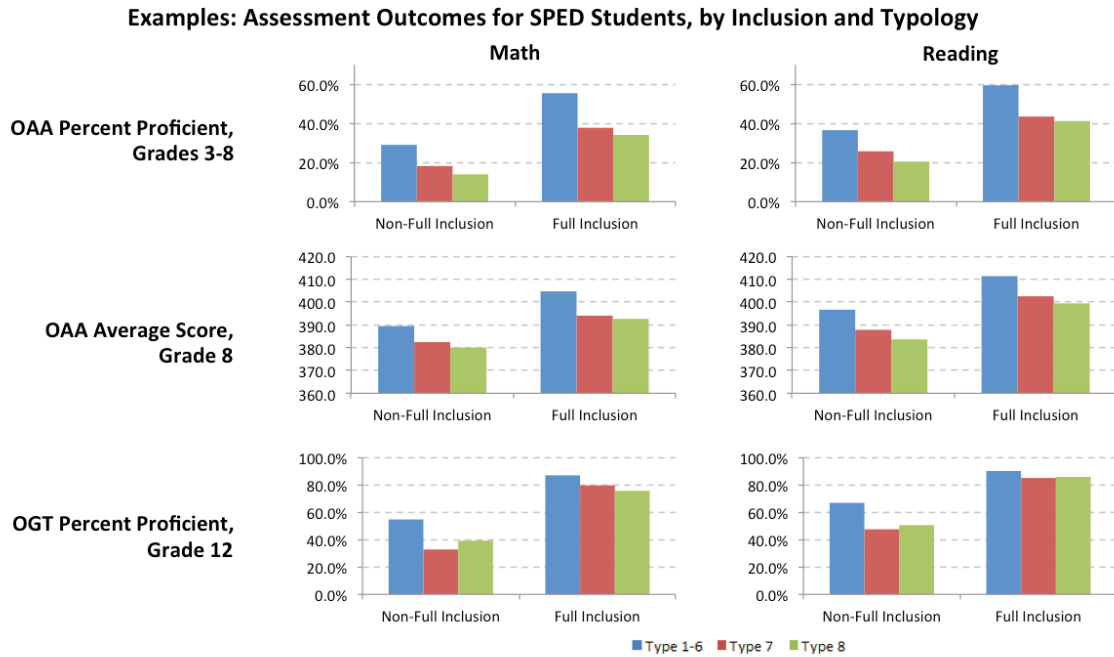


Figure 7: Average scale math scores on the Ohio Achievement Assessment, grades 3-8, by inclusion, by typology.



When I compared OAA and Ohio Graduation Test (OGT) proficiency rates for students with disabilities in Typology 1–6 districts to student with disabilities in Typology 7 and 8 districts, I found that placement in segregated settings (i.e., spending 21-100% of the school day outside general education classrooms) was associated with significantly lower proficiency across typologies on both the OAA and the OGT. Proficiency rates were particularly low in Typology 8 districts and, to a lesser extent, in Typology 7 districts.

Figure 8: Comparisons of OAA and OGT outcomes for special education students, by inclusion/segregation and Typology.



A large body of research indicates that students with disabilities perform worse in non-inclusive settings. Ohio results appear to be consistent with those findings.

I performed a similar analysis of the three Typology 7 districts identified above that resemble the Typology 8 districts in how much they segregate students with disabilities. In these districts, too, students with disabilities who are educated in segregated settings, i.e., who spent 21-100% of each school day outside general education classrooms, generally have lower levels of academic proficiency than do students with disabilities who are not segregated.

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Table 3. Students with Disabilities in Eight Typology 8 Districts: Segregated Placements and Percent Proficient.

District	OAA Percent Proficient				
	% Segregated	Math		Reading	
		Not segregated	Segregated	Not segregated	Segregated
Akron	53%	33%	19%	34%	26%
Canton	37%	24%	5%	29%	15%
Cincinnati	49%	45%	27%	55%	38%
Cleveland	69%	33%	16%	36%	21%
Columbus	62%	29%	9%	37%	17%
Dayton	68%	21%	9%	27%	10%
Toledo	74%	39%	13%	55%	21%
Youngstown City	62%	33%	18%	40%	18%

Figures drawn from Ohio Longitudinal Data Archive and may not match publicly-reported figures. “Segregated” students spent between 21-100% of each school day outside general education classrooms.

Table 4. Students with Disabilities in Three Typology 7 Districts: Segregated Placements and Percent Proficient.

District	OAA Percent Proficient				
	% Segregated	Math		Reading	
		Not segregated	Segregated	Not segregated	Segregated
East Cleveland City	79%	28%	11%	23%	24%
Lima City	51%	18%	9%	26%	12%
Zanesville City	64%	44%	18%	59%	28%

Figures drawn from Ohio Longitudinal Data Archive and may not match publicly-reported figures. “Segregated” students spent between 21-100% of each school day outside general education classrooms.

Systemic denials of FAPE

The data I have reviewed are disturbing as they provide strong evidence that in Ohio there are systemic denials of FAPE.

Ohio students with disabilities in the Typology 8 and three Typology 7 districts are far more likely to be educated in segregated settings for some or all of the school day than students elsewhere in the state and nationally. Neither race, income status, nor type of disability explains

why. Moreover, students in Typology 8 districts and in the three Typology 7 districts are far less likely – as much as 75% less likely – to achieve proficiency on state academic achievement tests.

These disparities are striking. These students are significantly more likely to be educated in segregated settings as are students with disabilities nationwide. In my opinion, the extremely high rates of segregation in the Typology 8 and three Typology 7 districts indicate that large numbers of students are not being educated in the least restrictive environment (LRE) appropriate to their needs, a critical element of FAPE.

The vast majority of students with disabilities could and should be educated in general education settings, and removal from these settings should only occur after students have been provided services and accommodations that enable the student to access the general education curriculum.

Moreover, the segregation of students with disabilities in the Typology 8 and three Typology 7 districts is strongly associated with poor academic outcomes. The students educated in segregated settings for some or all of the school day in the Typology 8 and three Typology 7 school districts demonstrate far less proficiency in reading and math than students with disabilities who are not segregated (i.e., who spend 80% or more of the school day in general education classrooms). Except for students with the most significant cognitive disabilities, whose performance must be measured against alternate achievement standards, these students can meet the same challenging academic content standards as all other students in the state, with appropriate instruction, services, and supports. Their failure to do so is strongly associated with their placement in segregated settings in the Typology 8 and three Typology 7 districts.

In my opinion, and based on the above findings, the students with disabilities in the Typology 8 and at least three Typology 7 school districts appear to be receiving an education so inferior as to be a denial of FAPE. The data indicate that these districts are failing to provide specialized instruction and related services meeting the unique needs of each student with a disability, so that each student can make progress in curriculum based on Ohio's academic content standards.

As noted above, this data was readily available to the state. Ohio's response to its own data has been ineffective, however. I do not understand why the state has not taken action based on the high rates of segregation and associated poor academic achievement in these districts. This data should have led the state to analyze the EMIS data in ways similar to the analyses that I performed. In my opinion, the state failed to meet its supervisory responsibilities when it failed to react to or take effective action in response to the striking rates of segregation in the Typology 8 and three Typology 7 districts and the low levels of proficiency in reading and math of students with disabilities in those districts.³⁵

Further, the systemic denial of FAPE in the Typology 8 and three Typology 7 districts disproportionately affects the state's most disadvantaged and vulnerable populations.³⁶

³⁵ As discussed below, the reports of Mary Jo Dare and her colleagues, and of Thomas Parrish, support and confirm this conclusion.

³⁶ The federal Elementary and Secondary Education Act (ESEA), enacted in 1965, reauthorized as the No Child Left Behind Act in 2001, and reauthorized again last year as the Every Student Succeeds Act, identifies students with disabilities, along with students of color, economically disadvantaged students, and students with limited English

First, it disproportionately affects low income students.³⁷ A significant proportion of the state's low-income students are educated in Typology 7 and 8 schools,³⁸ which, by definition, educate "very high" (Typology 8) or "high" (Typology 7) poverty student populations. Moreover, very high proportions, 84% of the students in the Typology 8 and 64% of the students in Typology 7 districts are low income, or "economically disadvantaged."³⁹ And nearly 20% of students in the Typology 8 districts, and more in the three Typology 7 districts, are students with disabilities.⁴⁰ The data indicates that low income students in Ohio are much more likely to be denied FAPE than non-low income students. The state has not acknowledged this circumstance or devised an effective response.

Additionally, the systemic denial of FAPE in the Typology 8 and three Typology 7 districts disproportionately affects students of color. African-American/Black students and Hispanic/Latino students comprise the majority (65%) of the student population in the Typology 8 school districts, and a significant percentage (33%) of students in the Typology 7 school districts. Students of color also account for a majority (74%) of students with disabilities in the Typology 8 districts, and a significant percentage (43%) of students with disabilities in the Typology 7 districts. These students represent the majority of students of color in the state. As discussed above, after they are identified, these students are far more likely to be educated in segregated settings (spending between 21-100% of the school day outside the general education classroom) than students elsewhere in the state, and are far more likely to experience poorer academic performance. The systemic denials of FAPE in these districts are disproportionately borne by students of color.

The significant disproportionality of students of color across the state of Ohio, including in the Typology 8 and three Typology 7 districts, in identification for special education and subsequent segregated placement, likely violates the IDEA's prescription against such racial disproportionality. Across the state, 19.5% of African-American/Black students were identified as needing special education services, compared to 12.7% of White students. 14.4% of Hispanic/Latino students were identified as students with disabilities, compared to 12.7% of White students. In part, this can be explained by differences in income status: as noted above, low-income students are more likely to be identified as needing special education, and far more African-American/Black students, 80%, live in poverty than do White students (35%). But this

proficiency, as one of the historically "disadvantaged and high needs" groups of students whose academic progress must be tracked by states. U.S. Dep't of Educ., Every Student Succeeds Act (ESSA), <http://www.ed.gov/esea> (last visited Aug. 5, 2016). When these students fail to make progress, school, school districts, and states must develop and implement interventions to improve student achievement for these groups of students. Many students in one or more of these groups are enrolled in Typology 8 and Typology 7 school districts.

³⁷ See *supra* note 23. The EMIS/OLDA data indicates that, across all typologies, low-income students were identified as eligible for special education services at substantially higher rates than were non-low income students in 2013-14. Nearly 1/5 of low-income students, 19.1%, were identified as having a disability, compared to less than 1/10 of non-low-income students, 9.3%.

³⁸ *Id.* Over 25% of Ohio's public school student population is enrolled in Typology 7 and 8 school districts. *Id.* Among the Typology 8 districts, rates of enrollment of economically disadvantaged students range from 70% in Cincinnati to 100% in Cleveland. The rates of enrollment of such students is at least 40% in each of the Typology 7 districts, and is as high as 80% in East Cleveland. *Id.*

³⁹ See *supra* note 23.

⁴⁰ See *supra* note 25.

difference does not fully account for the disparity between the two groups. Within each income group, African-American/Black students are identified as needing special education at significantly higher rates than White students, as are Hispanic/Latino students. The IDEA requires states to take action when such significant disproportionality is identified.⁴¹ Ohio does not appear to have taken effective action to prevent such disproportionality.

The picture painted by the data is disturbing. Low-income students and students of color disproportionately bear the burden of the FAPE violations I have found. Ohio could have and should have investigated this situation, including the districts' special education practices. As I explain below, this could have been accomplished by reviewing student records including assessments and IEPs, observing students in classrooms, and interviewing parents, teachers, and school administrators.⁴² These are common strategies used by states to determine if school districts are providing FAPE to students with disabilities. Dr. Mary Jo Dare and her colleagues used these methods in their investigation in ██████ of the largest urban districts in Ohio.

Qualitative Analysis of Practices in ██████ Typology 8 Districts

Dr. Dare and her team reviewed student records, observed classrooms, and interviewed stakeholders in ██████. They observed students, and reviewed the records of other students, in both general education classrooms and segregated settings, including “resource rooms” where students may be pulled out for instruction, and separate classrooms where students with disabilities spend most or all of the school day.

In its classroom observations, the Dare team found that students in segregated settings, including “resource rooms” where students received most or all of their core academic instruction, experience inferior instructional practices that typically lead to lower academic performance.⁴³ There was no evidence that these students were provided instruction aligned with the curriculum or academic standards for the grade in which they were enrolled. The students had no or minimal access to the same textbooks or other curricular resources used by students in the general education environment. The Dare team saw little evidence of differentiated instruction or accommodations to provide students with access to the grade level curriculum and help them meet academic standards. For the most part, they were given low-level worksheets, including coloring book pages, and minimal to no access to technology, either for communication or to access text.⁴⁴

⁴¹ 20 U.S.C. § 1418(d); 34 C.F.R. § 300.646.

⁴² Cf. 34 C.F.R. § 300.600(d) (state must monitor provision of FAPE using quantifiable indicators and “such qualitative indicators as are needed to adequately measure performance”).

⁴³ Dr. Dare and her colleagues observed that many of the “resource rooms” in ██████ were being used as full-time segregated settings for students with disabilities, where students received all of their instruction each day. They did not see why the vast majority of students in these classrooms could not have been educated in general education classrooms. Usually, “resource rooms” are used for a brief period of “pull out” during the school day to supplement academic instruction provided in general education classrooms. Students receiving instruction in “resource rooms” are thus typically in general education classes 80% of the day or more. However, in Typology 8 districts large numbers of students are in “resource rooms” for more than 20% of the school day, and receive instruction in core subjects in these segregated settings. Report of Dr. Mary Jo Dare et al., pp. 36-37.

⁴⁴ The Dare team also observed that students in these segregated settings generally had low school attendance rates, which their schools were not addressing. *Id.* at 41-45.

The widespread lack of challenging curriculum aligned with state academic standards observed by the Dare team is undoubtedly contributing to low performance levels of students and indicates that these students are not receiving FAPE.

The Dare team's review of student records revealed similarly harmful special education practices. Student IEP plans included large amounts of boilerplate language that resulted in plans that failed to address students' individual needs. Goals were copied and pasted from one year's IEP to the next, year after year, for many students.

The Dare team also found widespread violations of the requirement that schools provide students with disabilities with the related services they need to benefit from special education. These services include, among others, occupational therapy, physical therapy, assistive technology, and mental health services, such as skills training, mentoring, and counseling. Given that many of the students the Dare team observed were educated in segregated settings because of their behaviors, I would expect that these children would be receiving mental health services. But in many records the team reviewed, needed mental health services were not being provided at all. IEP documents contained multiple references to students' needs for mental health services, but did not provide for the delivery of such services.

[REDACTED]

[REDACTED] Alarming, it appeared that many school personnel interviewed in the [REDACTED] did not think mental health services were a school responsibility, and did not understand whether and when to include them in a student's IEP.

As part of providing FAPE, school districts must also provide assistive technology (AT) services when students need them to benefit from special education. AT includes a wide range of high- and low-tech devices, equipment, and technologies to help students with disabilities; examples include laptops or tablets to assist students who are deaf or blind, or who have difficulties writing; augmentative communication devices for students with communication or speech impairments;⁴⁵ and mobility aids and positioning equipment for students with physical disabilities.

The Dare team observed little use of AT, and what they did observe was often misused or out-of-date.

⁴⁵ As Dr. Dare notes, augmentative communication is an umbrella term that encompasses methods used to supplement or replace speech or writing, such as "read aloud" devices. Particularly important are devices that allow nonverbal students to communicate, including portable devices controlled by the student that write or produce speech; such devices referred to generally as communication devices. *See id.* at 23. Increasingly, these technologies allow students to access challenging, grade-level curriculum; this may partially account for the success many students with disabilities are having in universities and their careers. *See, e.g.,* Thomas Hehir & Lauren I. Katzman, Effective Inclusive Schools: Designing Successful Schoolwide Programs 103-04 (2012) [hereinafter Effective Inclusive Schools]; *see also* Thomas Hehir & Laura A. Schifter, How Did You Get Here? Students with Disabilities and Their Journeys to Harvard (2015) [hereinafter How Did You Get Here?].

[REDACTED]

The Dare team also identified widespread failures to provide transition services to adolescents with disabilities. They observed that transition planning and services are either unavailable or of very poor quality in the [REDACTED] school districts. Furthermore, many students with disabilities are being pushed to “graduate” by age 18, rather than receiving the educational and transition services they need and are entitled to through age 21. In Ohio students with disabilities may “graduate” from high school without meeting the state requirements that students without disabilities must meet. Instead, they may “graduate” by meeting the goals enumerated in their IEPs. But, as discussed above, the IEPs for students with disabilities in the [REDACTED] districts the Dare team reviewed did not include individualized goals based on state academic standards for the grade in which the student was enrolled. In most districts I have studied, students reaching age 18 continue to have IEPs with a strong emphasis on transitioning to adulthood through employment, independent living instruction, and increasingly post-secondary educational opportunities.⁴⁶ Large numbers of students in the districts the Dare team reviewed are being denied these opportunities.

As a result of the failure to provide transition services – as well as the failure to provide special education services that are aligned with grade-level academic standards, as discussed above – many students with disabilities in the [REDACTED] districts are graduating without having learned needed skills.

Dr. Dare and her colleagues performed a thorough review of special education practices in [REDACTED] Typology 8 school districts, using methods that are widely accepted in the special education field – methods that state education agencies themselves use – to determine whether or not school districts are providing FAPE to students with disabilities. The team’s qualitative analysis provides overwhelming evidence that there are systemic denials of FAPE in each of these districts.

These [REDACTED] school districts constitute a significant sample of the eight Typology 8 districts. My data analysis – and the fact that the [REDACTED] districts the Dare team reviewed were a random sample of the Typology 8 districts – indicate that, in the other [REDACTED] Typology 8 districts, there are similar systemic denials of FAPE. My analysis indicates that the other [REDACTED] Typology 8 districts are extremely similar to the districts the Dare team reviewed in how much they segregate students with disabilities and in how poorly they do on Ohio’s measures of academic achievement. The segregation and achievement data are also extremely similar in the three Typology 7 districts identified above. The Dare team’s review supports my opinion that there are systemic denials of FAPE in the Typology 8 districts and the three Typology 7 districts.

⁴⁶ See, e.g., Effective Inclusive Schools, *supra* note 45.

Ohio's Deficient Response

Having concluded that there are systemic denials of FAPE in the Typology 8 and at least three Typology 7 school districts, I reviewed documents pertaining to Ohio's supervision and enforcement of the FAPE requirement in its local districts. I find that Ohio has not met its supervisory responsibilities under the IDEA. Ohio's approach is ineffective: there is no indication that Ohio has intervened meaningfully to prevent the Typology 8 and three Typology 7 districts from violating the IDEA.

At a basic level, an effective monitoring and enforcement system must identify problems and intervene to correct them. Effective corrective measures must be based on identifying the root cause of a district's noncompliance (for example, a lack of professional development and training, or the need for additional resources) and result in actual and sustained compliance. My review indicates that Ohio's monitoring system fails to systematically correct the issues it identifies, particularly in the areas of LRE and poor student achievement.

I began my review by reading ODE's policies relating to general supervision of special education. On paper, these policies were similar to those in many other states. Ohio's system for monitoring special education delivery consists of three components: compliance indicator reviews, "on-site" reviews, and selective reviews. Each year, every Ohio school district sends data to ODE on the compliance indicators identified in the U.S. Department of Education's IDEA regulation.⁴⁷ ODE's Office of Exceptional Children then develops an annual report for each district, describing the district's performance on the indicators. When a district does not meet a target for specified indicators, the annual report also includes a corrective action plan identifying how the district will correct the noncompliance. ODE also performs "on-site" reviews of school district special education practice for about 50 Ohio districts each year, focusing on services for students in preschools and elementary/secondary schools, and IDEA fiscal requirements. ODE requires districts to implement corrective action plans for noncompliance found in "on-site" reviews. Finally, ODE performs "selective" reviews of special education practices in certain school districts, after an issue of concern is brought to ODE's attention. Corrective action plans are also required after noncompliance is uncovered during a selective review. For all three types of monitoring, local school districts must demonstrate that they have corrected noncompliance within one year after being notified of noncompliance.

This system for monitoring special education has not ensured the provision of FAPE in the Typology 8 and three Typology 7 school districts. Ohio has not required these districts to change their practices so that students with disabilities receive FAPE.

Dr. Dare and her colleagues reviewed ODE's annual reports for the [REDACTED] school districts. Their review found that, although ODE performs annual compliance indicator reviews in these districts, it has not required corrective action for any of their identified and ongoing failures to meet Ohio's targets for LRE and student achievement. Instead, districts are encouraged – but not required – to "review [their] trend data" and utilize resources identified in the annual report "to ensure continuous improvement in the future." In other words, there

⁴⁷ See *supra* note 20.

appear to be no consequences to the districts for failing to improve on these key aspects of FAPE, year after year. Disturbingly, much of ODE's interaction with the districts consisted of exhortations to organize and submit paperwork, rather than working to address the root causes of noncompliance: ineffective educational practices.

ODE's lack of oversight of LRE is particularly troubling. This requirement has been in IDEA for over 40 years, and states have been required to report the amount of time that students with disabilities spend in general education classrooms for the last 20 years. Given this history, I would have expected many more students in general education classes for most or all of the school day than is the case in the districts the Dare team and I reviewed. The Dare team found that none of the [REDACTED] districts they reviewed have met Ohio's LRE targets since at least 2006-2007: Though Ohio's target for LRE for the 2014-2015 school year was that 62.5% of special education students would be "included" (i.e., spend 80% or more of the school day in general education classrooms), only 28.2% of [REDACTED] special education students, and only 26.3% of [REDACTED], met this target. More of [REDACTED] students did, but its LRE performance worsened over time, and only 50.3% of the district's students met the state's target in the 2014-2015 school year.

Even in the few instances where ODE requires corrective action to achieve compliance, it does not ensure sustained compliance. For example, as mandated by the IDEA regulation, ODE requires school districts to report the percentage of students ages sixteen and above who have an IEP that contains all transition planning elements (*e.g.*, appropriate and measurable post-secondary goals, transition services, IEP goals that relate to the student's transition services needs, etc.) required by the IDEA.⁴⁸ Transition planning and services are a key aspect of providing FAPE, as discussed above. But as the Dare team's report indicates, [REDACTED] were regularly found noncompliant with the requirement that IEPs contain transition services, cleared of noncompliance after implementing a corrective action plan the next year, and then found noncompliant again the very next year. This pattern demonstrates that Ohio's process for correcting is not working. One corrective action plan reviewed by the Dare team required the school district to provide as verification of correction only a one-time sample of student records, from a limited time period, and from just five students selected by the districts themselves. The small number of records in the sample, the District's selection of the sample, the lack of frequency of review, the limited time period covered, and the failure to confirm with an on-site investigation whether the records accurately reflected the transition services the students had been provided are all evidence of inadequate general supervision under IDEA.

Ohio's approach cannot verify to the state whether special education students in large urban districts are receiving FAPE, including transition services, over the course of a school year, let alone over the course of a student's school career.⁴⁹

⁴⁸ See *supra* note 13; see also 34 C.F.R. § 300.600(d)(2) (states must monitor whether local school districts have "a system of transition services").

⁴⁹ Ohio's corrective action plans often require school districts to seek technical assistance from ODE. The documents I reviewed indicated that in the past ODE made efforts to provide such assistance to staff in Typology 8 districts; personnel from the Office of Exceptional Children met regularly with special education administrators from Ohio's eight largest urban school districts "to gain input and provide updates on requirements, policies, and programs for students with disabilities and to address the unique challenges in serving children with disabilities

I am also troubled by another aspect of Ohio's methods of determining and correcting systemic noncompliance, which are not effective at protecting the right of students with disabilities to FAPE. I reviewed documents pertaining to ODE's recent on-site reviews in East Cleveland and Lima; in both cases ODE consultants reviewed records for a sample of approximately 40 students. But ODE, pursuant to state policy, did not consider whether a systemic problem existed unless it appeared in the individual records of 30% of the students reviewed. If a problem did not exist in 30% of the records, ODE would require the district to correct the problem only for those children, but would not address it systemically.

This is a significant error in exercising general supervisory authority under the IDEA. East Cleveland educates 583 students with disabilities; one in seven, or 14%, IEPs reviewed by ODE failed to describe the specialized instruction and related services that students would receive, including the frequency and duration of interventions. As this did not meet the 30% threshold for a finding of systemic noncompliance, East Cleveland was required only to correct the deficient IEPs. But the fact that 14% of East Cleveland students from a randomly drawn sample have IEPs with this deficiency indicates that approximately 82 students overall, or more, may have similarly deficient IEPs – a substantial number of East Cleveland's population of students with disabilities.

Many of the deficiencies found by ODE in East Cleveland and Lima involve critical aspects of FAPE, such as the LRE requirement. Ohio's failure to review more carefully the education of students with disabilities in these school districts with extreme levels of segregation and poor academic performance is deeply concerning. So too is the fact that corrective action plans, for Lima and East Cleveland as well as other districts, appear to focus on correcting deficient paperwork, rather than on correcting deficient practices. A much larger sample of student records in these Typology 7 and Typology 8 districts should be reviewed. Also, after finding such noncompliance ODE should perform more extensive on-site reviews to determine if students are actually receiving the specialized instruction and related services identified in their IEPs. For many critical aspects of FAPE identified in the Lima and East Cleveland reports, it is highly likely that the districts will have to provide substantial professional development to implement better practices districtwide. There is no evidence that Ohio's monitoring system triggers such meaningful correction.

I reviewed the transcript from the March 9, 2015 deposition of Dr. Sue Zake, the director of the Office of Exceptional Children, and the ODE official responsible for Ohio's supervision of special education provision in the state's local school districts. Ms. Zake's answers to deposition questions confirm significant problems with how Ohio's monitoring and enforcement system functions.

faced by these LEAs." See ODE, "Ohio's System of General Supervision of IDEA in Ohio: Complying with State and Federal Requirements" (Jul. 2011), at 6, <https://education.ohio.gov/getattachment/Topics/Special-Education/Comprehensive-Monitoring-System/Ohio-General-Supervision-July-2011.pdf.aspx>. Simply meeting with district officials is not a robust strategy likely to yield systemic change in large districts. Further, ODE has represented that even these meetings no longer take place. See Defs.' Resp. to Pls.' Seventh Req. for Produc. of Docs. 7.

Investigating and resolving complaints from students and their parents or guardians is another important part of a state's system for supervising and enforcing IDEA, including the FAPE requirement.⁵⁰ Ohio has not remedied the systemic denials of FAPE I have identified, which were confirmed by the Dare team, through its complaint process. Dr. Dare and her colleagues reviewed state administrative complaints filed with ODE between 2011 and 2014. They reviewed 21 complaints from ██████████, 47 complaints from ██████████, and 41 complaints from ██████████. Most of the complaints were from parents who believed their child had been denied FAPE. The concerns raised in these complaints were similar to what the Dare team found in reviewing student records, observing students in classrooms, and interviewing staff and other stakeholders – and they arose again and again in complaints from individual parents over the four-year period.

For example, ██████████, ODE received a number of complaints and found violations regarding failures to involve parents in the IEP process, and failures to properly develop and implement students' IEPs, resulting in a lack of progress for those students. ODE also received several complaints about ██████████ students who were removed from school for disciplinary reasons for significant periods of time, without appropriate services. ODE also received complaints regarding ██████████ manifestation determination review (MDR) process, through which the district is to determine whether a student's behavior resulting in discipline was related to the student's disability. Given these trends in the complaints filed by students and parents in these districts, I would have expected ODE to implement interventions to correct these problems. There is no evidence of such interventions.

My analyses of the EMIS and other data indicate systemic denials of FAPE in the Typology 8 school districts and at least three Typology 7 districts. My analysis is supported by the qualitative analysis of the Dare team. The EMIS data is the state's own data; there is no reason that ODE could not have performed its own analysis similar to mine, conducted its own investigation on-site, and then imposed and monitored effective, long-term remedies for the IDEA violations in these schools. Other states have regularly taken aggressive action as needed to ensure the provision of FAPE. Based on my review of ODE's monitoring and enforcement policies and other documents, including the report of the Dare team, I conclude that Ohio has not. The failure of Ohio to meet its responsibility under IDEA to ensure that students with disabilities receive FAPE undoubtedly has had a life-long impact on many young adults with disabilities who have left school unprepared for higher education or employment.

Financial Analysis

The review conducted by Dr. Thomas Parrish supports the conclusions I have stated in this report.

I find Dr. Parrish's opinions – based on his independent analysis of some of the same data I have studied, as well as his investigation of Ohio's special education budget and expenditure data – to be logical and credible.

⁵⁰ See 34 C.F.R. §§ 300.151-300.153 (federal regulation requiring states to have administrative complaint procedures for resolving special education concerns).

Dr. Parrish found that Ohio does not provide Typology 8 districts with adequate financial resources. Dr. Parrish based his conclusion, in part, on his finding that the academic proficiency rate for students with disabilities in the Typology 8 districts is only 33%, and that only 41% of students with disabilities in these districts spend 80% or more of the school day in general education classrooms. This is consistent with my findings.

Also, Dr. Parrish found that Ohio has not adequately monitored how much districts are spending on the provision of special education services.

Dr. Parrish recognized the challenges facing the Typology 8 school districts: these districts identify far more students as needing special education services, these students are significantly less proficient on academic achievement assessments, and the Typology 8 districts face high costs for recruiting and retaining teachers and related services providers needed to support their students.

Dr. Parrish found that the Typology 8 districts require more state resources, including more state funding, to provide FAPE to students with disabilities. Ohio must target these districts for additional resources.

I agree that the Typology 8 districts lack needed funding and other resources, which has contributed to the systemic denials of FAPE I have found. In my opinion, the three Typology 7 districts I identified have the same problem. The Typology 8 and three Typology 7 districts will need funding and other state resources to correct the systemic denials of FAPE I have found.

What Must Ohio Do?

I have been asked to provide my opinion about what Ohio must do to ensure that the Typology 7 and Typology 8 districts I have identified provide FAPE to their students with disabilities. To effectively remedy the systemic FAPE violations I have found, and to effectively monitor and enforce the IDEA in its school districts, Ohio must take the following steps.

(1) OHIO MUST CONDUCT ANNUAL ON-SITE REVIEWS IN THE TYPOLOGY 8 DISTRICTS AND THREE TYPOLOGY 7 DISTRICTS.

On-site monitoring, including review of student records and other student-level data, classroom observations, and interviews with stakeholders, is critical to determining IDEA compliance, including whether a district is properly identifying students with disabilities who need special education (but not overidentifying or misidentifying students), and whether students are being provided FAPE. States cannot know whether districts are meeting these crucial IDEA requirements without engaging in on-site investigation. But Ohio does not have clear criteria to determine when districts receive on-site monitoring. In the districts I reviewed with significant disparities in segregated placements and academic achievement, these reviews should be conducted annually. Ohio should also conduct annual on-site reviews in other districts for which data indicates systemic denials of FAPE.

Ohio must also revise its approach to on-site reviews so that it meaningfully uncovers systemic denials of FAPE and other unlawful or otherwise problematic special education practices. Based on my own review, and that of the Dare team, the process that Ohio uses for on-site reviews involves four activities: (1) a parent meeting, (2) pre-site data analysis, (3) record reviews focusing on IEPs, and (4) interviews with staff and administrators. The process does not involve classroom observations or any method to determine if students are being provided FAPE, both of which were done by the Dare team. There does not appear to be meaningful analysis of district-, school-, or student-level data as part of on-site reviews. Academic performance, graduation rates, and LRE are not addressed. Only a handful of parents attended parent meetings. The on-site review appears to be merely a process of reviewing forms for “compliance” and interviews with special education staff. This is woefully inadequate to determine whether a district is providing FAPE to students with disabilities.

(2) OHIO MUST PROVIDE INTENSIVE SUPPORT TO THESE DISTRICTS TO IMPROVE SPECIAL EDUCATION PRACTICES.

To remedy the failures to provide FAPE, Ohio must set specific goals, require a corrective action plan, and provide sustained intensive intervention over time. What appears to be Ohio’s typical response – asking districts to review trend data and seek assistance – will not correct these failures.

At the core of Ohio’s failure to ensure FAPE is the inappropriate placement of students with disabilities in segregated settings for some or all of the school day. Dr. Dare and her colleagues have identified four other troublesome issues that contribute to the failure to provide FAPE: the failure to provide students with disabilities access to curriculum based on state academic standards, the lack of access to AT, the lack of access to mental health services, and the failure to provide effective transition services. These are all systemic issues that will take time to remediate – and there are others, such as poorly written IEP plans. The fact that these problems have been largely ignored or ineffectively dealt with by the state for years means that remediating them will require confronting deeply engrained practices.

With respect to the LRE requirement, simply mandating more integration will not be an effective remedy. Teachers and administrators will need to learn how to effectively integrate children with disabilities into general education classrooms. Though this is difficult work, my research and experience affirms that this can be done, including in urban schools without a history of inclusive practices or positive outcomes for students with disabilities.⁵¹

First, and foundational, schools must welcome these children and accept that they should be included in general education classrooms and other school activities in a way that is consistent with their needs. Second, teachers and other school personnel must learn how to provide effective and individualized academic and behavioral interventions, classroom accommodations, and related services. School staff in these districts will need a significant amount of ongoing staff development. My research on effective inclusive urban schools documents the central

⁵¹ See generally Effective Inclusive Schools, *supra* note 45.

importance of staff development.⁵² States play a critical role in providing professional development opportunities for administrators, teachers, and staff.

The lack of AT for students with disabilities should also be a focus of state intervention. The IDEA requires this issue to be addressed at all meetings to plan student IEPs because technology can have a huge impact on the ability of students with disabilities to access the curriculum, and for some students can provide a vehicle for communication. These technologies have been available for over 30 years and are rapidly changing to become more effective and less costly. The fact that few students in the Typology 8 districts the Dare team studied have access to these technologies indicates a serious denial of FAPE that can have a lifelong negative impact. I recently interviewed sixteen students with disabilities who attend Harvard University; most of them use technology extensively.⁵³ They feel that they would not have been able to pursue higher education without access to various technologies during their elementary and secondary school years. In the classes I teach, I use various commonly-used technologies to give students with different types of disabilities the opportunity to participate and succeed in my large classes.

The absence of mental health services in these school districts also requires considerable attention. The provision of these services is complex and can involve outside providers, as well as school based personnel such as social workers and counselors. This complexity requires state intervention to untangle. The IDEA requires states to coordinate service providers across agencies, so that schools working with outside providers can effectively meet each student's needs.⁵⁴ There is no evidence that this coordination has occurred in Ohio.

Equally troubling is the fact that many school personnel did not view mental health services as a school responsibility. Schools rarely took responsibility for providing mental health services by identifying them in IEP plans as related services to be provided to students. In the [REDACTED] school districts, staff regularly told parents to seek mental health services outside of school when they should have been provided as part of an IEP. School districts are obligated to provide mental health services to students with disabilities, and to coordinate these services between schools and mental health providers.⁵⁵ Ohio must provide these school districts assistance in coordinating resources. Ohio must also help the districts develop effective interventions for children with mental health needs, including functional behavioral assessments and behavior intervention plans.

⁵² *Id.* at 46-53.

⁵³ See generally *How Did You Get Here?*, *supra* note 45.

⁵⁴ 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154(a)-(c). This obligation has been reinforced through federal litigation. See, e.g., Center for Public Representation, "Reforming The Medicaid Children's Mental Health System: What Schools Should Know About *Rosie D.*," 3, <http://rosied.org/page-89479> (last visited Aug. 5, 2016) (explaining how, under remedial plan in *Rosie D. v. Patrick*, Case 3:01-cv-30199-MAP (D. Mass.), parents may invite school representatives to attend planning meetings convened by children's mental health providers). Under the IDEA, states may use, or permit school districts to use, Medicaid or other insurance programs in which a student participates to pay for services, such as mental health services. 20 U.S.C. § 1412(e); 34 C.F.R. § 300.154(d).

⁵⁵ 34 C.F.R. § 300.34(c)(14)(iv) (services to be provided to students with disabilities include "[m]obilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program").

As discussed above, the IDEA identifies important tools states can use to support these types of efforts in local school districts, including providing direct technical assistance, making local capacity development grants, and helping districts access national technical assistance centers. We did not see evidence that this is happening in Ohio.

(3) OHIO MUST CONSIDER WITHHOLDING FUNDS FROM DISTRICTS.

Although it is important for a state to provide technical assistance to any local school district that is out of compliance with the IDEA and its FAPE requirement, the district itself must embrace this support and commit itself to change. Before providing such assistance, Ohio should request and receive strong assurances from the Typology 7 and Typology 8 districts where there are systemic denials of FAPE that they will work expeditiously to ensure that students with disabilities will receive FAPE. In the absence of these assurances, or where it is clear that any local district will not work in good faith with the state, Ohio should move to withhold funds, as happened in Chicago in 1989, and in Seattle in 2014. Ohio could also direct a noncompliant district to spend funds in specific ways intended to ensure the provision of FAPE.

(4) OHIO MUST CONSIDER RECEIVERSHIP FOR DISTRICTS THAT CANNOT PROVIDE FAPE EVEN WITH THE STATE’S ASSISTANCE.

If Ohio determines that a school district is unwilling or incapable of providing FAPE to students with disabilities, the state should consider placing the district in full or limited receivership. Although this is a drastic remedy for noncompliance, it is one that has been implemented in some particularly troubled districts.⁵⁶ Such arrangements are temporary: while the state takes direct responsibility for providing FAPE, it must also work to develop leadership that can take over special education administration after the district is returned to local control. This tool should not be rejected out of hand here, given what appear to be entrenched, severely deficient special education practices in districts identified in this report. Based on the materials I reviewed, some of these districts may require changes in leadership to address deficient practices. In such instances the state may have to take a more assertive role.

VI. CONCLUSION

Based on my analyses of available data, the reports of the other consultants retained by plaintiffs, and our review of documents pertaining to Ohio’s IDEA enforcement efforts, I conclude that Ohio is failing to meet its general supervision responsibilities under IDEA. It is failing to ensure that students in its largest, highest poverty school districts are receiving FAPE, as required by the

⁵⁶ See *supra* note 18. Ohio has placed one of the Typology 8 school districts, the Youngstown City School District, under a type of state control, by requiring the district to submit an “Academic Recovery Plan” to the “Youngstown Academic Distress Commission,” which was established by the state in 2010. See ODE, Youngstown City Schools Academic Recovery Plan, <http://education.ohio.gov/Topics/School-Improvement/Academic-Distress-Commission/Youngstown-City-Schools-Academic-Recovery-Plan> (last visited Aug. 5, 2016). Ohio did not take this action because of Youngstown’s failures to provide FAPE or meet other IDEA requirements, but because district schools had failed to meet Adequate Yearly Progress (AYP), as required by the No Child Left Behind Act, for four or more consecutive years. *Id.*

IDEA. The failure to assure that students with disabilities receive FAPE, if uncorrected, will do profound and long-lasting harm to many Ohio children and their families.



Dr. Thomas Hehir

August 12, 2016

Date