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Via Facsimile, U.S. Mail, and Electronic Mail

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Re: *M.V., by and through J.V., et al. vs. Jefferson Parish Public School System*

Dear Ms. Simons and Mr. Castillo:

Please consider this letter a supplement to the Complaint filed by the Southern Poverty Law Center on behalf of English language learner (“ELL”) students and their limited English proficient (“LEP”) families against the Jefferson Parish Public School System (“JPPSS” or “the District”) on August 22, 2012.¹ The Complaint was filed jointly before the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section. By letter dated September 27, 2012, the Southern Poverty Law Center was informed that the U.S. Department of Justice’s Civil Rights Division (“DOJ”) and the U.S. Department of Education’s Office for Civil Rights (“OCR”) initiated a joint investigation into the District’s compliance with its obligations under the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (“EEOA”), Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (“Title IV”), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulations at 34 C.F.R. part 100 (“Title VI”).

¹ The contact information for the District is as follows: 501 Manhattan Blvd., Harvey, LA 70058-4495; Phone: (504) 349-7600.

In an effort to assist the Departments with their investigation into the District's compliance with the EEOA, which requires state and local educational agencies to take appropriate action to overcome language barriers that impede equal participation by all students in instructional programs, *see* 20 U.S.C. § 1703(f), this supplement makes clear that the District is failing to meet its obligations under the EEOA. The supplement includes an examination of both the implementation and the results of the chosen method of ESL instruction in JPPSS through (1) an expert analysis of district data and school records from Dr. Gerardo R. López,² and (2) anecdotal evidence from current complainants Y.A., J.C.A., I.A., by and through E.A.; B.T., by and through N.A.; C.K., by and through C.K., Sr.; J.J., by and through M.J.; J.A. on her own behalf; in addition to new complainants T.C. and V.P. by and through E.C.³

As set forth in detail below, JPPSS is failing to provide equal educational opportunity to its LEP students, because its programs and practices are not reasonably calculated to implement effectively the ESL program it has committed to providing its LEP student population. As a result of this failure to effectively implement its chosen language remediation program, it is not surprising that the District's LEP students are falling far behind their non-LEP classmates. As Dr. López has concluded,

[I]t is my professional opinion that JPPSS stifles the educational opportunities of [ELLs] enrolled in the district. The [D]istrict clearly struggles to make AYP for LEP students and faces significant challenges in ensuring all LEP students perform at satisfactory levels when it comes to preparation for higher education, as well [as] preparing them with the skills and credentials necessary for gainful employment in today's workforce.⁴

Thus, the District has violated the rights of Complainants and other ELL students by failing to take appropriate action to overcome language barriers that impede equal participation by ELL students in instructional programs as required by the EEOA.

CLAIMS UNDER EQUAL EDUCATIONAL OPPORTUNITIES ACT

Under the requirements of the EEOA, “[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

To determine whether a school district has taken “appropriate action to overcome language barriers,” courts follow the three-prong analysis set forth in *Castañeda v. Pickard*, 648

² Gerardo R. López, Professor at Loyola University New Orleans and Associate Director of the Loyola Institute for Quality and Equity in Education, conducted a detailed analysis of the District's ESL program by analyzing school and district data, school enrollment information, ESL curriculum information, teacher certification information, district budget information, and student records. Professor López's detailed report is attached as Exhibit 1.

³ *See* Exhibit 2 for contact information, including new Complainants added in this supplement.

⁴ Ex. 1 at 2.

F.2d 989, 1009-10 (5th Cir. 1981). *See Horne v. Flores*, 557 U.S. 443, 477-78 (2009) (indicating that courts in several Circuits utilized the *Castañeda* approach and “[n]o Circuit Court has denied its validity”). “First, the court must examine carefully the evidence the record contains concerning the soundness of the educational theory or principles upon which the challenged program is based.” *Castañeda*, 684 F.2d at 1009. While state and local educational districts are afforded a “substantial amount of latitude in choosing the programs and techniques” they use to satisfy their obligations under the EEOA, they must make a “genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students” *Castañeda v. Pickard*, 648 F.2d 989, 1009 (5th Cir. 1981).

Second, a court must then determine “whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school.” *Castaneda v. Pickard*, 648 F.2d 989, 1010 (5th Cir. 1981). A school system fails to take “appropriate action to remedy language barriers if, despite the adoption of a promising theory, the system fails to follow through with practices, resources and personnel necessary to transform the theory into reality.” *Id.*

If a court determines that a district “has adopted a sound program for alleviating the language barriers impeding the educational progress of some of its students and made bona fide efforts to make the program work,” one final test must be met. “If a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned.” *Id.*

Because of the latitude given to school districts in choosing an educational theory or program with which to overcome students’ language barriers, Complainants do not address the strengths or weaknesses with JPPSS’s chosen ESL curriculum. However, as set forth in detail below, it is clear that the District is failing the second and third prongs of the *Castañeda* analysis.

I. JPPSS Has Failed to Comply with Its Obligations Under the EEOA Because Its Programs and Practices Are Not Reasonably Calculated to Effectively Implement Its Chosen Educational Theory.

To comply with its obligations under the EEOA, the “programs and practices actually used by a school system” must be “reasonably calculated to implement effectively the educational theory adopted by the school.” *Castañeda*, 648 F.2d at 1010. In *Castañeda*, the Court of Appeals for the Fifth Circuit explained that the EEOA imposes on districts “not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking ability students with assistance in other areas of the curriculum where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program.” *Id.* at 1011. The court further explained: “If no remedial action is taken to overcome the academic deficits that limited English speaking students may incur during a period of intensive language training, then the language

barrier, although itself remedied, might, nevertheless, pose a lingering and indirect impediment to these students' equal participation in the regular instructional program." *Id.*

The *Castañeda* court emphasized that the EEOA "leaves schools free to determine the sequence and manner in which limited English speaking students tackle this dual challenge so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system." *Id.*

The District's implementation of its chosen language remediation program is not reasonably calculated to effectively implement its chosen educational theory in four key ways:

- (1) A failed "cluster" model does not accurately reflect the demographics of the district, resulting in improperly-allocated resources;
- (2) A significant management change instituted by the District has greatly increased the autonomy each principal has over the management of his or her own school, resulting in principals who are ill-equipped to implement quality ESL programming;
- (3) LEP students are exited from ESL services far too soon based on the student's English speaking ability and not their English writing or reading ability, resulting in LEP students who are ill-prepared to succeed in their core classes; and
- (4) There is no readily apparent system for conducting the required two-year tracking of LEP students once they exit the program, resulting in those students experiencing academic failure without appropriate intervention and an inability to effectively evaluate the District's ESL program.

a. The District's Failed "Cluster" Model Does Not Accurately Reflect the Demographics of the District, Resulting in Improperly-Allocated Resources

The core method by which JPPSS has implemented its ESL curriculum is through clustering ESL staff at designated schools, based on separate criteria for elementary, middle, and high schools. For elementary schools, serving Grades K-5, the allocation of ESL staff is entirely contingent upon the population of LEP students enrolled in the school; for middle (Grades 6-8) and high schools, the allocation of ESL staff is controlled by designating specific schools as "ESL Sites."⁵ This model is intended to appropriately allocate staff across all schools in order to implement the JPPSS ESL curriculum, which consists of three different curriculums (beginner, intermediate, advanced) for grades K-1, 2-3, 4-5, 6-8, and 9-12—in total, at least 15 ESL curriculum guides.

⁵ See Exhibit 3, "Elementary Programs for Instruction of ELLs;" Exhibit 4, "School Placement for Middle School ELLs;" and Exhibit 5, "Student Placement for High School ELLs," JPPSS public records produced pursuant to public records request.

For elementary schools, JPPSS implements its ESL curriculum in three ways, depending upon the number of LEP students enrolled:

- (1) *Designated ESL classes*, required if there are 15 or more LEP students in a grade level at that school. The class must contain a mix of LEP and English-speaking students. A bilingual paraprofessional should be in the class to provide sheltered language instruction.
- (2) *Pull Out classes*, taught by ESL-certified teachers. A Pull Out ESL teacher should instruct no more than 26 K-3rd graders and 33 4th-5th graders. Furthermore, they should not instruct more than three grade levels unless the ESL population is less than 33 students. The amount of instructional time with the Pull Out teacher varies from three hours for beginner-level students and one hour for advanced-level students.
- (3) *Push In classes*, taught by ESL-certified teachers, who co-teach with regular teachers while providing sheltered ESL instruction. Push In teachers should not instruct more than two grade levels, and should provide at least two hours of instructional time if beginner-level students are present in a class. Bilingual paraprofessionals also assist with ESL instruction.

This elementary school ESL staffing model implies a substantial amount of central coordination to annually assess LEP student enrollment and ensure that the appropriate ESL staffing model is implemented. A review of JPPSS ESL elementary student enrollment by school calls into question the extent to which this model is properly implemented, such that LEP students receive appropriate access to the JPPSS ESL curriculum.⁶ For example:

- Schneckeburger Elementary School has 37 LEP students and employs one ESL teacher and one bilingual paraprofessional. With 37 students spread across six grades levels, it is unclear how one teacher and one paraprofessional are implementing one of the above models, such that the possible nine curriculum models are provided to LEP students of all levels across six grades.
- Greenlawn Elementary School has 90 LEP students and employs one ESL teacher for grades K-2, one ESL teacher for Grades 3-5, and one paraprofessional. With two teachers each providing instruction to three grades, it is unlikely the “designated class” model is being properly utilized and impossible that the “Push In” model is being appropriately implemented. Should the “Pull Out” model be in effect, it is unclear how two teachers are adequately providing the necessary hours of instruction required for multiple levels of ESL instruction to multiple grade levels on a daily basis.
- Clancy-Maggiore Elementary School has 63 LEP students and employs one ESL teacher for Grades K-2, one teacher for Grades 3-5, and one paraprofessional. Similar to Greenlawn Elementary, it is unclear how two teachers and a paraprofessional are

⁶ This rudimentary analysis compares records of LEP students in an ESL program at each school and the numbers of ESL staff assigned to each school, as provided by JPPSS pursuant to public records requests.

delivering the requisite number of instructional hours to multiple grade levels with multiple curriculum models designed for different grade levels.

Until this current school year for JPPSS middle and high schools, the ESL curriculum for Grades 6-8 and Grades 9-12 was implemented through designating ESL sites throughout the parish, with a total of seven designated middle schools and three designated high schools.⁷ Regardless, any middle or high school enrolling LEP students must employ the necessary staff to implement the three levels of middle school ESL curriculum and three levels of high school ESL curriculum for beginning, intermediate, and advanced LEP students. Given current rates of enrolled LEP students and allocated ESL staff, it is unclear how JPPSS is appropriately implementing its middle and high school ESL curriculums. For example,

- Livaudais Middle School enrolls 97 LEP students but employs two ESL teachers, has one vacant ESL staff position, and one fulltime and one part-time bilingual paraprofessional.
- Adams Middle School enrolls 83 LEP students but employs 2.5 ESL teachers and 1 bilingual paraprofessional.
- Grace King High School enrolls 180 LEP students but employs three ESL teachers, one full time and one part time bilingual paraprofessional.
- West Jefferson High School enrolls 146 LEP students but employs three ESL teachers and one bilingual paraprofessional. It is notable that from the last school year to the current, ESL staff at West Jefferson dropped from six teachers to three.⁸

Because of the improper allocation of resources, the ESL program in JPPSS is understaffed. There are not enough ESL-certified teachers to properly carry out the ESL curriculum and effectively teach ELL students English so that they can succeed in school. In his report, Professor López explains that while the District's chosen ESL curriculum appears to be solid, the curriculum guides are "designed to be used by ESL teachers in their classrooms" and "having teachers with ESL certification and current knowledge of 'best practice' is not only important, but critical across the curriculum."⁹ After reviewing ESL certificates for elementary teachers at JPPSS, Professor López concluded that the number of elementary ESL teachers (as indicated by the number of ESL certificates) is "disproportionate to the number of elementary ELL students at JPPSS in need of services," which is 1,955 students.¹⁰ Further, of the 124 elementary teachers who are ESL-certified, more than half have licensure that will either expire in the next four years or has already expired.¹¹ Professor López concluded that, "[g]iven the large

⁷ See Exhibits 4 and 5. As of the 2011-2012 school year, the middle school ESL sites were Roosevelt Middle, Meisler Middle, Adams Middle, Truman Middle, Gretna Middle, Livaudais Middle, and Marrero Middle Schools. The high school ESL sites were Bonnabel High, West Jefferson High, and Grace King High Schools. However, staffing assignments for this year reflect assignments of ESL staff to non-designated ESL sites.

⁸ For 2011-2012 ESL staffing levels, see Exhibit 6, "JPPSS ESL Staffing 2011-2012," produced pursuant to public records request.

⁹ Ex. 1 at 3.

¹⁰ *Id.*

¹¹ *Id.* As detailed in the report, there are eight (8) elementary ESL teachers at JPPSS whose licensure will expire in the year 2016; seven (7) elementary ESL teachers at JPPSS whose licensure will expire in the year 2015; 14 elementary ESL teachers at JPPSS whose licensure will expire in the year 2014; 24 elementary ESL teachers at

numbers of ESL teachers whose teaching license is due to expire in the next few years, it is imperative that JPPSS think about ESL teacher recruitment and retention.”¹²

The District’s failure to provide enough qualified ESL teachers is a clear failure to effectively implement its ESL program. The *Castañeda* court spoke to this issue directly: “We begin by noting that any school district that chooses to fulfill its obligations under Section 1703 by means of a bilingual education program has undertaken a responsibility to provide teachers who are able competently to teach in such a program.” *Castañeda v. Pickard*, 648 F.2d 989, 1012 (5th Cir. 1981).

Not only is the District failing to employ enough ESL-certified teachers to effectively implement its ESL program, but also the District is “relying on a mix of paraprofessionals, ESL teachers and ‘designated’ ESL classrooms to deliver services to students in the ESL program.”¹³ Professor López explains that “[t]his is not a recommended practice, as non-ESL certified teachers and/or paraprofessionals may not have the requisite training, skills, or pedagogical knowledge to effectively deliver instruction to students with diverse linguistic needs.”¹⁴ As set forth in his report, the data indicate that for 3,308 students, there are 81 ESL teachers and 41 “designated” teachers, resulting in a teacher-student ratio of approximately 1:27.¹⁵ Professor López concludes that “JPPSS seems to be relying heavily on its ESL paraprofessionals to deliver critical instruction to students” and notes that “[t]his finding is most evident in ESL-impacted schools (e.g., Birney, Bissonet, Ellender Hearst, King, Meisler, Solis, West Jefferson) where the Teacher-Student ration, exclusive of paraprofessionals, can be as high as one teacher for every 50 ESL students.”¹⁶

Case law and OCR guidance support Professor López’s assertion that this practice is inadequate. The *Castañeda* court noted that “[t]he use of Spanish speaking aides may be an appropriate interim measure, but such aides cannot . . . take the place of qualified bilingual teachers.” *Castaneda*, 648 F.2d at 1013. OCR guidance also discourages this practice:

To the extent that the recipient's chosen educational theory requires native language support, and if the program relies on bilingual aides to provide such

JPPSS whose licensure will expire in the year 2013; eight (8) elementary ESL teachers at JPPSS whose licensure expired this year; and five (5) elementary ESL teachers at JPPSS whose licensure expired last year.

¹² Ex. 1 at 3.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.*; see also *id.* at 4-6 for a chart detailing the number of ESL students, ESL teachers, and paraprofessionals at JPPSS schools. As Professor López points out:

Not only does the data indicate that there are several schools with LEP students and no ESL teacher or paraprofessional to teach them, but it also shows there are not enough ESL teachers and support staff across the entire district to effectively teach the recommended ESL curriculum set forth in their staffing model (i.e., beginning, intermediate, and advanced levels). In fact, the designated ESL schools sites, identified in the above table, are insufficient to address the linguistic needs of a student population that is clearly represented across the majority of schools in the district.”

Id. at 6.

support, the recipient should be able to demonstrate that it has determined that its aides have the appropriate level of skill in speaking, reading, and writing both languages. In addition, the bilingual aides should be working under the direct supervision of certificated classroom teachers. Students should not be getting instruction from aides rather than teachers.¹⁷

Further, a number of Complainants report concerns about the quality of ESL assistance received from JPPSS staff:

- Complainant J.J., freshman at West Jefferson High School, is taking beginner-level ESL classes and has a very limited English proficiency. He reports that in his ESL class, the teacher only speaks English; in his non-ESL classes, the bilingual paraprofessional doesn't speak Spanish and the assistance provided consists of the paraprofessional repeating the teacher's instructions, in English and more slowly. The only help he can rely on is from other Spanish-speaking students.
- Complainant C.K., sophomore at Cox High School, reported issues with the ESL instruction he received as a freshman at West Jefferson High School. Regarding the assistance of bilingual paraprofessionals in non-ESL classes, he stated that staff would express frustration with the paraprofessional. Specifically, he recalled teachers expressing that the paraprofessionals were a distraction to the class, asking them to delay assisting LEP students until they finished the lesson or stating to the LEP students that they were working too slowly and needed to catch up.
- C.K. also recalled that in ESL class, the more advanced students were expected to assist the beginner-level students. As a result, students would not finish their work. He stated that on one occasion, the teacher instructed him to help another student; he refused because he wanted to complete his own work; and as a result, he received a detention.
- Complainants Y.A. and J.A., both LEP students at one point enrolled at West Jefferson High School, specifically complained about bilingual assistance in math classes. They separately reported a lack of language assistance in various math classes, and felt that there was no one to explain concepts to them in their native language. Y.A. specifically felt that if she had received language assistance in math and had understood what was going on, she may not have received a failing grade.

¹⁷ Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency, U.S. Dept. of Educ., Office for Civil Rights (Sept. 27, 1991) (hereinafter "Sept. 1991 Policy Memo") (citing 34 C.F.R. § 100.3(b)(1)(ii)), available at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html>.

The failure to ensure that an ESL teacher or paraprofessional is bilingual in the native language of the LEP students has been found to illustrate inadequate implementation of an ESL curriculum. *Keyes v. School Dist. No. 1, Denver, Colo.*, 576 F. Supp. 1503, 1516-17 (D. Colo. 1983). Furthermore, the Fifth Circuit noted that “[a] bilingual education program, however sound in theory, is clearly unlikely to have a significant impact on the language barriers confronting limited English speaking school children, if the teachers charged with day-to-day responsibility for educating these children are termed ‘qualified’ despite the fact that they operate in the classroom under their own unremedied language disability.” *Castañeda v. Pickard*, 648 F.2d 989, 1013 (5th Cir. 1981). As Professor López concludes, “the current number of teachers on the books is insufficient to staff these classes relative to the high number of LEP students enrolled in the district.”¹⁸ He further notes that “placing a large number of students under the tutelage of paraprofessionals is not only ill-advised, but may lead to gross inequities in tracking and ultimately a systematic marginalization of ESL students.”¹⁹

b. A Significant Management Change Instituted by the District Has Greatly Increased the Autonomy Each Principal Has Over the Management of His or Her Own School, Resulting in Principals Who Are Ill-equipped To Implement Quality ESL Programming

As reported to the local newspaper,²⁰ JPPSS has instituted a significant management change by greatly increasing the autonomy each principal has over the management of his or her school. This increase in autonomy results in principals having near-unfettered authority over budgets, staffing, and programs at their schools. For instance, it is up to each principal to decide how many specialized personnel, like ESL teachers or paraprofessionals, he or she will have at the school. Furthermore, all JPPSS schools have been clustered together into small networks of schools. A total of six networks exist—numbered 1-4, plus two additional networks for turnaround schools and specialty schools.²¹ Each Network is assigned a Network Leader, who oversees the schools and is the medium by which central office staff, including English Language Acquisition Department (ELAD) staff, may relay information to individual schools.

This year’s oversight changes mark a significant departure from pre-existing management practices. Until this year, school oversight was managed entirely by central office, with schools grouped and resources assigned relative to geographic location on either the West Bank or East Bank of the Mississippi River. For instance, placement options for middle- and high-school ESL students were divided along limited East Bank or West Bank designated school sites providing ESL instruction.²²

This change is a marked departure from prior central office oversight practices, where ELAD administrators with specialized knowledge of district and federal ESL requirements could

¹⁸ Ex. 1 at 7.

¹⁹ *Id.*

²⁰ “Continuing school reforms in Jefferson Parish: Editorial,” Feb. 10, 2013, *available at* http://www.nola.com/opinions/index.ssf/2013/02/continuing_school_reforms_in_j.html

²¹ See Exhibit 7, JPPSS public records, “Teacher and Para Staffing,” 2012/2013.

²² See Exhibit 4, JPPSS public records, “School Placement for Middle School ELLs” and Exhibit 5, “Student Placement for High School ELLs.”

coordinate the placement of these specialized staff throughout the district, as student needs and staffing plans required. Former JPPSS ESL staff report that this increased autonomy has not been paired with increased training on ESL requirements. Therefore, principals are unable to execute their hiring and programmatic autonomy armed with appropriate knowledge of federal ESL program requirements. Furthermore, former JPPSS ESL staff report that in the new Network model, ELAD staff have lost their ability to oversee and communicate directly with principals regarding ESL programming, and must now relay information to the Network Leaders, who in turn share it with principals, who have increased discretion to adopt ELAD's advice. Thus, JPPSS has both reduced its central oversight of its ESL program implementation and failed to ensure that principals are equipped with the necessary information to make appropriately informed decisions with regards to ESL programs and students in their schools.

c. LEP Students Are Prematurely Exited From ESL Programming Resulting in LEP Students Who Are Ill-prepared to Succeed in Their Core Classes

The experiences of Complainants Y.A., J.C.A., and B.T. reflect that they ceased receiving ESL instruction before they demonstrated full English proficiency, suggesting that JPPSS does not uniformly implement state-mandated exit criteria. JPPSS's practice of prematurely exiting students from the ESL program further demonstrates its failure to appropriately implement its ESL curriculum, such that LEP students overcome their language barriers and enjoy equal educational opportunities as their English-speaking peers.

Louisiana schools must measure English proficiency by administering annually the English Language Development Assessment ("ELDA"). ELDA measures English proficiency in four areas (writing, reading, speaking, and listening), with each underlying area scored from Level 1 (lowest proficiency) to Level 5 (full proficiency). Additionally, ELDA assessments include an overall composite score, ranging from Level 1 to 5. Within a Louisiana school, an ESL student's exit from ESL is contingent upon the ELDA score, with a few variables:²³

- for ESL students grades K-2, either
 - achieving Level 5 composite score for two consecutive years, *or*
 - achieving Level 5 composite score for one year *and* scoring grade-level on a standardized reading assessment.
- for ESL students grades 3-12, either
 - achieving Level 5 composite score, *or*
 - achieving Level 4 composite score, *and* scoring proficient on the English/Language Arts (ELA) portion of a standardized assessment.

A review of student records suggests that JPPSS is not implementing its exit criteria, and is exiting students before they have reached Level 5 composite scores or demonstrated the

²³ See *Bulletin 111 – The Louisiana School, District, and State Accountability System*, La. Admin code, Tit. 28, pt. LXXXIII, § 4001 (2012); see also Jefferson Parish Public School System – English Language Acquisition Department, “Exiting Criteria,” available at <http://esl.jppss.k12.la.us/elad/DefaultTemplate.aspx?id=2147509428&linkidentifier=id&itemid=2147509428>.

alternative exit criteria. For example, high school junior Y.A. reports that she was removed from ESL classes and ceased to receive any ESL instruction after her freshman year at West Jefferson High School, during the 2010-2011 school year. She reports that she simply stopped being enrolled in ESL classes, and when asked about it, was told that she had been transferred out. Her transcript reflects that she ceased receiving ESL instruction after her freshman year. Yet, her Spring 2011 ELDA composite score was Level 2—with her reading score at Level 1, the lowest level of proficiency. Notably, her cumulative transcript of testing history excludes all components of this ELDA score with the exception of her Speaking score, noting that she was “Advanced.” Y.A. reports that when inquiring as to why she was no longer in ESL classes, she encountered a West Jefferson teacher who had previously instructed her at Livaudais Middle School. This teacher informed her that she didn’t need ESL class because “she spoke English.”

Similarly, Complainant J.C.A. stopped receiving ESL instruction from West Jefferson High School after 2011, while repeating the eleventh grade. He recalls a teacher telling him that he had “passed the test” and was being switched out of ESL. Furthermore, J.C.A.’s records reflect that during the 2011-2012 year (his senior year), he was placed in English IV, an average level class, and not an ESL English class. However, J.C.A.’s ELDA records reflect that he scored Composite Level 1 on his 2011 ELDA—indicating he was a Beginner in his English proficiency skills. Much like Y.A., his cumulative testing transcript selectively reports only his 2011 ELDA Speaking score (“Advanced”), failing to note any other component of the exam, including the Composite Level 1 score.

Additionally, eighth-grader B.T. is not clearly receiving any ESL instruction at Gretna Middle School. His schedule for the past two years does not reflect enrollment in any designated ESL class. His records indicate that during the 2011-2012 school year, he received ESL “accommodations” of extended test and assignment times, a Spanish-English dictionary, graphic organizers, and group learning—but not instruction from a designated ESL teacher nor bilingual paraprofessional. B.T. does not believe he is in ESL class and believes he exited the ESL program years ago. Yet, B.T.’s 2011 and 2012 ELDA composite scores reflect Level 3-Upper Intermediate Proficiency.

As illustrated by the above Complainants, it is concerning that JPPSS personnel appear to prematurely remove LEP students from the program by inappropriately conflating conversational fluency with full academic proficiency, and with general disregard for the state ELDA exit requirements. Schools that fail to place as strong an emphasis on the development of English language reading and writing skills, as they place on speaking skills, are not appropriately implementing their ESL programs in compliance with the *Castañeda* legal standard. *Keyes*, 576 F. Supp. at 1518. On the basis of records alone, it is clear that JPPSS is not uniformly implementing its ESL exit criteria, to the detriment of LEP students.

- d. There Is No Readily Apparent System for Conducting the Required Two-year Tracking of Exited LEP Students, Resulting in Their Subsequent Academic Failure Without Appropriate Intervention and The District’s Inability To Effectively Evaluate Its Program

Under the No Child Left Behind Act of 2001 (“NCLB”), districts that accept federal funding “to improve the education of limited English proficient children, by assisting the children to learn English and meet challenging State academic content and student academic achievement standards” must monitor and report “the progress made by children in meeting challenging State academic content and student academic achievement standards for each of the 2 years after such children are no longer receiving [ESL] services” 20 U.S.C. §§ 6825, 6841.²⁴

Based on the review of student records, there is no information regarding how LEP students are to be monitored during the two years following exit from the ESL program. For example, a review of records for exited LEP students J.C.A., Y.A., and V.P. reflects no documentation of any post-exit monitoring. The only recognition of any monitoring obligation exists in V.P.’s records, in the form of a single notation in the file that for her “5th Grade to 6th Grade Placement,” her “ELL Level” is “Monitor Year 1.” This calls into question whether monitoring happens at all and why results of the monitoring are not documented in student records. As Professor López notes, “[t]his is quite concerning because . . . LEP students continue to struggle academically in particular areas following program exit, and have difficulty on standardized tests in subsequent years.”²⁵ He concludes that formal protocols are needed to demonstrate how the District monitors exited ESL students. “It is important that schools demonstrate not only how they monitor student progress, but also how they take appropriate steps to ensure that struggling students get the assistance they need in order to be successful in school.”²⁶

II. JPPSS Has Failed to Comply with Its Obligations Under the EEOA Because Its Chosen Language Remediation Program Is a Demonstrated Failure and Has Produced Results Indicating that the Language Barriers Confronting Students Persist, Are Not Being Overcome, and Are Getting Worse.

A finding that a school district has not satisfied the second prong of the *Castañeda* analysis ends the inquiry into the districts compliance with its obligations under the EEOA. *See Gomez v. Illinois State Bd. of Ed.*, 811 F.2d 1030, 1042 (7th Cir. 1987) (“[I]f the defendants have failed to satisfy step two [of the *Castañeda* analysis], we need not consider step three, because this final step assumes that there has been an adequate initial implementation of the program.”); *Keyes*, 576 F. Supp. at 1518-19 (explaining that court need not reach third *Castañeda* prong because it found the district failed to “take reasonable action to implement the bilingual education policy which it adopted”). Nonetheless, even if it could be found that JPPSS’s program and practices have been “reasonably calculated to implement effectively the educational theory adopted by the school,” *Castañeda*, 648 F.2d at 1010, it is clear that the District’s programs and practices have “fail[ed] to produce results indicating that the language barriers confronting students are actually being overcome” and “no longer constitute appropriate action” to overcome language barriers as required by the EEOA. *Id.*

²⁴ See also Louisiana Department of Education, “English Language Learners Program Handbook,” at 8-9, available at http://esl.ebrschools.org/eduWEB1/1000123/docs/la_admin_handbook_for_ell_programs.pdf (2005).

²⁵ Ex. 1 at 14; see *infra* Section II-b.

²⁶ *Id.*

As demonstrated by the previous section, it cannot be said that JPPSS has undertaken bona fide efforts to make its ESL program work. As a result of this failure to effectively implement its chosen language remediation program, it is not surprising that the District's LEP students are falling far behind their non-LEP classmates. Under the EEOA, a district is not "free to persist in a policy which, although it may have been 'appropriate' when adopted, in the sense that there were sound expectations for success and bona fide efforts to make the program work, has, in practice, proved a failure." *Castañeda*, 648 F.2d at 1010. The District's ESL program has failed its LEP students because they have collectively struggled to make NCLB performance benchmarks as a subgroup; do not clearly benefit from ESL instruction by failing to demonstrate incremental improvement towards full English proficiency on their annual ELDA exams; and chronically struggle to achieve proficient scores on state standardized assessments to their detriment of succeeding in and graduating from Jefferson Parish schools.

a. JPPSS Is Struggling To Make Adequate Yearly Progress for the LEP Subgroup—Particularly for Middle and High School Students

To achieve Adequate Yearly Progress ("AYP") under NCLB, Louisiana school districts must demonstrate that identified subgroups of students are proficient in English Language Arts and Mathematics by meeting or exceeding a minimum level of performance known as the Annual Measurable Objective ("AMO").²⁷ Professor López's report demonstrates that, as a subgroup, LEP students in JPPSS are struggling to meet AMO. Middle school LEP students in the district failed to meet AMO in at least one subject area in the 2006-07 (failed English Language Arts), 2007-08 (failed both English Language Arts and Mathematics), and 2008-09 (failed English Language Arts) school years.²⁸ Middle school LEP students did, however, meet AMO for both subjects in the 2009-10 school year.²⁹

Notably, high school LEP students failed to meet AMO in English Language Arts all four years for which data was available.³⁰ As explained in Professor López's report, "[n]ormally, not meeting AMO translates into not meeting AYP for the district for a particular subgroup."³¹ However, because the District was able to demonstrate 10% improvement in the non-proficiency rate for the previous year in all four years for which data was available, the District's LEP students met AYP as a subgroup.³² As Professor López explains, "[t]his suggests that while a sizeable number of Middle and High School LEP students are performing at the 'Unsatisfactory' or 'Approaching Basic' levels on the annual standardized test, the number of students scoring at higher levels in subsequent years is greater than 10%."³³ Stated differently, "while the margin of

²⁷ With five possible scores on Louisiana standardized assessments, two indicate degrees of failing scores ("approaching basic" and "unsatisfactory") and three reflect degrees of proficiency ("basic," "advanced," and "mastery").

²⁸ Ex. 1 at 9.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

improvement was sufficiently high to merit designation for NCLB purposes, the underlying substantive performance of LEP students *continues* to be unsatisfactory.”³⁴

b. Although Most Elementary Students Demonstrate Annual Progress on ELDA Exams, Scores for Middle and High School LEP Students Stagnate and LEP Students Struggle Academically on Standardized Tests.

While most elementary-level LEP students in the District appear to acquire English proficiency quickly, they struggle on standardized tests after being exited from the ESL program.³⁵ In Professor López’s review of student files, it was common to find LEP students “rapidly transitioned out of the ESL program, only to find themselves struggling in academic areas down the road.”³⁶ Professor López found “[a] disturbing trend is that students are being promoted to the next grade level (and to the next successive course) when they are barely passing their coursework at the most basic/rudimentary level of understanding.”³⁷ He concludes that “[t]his practice ultimately sets up students for academic difficulty and possible failure in subsequent school years.”³⁸

LEP students entering JPPSS in middle and high school acquire English proficiency slower than students entering the District in elementary school. They also struggle to be successful in their academic classes and on standardized tests. Professor López explains that LEP students entering the District in middle or high school “tended to test at the ‘Lower Intermediate’ and ‘Upper Intermediate’ levels on the [ELDA] . . . and continued to test at these levels as they progressed in school.”³⁹ For example:

- Complainant I.A., a seventh grader at Livaudais Middle School, has made little progress on acquiring English proficiency, despite years of ESL instruction. He consistently scored a Composite Level 2 on his ELDA exams from second grade through fifth grade (Spring 2008-Spring 2011), making no progress in gaining English proficiency beyond “lower intermediate proficiency.”
- Complainant Y.A., a junior at West Jefferson High School, failed to gain English proficiency after five years of ESL instruction at JPPSS schools. Her ELDA Composite score hovered between Level 2 and 3, from seventh grade in 2008 through ninth grade in 2011—at which point she was removed from ESL instruction regardless.
- Complainant T.C., third grader at Hart Elementary School, scored a Composite Level 2 on his Spring 2012 ELDA. This reflects no improvement from his initial ELDA assessment in kindergarten, where he scored a Level 2, and from his first grade ELDA composite Level 1 score.

³⁴ *Id.* (emphasis added).

³⁵ Ex. 1 at 10.

³⁶ *Id.* at 11.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

- Complainant J.C.A., who has completed high school coursework but has not successfully graduated from West Jefferson High School, made no progress in improving his English proficiency, as measured by ELDA. From his seventh grade 2006 ELDA to his eleventh grade 2011 ELDA, his Composite score never rose above Level 1, for beginning proficiency.
- Complainant C.K., a student at Cox High School, took the ELDA from 2007, as a fifth grader, through 2011, as an eighth grader. His Composite score marginally improved over five years, from Level 1 to Level 2, and stagnated at Level 2 for three straight years before his family had him removed from ESL program participation.

Consequently, “many of these students demonstrated more academic difficulty in their classes (as observed on their end of semester grades, particularly in English and Mathematics), and struggled on their standardized [] tests in subsequent years where they tended to score at the ‘Unsatisfactory’ and ‘Approaching Basic’ levels.”⁴⁰ These students also demonstrated difficulty passing the mandatory Graduation Exit Exam (“GEE”).⁴¹ For example:

- Complainant J.C.A., who has completed high school coursework but failed to complete graduation requirements, has taken the GEE nine times and has consistently scored “Unsatisfactory,” the lowest possible achievement score, on every portion of all nine exams administered. As a result of his inability to pass the GEE, he has not received a high school diploma.
- Complainant Y.A.’s records reflect standardized assessment scores for 2006 and 2008-2010, for which Y.A. failed to demonstrate proficiency for any subject tested on any assessment. As for her academic coursework, during her freshman year Y.A. received an F in Intermediate Composition and a D in English I. During her 2011-2012 sophomore year, she didn’t take any English course but did receive an F in “Transition to Math Studies II.” Y.A. feels that she failed math because it was too hard, and learning in Spanish would have helped explain the more difficult concepts.
- Complainant B.T. demonstrated proficiency on only one of four subjects on his Spring 2012 standardized assessments for seventh grade.
- Complainant V.P. has consistently struggled to demonstrate proficiency on standardized assessments since exiting ESL in 2009. V.P. has never received a proficient score on a Mathematics assessment from 2009-2012, and only in 2009 and 2011 demonstrated basic proficiency in English Language Arts.

⁴⁰ Ex. 1 at 11-12.

⁴¹ *Id.* at 12. ESL students entering the District in middle or high school “tended to score at the ‘Approaching Basic’ and ‘Unsatisfactory’ levels in the subject areas tested . . .” *Id.* Further, “LEP students who began taking the End of Year Assessment as the GEE was phased out of use fared no different: They tended to score at the ‘Needs Improvement’ and ‘Fair’ levels[.]” *Id.*

Disturbingly, LEP high school students score “well below benchmark on the ACT college entrance exam, as well as other ACT preparation exams taken in the 8th, 9th, and 10th grades.”⁴² Professor López notes that “one LEP student’s ACT scores were so low, that she scored in the 1 percentile in Mathematics (i.e., 99% of all ACT test takers in the state scored above her) and in the 5th percentile in English (i.e., 95% of all ACT test takers in the state scored above her).”⁴³

Another troubling trend is that “many LEP students are marginally passing certain key subject areas (English, Math, Science) with a “D” grade and appear to be struggling throughout the semester in these courses.”⁴⁴ Professor López notes that “[b]ecause students marginally ‘pass’ these courses, they are promoted to the next level, even though the student had a rudimentary understanding of the course content.”⁴⁵ For example, Complainant V.P.’s 2011-2012 seventh grade year, she dipped to an F in English before pulling up the final grade to a C; similarly, she oscillated between C, F, and D on her quarterly Math grade, getting a final grade of D—a reflection of a student struggling to make passing grades.

While it is difficult to definitively conclude that the premature exit from the ESL program caused the subsequent academic struggles, it certainly begs the question how these students’ academic performance may have been better served by JPPSS properly implementing its ESL programs such that its LEP students overcame their documented English language barriers.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ex. 1 at 13.

⁴⁵ *Id.*

CONCLUSION

Based on the above, Complainants respectfully request that DOJ and OCR consider the supplemental information and attached documentation contained herein as part of the ongoing investigation of Jefferson Parish Public School System's compliance with the Equal Educational Opportunity Act.

Respectfully,



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