

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

W.P. on behalf of J.P., E.B. on behalf	)	
of C.B., Q.B. on behalf of D.S., and	)	COMPLAINT UNDER TITLE VI OF
and J.W. on behalf of G.A., and all	)	THE CIVIL RIGHTS ACT OF 1964,
similarly situated students,	)	§ 504 OF THE REHABILITATION
	)	ACT OF 1973, AND TITLE II OF
Complainants,	)	THE AMERICANS WITH
	)	DISABILITIES ACT
v.	)	
	)	
JEFFERSON PARISH PUBLIC SCHOOL	)	
SYSTEM and the JEFFERSON PARISH	)	
SCHOOL BOARD,	)	
	)	
Respondents.	)	

**ADMINISTRATIVE COMPLAINT**

This is an administrative complaint filed pursuant to (1) Title VI of the Civil Rights Act of 1964; (2) Section 504 of the Rehabilitation Act of 1973; and (3) Title II of the Americans with Disabilities Act against the Jefferson Parish Public School System (“JPPSS” or “the district”). The complaint is brought on behalf of African American students and students with disabilities who are disproportionately placed in alternative school settings where they languish for indefinite periods of time. The Complainants maintain that JPPSS, under the governance of the Jefferson Parish Public School Board (“JPSB”), has discriminated against them on the basis of race and on the basis of disability by administering district-wide alternative school referral policies and alternative school exit criteria that have a discriminatory impact on African American students and students with disabilities. The Complainants file this administrative complaint on behalf of themselves and all other similarly situated students.

Specifically, African American students represent approximately 46% of JPPSS' student population; yet comprise nearly 78% of all referrals to alternative schools.<sup>1</sup> Students with disabilities represent approximately 11% of JPPSS' student population;<sup>2</sup> yet comprise approximately 52% of all referrals to alternative schools.<sup>3</sup> The average length of stay for African American students and students with disabilities in JPPSS' alternative schools is similarly disproportionate when compared to their white or nondisabled peers. The average length of stay in JPPSS' alternative schools for African American high school students is 115.3 days as compared to an average length of stay of 74.4 days for white high school students.<sup>4</sup> The average length of stay in JPPSS' alternative schools for students with disabilities is 223.9 days as compared to an average length of stay of 94.5 days for students without disabilities.<sup>5</sup>

## **I. Introduction**

For approximately 47 years, Jefferson Parish public schools operated under federal court supervision originating from a 1964 desegregation lawsuit.<sup>6</sup> Although a federal district court declared JPPSS unitary on August 2, 2011,<sup>7</sup> the school district continues to struggle with its obligation to provide equal educational opportunities for all students. Recently, JPPSS has been accused of failing to admit qualified African American students to its selective advanced academy schools because of discretionary admissions policies.<sup>8</sup> And in January 2012, the Southern Poverty Law Center filed a complaint with the Office for Civil Rights on behalf of four

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<sup>1</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, August 2006-March 2011, Exhibit 1.

<sup>2</sup> Louisiana Department of Education, *2009-10 Special Education Performance Profiles*, available at <http://www.louisianaschools.net/lde/uploads/18159.pdf>.

<sup>3</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, *supra* note 1, at Exhibit 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Dandridge v. Jefferson Parish Public School Board*, 456 F.2d 552 (5th Cir. 1972).

<sup>7</sup> Mark Waller, *Jefferson Parish schools are sufficiently integrated and free from federal oversight, judge rules*, TIMES-PICAYUNE, August 3, 2011.

<sup>8</sup> Mark Waller, *Jefferson Parish magnet school admissions process disorganized, dysfunctional, report says*, TIMES-PICAYUNE, January 19, 2011.

named students alleging racial disparities in school-based arrests in Jefferson Parish public schools.<sup>9</sup>

Similarly, JPPSS has struggled to appropriately educate and serve students with disabilities. The district was the subject of a class administrative complaint filed against the Louisiana Department of Education in 2005 alleging that JPPSS routinely suspended or expelled students with disabilities for minor offenses related to their disabilities and segregated special education students in self-contained classrooms or trailers behind the schools.<sup>10</sup> As a result, JPPSS was required to appoint a Special Master to oversee the provision of special education services to students.

As the instant complaint demonstrates, JPPSS' alternative school policies and practices have a disproportionate and discriminatory impact on African American students and students with disabilities. First, JPPSS disproportionately refers African American students and students with disabilities to the district's alternative schools. Second, JPPSS engages in a practice of delaying students' entry into the alternative schools which disproportionately affects African American students, leaving students sitting out of school for days or weeks at a time. Third, upon placement at an alternative school in JPPSS, African American students and students with disabilities are warehoused there for months or years as a result of the district's "Student Support System" policy, a three-level behavior management program that determines when a student may exit the alternative school and return to his or her regular school setting. As a result, African American students and students with disabilities languish in JPPSS' alternative schools where they receive inadequate and unequal educational instruction and services.

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<sup>9</sup> Barri Bronston, *Racial bias alleged in Jefferson Parish public school arrests*, TIMES-PICAYUNE, January 12, 2012; see also Barri Bronston, *Feds to investigate Jefferson Parish student discrimination complaints*, TIMES-PICAYUNE, March 22, 2012.

<sup>10</sup> G.D. v. Louisiana Department of Education; Louisiana Administrative Complaint, Log No. 45-H-41 (2005).

The Complainants therefore ask the Office for Civil Rights to: (1) Accept jurisdiction and fully investigate these claims; (2) Perform a district-wide compliance review of JPPSS' disciplinary and alternative school policies, procedures, and practices to determine if they discriminate against African American students and students with disabilities; (3) Compel JPPSS to overhaul its current policies and practices that lead to the disproportionate referral and retention of African American students and students with disabilities at the district's alternative schools; (4) Monitor and track all incidents of alternative school referrals and returns to regular school in JPPSS; and 5) Mandate that JPPSS implement strategies to reduce the number of referrals, the length of transition time, and the length of stay for African American students and students with disabilities at JPPSS' alternative schools.

## **II. Jurisdiction**

This complaint is authorized by (1) Title VI of the Civil Rights Act of 1964; (2) Section 504 of the Rehabilitation Act of 1973; and (3) Title II of the Americans with Disabilities Act. Under Title VI of the Civil Rights Act of 1964, the U.S. Department of Education, Office for Civil Rights, has jurisdiction over a claim involving a facially neutral rule or policy promulgated by an elementary, secondary or postsecondary school or other entity that is a recipient of federal funds, when such rule or policy produces an adverse disparate impact on the basis of race.<sup>11</sup>

The Office for Civil Rights also has jurisdiction over a claim involving discrimination against individuals with disabilities under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 protects a qualified individual with a disability from discrimination in the provision of any benefit or service provided under any program or activity receiving federal funds, including “a local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other

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<sup>11</sup> See 34 C.F.R. § 100.3(b)(2) (2010).

school system.”<sup>12</sup> Title II of the ADA prohibits discrimination on the basis of disability in programs and activities of all state and local governments.<sup>13</sup>

The Respondents are public entities and are recipients of federal financial assistance and are therefore subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. The racial and disability discrimination detailed in this complaint are both ongoing and have occurred within the last 180 days.

### **III. Complainants**

The Representative Complainants are four African American children and/or children with disabilities in Jefferson Parish, Louisiana who were referred to a JPPSS alternative school or otherwise enrolled in a JPPSS alternative school within the past 180 days as a result of JPPSS’ alternative school policies and practices. They bring this Complaint on behalf of themselves and all other similarly situated students.

J.P. is a thirteen-year-old, African American student and a student with a disability identified under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). He is currently enrolled in the 6th grade at Ellender Middle School. In the past 180 days, J.P. was a student at Westbank Community School, an alternative school operated by JPPSS.

C.B. is a sixteen-year-old, African American student and a student with a disability identified under the IDEA. In the past 180 days, C.B. was enrolled in the 9th grade at John Martyn Alternative School, an alternative school operated by JPPSS.

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<sup>12</sup> 34 C.F.R. § 104.3(k)(2)(ii) (2010).

<sup>13</sup> See 42 U.S.C. § 12132 *et seq.* (2006).

D.S. is a thirteen-year-old, African American student and a student with a disability identified under the IDEA. He is currently enrolled in the 7th grade at John Martyn Alternative School, an alternative school operated by JPPSS.

G.A. is fourteen-year-old student with a disability identified under the IDEA. He is currently enrolled in the 6<sup>th</sup> grade and is receiving homebound services pursuant to a change of placement issued by JPPSS. In the past 180 days, G.A. was a student at Waggaman Alternative School, an alternative school operated by JPPSS.

#### **IV. Respondents**

Respondent Jefferson Parish Public School System (“JPPSS”) is the local educational agency (“LEA”) responsible for the administration and operation of Jefferson Parish public schools under the governance of the Jefferson Parish Public School Board (“JPSB”). JPPSS is a recipient of federal financial assistance totaling approximately \$93 million.<sup>14</sup> JPPSS operates 88 schools in the district, including five alternative schools: Deckbar Alternative School, Jefferson Community School, John Martyn Alternative School, Waggaman Alternative School, and Westbank Community School. JPPSS officials are responsible for developing and implementing the district’s disciplinary and alternative school referral policies, as well as the “Student Support System” exit criteria for students to transition from alternative schools back to regular schools.

Respondent JPSB is an independent legislative body created under Louisiana Revised Statute § 17:51. JPSB has the power to make rules and regulations for its own government consistent with the laws of the State of Louisiana and the regulations of the State Board of Elementary and Secondary Education, and to levy taxes and collect revenues through state-approved means.

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<sup>14</sup> Nat’l Ctr. Educ. Statistics, Digest of Education Statistics, Public School Districts: Selected Years, 2009-2010, Exhibit 2.

## **V. Facts Relating to the Complainants**

### **J.P.**

J.P. is a thirteen-year-old, African American student and student with a disability. He is currently enrolled in the 6<sup>th</sup> grade at Ellender Middle School in the Jefferson Parish Public School System. J.P. was first identified as a student with the disability under Section 504 on November 5, 2010, although he later became eligible for special education services pursuant to the IDEA under the classification category of “other health impairment” in October 2011. In addition to a diagnosis of attention deficit hyperactivity disorder (“ADHD”), J.P.’s records indicate that he has been receiving treatment for many years for various mental health conditions, including depression and anxiety disorder, and he receives medication for all diagnosed impairments. J.P. has been hospitalized several times for suicidal ideations, including expressing suicidal thoughts and plans at school in the presence of teachers and administrators. He has struggled academically for many years, receiving mostly unsatisfactory grades.

Rather than providing J.P. with necessary educational supports and services, JPPSS has instituted a revolving door of disciplinary alternative school placements for him. On February 12, 2010, J.P. was assigned to a JPPSS alternative school for taking what was alleged to be either a sleeping pill or his prescribed medication while on campus. Although he was referred to Waggaman Alternative School on February 12, 2010, he did not begin attending the alternative school until March 8, 2010. As a result of JPPSS’ practice of delaying students’ entry into alternative schools, J.P. missed one month of instructional time. He attended Waggaman Alternative School for approximately three months.

In January 2011, J.P. was again referred from his regular school, Ellender Middle School, to an alternative school, Westbank Community School, for allegedly fighting with another

student and for pushing a teacher who attempted to stop the fight. After being referred to Westbank Community School, J.P. sat out of school for over two weeks as a result of JPPSS' practice of delaying students' entry into alternative schools. J.P. attended Westbank Community School for approximately 8 months, from January 2011 through the end of November 2011, because he was unable to exit the alternative school program as a result of minor school misconduct, such as disrespectful behavior, use of profanity, disrupting class, and horseplay. While at the alternative school, he was subject to eight out-of-school suspensions for minor school misbehaviors, accruing 25 days of missed instructional time. He was finally permitted to exit the alternative school program at Westbank Community School upon the determination of his eligibility for special education services under the IDEA.<sup>15</sup> J.P. has experienced multiple negative consequences as a result of his prolonged stays in JPPSS' alternative schools, including performing significantly below grade level and receiving unsatisfactory grades in all of his academic courses at Ellender Middle School.

**C.B.**

C.B. is a sixteen-year-old, African American student and student with a disability. He was enrolled in the 9<sup>th</sup> grade at John Martyn Alternative School in JPPSS until April 10, 2012, when he withdrew from school. C.B. is identified as a student with emotional disabilities based on the clinical diagnoses of depression, anxiety, ADHD, impulsive behavior, and oppositional defiant disorder.

According to his Individualized Education Program ("IEP"), C.B. was referred to John Martyn Alternative School on April 19, 2011 for a history of "ungovernable behavior." He had disciplinary referrals at his regular school placement for skipping class, disrespect for authority,

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<sup>15</sup> Westbank Community School was unable to provide J.P. with special education services, and he was therefore transitioned back to his regular school placement at Ellender Middle School on or around December 1, 2011.



willful disobedience, use of profanity, disturbing the classroom, and excessive tardies and absences. Instead of implementing more appropriate corrective strategies for minor school misbehavior, JPPSS unilaterally transferred C.B. to the alternative school without the benefit of a manifestation determination review or the disciplinary protections afforded by the IDEA or Section 504. JPPSS processed the referral to the alternative school as simply a change in C.B.'s school site determination. After being referred to the alternative school on April 19, 2011, C.B. sat out of school for the remainder of the 2010-11 school year as a result of JPPSS' practice of delaying a student's entry into the alternative school. He did not begin receiving educational instruction at John Martyn Alternative School until the beginning of the 2011-12 school year.

Upon enrolling at John Martyn Alternative School, C.B. was subject to the alternative school's one-size-fits-all computerized academic instruction program and the "Student Support System" policy, a three-level behavior management program that determines when a student may exit the alternative school and transition back to his or her regular school placement. The computerized curriculum did not allow for his IEP accommodations to be implemented, which included modified assignments, oral instruction, and repeated/modeled directions. As a result, his academic performance suffered. Moreover, C.B. struggled to attain progress with the alternative school Student Support System policy. It took C.B. over two months to transition from Level 1 of the Student Support System to Level 2. As a result of his emotional disabilities, including documented difficulty staying on task, speaking out of turn, and displaying impulsive behavior, C.B. was never able to satisfy the criteria to transition to Level 3 or beyond so as to earn his way back to his regular school setting over the course of the next six months. Frustrated by his academic deficits and inability to make progress on JPPSS' alternative school exit criteria, C.B. withdrew from school on April 10, 2012.

**D.S.**

D.S. is a thirteen-year-old, African American student and a student with a disability. He is currently enrolled in the 7<sup>th</sup> grade at John Martyn Alternative School in JPPSS. D.S. is identified as a student with emotional disabilities, and has been diagnosed with ADHD, oppositional defiant disorder, aggressive behavior, and situational inappropriate behaviors. He has been eligible as a student with a disability under the IDEA since 2006.

Instead of providing D.S. with increased behavioral supports, services, and interventions in the regular education environment, JPPSS has instituted a revolving door of disciplinary alternative school placements for him, some lasting for several years at a time. D.S. was placed at Deckbar Alternative School for the first time in April 2007 when he was in the second grade for minor school misconduct such as not following directions, disobeying classroom rules, inappropriate class participation, and threatening classmates. He remained at Deckbar Alternative School for over a year, and was only permitted to return to his regular school setting in November 2008 upon his completion of the alternative school's tri-level behavior management program. In April 2009, less than six months later, D.S. was again referred to Deckbar Alternative School due to the school's determination that his behavior was ungovernable and inappropriate. He remained at Deckbar Alternative School, unable to complete the district's stringent behavior management program, for over two years, until the end of the 2010-11 school year. He began the 2011-12 school year in his regular educational setting at Roosevelt Middle School, but on April 10, 2012, D.S. was again referred to a JPPSS alternative school, John Martyn Alternative School, as a result of an incident where he allegedly tossed a pair of scissors in the classroom. D.S. is currently enrolled at John Martyn Alternative

School and is again attempting to progress through JPPSS' alternative school behavior management program.

**G.A.**

G.A. is fourteen-year-old student with a disability. He is currently enrolled in the 6<sup>th</sup> grade at Waggaman Alternative School in JPPSS, but has been placed on homebound status since late February 2012. G.A.'s medical diagnoses of a mood disorder and ADHD have led to disciplinary referrals for leaving class, skipping class, and other minor school misbehaviors. During the 2010-11 school year, G.A. was referred to Waggaman Alternative School for an incident in which he was attempting to leave the classroom and he pushed a teacher out of his way. He attended Waggaman Alternative School from spring 2011 through February 2012, unable to successfully earn his way out of the district's alternative school Student Support System program to return to his regular school placement.

In mid-February 2012, staff members accused G.A. of attempting to injure himself with a pencil. He was restrained by school staff and brought to the hospital where he was released with a determination that he was not a threat to himself or others. Nevertheless, when his parent, J.W., returned him to school, J.W. was informed that the school felt that G.A. was still a threat to himself and others and that he would need to be educated in the homebound setting. J.W. initially agreed to a change of placement for G.A. to the homebound setting because she felt G.A. would make more progress at home than at the alternative school and that it would increase his chances of returning to the regular school setting; however, it has been approximately three months and G.A. has still not received any instruction in the homebound setting. As a result of his placement at Waggaman and the failure of JPPSS to provide him with homebound

instruction, G.A.'s academic performance has suffered and he is still performing significantly below grade level in all subjects.

## **VI. Discrimination on the Basis of Race**

### **A. The Disparate Impact Standard**

Title VI of the Civil Rights Act of 1964 provides that: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>16</sup> The United States Department of Education has promulgated regulations pursuant to Title VI that prohibit recipients of federal funds, including public schools, from taking certain actions to the extent that those actions have a disparate impact on groups protected by the statute.<sup>17</sup> In other words, a grantee of federal funds may not have a neutral rule that produces disparate effects in the protected categories of race, color, or national origin.

The language of Title VI's enacting regulations provides in relevant part:

(b)(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration *which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.*<sup>18</sup>

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<sup>16</sup> 42 U.S.C. § 2000d.

<sup>17</sup> Elston v. Talladega County Board of Education, 997 F.2d 1394, 1406 (11th Cir. 1993).

<sup>18</sup> 34 C.F.R. § 100.3(b)(2) (emphasis added).

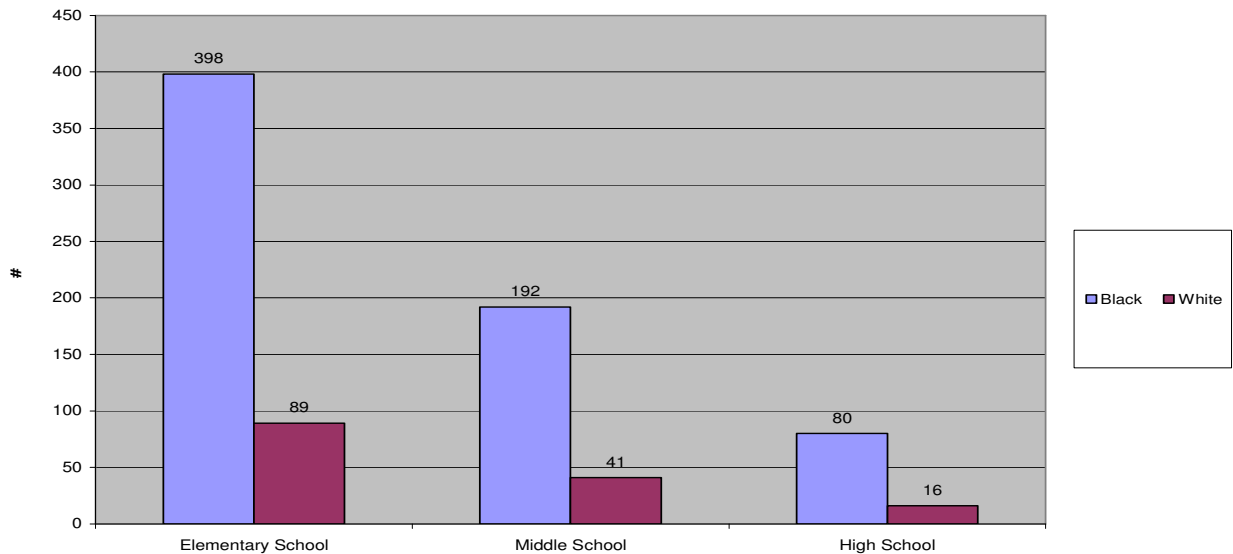
The explicit language of the enacting regulations makes clear that recipients are prohibited from administering policies and practices that have a disparate impact on groups protected by the statute.

**B. JPPSS’ Alternative School Policies and Practices Have a Disproportionate Adverse Impact on African American Students**

1. JPPSS Refers African American Students to Alternative School Settings at Dramatically Higher Rates Than Their White Peers

JPPSS’ alternative school data overwhelmingly supports a finding that JPPSS’ punitive and exclusionary alternative school policies and practices exact a disparate impact on African American students. JPPSS refers African American students to the alternative schools at disproportionate rates when compared to their white peers. Specifically, Jefferson Parish’s alternative school referral data demonstrates that although African American students represent approximately 46% of JPPSS’ student population, African American students account for 78% of all referrals to the alternative schools.<sup>19</sup>

**Graph 1: JPPSS Alternative School Referrals By Race for each School Level**



Source: Jefferson Parish Public School System, Exhibit 1

<sup>19</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, *supra* note 1, at Exhibit 1.

The disproportionate referral of African American students to the district’s alternative schools is due to JPPSS’ policy of permitting principals or district personnel to discretionarily place students in alternative schools for a pattern of minor school misconduct, such as dress code violations, disrespect for authority, disturbing the classroom environment, or using profane and/or obscene language. JPPSS’ disciplinary policy permits a principal to remove a student to an alternative school for the remainder of the school year “on the fourth suspension.”<sup>20</sup> If a student exhibits a series of suspensions for using profanity, which is a suspendable offense under JPPSS’ Procedures and Policies manual, upon the fourth referral for using profanity, the principal may remove the student to the alternative school for the remainder of the school year. In addition, JPPSS’ discipline policy permits a student to be removed to an alternative school without a pattern of disciplinary misconduct “for the remainder of a school year, depending upon the seriousness of the offense.”<sup>21</sup> Yet, even this provision gives school personnel unfettered discretion to determine the seriousness of an offense, resulting in some children being referred to the alternative school after one incident of minor school misconduct. All too often, a school principal or JPPSS personnel determine that a child’s behavior is “ungovernable” based on a single incident or a pattern of subjective offenses, and the child is discretionarily placed at a JPPSS alternative school.

African American students bear the brunt of these discretionary removals, and are disproportionately referred to the district’s alternative schools for minor misbehaviors. For example, 17 African American students were referred to alternative schools for the offense of “cutting class” or “leaving campus,” while only 2 white students were referred for the same

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<sup>20</sup> JPPSS, 2011-2012 Procedures and Policies for Parents and Students, at 12, Exhibit 3.

<sup>21</sup> *Id.*

offense.<sup>22</sup> For the offense of “willful disobedience,” 70 African American students received referrals to alternative schools compared to 14 white students. For the offense of “disrespect for authority,” 48 African American students received referrals to alternative schools compared to 14 white students. For the offense of “disturbs class” or “habitual violation of school rules,” 48 African American students received referrals to alternative schools compared to 11 white students.<sup>23</sup> For the offense of “speaks profane and/or obscene language,” 18 African American students received referrals to alternative schools compared to 5 white students.<sup>24</sup> And for the offense of “immoral practices,” 13 African American students received referrals to alternative schools compared to 3 white students.<sup>25</sup> These numbers demonstrate that there is an alarming pattern of racial disparity in the administration of school discipline that leads to the over-referral of African American students to JPPSS’ alternative schools.<sup>26</sup> In fact, national research has shown that African American students are far more likely than their white classmates to be punished for infractions that invite the subjective judgment of a teacher or administrator.<sup>27</sup> Respondent JPPSS has failed to provide clear guidance about when a student should be referred to the alternative school, leading to arbitrary and subjective referral decisions by a teacher or administrator that disproportionately impact African American students.

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<sup>22</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, *supra* note 1, at Exhibit 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> The disproportionate referral of African American students in JPPSS is also indicative of school disciplinary practices throughout the State of Louisiana. Louisiana schools are 2.6 times as likely to suspend, and 3.2 times as likely to expel, African American students as white students. See Agenda for Children, *2009 KIDS COUNT Data Book on Louisiana’s Children* (2009), available at <http://www.agendaforchildren.org/2009databook/louisianakidscount2009.pdf>.

<sup>27</sup> Russell Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 THE URBAN REVIEW 317, 334-35 (2002).

2. JPPSS Engages in a Practice of Waiting Days or Weeks to Officially Transition Students to Alternative School Settings and These Delays Disproportionately Impact African American Students

JPPSS' practice of transitioning students from their regular schools to the alternative schools takes days or weeks, during which time students sit out of school and receive no educational instruction or services. These delays have a disparate impact on African American students in JPPSS. For example, at Jefferson Community School, a JPPSS alternative school, African American students wait an average of 18 days before they are transitioned to the alternative school to begin receiving instruction, with several African American students waiting more than 25 days.<sup>28</sup> In comparison, white students wait an average of 12 days. The effect of these transition practices is further demonstrated by the Complainants. J.P. sat out of school for one month before he was transferred to Waggaman Alternative School from his regular school placement, and again for over two weeks before he was transferred to Westbank Community School from his regular school placement. C.B. was referred to John Martyn Alternative School on April 19, 2011, but did not begin instruction at the alternative school until the start of the 2011-12 school year. These days represent missed instructional time in class and result in further academic delays.

3. African American Students are Disproportionately Warehoused at JPPSS' Alternative Schools for Months or Years as a Result of the District's Exit Criteria to Return to Regular School

Upon placement at an alternative school in JPPSS, African American students are warehoused there for months or even years at a time as a result of the district's alternative school "Student Support System" policy. The Student Support System policy is a rubric by which students at the alternative schools have to earn a certain number of points and advance through multiple levels in order to earn their way out of the alternative school setting and transition back

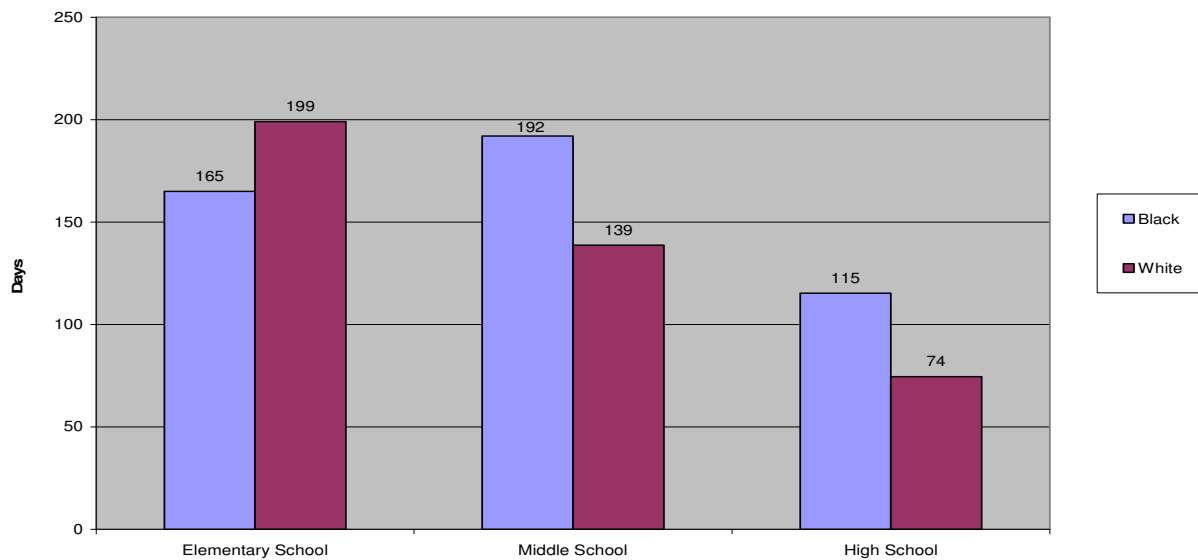
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<sup>28</sup> Jefferson Community School, 2011-12 Active Student Data, Exhibit 4.



to their regular school. The assignment of points is done at the discretion of teachers and administrators at the alternative schools, and as a result, African American students are frequently unable to earn enough discretionary points to adequately satisfy the criteria to earn their way back to the regular classroom. Instead, they are warehoused in the alternative schools for months or years. This racial disparity is demonstrated in the district’s alternative school length of stay data. Specifically, the average length of stay for African American high school students in JPPSS’ alternative schools is 115.3 days as compared to an average length of stay of 74.4 days for white high school students. The average length of stay for African American middle school students in JPPSS’ alternative schools is 192 days as compared to an average length of stay of 138.7 days for white middle school students.

**Graph 2: JPPSS Alternative School Length Of Stay By Race for each School Level**



Source: Jefferson Parish Public School System, Exhibit 1

As the above data demonstrates, Respondent JPPSS’ facially neutral alternative school referral, transition, and exit policies and practices have a discriminatory effect on African American students. It is well documented in national studies that African American students

frequently bear the brunt of discretionary discipline referrals, and are less likely to receive more lenient consequences once referred to the school office.<sup>29</sup> In addition, black students are almost 3.5 times more likely to be expelled from school than their white counterparts.<sup>30</sup> This disparity in JPPSS' discretionary discipline referrals is demonstrated by Complainants C.B. and J.S. Complainant C.B. was never involved in any fights or major infractions, but was sent to a JPPSS alternative school for what the district determined was ungovernable behavior, including skipping class, disrespect for authority, and using profanity. Similarly, D.S. was sent to an alternative school on multiple occasions for ungovernable and inappropriate behavior, including disobeying classroom rules and not following directions. In each instance, JPPSS could have utilized more appropriate corrective remedies designed to keep these students in their regular schools, but instead the district insisted on the students' removal to alternative schools.

Because African American students are over-referred to JPPSS' alternative schools and unable to meet the exit criteria to return to their regular schools, African American students are continuously and disproportionately subjected to the inferior and unequal educational programming offered at JPPSS' alternative schools. The alternative school curriculum consists of a computer program. A student is placed in front of the same computer screen all day every day to work through a series of four online academic courses – regardless of the student's ability or need. There is one teacher present in the room who is simply there to answer questions, but otherwise engages in limited to no live educational instruction. Alternative high school students have no elective courses available to them and only limited availability to courses awarding state-mandated Carnegie units, credits required for a high school diploma. Further, the

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<sup>29</sup> Russell J. Skiba et al., *supra* note 27, at 334.

<sup>30</sup> ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW "ZERO TOLERANCE" AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), *available at* [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

alternative schools contain no extra-curricular activities, athletic teams, clubs, student-led organizations, playground equipment, or other social and developmental activities. As a result, even if a student is able to achieve the exit criteria to leave the alternative school program, they often return to their regular school with academic and social deficits as a result of attending the alternative school program for prolonged periods of time.

As a result of JPPSS' alternative school policies and practices, African American students in Jefferson Parish are disproportionately subjected to the collateral consequences that accompany removals to alternative schools, including alienation and exclusion from the education system and eradication of the opportunity to learn. Moreover, disciplinary removals from regular schools are associated with higher dropout rates and a negative effect on graduation time.<sup>31</sup> As one study found, a student suspended more than three times by the end of his or her sophomore year in high school is five times more likely to drop out of school than a student who has never been suspended.<sup>32</sup> Each year, 16,000 Louisiana public school students drop out of school.<sup>33</sup> Furthermore, only 62% of Jefferson Parish students graduate in four years.<sup>34</sup> These collateral consequences are illustrated by the experiences of the Complainants. J.P. and D.S.'s grades and academic performance have continued to decline, and C.B. has dropped out of school. JPPSS has promoted these alternative school policies and practices without regard to their effects on the educational opportunities of African American children. Because these policies and

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<sup>31</sup> See Am. Psychol. Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63 AM. PSYCHOL. 852, 854 (2008) (citing Christine Bowditch, *Getting Rid of Troublemakers: High School Disciplinary Procedures and the Production of Dropouts*, 40 SOC. PROBS. 493 (1993)).

<sup>32</sup> ADVANCEMENT PROJECT, *supra* note 30, at 17 (citing NAT'L CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION 2006* (2006)).

<sup>33</sup> Louisiana Department of Education, Data and Reports, *available at* [http://doe.louisiana.gov/topics/dropout\\_rates.html](http://doe.louisiana.gov/topics/dropout_rates.html).

<sup>34</sup> Editorial Staff, *Expanding reforms in Jefferson Parish schools: An editorial*, TIMES-PICAYUNE, September 24, 2011.

practices disproportionately affect African American children, these children bear the brunt of the negative consequences, including psychological damage and harm to academic achievement.

## **VII. Discrimination on the Basis of Disability**

### **A. Section 504 of the Rehabilitation Act and Title II of the ADA Prohibit Discrimination on the Basis of Disability**

Generally, public institutions may not discriminate against people with disabilities. Section 504<sup>35</sup> and Title II of the ADA<sup>36</sup> prohibit “recipients of federal financial assistance” or “public entities” from discriminating against individuals with disabilities. “Recipients” means “any state or its political subdivision” under Section 504,<sup>37</sup> and public entities are defined as “any state or local government” under the ADA. JPPSS and JPSB qualify under both definitions as entities that are prohibited from discriminating against people with disabilities.

Under Section 504 and the ADA, “individuals with disabilities” is defined to include any individual with a condition that “affects [or substantially limits] a major life activity.”<sup>38</sup> Therefore, students identified as students with disabilities under Section 504 or the IDEA, and students receiving Supplemental Security Income (“SSI”), would all fall into the definition of “handicapped persons” under Section 504 and Title II.

The language of Section 504’s enacting regulations provides in relevant part:

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received Federal financial assistance . . .

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that *have the effect of subjecting qualified handicapped persons to discrimination* on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s

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<sup>35</sup> 29 U.S.C. § 794 (2006).

<sup>36</sup> 42 U.S.C. § 12131 *et seq.* (2006).

<sup>37</sup> 34 C.F.R. § 104.3 (2010).

<sup>38</sup> 34 C.F.R. § 104.3(1)(1)(2010).

program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.<sup>39</sup>

It is therefore clear that the purpose of both Section 504 and Title II of the ADA is not to just prohibit intentional discrimination by the school district against students with disabilities.

As the explicit language of the enacting regulations make clear, school districts, as recipients of federal financial assistance, are forbidden from using “methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.”<sup>40</sup>

Federal law also clearly prohibits the involuntary segregation of persons with disabilities,<sup>41</sup> and requires that recipients of federal funding ensure that academic and non-academic services are provided “with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person.”<sup>42</sup> “[M]uch of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by discriminatory intent.”<sup>43</sup>

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<sup>39</sup> 34 C.F.R. § 104.4 (emphasis added). The enacting regulations of Title II of the ADA are identical. See 28 C.F.R. §§ 35.130(b)(3)(i)-(iii)(2010).

<sup>40</sup> 34 C.F.R. § 104.4(b)(4)(2010); see also, e.g., *id.* § 104.4(b)(1)(v) (prohibiting the aiding or perpetuation of “discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap”); *id.* § 104.4(b)(5) (prohibiting the site or location selection of facilities “that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons”).

<sup>41</sup> See, e.g., *id.* § 104.4(b)(3) (“Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different”).

<sup>42</sup> *Id.* § 104.34(a); see also *id.* § 104.34(b).

<sup>43</sup> *Alexander v. Choate*, 469 U.S. 287, 296-97 (1985).

**B. JPPSS' Alternative School Policies and Practices Discriminate Against Children with Disabilities**

1. JPPSS Disproportionately Refers Students with Disabilities to the District's Alternative Schools

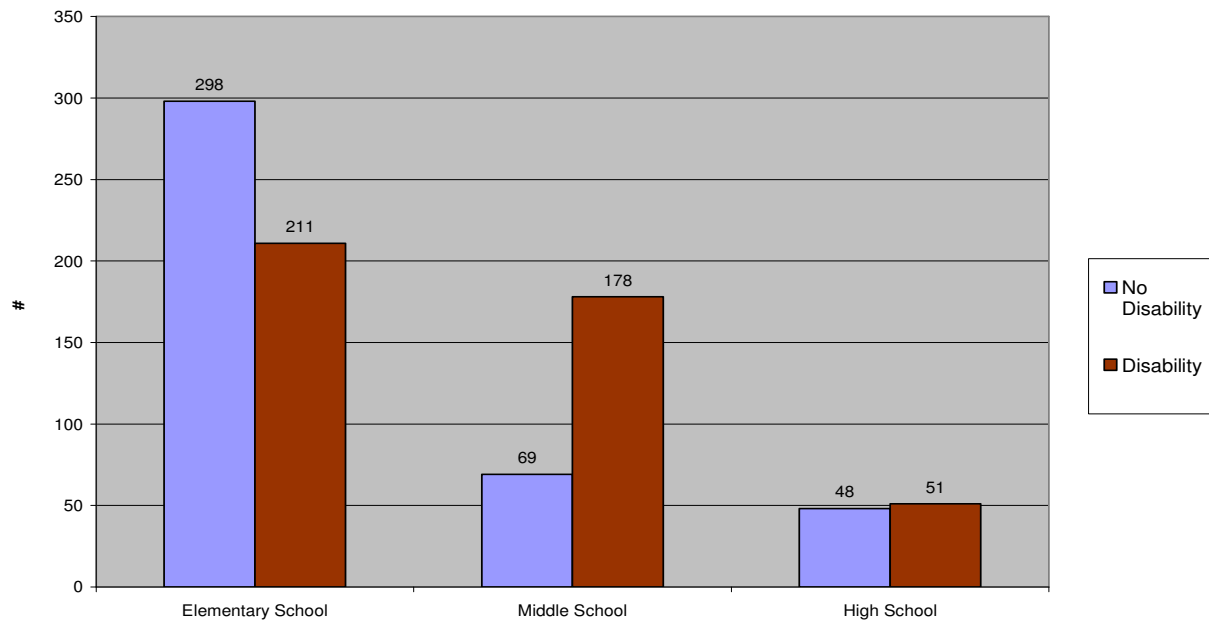
JPPSS' alternative school referral policies have the effect of subjecting qualified students with disabilities to discrimination on the basis of disability. The discriminatory effect of these policies is undoubtedly demonstrated by JPPSS' alternative school referral data. Specifically, although students with disabilities comprise only 11% of JPPSS' student population,<sup>44</sup> students with disabilities account for 52% of all referrals to the alternative schools.<sup>45</sup> Given students with disabilities' proportion of the total JPPSS student population, their alternative school referral rates are disproportionately higher. For example, at the elementary school level, students with disabilities account for 41% of all referrals to the alternative schools – 3.7 times higher than their proportion of the student population. At the middle school level, students with disabilities account for 72% of the all referrals to the alternative schools – 6.5 times higher than their proportion of the student population. And at the high school level, students with disabilities account for 51% of all referrals to the alternative schools – 4.6 times higher than their proportion of the student population.

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<sup>44</sup> Louisiana Department of Education, *2009-10 Special Education Performance Profiles*, available at <http://www.louisianaschools.net/lde/uploads/18159.pdf>.

<sup>45</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, *supra* note 1, at Exhibit 1. See also CAMILLA A. LEHR & CHERYL M. LANGE, ALTERNATIVE SCHOOLS AND THE STUDENTS THEY SERVE: PERCEPTIONS OF STATE DIRECTORS OF SPECIAL EDUCATION 14 (Univ. of Minn. Minneapolis, Inst. on Community Integration 2003) (stating that nationally, approximately 12% of students in alternative schools are students with disabilities).

**Graph 3: JPPSS Alternative School Referrals By Disability for each School Level**



Source: Jefferson Parish Public School System, Exhibit 1

JPPSS’ discretionary referral policies permit school administrators and other JPPSS personnel to unilaterally refer a student with a disability to the alternative school without regard for the student’s Individualized Education Program (“IEP”) placement or accommodations. Often these referrals are made because the student has exhibited a pattern of school misconduct that is likely related to the student’s disability. Instead of providing increased behavior support for students with disabilities by developing or amending a Functional Behavior Assessment or Behavior Intervention Plan, JPPSS refers students with disabilities to the district’s alternative schools. For example, instead of evaluating Complainant J.P. for special education services and providing him with increased behavioral supports, JPPSS referred him to an alternative school on multiple occasions before evaluating him. Similarly, Complainant C.B. was referred to an alternative school without increased behavioral supports and services and without the disciplinary procedural protections afforded by the IDEA and Section 504. As a result, students

with disabilities are referred to the district's alternative schools at alarming rates that result in a discriminatory effect on students with disabilities.

JPPSS attempts to justify the unilateral change of placement by arguing that referrals to the alternative school are a change in the student's school site, not a change to a more restrictive placement. Yet, the alternative schools in JPPSS are highly restrictive settings where students with disabilities are not provided with equal educational opportunities as compared to the regular education environment, nor are they provided the individualized educational programming they are entitled to under Section 504 of the Rehabilitation Act. The educational program at the district's alternative schools is a one-size-fits-all program where every student is placed in front of a computer screen all day to work through a series of four online academic courses, regardless of the student's ability or need. The students receive little if any live academic instruction. Students with disabilities, who require unique accommodations as part of their IEP or 504 Plan such as small group or individualized instruction, oral instruction, modified assignments, or altered instructional materials, are not receiving these accommodations under the standardized alternative school program. High school students do not have the opportunity to enroll in elective courses, nor are students provided full access to the state-mandated curriculum for graduation as those opportunities are only offered on a limited basis in select courses.<sup>46</sup>

2. Students with Disabilities Languish in JPPSS' Alternative Schools for Months or Years as a Result of the District's Exit Criteria

JPPSS' alternative school exit criteria further discriminates against students with disabilities by segregating them in the district's alternative schools and requiring them to "earn

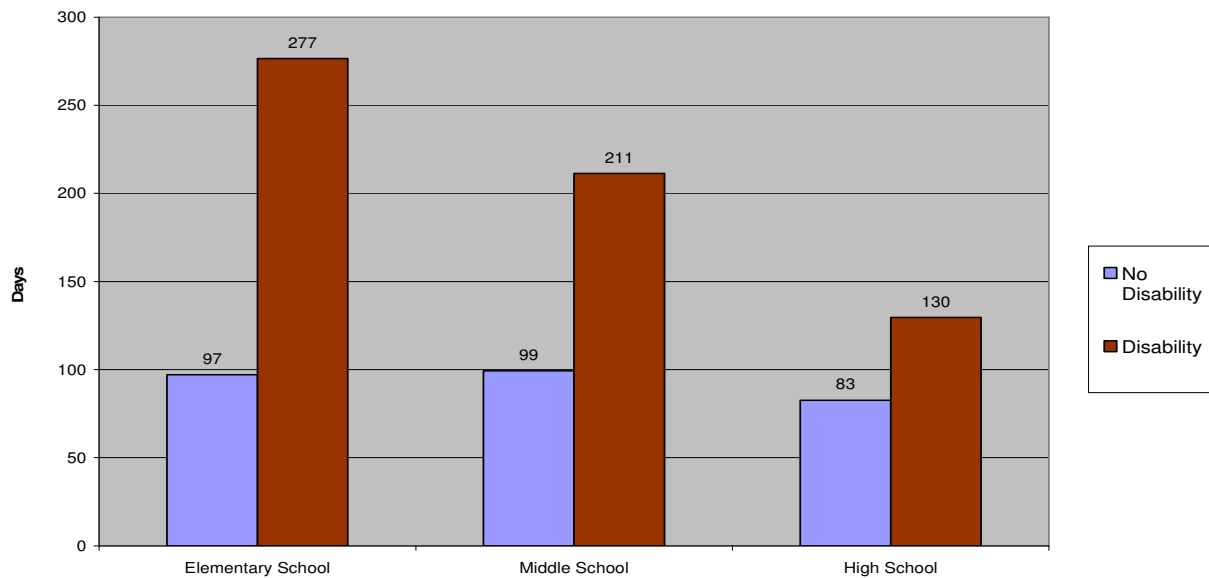
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<sup>46</sup> The one-size-fits-all educational program and behavior management program instituted by JPPSS' alternative schools do not address students' individualized educational needs, and are a clear denial of the right of students with disabilities to receive a free appropriate public education under Section 504. See 34 C.F.R. 104.33(b)(1) ("[T]he provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met").



their way” back to the regular classroom setting, in violation of the “least restrictive environment” provisions of Section 504.<sup>47</sup> Students with disabilities who are referred to the district’s alternative school are unable to satisfy JPPSS’ alternative school exit policies and as a result are warehoused in the alternative schools for months or years at a time. This discriminatory effect on students with disabilities is demonstrated in the district’s alternative school length of stay data. Specifically, the average length of stay for students with disabilities in JPPSS’ alternative schools is 223.9 days as compared to an average length of stay of 94.5 days for non-disabled students.<sup>48</sup> At the elementary school level, students with disabilities languish at alternative schools for an average of 180 days longer than non-disabled students. At the middle school level, students with disabilities stay for an average of 112 days longer than non-disabled students. And at the high school level, students with disabilities stay for an average of 47 days longer than non-disabled students.

**Graph 4: JPPSS Alternative School Length of Stay By Disability for each School Level**



Source: Jefferson Parish Public School System, Exhibit 1

<sup>47</sup> 34 C.F.R. § 104.34.

<sup>48</sup> Jefferson Parish Public School System (JPPSS), Alternative School Data, *supra* note 1, at Exhibit 1.

This discrepancy is caused by JPPSS' "Student Support System" policy, the criteria by which students at the alternative schools earn their way out of the alternative school setting back to their regular educational setting.<sup>49</sup> The policy has three levels of behavior management, and a student cannot move from one level to the next unless they receive a certain number of points by performing specific compliance behaviors for a particular number of consecutive days. If a student achieves some progress in earning points based on good behavior and then has a behavior incident at school, he or she may be bumped down to a previous level and required to start again.<sup>50</sup> In order to exit this tri-level program, a student must achieve 65% compliance with Level 1 for 15 consecutive days,<sup>51</sup> 75% compliance with Level 2 for 15 consecutive days,<sup>52</sup> and 85% compliance with Level 3 for 15 consecutive days,<sup>53</sup> a daunting task for any student and particularly students with emotional or behavioral disabilities, who by definition have difficulty demonstrating appropriate behavior under normal circumstances. For example, J.P., a student with ADHD, depression, and anxiety disorder, was housed in an alternative school for eight months; C.B., a student with emotional disabilities, was kept at the alternative school for nine months; G.A., a student with ADHD and a mood disorder, has been at the alternative school for over one year; and D.S., a student with emotional disabilities, has spent several rotations in the alternative schools, one of which lasted for over two years. As a result, students with disabilities are often unable to "earn their way" to their least restrictive environment, in violation of Section 504 and Title II.<sup>54</sup>

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<sup>49</sup> Jefferson Parish Public School System (JPPSS), Student Support System for Alternative Schools, Exhibit 5.

<sup>50</sup> *Id.*

<sup>51</sup> *See id.* Level 1 is described by the policy as "the most restrictive of the levels." "Students on Level 1 are never without close adult supervision."

<sup>52</sup> *See id.* Level 2 "provides students with more freedom . . . it allows for greater input into their classroom environment, and more personal decision-making opportunities."

<sup>53</sup> *See id.* "Students at Level 3 have demonstrated they can be trusted without constant supervision; they can get along with their classmates and behave in a manner consistent with classroom rules."

<sup>54</sup> 34 C.F.R. § 104.34(a); *see also id.* § 104.34(b).

JPPSS' actions in establishing and maintaining alternative school referral and exit policies which have the effect of discriminating against qualified students with disabilities violate Section 504 of the Rehabilitation Act and Title II of the ADA. As a result of JPPSS' policies and practices, students with disabilities, like African American students, are subjected to the collateral consequences associated with removing students from their regular school setting and warehousing them at an alternative school, such as increased likelihood of future behavior problems, academic difficulty, detachment from school, and dropping out.<sup>55</sup> Moreover, students with emotional and behavioral disabilities or other mental health concerns are at even greater risk for negative consequences, including depression, drug addiction, increased stress, antisocial behavior, and suicidal ideation.<sup>56</sup> Students with disabilities in JPPSS alternative schools receive unequal educational opportunity and suffer further academic and behavioral deficits, increasing the likelihood of dropping out, and further mental health complications.

## **VI. Conclusion**

Based on the foregoing, the Complainants ask the Office for Civil Rights to: (1) Accept jurisdiction and fully investigate these claims; (2) Perform a district-wide compliance review of JPPSS' disciplinary and alternative school policies, procedures, and practices to determine if they discriminate against African American students and students with disabilities; (3) Compel JPPSS to overhaul its current policies and practices that lead to the disproportionate referral and retention of African American students and students with disabilities at the district's alternative schools; (4) Monitor and track all incidents of alternative school referrals and returns to regular school in JPPSS; and 5) Mandate that JPPSS implement strategies to reduce the number of

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<sup>55</sup> See Am. Psychol. Ass'n Zero Tolerance Task Force, *supra* note 31.

<sup>56</sup> American Academy of Pediatrics (AAP), *Policy Statement: Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206-10 (2003).

referrals, the length of transition time, and the length of stay for African American students and students with disabilities at JPPSS' alternative schools.

Dated this 17th day of May 2012.

Respectfully submitted,

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## **EXHIBIT INDEX**

- EXHIBIT 1            JPPSS, Alternative School Data, August 2006-March 2011
- EXHIBIT 2            Nat'l Ctr. Educ. Statistics, Digest of Education Statistics, Public School  
Districts: Selected Years, 2009-2010
- EXHIBIT 3            JPPSS, 2011-2012 Procedures and Policies for Parents and Students
- EXHIBIT 4            Jefferson Community School, 2011-12 Active Student Data
- EXHIBIT 5            JPPSS, Alternative School Student Support System Policy