

Melanie Velez
Regional Director
U.S. Department of Education
Office for Civil Rights
61 Forsyth Street S.W., Suite 19T10
Atlanta, GA 30303-8927

Re: Complaint against the Dothan City School District, Dothan City School Board, and the Dothan Police Department,¹ a branch of the City of Dothan, alleging violations of rights guaranteed by Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990.

Dear Ms. Velez:

For years, the Dothan City School District in Alabama has been disproportionately disciplining and arresting black students at extraordinary rates. The District's "zero tolerance" discipline policies and practices treat young, black children as if their youth—and their ensuing youthful behaviors—warrant severely punitive discipline and arrest. These policies and practices are compounded for black children with emotional disabilities, who are harshly disciplined for behavior that is directly related to their disability. These practices have been going on for years—and despite the Southern Poverty Law Center's ("SPLC") extensive efforts to encourage and facilitate reform, District officials remain resistant to policy changes that are necessary to provide relief for the children who have been subjected to the most punitive discipline and arrest practices in the District.

This Complaint is submitted on behalf of four individual students and all other similarly situated minority students and students with disabilities who are subjected to the current discipline and arrest policies and practices in the District. The District's policies and practices disproportionately subject black children to harsh punishment for minor adolescent behavior in violation of Title VI of the Civil Rights Act of 1964 and penalize children with disabilities for behavior related to their disability in violation of the Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. This Complaint is submitted by the SPLC.

The Complaint is structured as follows:

- I. Section I provides an introduction to the discriminatory discipline and arrest policies and practices in the District;

¹ The District contracts with the City of Dothan to employ eight of the District's nine school resource officers. See *infra*, Section III(B)(iii). See also Appendix F (Agreement between the District and the City of Dothan regarding the School Resource Officer Program).

- II. Section II describes the individual experiences of four Dothan students who have been subjected to the unlawful discipline and arrest policies and practices in the District;
- III. Section III describes the discriminatory discipline and school-related arrests imposed on African American children and children with disabilities, as evidenced by the different treatment of black children, and the disparate impact of the District's school discipline and arrests on black children and children with disabilities;
- IV. Section IV establishes that the District's discriminatory discipline and arrest policies and practices are not educationally necessary, and then details less discriminatory, more effective alternatives that would remedy the District's unlawful, discriminatory discipline and arrests of black children and children with disabilities; and
- V. Section V requests specific relief to remedy the above violations.

I. Introduction

Education is a precious commodity, and public education can be “a great equalizer of conditions of men—the balance wheel of the social machinery.”² It is an anathema, therefore, to this most precious institution when a public school system, like the Dothan City School District, facilitates the systemic penalization, and even criminalization, of historically marginalized student populations. Exactly one decade since the District was freed from its desegregation order and declared to have achieved “unitary status,”³ the District's history of discrimination lives on—in its imposition of severe disciplinary consequences and school-related arrests upon black children and children with disabilities.

Not only is the District issuing disciplinary referrals to black students at extraordinary rates, including 100% of the District's expulsions in 2015-16,⁴ black children have been subject to overt discriminatory treatment in the classroom, as when a teacher forced all the black children to sit in a corner because the black children were “bad” and the white children were not. Moreover, the District's discipline and school-related arrest policies and practices have an extreme discriminatory impact on black children. In 2015-16, the District's highest number of disciplinary referrals was for the highly subjective offense, “defiance”—and 97% of *disciplinary referrals* for “defiance” were directed at African American students. Many of the black children who are disciplined by the District are then sent to the District's disciplinary alternative program, P.A.S.S. Academy, where, like violent criminals, they are searched upon entry, forced to conform to probation-like “conditions” and otherwise warehoused with little to no education provided.

² Roslin Growe & Paula S. Montgomery, *Educational Equity in America: Is Education the Great Equalizer?*, Prof'l Educator 23 (2003), available at <http://files.eric.ed.gov/fulltext/EJ842412.pdf> (quoting Horace Mann).

³ See *Desegregation Orders: What They Are and Which Districts Have Them*, Ala. School Connection, Dec. 9, 2013, <http://alabamaschoolconnection.org>; *60 Years After Desegregation, Some Alabama Schools Still Under Federal Orders*, May 16, 2014, <http://www.wtvj.com>.

⁴ See *infra*, Section III(B)(ii)(1).

This persistent pattern of penalizing children of color comes down especially hard on black children with emotional disabilities—whose behavior triggers some of the most severe responses by the District. District policies and practices authorize administrators to impose harsh, exclusionary consequences on children with mental health disabilities for conduct that the children cannot control. The District then pushes these children out of the classroom and into other “programs” like P.A.S.S. Academy, or even into the handcuffs of a police officer, for behavior that is caused by their disability—and in direct violation of federal law.

These systemic and discriminatory policies and practices stem from a culture in the District, wherein school board members refer to certain children as the “project kids” and espouse their generosity for choosing not to expel children for non-serious, non-violent behavior. Indeed, the District railroads children into exclusionary discipline referrals, violating their due process rights, and it fails to hold itself accountable through comprehensive and thorough data collection. The District’s pattern of blaming students and parents, and its refusal to acknowledge clear evidence of discrimination indicts the District as being far more protective of its own interests than it is of those whose rights the District is failing to protect.

The Complainants, who have suffered unlawful consequences as a direct result of these discriminatory policies and practices, bring this Complaint on behalf of themselves and all similarly situated minority students and students with disabilities, alleging that current school discipline and school-based arrest policies and practices in the District violate Title VI of the Civil Rights Act of 1964,⁵ Section 504 of the Rehabilitation Act of 1973,⁶ and Title II of the Americans with Disabilities Act of 1990 (“ADA”).⁷ The Complainants respectfully request that the Office for Civil Rights of the United States Department of Education (“OCR”) investigate the District’s policies and practices and the unlawful policies and practices of the Dothan City Police Department (“the Department”), insofar as the Department contracts with the District to provide school policing services.

To remedy the systemic and individual violations alleged herein, Complainants request that OCR require the District and the Department to issue systemic relief, as outlined in Section V, to rectify the District’s unlawful and discriminatory discipline and school-related arrest policies and practices, and individual relief, also outlined in Section V, to remedy the harms suffered by each Complainant as a result of the District’s unlawful and discriminatory actions.

A. Negotiations between the District and SPLC leading to the filing of this Complaint

Beginning in 2015, SPLC conducted a lengthy, independent investigation into the District’s discipline and school-based arrest policies and practices. In April 2016, representatives from SPLC met with District Superintendent Ledbetter to discuss whether the District would consider voluntarily reforming its discipline policies and practices. It was agreed that SPLC

⁵ 42 U.S.C. § 2000d, *et seq.*

⁶ 29 U.S.C. § 794.

⁷ 42 U.S.C. § 12131, *et seq.*

would present findings from its investigation, and its recommendations for discipline reforms, to the Dothan City School Board on June 6, 2016.

On June 6, SPLC made its presentation to the Board.⁸ SPLC presented data showing severe race and disability disparities in the District's discipline, as well as anecdotal information about specific unlawful discipline and arrest practices in the District. SPLC also made a series of recommendations and asked that those recommendations be adopted by the Board on July 18, 2016. The Board's reaction, however, was far from positive. In response to the District's discipline data,⁹ one Board member stated, "They are facts, but they aren't true facts[.] . . . You can twist the numbers however you want."¹⁰

Following the June 6 meeting, the District began an effort to change its discipline policies. It held meetings on June 9 and 28 to obtain community input on changes to the Code of Conduct, and representatives from SPLC provided District staff with extensive technical assistance on those changes.

On July 14, 2016, the school board held a work session, wherein District staff presented an overview of proposed Code of Conduct revisions. The Board's response to those revisions was mixed. One Board member mentioned that he could not guarantee that he would approve the revisions by July 18, 2016. Following the board meeting, SPLC representatives met with the Superintendent, and the parties agreed that the District needed two additional weeks to finalize the revisions and submit them to the Board.

As the District continued its efforts to finalize the Code of Conduct, SPLC continued to provide substantial technical assistance to the District. SPLC met or spoke with Superintendent Ledbetter and Scott Faulk, Director of Secondary Curriculum Services, on several occasions to review and discuss changes to the Code of Conduct. SPLC provided the District with line-by-line edits to the original Code of Conduct and to each revised version. And throughout this process, SPLC continued to communicate to Superintendent Ledbetter and Mr. Faulk the specific Code of Conduct revisions that would bring the District in line with the recommendations made by SPLC on June 6, 2016.¹¹

Although the meetings between SPLC and the District were productive in regards to certain reforms, the District was insistent on retaining other punitive measures. For example, the

⁸ See Appendix A (SPLC powerpoint presentation from the June 6, 2016 board meeting); Jim Cook, *Southern Poverty Law Center wants Dothan City Schools to change discipline policies*, Dothan Eagle, June 6, 2016, <http://www.dothaneagle.com>.

⁹ Unless otherwise noted, the data cited in this Complaint was provided by the District in response to an open records request. See Appendix B. The District's response to SPLC's data request was produced in the form of hundreds of pages of information. SPLC would be happy to provide a copy of the actual pages of data to OCR upon request.

¹⁰ Jim Cook, *Dothan School Board members respond to racial bias claims*, Dothan Eagle, June 20, 2016, <http://www.dothaneagle.com>. Other members appeared to be more amenable to the evidence of problematic policies and practices. *Id.*

¹¹ See Appendix C (Communications from SPLC to the District for the purpose of providing technical assistance on the Code of Conduct changes).

District insisted on including “Multiple Class I” and “Multiple Class II” offenses. These offenses allow the District to, in effect, graduate Class I conduct to Class II consequences, and Class II conduct to Class III consequences when an individual has received multiple disciplinary referrals in a specified timeframe. Additionally, in several conversations with the Superintendent and Mr. Faulk, SPLC representatives asserted that it was inappropriate to authorize the same consequences for minor conduct, like “Profanity,” as for very serious conduct, like “Assault.” The District disagreed with SPLC’s position.

SPLC representatives repeatedly made clear to Superintendent Ledbetter that each of the explicit recommendations made in SPLC’s June 6, 2016 presentation must be put into effect in order to meaningfully rectify the District’s ongoing unlawful school discipline and arrest policies and practices.

On July 25, 2016, the District sent out the final version of the 2016-17 Code of Conduct that would be submitted to the Board for a vote. SPLC representatives reviewed the final version and determined that several of SPLC’s most critical recommendations were not adopted. On July 28, 2016, SPLC communicated with Superintendent Ledbetter the specific changes that had not been made and SPLC’s position that the District’s proposed 2016-17 Code of Conduct did not go far enough to rectify the zero tolerance discipline that facilitates discrimination against black children and children with disabilities.¹²

The District made no further revisions to the 2016-17 Code of Conduct,¹³ and on August 1, 2016 the Board adopted the revised Code of Conduct without discussion.¹⁴ The Board did not vote to adopt any of the other recommendations made by SPLC, including (1) a “written commitment” to amend the Agreement with the City of Dothan regarding the School Resource Officer Program, (2) procedures for data collection and reporting, or (3) a training schedule to ensure “all Dothan City School teachers and administrators” are trained on the new policies and procedures.

B. Timeliness

In addition to the timeliness of the complainants’ allegations, described below, the systemic allegations in this Complaint are timely because the disparate impact of the District’s discipline and school-based arrests policies and practices on black students and students with disabilities is continuous and ongoing.

¹² See Appendix D (July 28, 2016 email from SPLC attorney, Natalie Lyons, to Superintendent Ledbetter detailing the changes that were not adopted by the District in the revised Code of Conduct).

¹³ SPLC has a copy of the revised 2016-17 Code of Conduct with the District’s revisions marked in “track changes” and will share that copy with OCR upon request. As of the filing of this Complaint, the District’s online copy of the 2016-17 Code of Conduct does not reflect these changes.

¹⁴ The Board did not specify that the Code of Conduct it adopted on August 1, 2016 was the same version sent by the District to SPLC and others. However, Superintendent Ledbetter and Mr. Faulk did indicate after the meeting that it was the same version.

II. Student Complainants

The complainants bring this action on behalf of all similarly situated students of color and students with disabilities in the District who have been subjected to discriminatory discipline and school-based arrests.

A. I.K.

I.K. is a 14-year old African American boy who attends Girard Middle School in the District. I.K. loves to draw and play football and is a running back on the Girard football team. I.K. has been diagnosed with Bipolar Disorder, OCD, ADHD, and Oppositional Defiance Disorder (“ODD”), and is recognized as disabled under federal law.¹⁵ I.K. has had an Individualized Education Program (“IEP”) since the third grade. In August 2015, I.K. was referred for “homebound services” resulting from a disciplinary infraction. Consequently, he spent nearly the entire school year at home.

i. District’s failure to recognize and address I.K.’s mental health conditions

I.K. experiences severe outbursts of anger and other problematic impulses related to his multiple disability diagnoses.¹⁶ He has struggled to control these behaviors since he was a small child, and the District has been on notice of his mental health disabilities since 2011, when he was nine-years old and evaluated for special education services.¹⁷

These conditions cause I.K.’s difficult behavior at school, yet there is no indication in his files that the District has ever recognized or attempted to address the connection between his conduct and his disabilities. Although I.K. has been on a behavior plan since 2011-12—none of his behavior plans provide any information on the function underlying his problematic behaviors.¹⁸ Indeed, none of his IEPs, starting in 2011-12 through 2016-17, provide *any information* on his underlying disabilities—not even a listing of the names of his disabilities. As an example of how blatantly out of compliance I.K.’s IEPs and behavior plans have been, a person with ODD may exhibit behaviors that include loss of temper, arguing with authority

¹⁵ 34 C.F.R. § 104.3(j)(2)(i) (defining a person with a disability as, among other things, persons with “any mental or psychological disorder, such as . . . emotional or mental illness”). I.K. has been evaluated and approved for special education services under the IDEA; he is therefore protected by Section 504. *See, e.g.*, Letter from Gerald A. Reynolds, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., to Senator Mary L. Landrieu (July 12, 2002), *available at* <https://www2.ed.gov/policy/speced/guid/idea/letters/2002-3/landrieu0712023q2002.pdf> (“Students eligible for services under the IDEA are also protected by Section 504.”).

¹⁶ Documentation received by the District from Dothan Behavioral Medicine on October 9, 2013 indicates diagnoses for Bipolar Disorder, ADHD, OCD, Sleep Disturbance and ODD.

¹⁷ The “Notice and Eligibility Decision Regarding Special Education Services” dated September 29, 2011 indicates that his “clinically significant behaviors” are ADHD, Conduct Disorder, and Oppositional Defiance Disorder and classifies him under “Other Health Impaired.”

¹⁸ Under federal law, children with behavioral disabilities may be entitled to a “functional behavioral assessment,” wherein the underlying function of the child’s problematic behaviors is determined so that educators can develop a behavioral intervention plan with effective responses to those behaviors. *See* 34 C.F.R. § 300.530.

figures, and refusal to comply with requests by authority figures.¹⁹ Yet, on at least three occasions, when I.K. displayed such behavior, his IEP Team determined that his conduct did not relate to his disabilities.

ii. District's history of disciplining I.K. in violation of his IEP

On December 20, 2012, when I.K. was ten-years old and in 4th grade at Slingluff Elementary, a Manifestation Determination Review ("MDR") was held by his IEP Team to determine whether the school could impose exclusionary discipline, thereby changing his educational placement.²⁰ I.K. had an episode and lashed out, verbally and physically, at his teachers. Notwithstanding the District's knowledge of I.K.'s multiple disabilities, the IEP Team focused solely on his ADHD and determined that "his ADHD did not cause his behavior." As a result, I.K. was placed in the District's disciplinary alternative school,²¹ P.A.S.S. Academy,²² for the remainder of the year—a determination that was made without a hearing on the evidence or an opportunity for I.K. to be heard.²³ Moreover, his placement at P.A.S.S. deprived him of important educational services required under his IEP.²⁴

On January 23, 2015, when I.K. was in the sixth grade at Girard Middle School, an MDR was held by his IEP Team regarding an incident that had taken place on the bus. I.K. allegedly threatened to harm everyone on the bus, "knocked off [a] bus aide's hat," and directed verbal obscenities towards people on the bus. When asked for his version of the story, I.K. stated that another student had promised to give him twenty dollars to say and do those things. The IEP Team again determined that I.K.'s conduct was not a manifestation of I.K.'s disabilities. He was then placed at P.A.S.S. Academy pending an expulsion hearing. A due process hearing was held on March 31, 2015 and it was determined that I.K. would remain at P.A.S.S. Academy for the remainder of the school year, depriving him, once again, of important educational services required under his IEP.²⁵

¹⁹ Mayo Clinic, Oppositional Defiance Disorder, <http://www.mayoclinic.org> (last visited Aug. 8, 2016).

²⁰ I.K. is a child with a disability, as defined by Section 504 and the IDEA. *See supra*, note 15. The information provided herein regarding the District's failure to lawfully implement I.K.'s IEP is offered as persuasive evidence that the District has discriminated against him in violation of his rights under Section 504 and Title II of the ADA. *See id.*

²¹ If the IEP Team had found that I.K.'s behavior was a manifestation of his oppositional defiance disorder, *see supra*, note 20, it could not have lawfully changed I.K.'s placement by putting him in P.A.S.S. Academy where he did not receive required services under his IEP. 34 C.F.R. § 300.530(f)

²² *See* Section III(B)(ii)(4) ("Warehousing of children in P.A.S.S. Academy").

²³ Section 504 requires that students with disabilities be provided certain procedural safeguards in decisions regarding educational placement, including "notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure" 34 C.F.R. § 104.36.

²⁴ I.K. did not receive, among other things, the following services from his 2011-12 IEP: (1) individualized instruction from the special education teacher on "third grade content standards that need to be taught to mastery"; (2) study guides and charts for reading; (3) taking tests in the resource room; and (4) "word banks" as a supplement to fill-in-the-blank tests in math.

²⁵ I.K.'s 2014-15 IEP required that he be provided, among other things, (1) "assignments broken down into smaller segments," (2) "multiplication and conversion charts," (3) access to the resource room, and (4) assistance

iii. Incident that led to I.K. being referred for homebound services in 2015-16

The incident that led to I.K.'s referral to homebound services in 2015-2016 began on Friday, August 21, 2015. I.K. wore a blue bandana to school, and he resisted the directives of various school staff asking him to remove it. He eventually responded to their efforts by "writing profanity on his paper" and was sent home. When I.K. returned to school the following Monday, his behavioral aide took him to an area the aide refers to as "isolation." The behavioral aide directed I.K. to write an apology to the principal and his mother for his behavior on the previous Friday. Instead of apologizing, I.K. wrote several disconnected, provocative statements clearly intended to incite a reaction—and including "somebody help me please."

Despite the note imploring "somebody help me please," the school did not refer I.K. to counseling or for any other supplemental services. Rather, he was referred for discipline on three offenses: Gang Affiliation/Paraphernalia; Threats to School Board Employee; and Profanity. Despite the multiple disability diagnoses that directly cause I.K.'s behavior and his history of making empty threats, the school held an MDR and, *once again*, found that his behavior was not a manifestation of his disabilities. I.K. was again placed at P.A.S.S. Academy. On September 11, 2015, the IEP Team informed I.K.'s mother that he would be placed in the District's "home bound" program for the rest of the school year—a determination that was made without a hearing on the evidence or an opportunity for I.K. to be heard.²⁶ Nor were I.K. and his mother asked for their input; the decision was presented to them as a done deal. I.K.'s Amended IEP Plan for 2015-16 states, "[t]he IEP [T]eam determined that [I.K.] will receive home bound services for the remainder of the school year due to behavior issues." Although I.K.'s mother ultimately signed the Amended IEP, she did so only because the IEP Team made it clear that the decision was already made, and she felt that she had no choice but to sign the document.

iv. District's failure to provide I.K. with FAPE in 2015-16

Thirty-six days after the start of the school year, on September 30, 2015, I.K. was placed in the District's "homebound program." The homebound program required him to stay at home where he received only three hours of instruction a week for the rest of the school year—in violation of his IEP,²⁷ and it deprived him of receiving a free and appropriate public education ("FAPE") as required by federal law.²⁸

from his general education teacher, special education teacher, and the paraprofessional or "SpectraCare Aide" to ensure he had all necessary notes and study guides for exams.

²⁶ See *supra*, note 23 (regarding procedural safeguards I.K. should have been afforded).

²⁷ I.K.'s 2015-16 IEP provided, among other things that he would receive the following supplementary aids and services: (1) "resource/skills classroom assistance"; (2) "peer tutoring"; (3) "small group and one on one instruction"; (4) "modified tests"; and (5) "frequent checks for understanding."

²⁸ State agencies and local districts must "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. § 104.33.

I.K.'s mother was not provided with the District's materials, which describe the homebound program and require the parent's written consent. The District's materials on this program make clear, among other things, that homebound is a part-time program, providing instructional services for three hours a week. The materials state: "Homebound Services do not replace classroom instruction in any way." The materials require the school to obtain the parent's consent to certain conditions of homebound, including that: (1) only core subjects (English, Math, Science and Social Studies) will be covered and (2) the parent must agree to "schedule time for student study" on assignments.²⁹

I.K.'s homebound services were limited to I.K.'s history teacher coming to his home for three hours a week and giving him instruction on social studies, language arts, and math. Throughout the entirety of this past school year when he was on homebound, I.K. received no assignments, except those that were completed during his three weekly hours with the history teacher. Nor did he receive instruction or assignments in Science and Physical Education. Yet, despite the lack of instruction or assignments in those two subjects, I.K. obtained an "A" and "B" grades in P.E. and Science, respectively.

I.K.'s mother met with his special education teacher on April 4, 2016 to develop his IEP for the 2016-17 school year. This meeting was deemed by the District to be I.K.'s "IEP Team meeting."³⁰ The 2016-17 IEP reaffirmed I.K.'s placement in the homebound program for the remainder of the 2015-16 school year, and states that I.K. will return to Girard Middle School next year.

B. I.C.

I.C. is a seven-year old African American boy. He gets good grades, loves basketball and reading, and he wants to be a police officer when he grows up. Prior to this past school year, I.C. had never received a discipline referral. Yet, on February 17, 2016, I.C. was suspended from Cloverdale Elementary School and was not allowed to return to any District school for over a month. Eventually, I.C. was allowed to return to a different school, but by then, there were just 37 days left in the school year.

i. Bullying and harassment of I.C.'s family

Despite being the youngest child in his family and only four-feet tall, I.C. sees himself as the protector of his family. His eleven-year old brother, I.T., has autism and a learning disability. I.T. is recognized as disabled under the IDEA and has been on an IEP since preschool. I.C. has witnessed persistent and brutal bullying of his older brother for years. Despite their parents

²⁹ I.K.'s mother is not a certified teacher or otherwise trained to provide qualified instructional assistance to her son.

³⁰ Under federal law, certain categories of individuals must be present at every IEP Team meeting. Those are: (1) the parent or parents, (2) at least one "regular education" teacher, (3) at least one "special education" teacher, (4) a District representative with, among other things, authority over special education, and (5) an individual who can "interpret the instructional implications of evaluation results." 34 C.F.R. § 300.321.

repeatedly informing the school of this bullying and harassment, nothing has been done to address it. Their mother is also a subject of ridicule. As a baby, she got a staph infection and has lived for her entire life with resulting abnormalities to her face. Kids and school staff alike have subjected I.C.'s family to harsh bullying based on his brother's disabilities and his mother's facial abnormalities.

ii. Teacher targeting I.C. for discipline

Despite his lifelong history of good conduct at school, I.C. had problems this past year with one white teacher, Ms. Skipper, who consistently and inexplicably lowered his conduct grade. During this past year, I.C.'s mother attempted to address Ms. Skipper's targeting of I.C. for discipline, but the teacher did not respond well to her efforts to intervene. When I.C.'s parents attended Ms. Skipper's class, the teacher stated in her notes that she "felt very uncomfortable having them in my classroom." I.C.'s mother believes that Ms. Skipper's "discomfort" was not because she advocated for her child; she believes it was because she is black and has facial abnormalities.

During this past school year, I.C. experienced problems with his bladder function. He was wetting his bed, and his mom became concerned that this could be a problem in school. She called the school and informed an administrator, asking the administrator to inform Ms. Skipper. On February 10, 2016, I.C. asked Ms. Skipper to use the restroom and she told him that he would need to "move the clip"—a device used by Ms. Skipper indicating that he was using the restroom too often and his conduct grade would be lowered. She felt "it was just not fair that he didn't have to follow the rules like everyone else." Not wanting his conduct grade to be lowered, I.C. wet his pants.³¹

I.C.'s mother arrived to bring him new clothes, and as she was taking I.C. to the restroom to change, she encountered Ms. Skipper. She expressed anger at Ms. Skipper and asked the teacher why she wouldn't let I.C. go to the restroom, given that she knew he'd been having medical problems with his bladder function. The school responded by putting the entire school on lockdown and calling the school resource officer ("SRO"). The SRO spoke extensively with I.C.'s mother about "not behav[ing] that way in a school," and the school counselor escorted I.C.'s mother to her car. Among other things, the counselor told I.C.'s mother that, as African Americans, they needed to behave in a certain way with the white people at the school or things would not turn out right.

iii. The incident on February 17, 2016 that led to I.C.'s removal from school

The persistent and unaddressed harassment of his brother and mother triggered I.C.'s disciplinary incident on February 17, 2016, which occurred after another student said to I.C. that

³¹ At no time has the school evaluated I.C. for a Section 504 plan, because of his bladder problem. *See* 34 C.F.R. § 104.35(a) (requiring school districts to evaluate for special education services "any person who, because of handicap, needs or is believed to need special education or related services"). Since this incident, he was seen by a doctor, and it was determined that this is a chronic condition related to his oversized bladder. He is currently on medication that helps but does not completely eliminate his symptoms.

“his mother’s lips were so black you can’t see them in the dark.” After class, I.C. was so upset by this hurtful statement that he started kicking the wall outside the bathroom. When a teacher walked by, I.C.’s foot swung back and accidentally hit her. A statement, written by that teacher on the same day, stated: “He was facing the wall kicking it as hard as he could. I was walking by not realizing what he was doing. He kicked my leg as he went back with his foot.” On the disciplinary referral, the teacher changed her statement, saying: “He was at the bathroom door and starting kicking the wall. He was kicking it hard. I walked by to stop him and he kicked me. He said that it was an accident.” The administrator determined that the other student did make the demeaning statement about I.C.’s mother and that I.C. accidentally kicked the teacher “with the back of his foot.” The other student received a “consequence per the classroom management plan.” However, I.C. was suspended for over four weeks, although I.C.’s official record states that this was a one-day suspension.

For I.C.’s parents, this incident was the last straw. They had been dealing with the District’s failure to address the bullying of I.C.’s brother for years. At Cloverdale Elementary, I.C.’s parents had spoken with the administrator several times about the teasing, bullying, and physical aggression against their kids—to no avail. Thus, when the school administrator called I.C.’s mother to tell her that he had been suspended for accidentally kicking a teacher because he was angry about something “ugly” that had been said about her, she was justifiably angry. She told the administrator that they should call the police because she was going to press charges against the school. The administrator construed this statement as a “verbal threat” and placed the entire school on lock down.

When I.C.’s mother and father arrived, they were met outside by two SROs who refused to allow them inside the school. One of the officers asked I.C.’s mother, “What are you going to do about this situation? You need to get this show on the road.” I.C.’s mother protested that the school was suspending I.C. for what amounted to an accident, and she asked to speak to her child. The SRO responded, “That isn’t going to happen.” He then asked if she wanted to withdraw I.C. from the District. She agreed to do so, if it would keep I.C. from being suspended. One of the SROs gave I.C.’s mother the withdrawal papers for both of her sons and she signed the papers.

During this time when I.C. was unable to see his parents, he was in an office with an administrator and two teachers, who were peppering I.C. with questions. Despite everything that had already happened to I.C. that day, one of the teachers asked him: “What happened to your mom’s face?” When asked about this interaction with the teacher, I.C. still has a hard time discussing it, saying, “It breaks my heart.” Once the withdrawal forms had been signed, two SROs escorted I.C. down the hall, in front of all the other students, to his parents.

Dothan City Schools Board Policy 6.2.2 states that “[n]o student of compulsory attendance age will be permitted to withdraw from school except in accordance with state law”³² I.C. was only six-years old when District personnel coerced his parents to withdraw him on February 17, 2016, and I.T. was eleven-years old and had been on an IEP since preschool. Although they had possession of the signed withdrawal papers, the District, without explanation, did not actually disenroll I.C. or I.T. from the District. Rather, the District unlawfully allowed the children to languish at home while District staff arranged for the students to be enrolled in a different District school. Neither I.C. nor I.T. were afforded any due process rights during this time period.

Superintendent Ledbetter met with I.C.’s parents the week following I.C.’s removal. He told the parents that he would investigate the suspension of I.C. and the bullying of I.T. Superintendent Ledbetter then suggested that the parents enroll both children in a virtual school available through the District. He explained that, as long as I.C. and I.T. remained in a District school, they would continue to be bullied by students and District personnel because of I.T.’s disabilities and their mother’s facial abnormalities. As a solution to this bullying, Superintendent Ledbetter encouraged the parents to enroll their children in the virtual academy, saying it was in the best interest of both children. Following that meeting, the parents received a call from the District office with information about Alabama Virtual Academy. Because it was too late to enroll in virtual school, I.C. was enrolled at Selma Street Elementary in Dothan on March 23, 2016—over a month after he was suspended and 37 days before the end of the school year.

During the days that I.C. was at home, he received no due process protections, no assignments, and no make-up work. On May 23, 2016, *61 school days after the incident occurred*, the District mailed the discipline referral form to I.C.’s parents, which lists his punishment as a one-day suspension.³³

C. R.M.

R.M. is a ten-year old African American boy. R.M. is very active; he loves being outside, riding his bike, and wrestling. During this past school year, at Cloverdale Elementary, he was suspended or referred to P.A.S.S. Academy³⁴ for a total of 50 days, which was 29% of the total instruction days for the school year.

³² Under Alabama Law, the District was not authorized to facilitate I.C.’s withdrawal from public school. State law provides that, “every child between the ages of six and 17 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term” Ala. Code § 16-28-3(a). And it is incumbent upon the District to ensure that students and parents follow the compulsory attendance law: “It shall be the duty of . . . the city superintendent of education . . . to require the attendance officer to investigate all cases of nonenrollment and of nonattendance.” Ala. Code § 16-28-16(a). *See also* Ala. Code § 16-28-3.1 (authorizing children over the age of 17 to withdraw from public school before graduation).

³³ The administrator noted that it was recorded as a one-day suspension because I.C. was “not picked up till after 11:30” on February 17.

³⁴ *See* Section III(B)(ii)(4) (“Warehousing of children in P.A.S.S. Academy”).

i. Disciplinary removals of R.M. over 2015-16

Discipline	Dates	Days
Out-of-school suspension	Sep. 23 – 24	2
P.A.S.S. Academy	Oct. 19 – 21	3
P.A.S.S. Academy	Jan. 20 – 22	3
P.A.S.S. Academy	Jan. 29 – Feb. 4	5
P.A.S.S. Academy	Mar. 2 – 15	10
P.A.S.S. Academy	Mar. 22 – May 4	27 ³⁵

In 2015-16, R.M. was suspended or sent to P.A.S.S. Academy six times. Four of the six referrals were for “defiance.” On two different occasions, one reason he was sent to P.A.S.S. Academy was that he had received an F Conduct grade from the previous week. Other reasons he has been labeled “defiant” include:

- (1) he was “a constant interruption in every class”;
- (2) he was “hindering others from learning”;
- (3) he “continues to be disruptive in class”;
- (4) he “continues to make noises and yell out during instruction”;
- (5) he “began singing and yelling out” upon entering the classroom; and
- (6) he “makes noises in class and talks back to his teachers.”³⁶

When administrators ask why he talks out in class, he responds by saying: “I don’t know.”

ii. The District’s discipline of R.M. for behavior related to his ADHD

Even though this ten-year old child may not know the exact reason for his behavior, the District has reason to know: R.M. was diagnosed with ADHD when he was five-years old. His mother has informed the District of that diagnosis multiple times, but he has never been evaluated for special education services.³⁷

³⁵ The District coded all the referrals to P.A.S.S., even the 24-day placement, as “short term” referrals.

³⁶ Such behaviors are consistent with R.M.’s ADHD, which is characterized by “difficulty sustaining attention, hyperactivity and impulsive behavior.” Mayo Clinic, *Attention-deficit/hyperactivity disorder (ADHD) in children*, <http://www.mayoclinic.org/> (last visited on Aug. 8, 2016).

³⁷ Section 504 of the Rehabilitation Act of 1973 requires schools to identify and provide services to children with disabilities. 34 C.F.R. § 104.32. More than two decades ago, the U.S. Office of Special Education and Rehabilitative Services made clear that ADHD may be considered a disability under “other health impaired” where it is “a chronic or acute health problem that results in limited alertness, which adversely affects educational performance.” Office of Special Educ. & Rehabilitative Servs., *Joint Policy Memorandum (ADD)* (September 16, 1991), *available at* http://www.wrightslaw.com/law/code_regs/OSEP_Memorandum_ADD_1991.html (for purposes of the guidance, OSEP used the terms ADD and ADHD interchangeably). Indeed, Dothan City Schools recognizes ADHD as being

As early as Kindergarten, his teacher stated, “[R.M.] is a sweet young man but has to focus.” R.M. has been on medication for his ADHD, but when he is on it, his head and chest hurt, and he loses his appetite. R.M.’s mother has tried to inform his teachers on how to help R.M. focus, but she feels unheard. The principal and school staff treat R.M. as if he does not have a disability, and therefore is not entitled to an evaluation, an IEP, or a 504 Plan. Rather, the District blames R.M.’s mother’s decision to take him off the ADHD medication for the severe discipline that R.M. has been receiving.

In the 2014-15 school year, when R.M. was at Selma Street Elementary, the District established a behavioral intervention plan that primarily consisted of punitive “interventions,” including separate seating, an hourly behavior sheet, and proximity to the teacher. Yet, the notes from his “intervention log” rarely indicate that even these interventions were applied. Rather, the notes read as a scroll of R.M.’s “bad behavior”:

- 10/9/15: “[R.M.] was written up after receiving four conduct slips and numerous behavior issues this week.”
- 11/13/15: “He didn’t meet his goal this week with his daily behavior log. PE seems to be his most trouble.”
- 1/15/16: “[R.M.] had a horrible week. He was sent to PASS Academy starting on Wed. Jan 20.”
- 2/12/16: “Very disruptive and received 3 conduct slips in [PE].”
- 3/4/16: “[R.M.] had a conduct grade of 43 this week. He starts [P.A.S.S. Academy] next Tuesday for 10 days. He was disruptive in all of his classes this week. He continues to pick on other students and interrupt all of his classes.”

There is little evidence in R.M.’s file that administrators or teachers at Cloverdale have even attempted to implement his behavior intervention plan, much less to evaluate R.M.’s disability and develop an IEP or 504 plan.

Each time R.M. was sent to P.A.S.S., the school principal called R.M.’s mother and told her, “R.M. is going to P.A.S.S.; you need to come pick him up.” R.M.’s mother was not provided any opportunity to discuss this decision with any school or District employee, notwithstanding that R.M.’s mother has frequently reminded District personnel about R.M.’s ADHD diagnosis and that the placement at P.A.S.S. Academy has been detrimental to R.M.’s academic and social development³⁸—as evidenced by the noticeable drop in R.M.’s grades this past school year.

Not only did the District repeatedly punish R.M. for behavior in the classroom that was a manifestation of his disability, he was separately punished for similar behavior on the bus, including for making “obscene gestures” and walking while the bus was moving. R.M. was denied bus transportation for 60 school days in 2015-16. Coupled with the 50 days that R.M.

within the “other health impaired” category of disabilities. See Dothan City Schools, *Exceptionalities*, <http://www.dothan.k12.al.us> (last visited on July 27, 2016).

³⁸ See Section III(B)(ii)(4) (“Warehousing of children in P.A.S.S. Academy”).

spent in P.A.S.S. Academy,³⁹ this meant that R.M.’s mother had to find transportation for him on 110 days out of the 174-day school year. A single mom of three school-age children, R.M.’s mother works at a distribution center located 45 minutes from the school. Thus, it was a significant hardship to provide transportation to and from school for over 63% of the school year. Yet, the consequences for not ensuring that R.M. made it to school, as noted in the District’s Code of Conduct, would have been severe:

Alabama law also provides that it shall be unlawful for any parent/guardian, legal custodian, or other person to cause a child to fail to attend school as required by compulsory school attendance law, or to willfully aid, encourage, or cause any child to become or remain delinquent, dependent or in need of supervision. A violation of this provision is a Class A misdemeanor and the parent/guardian faces up to one year in jail and up to a \$6,000.00 fine.⁴⁰

When asked what it was like to deal with the school’s discipline of R.M. last year, his mother says it was a “nightmare.”

D. J.J.

J.J. is a fourteen-year old African American boy. J.J. loves playing basketball, football and the piano, and he wants to be a psychiatrist when he grows up. Until his eighth-grade year at Honeysuckle, J.J. had little to no discipline problems at school.⁴¹ But all that changed on October 19, 2015, when he was involved in an alleged fight⁴² that led to an expulsion referral and arrest.

i. Bullying that led to the October 19 incident

Before the October incident that changed the trajectory of J.J.’s life, another student had been bullying J.J. for weeks. The week before the fight, J.J.’s mother received a call from the school. The other boy had hit J.J. on the head and they had gotten into an argument. Although teachers and coaches had witnessed the bullying, J.J., the victim of the bullying, was suspended for one day by the Assistant Principal because he hadn’t informed administrators of the prior bullying. According to the Assistant Principal, if J.J., the *victim* of the bullying, would have informed school personnel about the bullying, he wouldn’t have been in trouble.

When J.J. returned to school the next day, the other boy began bullying him again. J.J. informed a teacher and the other boy was suspended. Yet, the continuous and unaddressed bullying made J.J. want to avoid school altogether. He would tell his mother that he was sick

³⁹ The District does not provide bus transportation to or from P.A.S.S. Academy.

⁴⁰ Code of Conduct Manual, Dothan City Schools, 67, 88 (2015-16). This provision is also in the newly adopted Code of Conduct.

⁴¹ The District has produced a “discipline report” indicating three fights in 3rd, 4th and 5th grades respectively. However, there are no discipline referrals in his files for these alleged fights and his mother has no memory of them.

⁴² J.J. did not hit the other boy and does not remember the other boy hitting him.

when he wasn't, so that he could stay home. At one point, feeling like the school was not adequately protecting her child, his mother told J.J. that if he needed to, he should defend himself.

ii. The incident and aftermath on October 19, 2015

On October 19, J.J. was approached by a student saying that someone wanted to “see him” around the corner. The student led J.J. to a place in the hallway where the bully was waiting and a crowd of students had gathered.

At the start, the two boys stood close, talking. The other boy pushed J.J. and put up his fists, and the two begin dancing around each other; J.J. trying to avoid the other boy who was advancing on him. Watching this whole event unfold was Mr. Moates, a white teacher who was acting as hall monitor at the time. At six-feet, four-inches tall, Moates towered over both boys and stood in the vicinity of the incident well before it escalated. He continued to stand by and watch as the other boy advanced on J.J., even as other less imposing teachers began to intervene. Nonetheless, the approximately thirty seconds when Moates was involved concluded by J.J. being knocked unconscious by Mr. Moates and Mr. Moates putting the other boy in a chokehold and pulling him, by the neck, to the ground. In the melee of teachers and students, J.J. remembers someone coming behind him and grabbing him.⁴³ At that point, he went unconscious and does not remember anything else. Students later relayed to J.J. that Moates kneed J.J. and threw him into the wall. Video taken by other students shows J.J. lying unconscious on the floor.⁴⁴ The following day, when a student mentioned the incident to Moates, he replied, “Everybody likes to see a good fight.”

The school nurse attended to J.J. as he was lying on the ground. At her office, she noted that he had a nosebleed, his bottom lip was bleeding, and an area on the back of his head was red. She allowed J.J. to look at his phone so that he would stay awake, but emphatically told J.J. not to call his mother.⁴⁵ J.J. texted his aunt, who arrived at the nurse's office to find J.J. sleeping. She asked the nurse what was wrong, and the nurse replied that he was tired. When his aunt woke J.J. up, he didn't recognize her.

After the incident, the Honeysuckle principal, Ms. Weatherington, called an assembly. She told students that anyone who disseminated video of the incident would be sent to P.A.S.S. Academy for 30 days. Some students were forced to hand over their phones to school personnel, and parents were required to come to the school to retrieve the phones. One student was explicitly told that if he shared his video of the incident, he would be sent to P.A.S.S. and removed from the football team.

⁴³ J.J. does not remember hitting anyone. When J.J.'s mother arrived at the school, J.J. was in the administrator's office. The principal, Ms. Weatherington, told J.J. that he hit Mr. Moates, and J.J. said, “I did?”

⁴⁴ Two videos were taken by students and made public. See *Honeysuckle Middle School in Dothan, Alabama*, YouTube (Oct. 21, 2015), <https://www.youtube.com/watch?v=ts9A-pZjPuE>; *Honeysuckle*, YouTube (Oct. 20, 2015), <https://www.youtube.com/watch?v=ZaYsGWwtrfw>.

⁴⁵ The nurse's notes state: “I told him NOT to text his mother at this time.”

When J.J.'s mom came to the school, she asked why she wasn't called, and Principal Weatherington said: "We were going to get around to it."⁴⁶ Notwithstanding students' accounts that Moates kneed J.J. and slammed him against a wall, Weatherington blamed J.J. for the incident. She made this determination despite admitting that she had not witnessed the event. When J.J.'s mother told the principal that it seemed as if her son needed medical attention, Weatherington replied, "I am not going to do this with you." She then refused to discuss the matter any further with J.J.'s family.

That same day, J.J.'s mother took him to the hospital to examine the injuries caused by Mr. Moates. The hospital ordered a cat scan of J.J.'s head and determined that he had suffered a concussion.

iii. Criminal charges against J.J.

No more than two days after the incident, J.J.'s mother went to the police station to file charges against Mr. Moates for harming her child. She was brought to the desk of Corporal Morgan where she made a statement. Morgan then asked her to bring J.J. in to make a statement, and she did. No charges were ever filed by the police against Mr. Moates. Rather, on the Friday following the incident, when J.J. and his mother were not at home, the police came—in six police cars—to arrest him. Corporal Morgan called J.J.'s mother and told her that she needed to bring her son in.

J.J. was charged with felony assault on Moates. The trial begins on August 22, 2016. Prior to this charge, J.J. had never been arrested, charged, or convicted of any offense.

iv. School board hearing on November 16, 2015

J.J. was sent to P.A.S.S. Academy pending an expulsion hearing. J.J.'s mother went to the District office to meet with Superintendent Ledbetter and they reviewed the video together. Superintendent Ledbetter agreed that it seemed clear from the video that the students didn't fight and told her that they had received a lot of complaints about the principal at Honeysuckle. He gave her his personal cell phone number and told her that he would "get to the bottom of it." They spoke several times and he continued to assure her that he was working on it.

On Thursday, October 29, a letter was sent to J.J.'s mother informing her that a hearing was scheduled for Monday, November 2, 2015. However, the letter was sent to the wrong address and J.J.'s mother did not receive it. On Monday, November 2, the school called the other boy's mother to inform her about the hearing, and she called J.J.'s mother. The school never called to inform J.J.'s mother of the hearing, and she did not receive the letter by November 2.

The hearing was moved to Monday, November 16,⁴⁷ and J.J. remained in P.A.S.S. Academy until that date. At the hearing, the school board attorney acted both in his capacity as

⁴⁶ The mother of the other boy had already been informed by the school of the incident.

⁴⁷ The attorney representing J.J. in his criminal case asked for a continuance of the hearing so that he could review the school district's evidence.

the lawyer for the District, questioning witnesses and presenting evidence, and as the arbitrator of the hearing—violating due process standards requiring expulsion hearings to be conducted by a neutral decision-maker.⁴⁸ J.J. was charged with Code of Conduct offenses: fighting and assault upon a school board employee. The District charged J.J. with these offenses despite clear contradictions in their own witness statements and video footage showing that Moates acted with brute force against the adolescents.

During the hearing, the District admitted a discipline report as evidence that listed three separate “fighting” incidents in 2011, 2012, and 2013—incidents which neither J.J. nor his mother recall. The District alleged that J.J. received an out-of-school suspension on two of these three “fights.” Yet, there is no record, other than the “discipline report,” in J.J.’s school file that these fights actually took place—including, notably, no disciplinary referral forms for the alleged fights. Furthermore, J.J.’s mother met with the principal at Cloverdale Elementary, where these supposed “fights” had taken place, and the principal could find no record of the “fights.”

After the hearing ended and J.J. had been ordered to attend P.A.S.S. Academy for one-and-a-half years, Superintendent Ledbetter, who had promised to “get to the bottom” of the discrepancies in the District’s evidence against J.J., walked over to J.J. and his mother, apologized and told J.J. to “keep his head up.” Superintendent Ledbetter said nothing during the hearing.

J.J. was sent to P.A.S.S. Academy for the remainder of the 2015-16 school year and the first semester of the 2016-17 year, which would have been his first semester as a freshman in high school. In summary, the Board sent J.J.—a black middle school student—to P.A.S.S. for 216 instruction days as a result of an incident where (1) there is no video footage of J.J. hitting anyone, (2) there is medical evidence that J.J. suffered a concussion and (3) the District’s evidence against J.J. was, at best, contradictory. By contrast, Mr. Moates—a white adult—received no discipline.⁴⁹

v. J.J.’s experience at P.A.S.S. Academy

Before this incident, J.J. had never been sent to P.A.S.S. Academy. Indeed, J.J.’s teachers pulled him aside on several occasions expressing their concern that he did not belong there.⁵⁰

⁴⁸ See, e.g. *McKinney v. Pate*, 20 F.3d 1550, 1561 (11th Cir. 1994) (“It is axiomatic that [] the Constitution requires that the state provide fair procedures and an impartial decisionmaker before infringing on a person’s interest in life, liberty, or property.”). *Nash v. Auburn*, 812 F.2d 655, 665 (11th Cir. 1987) (“An impartial decision-maker is an essential guarantee of due process.”).

⁴⁹ Although Moates’ attorney claimed that “[h]e didn’t hit or punch anyone,” he caused J.J. to suffer a concussion and the other boy to suffer injuries that required him to wear a neck brace. Yet, he was not found culpable by the police or the District. Indeed, in an incident where it is hardly clear that the boys even touched each other, Moates is described as having “potentially saved bodily harm or even the lives of the two young men fighting.” Matt Elofson, *Two Honeysuckle Middle students charged, including one with assault on teacher*, Dothan Eagle, October 26, 2015, <http://www.dothaneagle.com>.

From November 2015 through May 2016, J.J. received nine disciplinary referrals at P.A.S.S. Academy. For the first referral—on November 12, while he was awaiting his expulsion hearing on November 16—he was disciplined for “stolen property” because a student had taken candy from a teacher’s purse and thrown it to J.J. who promptly put the candy in the trash. When his mother came to the school and inquired about this “offense,” she was told that he was complicit because he had touched the candy. In January 2016, he received a discipline referral for logging on to Facebook, and when J.J.’s mother told the principal that she remotely monitors his Facebook logins and there had been no alert of a login that day, he said “Well, I haven’t checked it yet.” Other referrals were for “shadow boxing,” “being disrespectful,” and “continuously disrupt[ing] class.”

It is hard to imagine what “class” J.J. was disrupting. His experience at P.A.S.S. was that children were not given anything to do. He told his mother that he would sleep a lot during the school day, because they were given little classwork to complete. The classwork they were given was to be completed, without help, on a computer. When J.J. asked teachers for assistance, he was told to sit down and figure it out. Nevertheless, J.J. did receive grades at P.A.S.S. Academy; though, it is unclear what the grades were based on. His mother asked the principal to provide copies of the work J.J. completed at P.A.S.S. and he still has not done so. She has spoken with two other parents who made the same request and are also still awaiting those records. As a result of his time at P.A.S.S., J.J. has fallen behind in his schooling and fears he will be unable to catch up to his peers.

Because J.J. was ordered to report to P.A.S.S. for the first semester of the upcoming school year, J.J.’s mother decided to send him to Texas to attend school where his father lives. She feels that circumstances created by the District have set her child on a trajectory to be “just another statistic without a future.”

III. Discrimination against African American students and students with disabilities in school discipline and arrests

It is no accident that all of the Complainants are African American. Despite the District’s resistance to the truth in numbers,⁵¹ there are severe racial disparities in the discipline of District children—disparities that have existed for years. These disparities mean that the vast majority of children who are subject to the District’s zero tolerance discipline are African American students. As the Department of Education has recognized,⁵² such disparities are hardly ever a coincidence.

⁵¹ See *supra*, Section I(A).

⁵² The 2014 guidance issued by the Departments of Education and Justice states:

[S]ignificant and unexplained racial disparities in student discipline give rise to concerns that schools may be engaging in racial discrimination that violates the Federal civil rights laws. For instance, statistical evidence may indicate that groups of students have been subjected to different treatment or that a school policy or practice may have an adverse discriminatory impact. Indeed, the Departments’ investigations, which consider quantitative data as part of a wide array of evidence, have revealed racial discrimination in the administration of student discipline. . . . *In short, racial discrimination in school discipline is a real problem.*

A. Different treatment of black children in the District

The District has responded to the glaring racial inequities in discipline by denial and finger-pointing at the families of children who are disciplined. Board Member Addison responded to the discipline data by saying: “They are facts, but they aren’t true facts[.] You can twist the numbers however you want.”⁵³ The Superintendent diverted responsibility to the families: “[Superintendent] Ledbetter said students from low-income households often do not receive the resources and experiences that prepare them to succeed in structured environments such as the school setting.”⁵⁴ Board Chair, Harry Wayne Parrish referred to children with behavioral problems as “project kids.”⁵⁵ When asked to answer for the 100% expulsion rate of African American students in 2015-16, Mr. Parrish stated that members are in expulsion hearings into the evening working to keep kids in school: “We make a little over \$200 per month – go figure that out.”⁵⁶

Further, African American parents and children have direct experience with racial discrimination by school staff:

- 1) In 2015-16, a white elementary school teacher punished the “bad kids” during the school day, by making them sit without talking in a separate area away from the other kids in the classroom. The “bad kids” were all African American children, and the white children were allowed to form a circle and socialize with each other.
- 2) A fifth-grade African American boy at Montana Street Magnet Elementary School was called the n-word by a white boy in the 2014-15 school year. The principal, Ms. Clark, called the black boy’s mother to inform her of the incident, and the mother asked whether Ms. Clark had called the white boy’s mother. Ms. Clark said that she hadn’t called the white boy’s mother, but she had lunch with the boy.
- 3) A sixteen-year old African American male student at Northview High School was sent to P.A.S.S. Academy for 30 days for receipt of a stolen cell phone. Even though the black student denied having the phone, the school administrator searched his bag but did not find the phone. A white student was later found with the phone. The white student, who actually stole the phone, was only sent to P.A.S.S. for 10 days.
- 4) An African American boy in elementary school has been the subject of discriminatory discipline on two occasions when he and a white boy engaged in a minor altercation. After the first altercation, the black boy was sent to P.A.S.S. Academy and the white boy was not. After the second altercation between the children, the black child was sent to P.A.S.S. for 10 days, and the white boy was sent to P.A.S.S. for 3 days.

U.S. Departments Educ. & Justice, *Joint “Dear Colleague” Letter* (Jan. 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html> (emphasis added).

⁵³ Jim Cook, *Dothan School Board members respond to racial bias claims*, Dothan Eagle (June 20, 2016), <http://www.dothaneeagle.com>.

⁵⁴ *Id.*

⁵⁵ Dothan City School Board Work Session (July 14, 2016).

⁵⁶ Cook, *supra* note 53.

- 5) When Mr. Williams, the African American teacher at Girard Middle School who served as I.K.'s homebound teacher, called I.K.'s mother to tell her that he would be providing homebound services, he told her that I.K.'s white teachers had refused to perform homebound services because of the neighborhood where I.K. lives.

In addition to discriminatory statements made at public meetings by school board members and individual incidents of disparate treatment, the District Dress Code prohibits the following:

- No “grills/grillz” on campus or at school sponsored activities;
- All pants, shorts, skorts, and capris must be secured at the waist and cannot “sag”;
- School Administrators may require belts in grades 2-12 if he/she deems necessary. This may be required of students who do not comply with the “sagging” rule;
- Bandanas and du-rags of any color are not to be worn on any part of the body nor carried in or tied on book bags or other bags; and
- Combs and picks are not to be worn in the hair.⁵⁷

This evidence of the District's different treatment of black students refutes any notion that the following gross disparities in the District's discipline and school-related arrests are mere happenstance.

B. Discriminatory impact of the District's discipline and school-related arrests on black children

Through the District's zero tolerance discipline and school-related arrests, the District disproportionately subjects black children to harsh consequences for minor misconduct. Black students have borne this discriminatory impact of the District's discipline and arrest policies and practices for years.

i. Racial disparities in District discipline

During the 2015-2016 school year, African American children (who represent approximately 55% of District enrollment) comprised:

- 100% of expulsions (6 of 6 referrals);
- 90% of referrals to P.A.S.S. Academy (801 of 894 referrals);
- 87% of out-of-school suspensions (1,434 of 1,643 referrals); and
- 85% of in-school suspensions (2,797 of 3,290 referrals).⁵⁸

⁵⁷ See Code of Conduct Manual, Dothan City Schools, 27-28 (2015-16). These provisions were not removed in the revised 2016-17 Code of Conduct.

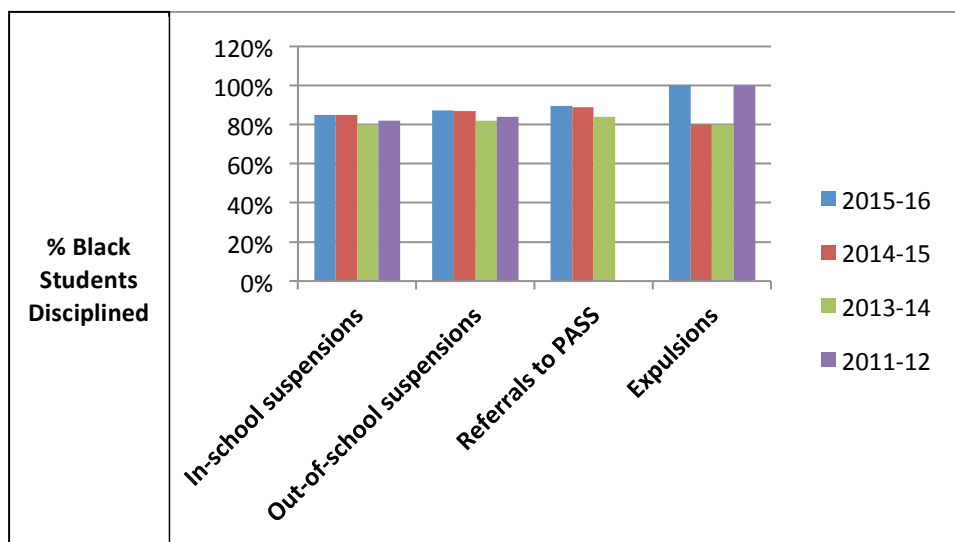
⁵⁸ Unless otherwise noted, the data incorporated in this complaint derives from the District's response to an open records request that asked for discipline information from the following school years: 2013-14, 2014-15 and 2015-

These racial disparities are not new. For years, the District has consistently imposed discipline on African American children far beyond their proportional representation in the student population.

Percentage of discipline imposed on African American students in 2011-12,⁵⁹ 2013-14, 2014-15, and 2015-16

School Year	Expulsions	P.A.S.S. Referrals	Out-of-school Suspensions	In-school Suspensions
2011-2012	100%	N/A	84%	82%
2013-2014	80%	84%	82%	80%
2014-2015	80%	89%	87%	85%
2015-2016	100%	90%	87%	85%

Discipline of black students in 2011-12,⁶⁰ 2013-14, 2014-15, and 2015-16⁶¹



16. See Appendix B. The District provided all data in paper format; the software “ABBYY FineReader 12” processed the scanned documents into an excel format, from which the analyses in this Complaint were generated. Upon request, SPLC will provide OCR with the excel sheets of data generated through this process.

⁵⁹ This data is from the 2011-12 Office for Civil Rights’ Civil Rights Data Collection (“CRDC”) which did not include data on alternative school referrals. The March 2, 2016 open records request asked for information from 2013-14, 2014-15 and 2015-16. See Appendix B.

⁶⁰ 2011-12 CRDC data.

⁶¹ In 2013-14, black students comprised 54% of total district enrollment (9,778 total students); in 2014-15, black students comprised 54% of total district enrollment (9,822 total students); and in 2015-16, black students comprised 55% of total district enrollment (9,831 total students).

ii. Disparate impact on black children of “neutral” discipline policies and practices

These extreme racial disparities in discipline would not even be possible without policies and practices that facilitate unfettered discretion by teachers and administrators. As the Department of Education has noted, discrimination can occur in the decision by a teacher to refer a child to the principal’s office and extend all the way to the point at which a final decision-maker issues the discipline and punishment.⁶² In the District, the exercise of discretion manifests so that a child like I.C. is forced to wet himself because a teacher has arbitrarily decided to not believe information from his mother about his medical condition. In more extreme cases, this unfettered discretion results in a child with as many disabilities as I.K. being treated as if he is “being bad” and removed from the classroom for hundreds of days over the life of his public education, or a child like J.J. being charged with felony assault against a white teacher twice his size who knocked him unconscious.

The District’s “zero tolerance” policies and practices enable teachers and administrators to treat non-serious, non-violent adolescent misconduct of African American children as inherently “bad” or even criminal. These policies empower administrators to punish children for all manner of behavior, such as R.M.’s referral to P.A.S.S. Academy for singing when he entered the classroom. As with R.M., administrators can issue extreme punishment for minor behavior, resulting in black children being subjected to the most extreme punishments in the District. Moreover, the District’s policies and practices have led to a troubling pattern of referring black students to P.A.S.S. Academy—a District-run “program” that treats all students as if they have been indicted on a criminal offense—for every manner of disciplinary “offense.”

1. Disproportionate issuance of severe penalties on black children for non-serious, non-violent misbehavior

Emblematic of the District’s zero tolerance approach—100% of expulsions in 2015-16 were black children. Yet, it is hardly clear why these children were considered for expulsion in the first place. None of the 2015-16 expulsions were for serious or violent offenses, as defined in the Code of Conduct. Rather, these black students were expelled for minor misconduct, like being late to class, and vaguely defined offenses, like “defiance,” as follows:

2015-2016 Expulsions: Demographics and Code of Conduct “Offenses”

Race	Age	Grade	Basis for Expulsion	Class Level
Black	11	6th	“Distraction of Other Students”	Class I
Black	18	12th	“Late to Class”	Class I or II
Black	12	7th	“Defiance of Employee’s Authority”	Class II
Black	14	7th	“Defiance of Employee’s Authority”	Class II
Black	13	7th	“Defiance of Employee’s Authority”	Class II
Black	17	11th	“Principal’s Discretion”	Unknown ⁶³

⁶² U.S. Departments Educ. & Justice, *supra* note 52.

⁶³ “Principal’s discretion” offenses are listed at each Class level in the Code of Conduct. Code of Conduct Manual, Dothan City Schools, 56-57, 60, 76-77, 79, 98-101, 105 (2015-16). The approach to “principal’s

Not only is expulsion an inappropriately severe punishment for non-serious, non-violent offenses; the Board acts against its own policies when expelling a student for anything other than a Class III offense. Dothan City School Board Policy 6.18 authorizes the expulsion of students for “offenses serious enough to warrant such action as provided in Code of Student Conduct or other Board disciplinary policies.” The 2015-16 Code of Conduct solely authorizes the District to refer a child for expulsion for Class III offenses.⁶⁴ The Class III level of offenses in the District’s Code addresses the most serious behavior—like assault, possession or sale of drugs, and possession or use of a firearm—that may be punished by the most serious punishment. Despite this practice of expelling children for Class I and II offenses, Board members tout their leniency in expulsion hearings, claiming that they expel students “only when there are no other alternatives.”⁶⁵ It begs the question: if children are being expelled for offenses that even the District has not designated for the expulsion, through what lens and on what basis does the Board determine that there are no other alternatives?

Over the past three school years, the District has expelled sixteen children—fourteen of whom were African American, meaning 88% of the expulsions from 2013-2016 were of African American students. Only two of the expulsions were for serious conduct; the other fourteen expulsions were for vague offense classifications that could embody minor misbehavior:

- Five expulsions for “defiance”;
- Four expulsions for “principal’s discretion”;
- Two expulsions for “leaving class/campus without permission”;
- One expulsion for “disobedience”;
- One expulsion for “late to class”; and
- One expulsion for “distraction of other students.”

Nor does the District reserve this most severe punishment for elder students. Of the sixteen expulsions, eight students were in middle school and two were in elementary school. One can hardly imagine circumstances that would justify the following: (1) in 2014-15, a ten-year old black boy was expelled for “disobedience,” a Class I offense; and (2) in 2013-14, a nine-year old black boy was expelled for “defiance,” a Class II offense. As with other expulsions for non-Class III offenses, these expulsions were not authorized by Board policy.⁶⁶

discretion” has been revised in the 2016-17 Code of Conduct, but it has not been eliminated. The revised 2016-17 removes this offense for Class I offenses by elementary students. It otherwise remains in the District’s Code of Conduct and administrators are authorized to issue it after review by a “tribunal” of other District principals.

⁶⁴ See generally Code of Conduct Manual, Dothan City Schools (2015-16).

⁶⁵ Jim Cook, *Dothan school system considering changes to discipline policies*, Dothan Eagle, July 9, 2016, <http://www.dothaneagle.com>. The District claims it expelled four students in 2015-16, but data provided by the District in response to the March 2, 2016 open records request shows that six students were, in fact expelled. See Appendix E.

⁶⁶ See Board Policy 6.18. See generally Code of Conduct Manual, Dothan City Schools (2015-16). Note: without access to the Codes of Conduct for these school years, an inference has been made that they largely resemble the 2015-16 Code.

The Code of Conduct authorizes administrators to issue a permanent referral to P.A.S.S. Academy or recommend expulsion for the following offenses:

- “Profanity or Vulgarity”;
- “Unauthorized Activities – Unauthorized activities/organizations – any attempt to use the school day for activities or organizational meetings that are not school-related, school-sponsored, and approved by the school administrator”;
- “Medical Excuses – the unauthorized use of, forgery of, and distribution of physician’s medical excuses”;
- “Small Pocket Knife”; and
- “Other incidents – Any other violation which in the discretion of the principal may deem reasonable to fall within this category after consideration of extenuating circumstances - principal must specify on the referral the exact violation.”⁶⁷

These “offenses” are included with other Class III offenses, like bomb threats, assault, drug possession or sale, and possession of a firearm. For purposes of punishment, they are treated the same as those serious offenses, a policy and practice that disproportionately impacts black children: 72% of 2015-16 disciplinary referrals for “Profanity or Vulgarity” were issued African American children, and the most severe exclusionary discipline referrals were issued to a 12-year old black girl and a 14-year old black boy. Both were sent to P.A.S.S. Academy for 30 days.

2. Disproportionate exercise of broad disciplinary discretion against black children

The vast majority of offenses for which District students are disciplined are “subjectively defined”⁶⁸ or so overbroad as to encompass all manner of conduct—providing principals broad discretion to issue disproportionate discipline against black students. The following “offenses” comprised over 75% of all exclusionary discipline in the District from 2013-14 to 2015-16:

Top “Offenses” of District students	Percent of all “Offenses” from 2013-2016
Defiance of Authority	26.8%
Leaving Class/Campus without permission	12.5%
Principal’s discretion	10.3%
Fighting	4.9%
Distraction of other students	4.8%
Truancy	4.1%
Minor Behavior Issues	3.5%
Failure to Follow Specific Instructions	3.3%
Profanity	2.8%
Profanity directed at staff	2.7%

⁶⁷ These Class III offenses remain in the newly adopted Code of Conduct for 2016-17.

⁶⁸ U.S. Departments Educ. & Justice, *supra* note 52. (“The Departments will look carefully at, among other things, a school’s definitions of misconduct to ensure they are clear and nondiscriminatory, the extent to which disciplinary criteria and referrals are made for offenses that are subjectively defined (e.g., disrespect or insubordination), and whether there are safeguards to ensure that discretion is exercised in a nondiscriminatory manner.”).

The top three offenses—defiance, leaving class/campus without permission, and principal’s discretion—constituted forty percent of all discipline in the District during the 2013-14, 2014-15, and 2015-16 school years.

Defiance was a Class II offense in the 2015-16 Elementary and Secondary Codes of Conduct, defined as “any verbal or non-verbal overt refusal to comply with a reasonable directive or order of a School Board employee” and subject to exclusionary discipline.⁶⁹ The District’s Code of Conduct is littered with vaguely defined offenses like “defiance,” which provide a wide opening through which administrators may exercise their subjective discretion. For example, the following categories of vague offenses remain in the District’s Code of Conduct as Class II and Class III offenses, and are therefore, subject to exclusionary discipline:

- Class II: Use of Obscene Behavior (written, verbal, E-mail, gesture, texting) toward another person;
- Class II: Gambling – participation in games of chance for money and/or other things of value;
- Class III: Profanity or Vulgarity – Use of obscene behavior (verbal, written, gesture) toward another person. The intentional, and or unintentional directing of obscene or profane language to a School Board employee;
- Class III: Unauthorized Activities – Unauthorized activities/organizations – any attempt to use the school day for activities or organizational meetings that are not school-related, school-sponsored, and approved by the school administrator; and
- Class II and III: Any other violation which in discretion of the principal may deem reasonable to fall within this category after consideration of extenuating circumstances – principal must specify on the referral the exact violation.

Use of the “principal’s discretion” offense—the third most common offense utilized by District administrators—exemplifies the broad discretion afforded to administrators. “Principal’s discretion” is defined as “[a]ny other violation which in the discretion of the principal may deem reasonable to fall within this category after consideration of extenuating circumstances” Thus, *any behavior* that the principal would like to deem an “offense” may be so deemed under the Code of Conduct. Because this offense is listed under Class II and III offenses, the administrator has extensive discretion to define the offense in a manner commiserate with the discipline he would like to issue.⁷⁰

The following graphs show that, in 2015-16, there were 41 referrals to P.A.S.S. Academy for “principal’s discretion” offenses, totaling 457 days spent in P.A.S.S. Yet, there is no way to know—without reviewing each student file—whether the punishment was appropriate given the student’s conduct.

⁶⁹ “Defiance” has been removed from the 2016-17 Code of Conduct.

⁷⁰ The District did not eliminate this offense from the 2016-17 Code of Conduct, but some limits were placed on its use. *See supra*, note 63.

Black students sent to P.A.S.S. in 2015-16 for a “Principal’s Discretion” offense

Grade	Age	Days in PASS
10	16	35
7	13	31
7	13	30
8	15	30
8	14	20
7	13	20
9	13	20
7	12	20
7	12	20
9	15	20
9	15	10
10	16	10
10	17	10
11	17	10
7	12	6
8	13	6
10	16	5
9	15	5
9	16	5
9	14	5
6	12	5
5	10	5
7	12	5
8	14	4
8	15	3
8	14	3
1	6	3
10	17	3
1	8	3
3	8	3
11	18	1

White students sent to P.A.S.S. in 2015-16 for a “Principal’s Discretion” offense

Grade	Age	Days in PASS
7	13	30
7	13	15
9	14	6
12	18	6
9	15	10
9	15	10
5	11	10
11	16	6
12	18	5
8	14	3

One thing is clear: the District’s policies have facilitated the following discriminatory patterns: (1) black children are more likely than white students to be disciplined under these vague and overbroad offense categories; (2) black children receive more severe punishments for vague and overbroad offenses than white students; and (3) black children are more likely to be punished at a younger age and grade level than white students. As noted by the Department of Education, “unguided discretion” in discipline is a wide berth through which “racial biases or stereotypes may be manifested.”⁷¹ This discriminatory consequence of vague or overbroad infractions is no more clear than in the District’s top three discipline offenses in 2015-16:

	Black students	White students	Racial data not provided ⁷²
Defiance	1105 incidents	95 incidents	242 incidents
Leaving Class/Campus	667 incidents	168 incidents	141 incidents
Principal’s Discretion	473 incidents	85 incidents	150 incidents

Black students made up 97% of discipline referrals for “defiance” in 2015-16—a statistic that cannot be “explained by more frequent or more serious misbehavior by students of color.”⁷³

If only 3% referrals for defiance in 2015-16 were issued to white children, then children like R.M.—who was suspended or put in P.A.S.S. Academy for defiance four times last year—are bearing the brunt of the District’s broad discretion to issue harsh punishment for adolescent conduct. It is hardly conceivable that there weren’t white ten-year old boys who “ma[d]e noises in class” or “talk[ed] back to the teacher”⁷⁴ in the 2015-16 school year. Nonetheless, if only 3% of all white children in the District received a referral for defiance this past year, it is very likely that there were white boys who acted out in the same ways as black boys, but were not punished.

3. Extreme discipline practices against elementary students

Perhaps one of the most troubling trends is the very high numbers of discipline against the youngest children in the District. In the 2015 data reported to the Alabama Department of Education,⁷⁵ discipline of elementary students comprised 83% of all discipline in the District. The discipline at the three predominantly black elementary schools—Faine Elementary, Selma Street Elementary, and Grandview Elementary—comprised 52% of all discipline in the District:

- At Faine Elementary, where student enrollment is 95% black,⁷⁶ the total number of discipline incidents was higher than the discipline incidents for the four middle schools and two high schools combined.

⁷¹ U.S. Departments Educ. & Justice, *supra* note 52 (noting the importance of “clear definitions of infractions”).

⁷² The failure to list a student’s race is one of several flaws in the data provided by the District. In addition, approximately 250 discipline incidents did not list the infraction.

⁷³ U.S. Departments Educ. & Justice, *supra* note 52.

⁷⁴ Notes from a discipline referral issued to R.M. on February 26, 2015 for defiance. He was sent to P.A.S.S. Academy for 10 days.

⁷⁵ The March 2, 2016 open records request did not ask for information about certain discipline dispositions. For example, we didn’t seek information about corporal punishments. *See* Appendix B. The data reported to the State includes all dispositions. Ala. State Dep’t Educ., *Data/Facts*, <https://www.alsde.edu> (last visited on Aug. 8, 2016).

⁷⁶ 2011-12 CRDC data.

- At Grandview Elementary, where student enrollment is 91% black,⁷⁷ 80% of the discipline referrals in 2015 were for “defiance.”

A review of all elementary school children in the District who were sent to P.A.S.S. Academy in 2015-2016 for ten or more school days tells the story:

Black elementary school children sent to P.A.S.S. Academy for 10+ school days in 2015-16

Ethnicity	Grade	Age	Infraction	Days	Disposition
Black	1	6	Disruptive Demonstration	10	PASS Academy
Black	1	7	Defiance Of Authority	10	PASS Academy
Black	2	7	Defiance Of Authority	10	PASS Academy
Black	2	7	Defiance Of Authority	10	PASS Academy
Black	1	8	Defiance Of Authority	10	PASS Academy
Black	2	8	Defiance Of Authority	10	PASS Academy
Black	2	8	Disorderly Conduct	10	PASS Academy
Black	2	8	Disorderly Conduct	10	PASS Academy
Black	3	9	Defiance Of Authority	10	PASS Academy
Black	2	9	Defiance Of Authority	10	PASS Academy
Black	3	9	Defiance Of Authority	10	PASS Academy
Black	4	9	Defiance Of Authority	10	PASS Academy
Black	2	9	Disruptive Demonst	10	PASS Academy
Black	4	9	Fighting	10	PASS Academy
Black	4	10	Fighting	10	PASS Academy
Black	4	10	Profanity/Vulgarity	10	PASS Academy
Black	5	10	Defiance Of Authority	10	PASS Academy
Black	4	10	Fighting	10	PASS Academy
Black	4	10	Disorderly Conduct	10	PASS Academy
Black	4	11	Defiance Of Authority	10	PASS Academy
Black	5	11	Fighting	10	PASS Academy
Black	4	11	Defiance Of Authority	10	PASS Academy
Black	4	11	Defiance Of Authority	10	PASS Academy
Black	4	11	Defiance Of Authority	10	PASS Academy
Black	5	11	Larceny/Theft	10	PASS Academy
Black	5	11	Profanity/Vulgarity	10	PASS Academy
Black	5	12	Defiance Of Authority	10	PASS Academy
Black	5	12	Defiance Of Authority	10	PASS Academy
Black	4	9	Fighting	13	PASS Academy
Black	5	12	Defiance Of Authority	14	PASS Academy
Black	1	7	Disorderly Conduct	15	PASS Academy
Black	1	8	Other	15	PASS Academy
Black	3	8	Defiance Of Authority	15	PASS Academy
Black	5	10	Defiance Of Authority	15	PASS Academy
Black	5	11	Defiance Of Authority	15	PASS Academy
Black	4	11	Threats/Intimidation	15	PASS Academy
Black	5	11	Defiance Of Authority	30	PASS Academy
Black	4	11	Harassment	30	PASS Academy
Black	5	12	Defiance Of Authority	38	PASS Academy

⁷⁷ 2011-12 CRDC data.

White elementary school children sent to P.A.S.S. Academy for 10+ school days in 2015-16

Ethnicity	Grade	Age	Infraction	Days	Disposition
White	2	8	Defiance Of Authority	10	PASS Academy
White	2	8	Disobedience	10	PASS Academy
White	4	10	Defiance Of Authority	10	PASS Academy
White	5	11	Other	10	PASS Academy
White	4	10	Defiance Of Authority	15	PASS Academy
White	3	10	Defiance Of Authority	15	PASS Academy
White	0	6	Disorderly Conduct	16	PASS Academy
White	0	6	Disorderly Conduct	20	PASS Academy

4. Warehousing of children in P.A.S.S. Academy

The District operates one primary alternative school, P.A.S.S. Academy. Despite Alabama Law requiring school districts that operate “alternative educational programs” to offer a restorative curriculum that promotes positive behavior and academic success,⁷⁸ P.A.S.S. Academy functions more as a place for warehousing and criminalizing children than a school.

P.A.S.S. Academy has been described as “all black.” Not a surprising label, given that black students made up 84% of P.A.S.S. enrollment in 2013-14, 89% of P.A.S.S. enrollment in 2014-15, and 90% of P.A.S.S. enrollment in 2015-16. Consequently, the District’s treatment of children at P.A.S.S. as “bad” or “dangerous” primarily comes down on African American students—a disproportionality that is on the increase.

In 2015-16, students as young as 5-years old have attended P.A.S.S. Academy with students as old as 20-years old. *All students* enter P.A.S.S. Academy through a metal detector and are immediately searched by school staff who require the children to take off their shoes, socks and belt. Two of the nine District SROs are stationed at P.A.S.S.⁷⁹ One parent of a seven-year old African American boy, who was suspended for three days, was told by a principal that the school was doing him a favor by not sending him to P.A.S.S. because it would be a harmful environment for him.

All students at P.A.S.S. Academy are treated as dangerous and criminal even though 31% of the referrals to P.A.S.S. in 2015-16 were elementary school children, and hundreds of students are sent to P.A.S.S. for non-serious, non-violent adolescent misbehavior. The Code of Conduct states that “P.A.S.S. Academy assignments are made as a last resort prior to a recommendation

⁷⁸ Ala. Admin. Code 290-3-1-.02(c) (requiring “a curriculum that stresses skills in recognizing and managing anger, alternatives to aggression (verbal and physical assault), strategies for developing self-control and personal responsibility, skills for getting along with others, success through academic achievement, and skills for success in the workplace”). *See also* Ala. Code § 16-1-14 (Disciplinary removal from the classroom “may not deprive [students] of their full right to an equal and adequate education.”).

⁷⁹ Dothan City Schools, *P.A.S.S. Academy* <http://www.dothan.k12.al.us> (last visited on July 21, 2016).

for expulsion from the Dothan City Schools.”⁸⁰ Yet, the number of referrals to P.A.S.S. has not been negligible:

- 894 P.A.S.S. referrals in 2015-16;
- 954 P.A.S.S. referrals in 2014-15; and
- 890 P.A.S.S. referrals in 2013-14.

At least 365 (41%) of the P.A.S.S. referrals in 2015-16 were for five days or less, which is inconsistent with notion that these referrals serve as “a last resort prior to a recommendation for expulsion.”

R.M. was sent to P.A.S.S. five times in 2015-16 for a total of 45 school days. When he went to P.A.S.S., his mother had to sign a “Behavior Contract.” Like conditions of probation, the contract requires the parent/guardian and student to agree to, among other things:

- “There is no bus transportation to P.A.S.S. Academy. It is the guardian’s responsibility to provide transportation for his/her child while his/her child attends PASS Academy.”
- “Students are not allowed after 8:15 am unless checked in with a doctor’s excuse or court letter.”
- “No book bags allowed. Paper, pencil, books, and assignments will be provided.”
- “No money, candy, cell phones, electronic devices, or jewelry allowed.”
- “Additional days can be added to a student’s placement while at PASS by the principal due to inappropriate behavior.”

Of the P.A.S.S referrals in 2015-16, twenty-six percent (26%) were for “defiance.” For example, one African American girl in fifth grade was sent to P.A.S.S. for thirty-six (36) days for defiance. At least thirty-seven percent (37%) of P.A.S.S. referrals were for Class I or Class II offenses.⁸¹ One African American boy in eighth grade was sent to P.A.S.S. for 29 days for “general use of profane or obscene language,” a Class I offense. Moreover, many children referred to P.A.S.S. for a Class III offense were sent there for non-serious, non-violent behavior, including “Profanity or Vulgarity,” which is a Class III offense and was the fourth most cited offense for P.A.S.S. referrals in 2015-16.

Perhaps most importantly, children at P.A.S.S. Academy do not receive an adequate education. The classwork provided to children is not enough to occupy the entire day. P.A.S.S. students talk about sleeping during the day and being bored. The classwork that is provided to students is “taught” to them by computers. Teachers refuse to help students who don’t understand their assignments. Some children who are referred to P.A.S.S. for five days or less don’t receive their classwork while they are there, and others receive their classwork on their last day at P.A.S.S. An elementary student who was sent to P.A.S.S. Academy for five days didn’t

⁸⁰ Code of Conduct Manual, Dothan City Schools, 53, 72, 94 (2015-16).

⁸¹ Certain offenses can be issued as Class I, Class II, or Class III offenses.

receive his work while he was at P.A.S.S, and when he returned to his home school, he failed a test because he hadn't been given any of his assignments.

iii. Disparate impact of the District's law enforcement referrals and school -related arrests on black children

Nine SROs are contracted to serve District schools, pursuant to an Agreement between the City of Dothan and the Dothan City School Board.⁸² The Agreement makes clear that SROs are—first and foremost—police officers:

1. “[SROs] shall remain employees of the Dothan Police Department and shall not be employees of the Board of Education. The Board of Education and the Police Department acknowledge that the [SROs] shall remain responsive to the chain of command of the Dothan Police Department.”
2. “[SROs] shall be certified law enforcement officers, as required by the Police Officer Standards, and Training Commission. Their powers and duties as law enforcement officers shall continue throughout their tenure as a School Resource Officer.”
3. “[SROs] shall take law enforcement action as necessary.”⁸³

1. District fails to collect or report data on school-related arrests and law enforcement referrals

The District does not currently collect or report information on school-related arrests or referrals made by District staff to law enforcement—in violation of its obligations under federal law.⁸⁴ For the school years 2013-14 through 2015-16, the District could provide no information about law enforcement referrals and arrests on school property.⁸⁵ Notably, the District is aware of its duty to collect and report policing data to the U.S. Department of Education, evidenced by the District's submission of (albeit inaccurate)⁸⁶ data on school-related arrests and law enforcement referrals for the 2011-12 Civil Rights Data Collection (“CRDC”). Thus, its failure to collect any data on school policing over the last three school years is not merely an act of ignorance; it is a blatant sign of the District's refusal to comply with the federal civil rights laws enforced by OCR.

Not only has the District evaded its duty to collect and report school-related arrest and referral data, efforts to obtain this information from the Dothan Police Department were met with evasion and recalcitrance. In response to a legally compliant open records request, the Dothan

⁸² See Appendix F (SRO Program Agreement, dated July 1, 2015). Neither the District nor the Police Department have indicated that a new agreement, effective July 1, 2016, has been executed.

⁸³ See Appendix F.

⁸⁴ 34 C.F.R. § 100.6.

⁸⁵ Data on law enforcement referrals and school-related arrests was requested, but not provided. See Appendix B (March 2, 2016 open records request). Superintendent Ledbetter has acknowledged that the District does not collect this data.

⁸⁶ See *infra*, Section III(B)(iii)(2).

City Attorney, among other things, refused to answer whether the data existed in a database and stated that Dothan City's response to the records request would cost \$6,300.00.⁸⁷

One wonders how parents and students can ensure the safety of their children from law enforcement overreach if the District and Police Department fail to provide any information on law enforcement activities in the schools?

2. Strikingly high numbers of school-related arrests reported by the Dothan Police for 2011-12

Notwithstanding the Dothan City Attorney's assertions that it would be overly burdensome to provide information on school-related arrests,⁸⁸ the Dothan Police Department provided such data to a reporter for the Dothan Eagle newspaper in 2012. And if the school year 2011-12 is any indication, the difference between District data and the reality of school policing is stark. While the 2012 Dothan Eagle article characterized District SROs as "mentors and protectors" of Dothan children, it noted that from August 2011 to February 2012, SROs "responded to 779 calls for service at Dothan City Schools. . . . [and] SRO's [wrote] 86 offense reports, made a felony arrest for unlawful prescription drug possession and 469 misdemeanor arrests."⁸⁹

These numbers were strikingly different from the data reported by the District to the U.S. Department of Education for the 2011-12 school year. According to the 2011-12 CRDC, the District reported zero school-related arrests and 103 law enforcement referrals.⁹⁰ Also conspicuous, the District reported one (1) law enforcement referral to the Alabama State Department of Education for 2011-12. Again, this pattern of inaccurate reporting indicates a blatant refusal to obey the federal civil rights laws that OCR enforces.

Of the data the District did report to the CRDC in 2011-12, African American children made up *83% of the law enforcement referrals* for that year. Were the District to have collected and reported numbers akin to those collected by the Dothan Police for that same year—779 law enforcement referrals and 469 misdemeanor arrests on school property—such racial disparities would be alarming for the sheer number of African American children being inculcated into the criminal justice system.

But the District has shielded itself by not collecting and reporting information that would allow District parents and students the opportunity to examine the nature of police activities in District schools.

⁸⁷ Efforts were made to obtain the relevant data from the Dothan City Police Department, but the many and varied attempts to obtain information regarding arrests of children on school property were met with evasion and denial. See Appendix G (communications between the Southern Poverty Law Center and Len White, Dothan City Attorney).

⁸⁸ See Appendix G.

⁸⁹ Matt Eloffson, *Dothan Police: Mentors and protectors*, Dothan Eagle, May 18, 2012, <http://www.dothaneagle.com> (emphasis added).

⁹⁰ 2011-12 CRDC data.

3. Evidence of problematic school-based policing practices

In addition to the data on school-based policing from August 2011–February 2012, there is evidence of problematic policing practices in the District. On April 20, 2015, a 15-year old boy was tased by a police officer for resisting arrest.⁹¹ The officer was called to the classroom because the student was refusing to follow a teacher’s instructions: “The student was told to leave the classroom and ultimately advised he was being placed under arrest.”⁹² The child’s “resistance” amounted to pushing the police officer when he was being handcuffed.⁹³ The adult officer responded by tasing the adolescent and charging him with: (1) disorderly conduct, (2) resisting arrest, and (3) harassment of a public safety official.⁹⁴

Additionally, the arrest of J.J. for felony assault on a teacher is especially problematic. Whereas J.J. suffered a concussion from the incident, the teacher received only “minor injuries.”⁹⁵ Yet, J.J. was charged with a felony and sent to P.A.S.S. Academy for one-and-a-half years based on evidence that was, at best, contradictory. The teacher, on the other hand, was not criminally charged.⁹⁶ When J.J.’s mother made a statement to the police in an attempt to file charges against the teacher, she was not told that her son would be charged later that week. She then went to the Houston County magistrate judge to file charges and was told that there was no way the judge would issue charges against a teacher. J.J. is now awaiting trial on a felony charge, when prior to this incident, he’d never had an arrest, charge, or conviction in his life.

4. The District’s over-reliance on police intervention

As with the District’s zero tolerance approach to discipline, Superintendent Ledbetter has made clear that the District will address all fights by arresting and charging children—without regard to individual circumstances:

Ledbetter said the school system’s policy of calling police when students in upper grades fight is an appropriate response. “If you got into a fight a Wal-Mart, the police would be called,” he said. “Why should it be any different at school?”⁹⁷

Notwithstanding the marginal numbers of serious incidents happening in the District,⁹⁸ District and City officials held a “school safety” meeting on March 14, 2016, wherein a city

⁹¹ Erin Edgemon, *Alabama middle school student Tased after resisting arrest, police say*, AL.com (April 20, 2015), <http://www.al.com/>.

⁹² *Id.*

⁹³ Greg Phillips, *Student shot with stun gun at Honeysuckle Middle*, Dothan Eagle (April 20, 2015), <http://www.dothaneagle.com>.

⁹⁴ *Id.*

⁹⁵ Matt Elofson, *Two Honeysuckle Middle students charged, including one with assault on teacher*, Dothan Eagle, October 26, 2015, <http://www.dothaneagle.com>.

⁹⁶ *Id.*

⁹⁷ Jim Cook, *Dothan City Schools step up security at Dothan High after fights*, Dothan Eagle, Jan. 29, 2016, <http://www.dothaneagle.com>. See also Rae Larkins, *Dothan City Schools, police address fights at Honeysuckle Middle School*, WSFA (Nov. 3, 2015), <http://www.wsfa.com>. (“Dothan City Schools Superintendent Chuck Ledbetter says the district will continue to arrest and charge students if they choose to fight.”).

commissioner suggested increasing security staff and installing metal detectors at all schools, and the Superintendent proposed an increased use of K-9 dogs in District schools.⁹⁹

Nor does the Memorandum of Understanding (“MOU”) between the District and the City curtail an SRO’s ability to arrest children for minor adolescent conduct. Although the MOU states that SROs are not school disciplinarians, it reinforces their law enforcement role and requires school administrators to contact police if they “believ[e] an incident is a law violation.”¹⁰⁰ As in most states, most adolescent conduct can be characterized as a crime under Alabama statutes that, for example, criminalize “disorderly conduct,”¹⁰¹ “loitering,”¹⁰² “harassment,”¹⁰³ and “criminal trespass.”¹⁰⁴ Superintendent Ledbetter has acknowledged that, when SROs arrest children on school property, it is often for “disorderly conduct.”

Dothan SRO Charles Coachman recently made it quite clear that his role is to enforce the law, when he made the following statement about Dothan students: “They know when it comes down to it I’m going to do my job. I’ll cry with you as you go to the diversion center, and I’ll welcome you back with open arms.” If Officer Coachman’s “job” is to arrest children, it can hardly be much solace to a student—after being arrested and handcuffed by Coachman—that he is “crying” with the student as he transports the child to juvenile detention.

C. Discriminatory impact of District’s discipline and law enforcement intervention on children with disabilities

Although the District provided SPLC with data on the discipline of children with disabilities, it did not provide the information in a manner that would permit analyses on whether such discipline has a disparate impact on students with disabilities.¹⁰⁵ However, it is clear that the practice of disciplining children with disabilities is on the rise, as the discipline of children with disabilities has increased by more than 119% from 2013-14 to 2015-16.

⁹⁸ See *infra*, Section II(A).

⁹⁹ *Officials hold meeting to discuss school safety*, Dothan First, Mar. 15, 2016, <http://www.dothanfirst.com>; Matt Elofson, *Security officers and metal detectors discussed at Dothan City Schools work session*, Dothan Eagle, Mar. 14, 2016, <http://www.dothaneagle.com>.

¹⁰⁰ See Appendix F (enclosing the Memorandum of Agreement between the Dothan City School Board and City of Dothan, dated July 1, 2015).

¹⁰¹ Ala. Code § 13A-11-7.

¹⁰² Ala. Code § 13A-11-9(a)(5).

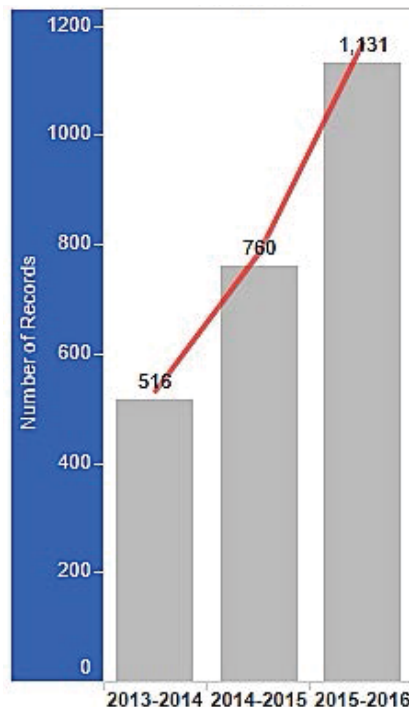
¹⁰³ Ala. Code § 13A-11-8.

¹⁰⁴ Ala. Code § 13A-7-4.

¹⁰⁵ The District’s initial response to the March 2, 2016 open records request did not include discipline data regarding children with disabilities. The District later supplemented its production with the missing data, but information provided in the second production was directly comparable to the first production.

i. Significant increase in discipline of children with disabilities

Number of discipline incidents of children with disabilities from 2013-14 to 2015-16



This troublesome trend signals that the District’s zero tolerance policies and practices are being meted out on these vulnerable children who are protected by Title II and Section 504.

ii. Unlawful disciplining of children with “emotional disturbance” disabilities for behavior caused by their disability

In particular, children whose disabilities directly impact their behavior—categorized by federal law as “emotional disturbance” and “other health impaired”¹⁰⁶—made up 40% of the discipline of all children with disabilities in 2015-16. Children with emotional disabilities (e.g. mental health conditions like bi-polar disorder or conduct disorder)¹⁰⁷ are likely to act out and defy teachers’ directives because, unlike children without mental health conditions, they are unable to control those behaviors, which can include:

- Hyperactivity (short attention span, impulsiveness);
- Aggression or self-injurious behavior (acting out, fighting);
- Withdrawal (not interacting socially with others, excessive fear or anxiety);
- Immaturity (inappropriate crying, temper tantrums, poor coping skills); and

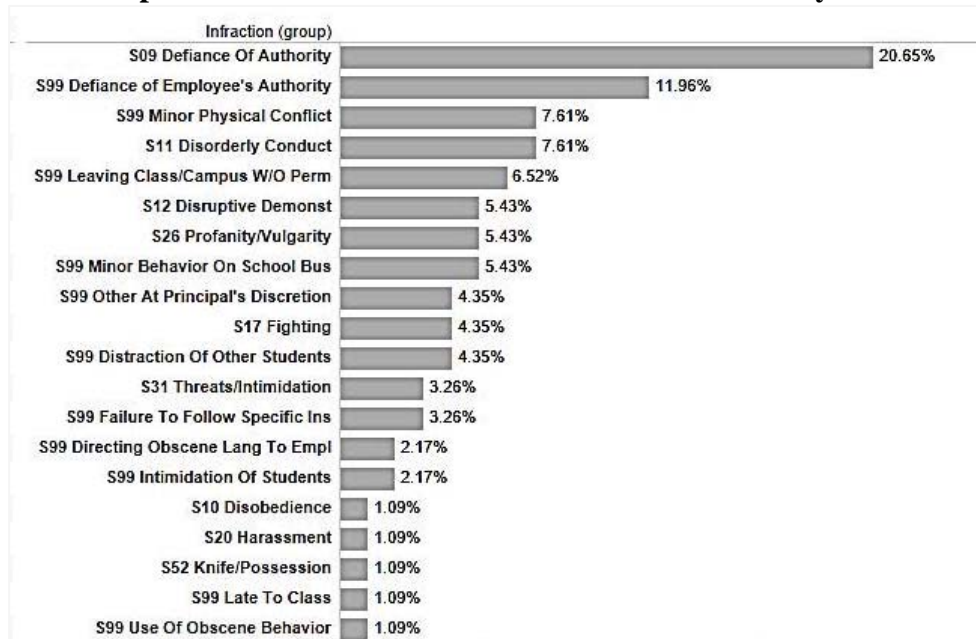
¹⁰⁶ See 34 C.F.R. §§ 300.8(c)(4)(i) and 300.8(c)(9) (defining “emotional disturbance” and “other health impairment,” respectively).

¹⁰⁷ Children who are classified under the “emotional disturbance” disability category have conditions like bipolar disorder, anxiety disorders, obsessive-compulsive disorder and conduct disorder. See *Emotional Disturbance*, Head Start, U.S. Dep’t of Human Health & Servs., <https://eclkc.ohs.acf.hhs.gov/> (last visited July 31, 2016).

- Learning difficulties (academically performing below grade level).¹⁰⁸

The District, however, treats the behavior of children with emotional disabilities as if the children are merely being “difficult” and their behavior is the result of a rational choice to “defy” school rules. In 2015-16, nearly 33% of District’s discipline of children with emotional disabilities was for “defiance.” Offenses like “defiance,” “disobedience,” and “disorderly conduct,” in fact, describe the disability-related behavior of children like I.K. who have mental health conditions like ODD.¹⁰⁹ Indeed, the vast majority of discipline referrals of children with emotional disabilities was for “offenses” that incorporate behavior that these children often exhibit as a direct consequence of their mental health-related disabilities:

Top offenses for students with an emotional disability in 2015-16



Moreover, in 2015-16, exclusionary discipline made up 49% of the total discipline of children with emotional disabilities.¹¹⁰ Not only does removal from the classroom implicate the federal rights of these children who have IEPs and 504 plans, it unjustly imposes severe consequences on children for behavior they have no ability to control—as the District did to I.K. on December 20, 2012, January 23, 2015, and September 11, 2015.¹¹¹ This practice of removing children with disabilities from their educational placement for behavior caused by their disability exemplifies the District’s failure to meaningfully recognize and accommodate the child’s disability.

¹⁰⁸ *Id.*

¹⁰⁹ *Oppositional Defiant Disorder*, Am. Acad. Child & Adolescent Psychiatry (July 2013), <http://www.aacap.org>. (behaviors include “[f]requent temper tantrums,” “[o]ften questioning rules,” “[o]ften being touchy or easily annoyed by others,” and “[a]ctive defiance and refusal to comply with adult requests and rules”).

¹¹⁰ This calculation includes refers to “alternative placement.” Discipline of children with disabilities that does not include “alternative placement” was 35% of total discipline.

¹¹¹ *See supra*, Sections II(A)(ii)-(iii).

iii. District IEPs put children with emotional disabilities on a trajectory for more discipline, not less

Further evidence that the District issues disciplinary removals to children for behavior caused by their disability is the District's practice of including disciplinary consequences as a "behavior intervention" in the IEPs of children with emotional disabilities. The behavior interventions plans for I.K.,¹¹² included in his IEPs for the years 2011-12, 2012-13, and 2013-14, state that "SRO will be contacted and administration will follow the [District's] Code of Conduct." Indeed, I.K. has been restrained and handcuffed twice by SROs as a "behavior intervention"¹¹³ that, notably, did not lead to arrest.

The IEPs that have been developed for I.K. since 2011 exemplify the District's practice to blame, not support, children with mental health disabilities that impact their behavior. As discussed in Section II(A), I.K. has been diagnosed with bi-polar and oppositional defiance disorders, among other mental health conditions. Yet, from his first IEP in 2011-12 to his most recent IEP, none of his IEPs list I.K.'s diagnoses or the conduct that can be expected from someone with those diagnoses. The information that is provided about I.K. characterizes him as a child who chooses to be difficult, not as one whose actions are a manifestation of his disability:

From I.K.'s IEPs in 2011-12 and 2012-13:

[I.K.] can be extremely defiant and disruptive. He is non-compliant with school rules. . . . He refuses to follow instructions. He yells and hits at the teacher and students. He uses profanity often. If the teacher ignores him, he will make any noise that will get her attention. I.K. rarely completes his work independently. He will throw it in the garbage or on the floor.

From I.K.'s IEP in 2013-14:

[I.K.] can be extremely defiant and disruptive. He does not follow school or classroom rules. . . . He argues with his peers. He thinks that the other students are bothering him and taking his things. He does not take responsibility for any of his actions. If things do not go his way, he will yell out in class, knock desks over, and throw anything near him. At times, he will use profanity.

¹¹² Despite his diagnoses, the District has classified I.K. in the "other health impairment" disability category. Nonetheless, his Bipolar and ODD diagnoses mean that, like children in the "emotional disturbance" disability category, his disability-related behavior has been subjected to unlawful and discriminatory discipline.

¹¹³ District policy explicitly authorizes the use of SROs to assist in the physical restraint of a child. *See* Code of Conduct Manual, Dothan City Schools, 52, 72 (2015-16). This provision is included in the revised 2016-17 Code of Conduct.

From I.K.'s IEP in 2014-15:¹¹⁴

[I.K.] can be extremely defiant and disruptive. He knows the school and class rules but often chooses not to follow them. . . . He does not take responsibility for his actions or lack of action, such as not completing his homework.

Thus, the language used in I.K.'s IEPs—"refuses to follow instructions," "does not take responsibility," and "chooses not to follow [the rules]"—places the blame on I.K. for his disability-related inability to conform to school rules and social norms. If this is the document meant to guide educators on how to address the disabilities underlying I.K.'s behavior, it is not surprising that I.K. has been subject to exclusionary discipline for his behavior since he was very young.

This is not a new problem in the District. The failure to recognize the cause of certain behaviors was flagged, among other things, as a district-wide problem in a corrective action letter issued to the District on August 27, 2015 by the Alabama State Department of Education ("the State") regarding the District's provision of special education services.¹¹⁵ The State reviewed a sample of the District's IEPs and found that "[e]ach student's IEP does not include a student profile, detailing how the student's disability affects the student's involvement and progress in the general curriculum" When the disability affects the child's ability to conform to school rules and social norms, the failure to include this vital information in a child's IEP sets the stage for overly punitive, ineffective, and unlawful discipline.

IV. The District's discipline and school-related arrest policies and practices are not necessary to meet an important educational goal and less discriminatory, more effective alternatives exist

The evidence is clear that the District's discipline and school-related arrest policies and practices have an adverse effect on African American children and children with disabilities. It is also clear that: (1) the current discriminatory policies and practices are not necessary to meet an "important educational goal,"¹¹⁶ and (2) there are more "effective alternative policies [and] practices" that would meet the District's educational goals without imposing the adverse, discriminatory impact on children of color and children with disabilities.¹¹⁷ Indeed, the District's zero tolerance policies and practices are not evidence-based, and there are more effective alternatives to addressing adolescent misbehavior that would not result in the severe disparities in the District that currently exist and have existed for years.

¹¹⁴ I.K.'s IEPs from 2015-16 and 2016-17 do not contain any information about his behavior; in general, the lack of information provided in his IEPs is extremely troubling.

¹¹⁵ See Appendix H.

¹¹⁶ U.S. Departments Educ. & Justice, *supra* note 52.

¹¹⁷ *Id.*

A. The District's discipline and school-related arrest policies and practices are not necessary to meet the District's educational goals

In discussions with SPLC, District officials repeatedly expressed their concern with “disruptive” students and the impact of those “disruptive” students on other students and the overall educational environment. Indeed, all children have a right to develop academically and socially in a supportive learning environment. Nevertheless, the District’s discriminatory discipline and school-related arrest practices and policies are not designed to achieve that end. Rather, the District has chosen to *disrupt* the academic and social development of certain children, who are mostly black students and students with disabilities, in preference for those children, who are mostly white and non-disabled, that the District has chosen to educate.

Thus, the District has set up black children and children with disabilities for the severe consequences that follow from exclusionary discipline. Studies have shown that exclusionary discipline, such as suspension, expulsion, and school-related arrests, increase the likelihood that a student will drop out of school¹¹⁸ or end up in delinquency proceedings.¹¹⁹ Contrary to the goal of improving student behavior, these exclusionary discipline practices impact minority students and students with disabilities by increasing the likelihood of more exclusionary discipline.¹²⁰ Indeed, the perception by District administrators and staff that these methods are effective instructional tools is likely to be “significantly at odds” with the actual effect on students:

While school personnel see school disruption as primarily a student choice and disciplinary consequences as an appropriate reaction to that choice, students, especially at-risk students, tend to view confrontational classroom management or school disciplinary strategies as playing a significant role in escalating student misbehavior In particular, students who are already at risk for disruption may see confrontational discipline as a challenge to escalate their behavior.¹²¹

Nor can the District argue that its zero tolerance discipline and arrest policies and practices are necessary to create a positive learning environment for all children. Research on zero tolerance discipline policies has uncovered *zero evidence* that these policies and practices do anything to improve educational outcomes or school safety:

¹¹⁸ Advancement Project, *Test, punish, and push out: how ‘zero tolerance’ and high-stakes testing funnel youth into the School-to-Prison Pipeline* 17 (2010) (Research by the American Psychological Association “showed that suspension and expulsion are associated with a higher likelihood of school dropout and failure to graduate on time.”). See also Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, 99 New Directions for Youth Dev. 17 (2003); Tony Fabelo, et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, Council of State Gov’ts Justice Cent. & Pub. Policy Research Inst. 60 (2011).

¹¹⁹ Russell J. Skiba & Kimberly Knesting, *Zero tolerance, zero evidence: An analysis of school disciplinary practice*, 92 New Directions for Youth Development 33 (2011) (“Research in the field of juvenile delinquency suggests that the strength of the school social bond is an important predictor in explaining delinquency.”).

¹²⁰ *Id.* at 35. (“For at-risk students, the most consistently documented outcome of suspension and expulsion appears to be further suspension and expulsion, and perhaps school dropout.”).

¹²¹ *Id.* (“Indeed, for some students, suspension is a strong predictor of further suspension, prompting some researchers to conclude that for these students, ‘suspension functions as a reinforcer , . . rather than as a punisher.’”).

[T]he idea that zero-tolerance policies contribute to improved student behavior or school safety remains unsupported by evidence. Despite more than ten years of implementation in school districts around the country, there is no convincing documentation that zero tolerance has in any way contributed to school safety or improved student behavior. In fact, the implications of available data on disciplinary removal are at best troubling.¹²²

The District's data should be a lesson to the District that the zero tolerance approach doesn't work. Whereas enrollment has not changed significantly over the last three years,¹²³ the overall use of exclusionary discipline on black students and students with disabilities by the District has been on the rise since 2013-2014:

Total number of exclusionary discipline referrals from 2013 to 2016

Discipline Disposition	2013-14	2014-15	2015-16
In-School Suspension	2,847	3,557	3,290
Out-of-School Suspension	815	1,317	1,643
P.A.S.S. Academy Referrals	890	954	894
Expulsions	5	5	6

If the goal is to modify student behavior and improve the educational environment, one would think that the use of these exclusionary methods would go down over time. Not one of these methods has decreased over the last three years, and the use of out-of-school suspensions, for example, has increased by 100% from 2013 to 2016.

District officials additionally cite “school safety” for their excessive use of exclusionary discipline and school-related arrests. Yet, the District's increased use of these tactics does not correspond to a significant increase in incidents that pose a credible harm to the student population. In 2013-14, there were ten disciplinary incidents that involved an allegedly serious weapon;¹²⁴ in 2014-15, there were eleven of these incidents; and in 2015-16, there were

¹²² *Id.*; see also *i.d.* at 32 (noting the lack of evidence that exclusionary discipline decreases the number of serious incidents, such as the possession of a weapon, on school property); U.S. Departments Educ. & Justice, *supra* note 52 (“Studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavior problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.”); Advancement Project, *supra* note 118, at 16-17 (“American Psychological Association published an evidentiary review of studies over the last 10 years evaluating the impact of zero-tolerance school discipline. They found that zero-tolerance policies had not been shown to improve school safety. In fact, according to the study, schools are not any safer or more effective in disciplining students than they were before zero-tolerance policies were implemented.”).

¹²³ In 2013-14, total district enrollment was 9,778 students; in 2014-15, total district enrollment was 9,822 students; and in 2015-16, total district enrollment was 9,831 students.

¹²⁴ The numbers cited here for “allegedly serious weapons” include Code of Conduct classifications, “weapon,” “knife,” and “handgun,” all Class III offenses. “Possession of a small pocket knife” (a Class II offense) was not included.

seventeen of these incidents. Moreover, not all of these incidents involved an actual weapon or plausible danger to students. For example, Superintendent Ledbetter informed SPLC that one of the “weapon” incidents in 2015-16 was a toy gun. In all three years, the discipline incidents for “assault” remained extremely low: five incidents in 2013-14; six incidents in 2014-15; and six incidents in 2015-16. Thus, the marginal number of serious incidents over the last three years fails to explain the District’s increase in the total number of disciplinary incidents by 1,389 incidents from 2013-14 (4,186 discipline incidents) to 2015-16 (5,575 discipline incidents).

The Complainants’ experiences mirror the data and the research. When faced with R.M.’s “disruptive” behavior, the District put him in P.A.S.S. Academy. When he returned from P.A.S.S., the District sent him right back for the same behavior that instigated the previous referral to P.A.S.S. Academy. Likewise, neither I.K.’s disability-related behaviors, nor the District’s response to those behaviors, have changed since he was a young child. When I.K. acts out, the District sends him to P.A.S.S. Academy, or even worse, they send him home where he receives little to no education and none of the services required under his IEP. The District has been applying the same exclusionary methods to I.K. since he was a young child and seeing no results. Rather, the impact of the District’s practices is that both R.M. and I.K. are significantly behind in their academic and social development.

B. There are less discriminatory, more effective alternatives to the District’s school discipline and arrest policies and practices

Not only does the research show that zero tolerance discipline and school-related arrests don’t improve behavior or improve school safety, school districts and states across the country have shown that alternative strategies actually improve the educational climate, increase academic outcomes, and maintain school safety.¹²⁵ To transform the District’s punitive practices and discriminatory impact of those practices, the District must shift away from exclusionary discipline and law enforcement intervention to the evidence-based policies and practices that enable administrators and school staff to manage student behavior in the halls, gymnasiums, cafeterias and classrooms of the school.

i. Positive intervention policies and practices promote a positive school climate

School discipline—and even exclusionary discipline measures—is one tool in the arsenal of strategies available to educators to create a positive learning environment for all students. However, the excessiveness with which this District employs exclusionary discipline and law enforcement strategies far exceeds the necessity of their use. Not only do the District’s policies facilitate the overuse of zero tolerance discipline and arrests against black children and children

¹²⁵ Baltimore City Schools, for example, reduced its suspensions by 42% over three years, and the rate of drop outs decreased by more than half. Jane Sundius & Faith Connolly, *Rethinking Suspensions to Keep Kids Learning*, Educ. Week, Aug. 2, 2011, <http://www.edweek.org>. See also Sally Pearsall Ericson, *Mobile County schools see 30 percent drop in suspensions; 'changes have been very positive'*, Al.com, March 21, 2014, <http://blog.al.com>; Spencer Whitney, *Alternatives to school suspensions show promise*, S.F. Chronicle, July 7, 2016, <http://www.sfchronicle.com> (noting that Oakland’s restorative justice initiative “help[ed] to reduce the suspensions of African American students by 40 percent in its first year”); *School Discipline Reform (Note)*, Council of State Gov’ts Justice Cent. (2016), available at <http://knowledgecenter.csg.org> (listing state reforms in school discipline).

with disabilities, the District has failed to provide administrators and staff with meaningful alternatives to these punitive measures.

Indeed, there are many and varied evidence-based strategies that educators utilize to address and resolve adolescent misbehavior in school.¹²⁶ Proven strategies include, but are not limited to, Positive Behavior Intervention and Supports, Safe and Responsive Schools, Restorative Justice, and Community Service Programs.¹²⁷ A meaningful implementation of evidence-based interventions and supports would not only address the minor misbehavior comprising the vast majority of discipline in the District, it would also improve the overall climate in District schools and help ensure school safety.¹²⁸ School districts with endemic safety and behavior concerns, like Baltimore City Schools,¹²⁹ have found that these techniques are not only more effective at dealing with student misconduct, they actually *improve* the overall educational results for students.

Nor is it enough to list these interventions in the Code of Conduct. For example, “mediation” and “behavioral counseling” were described as interventions in the District’s 2015-16 Code of Conduct, but the extent of their use was, at best, marginal. To ensure that administrators employ the alternative strategies described herein, the District must mandate the implementation of a clearly described, robust program of positive interventions.¹³⁰

ii. Comprehensive training for District personnel

Policy changes are not enough; individual administrators and teachers must be empowered by adequate education and training to implement policy changes.¹³¹ The implementation of positive behavior interventions and supports necessitates that the individuals who are required to employ the strategies understand the purpose of the interventions and supports, and how to implement them. One reason that implementation of a new system for behavior intervention will fail, is the absence of training and support for school staff:

¹²⁶ See generally Jenni Owen, et al., *Instead of Suspension: Alternative Strategies for Effective School Discipline*, Duke Cent. for Child & Family Policy and Duke Law School (2015).

¹²⁷ *Id.* at 13-18, 27-30. See also U.S. Departments Educ. & Justice, *supra* note 52. (“Successful programs may incorporate a wide range of strategies to reduce misbehavior and maintain a safe learning environment, including conflict resolution, restorative practices, counseling, and structured systems of positive interventions.”).

¹²⁸ *Id.* at 4 (noting that evidence-based alternatives “improve student behavior, maintain school safety, and enhance academic achievement”).

¹²⁹ Jane Sundius & Faith Connolly, *supra* note 125 (“Baltimore’s schools more often use tactics such as in-school suspensions, after-school detention, and mentoring. Violent students are referred to anger-management or conflict-resolution sessions or, in some cases, mental-health counseling.”).

¹³⁰ The failure by the District to require positive interventions was one point on which negotiations between SPLC and the District reached a stalemate. See Appendix D.

¹³¹ Jenni Owen, et al., *supra* note 126, at 19 (“A wealth of research links effective classroom management with improved outcomes, suggesting that providing support and training for teachers could help reduce suspension rates.”); Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, Civil Rights Project at UCLA & Nat’l Educ. Policy Cent.15 (2011) (noting that “[l]eadership training” on managing child misbehavior could improve educational outcomes, as “variations in a leader’s approach to school discipline can make a profound difference in attendance and educational outcomes”).

The implementation of [multi-tiered support systems in schools] involves the use of existing and new skill sets and practices. The implementation of [these systems] will be facilitated by a strong system of professional development and support (technical assistance and coaching) and hindered significantly by the absence of such a system.¹³²

Moreover, training programs on these tools are designed to ensure district-wide consistency in their implementation.¹³³

iii. Limited and clearly defined role of law enforcement

As District SRO, Charles Coachman, noted: law enforcement is his “job.”¹³⁴ This perspective—that his job at the school is no different than his job would be on the street—is confirmed and reiterated in the MOU between the District and the Dothan Police Department which emphasizes that the role of police officers is to enforce the law.¹³⁵ Yet, school districts across the country have recognized that the mere presence of police in school hallways, cafeterias, gymnasiums, and classrooms increases the likelihood that children will be caught up in the criminal justice system for mere adolescent misconduct.¹³⁶

In response to this over-criminalization of children for non-serious, non-violent behavior, Districts have modified the inter-agency agreements to redefine the role of SROs and limit arrests and other police interventions to only those situations where SRO intervention is “absolutely necessary.”¹³⁷ These agreements between school districts, police departments, and other agencies limit SRO’s ability to arrest students for adolescent misconduct that may technically constitute a misdemeanor criminal offense¹³⁸ but has been traditionally dealt with by

¹³² Univ. S. Fla., et al., *MTSS Implementation Components* 12, <http://flpbs.fmhi.usf.edu> (last visited on Aug. 8, 2016) (providing technical support for implementing Florida’s “Multi-Tiered System of Supports”).

¹³³ *Id.* at 2 (noting “high levels of variability” in the implementation of evidence-based behavioral support programs and emphasizing the “primary function” of school district leaders to ensure district-wide consistency in the implementation of these programs).

¹³⁴ *See supra*, Section III(B)(iii)(4).

¹³⁵ *Id.*

¹³⁶ *See, e.g.*, Jenni Owen, et al., *supra* note, 126 at 21 (noting that four years after Denver Public Schools increased the presence of SROs “the number of students referred to the court system by DPS had increased by over 70% [and f]orty-two percent of referrals were for minor offenses such as use of obscene language or disruptive appearance”); Donna St. George, *Judge Steve Teske seeks to keep kids with minor problems out of court*, Wash. Post, Oct. 17, 2011, <https://www.washingtonpost.com> (noting that in Clayton County, Georgia the number of school-related offenses increased “from 46 incidents in 1995 to more than 1,200 in 2003” as a result of placing SROs in the schools, and “[n]inety percent of cases were misdemeanors . . . mostly for the kind of trouble once handled by school principals”).

¹³⁷ Jenni Owen, et al., *supra* note 126, at 21.

¹³⁸ *See supra*, Section III(B)(iii)(4) (“As in most states, most adolescent conduct can be characterized as a crime under Alabama statutes that, for example, criminalize ‘disorderly conduct,’ ‘loitering,’ ‘harassment,’ and ‘criminal trespass.’ Superintendent Ledbetter has acknowledged that, when SROs arrest children on school property, it is often for ‘disorderly conduct.’”).

school administrators.¹³⁹ By limiting SRO involvement to “severe misconduct,” school districts can ensure school safety without the deleterious consequences of inculcating youth into the juvenile justice system for displaying youthful behaviors.¹⁴⁰

It is also imperative that inter-agency agreements ensure that SROs are provided specialized training on how to approach interactions with students.¹⁴¹ As “gatekeepers to the juvenile justice system,” it is critical that SROs be provided with evidence-based information on how to “read” youth, and especially youth with disabilities.¹⁴² Model training programs for SROs would include information to help officers understand the impact of adolescent brain development on behavior as well as tactics for de-escalating youth behavior.¹⁴³

iv. Facilitating the rights of parents and students through meaningful due process proceedings

The District’s current procedures for implementing discipline violate the due process rights of parents and children.¹⁴⁴ Not only are due process protections required by federal law,¹⁴⁵ they are crucial to preventing the inappropriate and discriminatory discipline that has been imposed on the District’s black children and children with disabilities. Parents and students must be provided with a fair opportunity to be heard before exclusionary discipline is issued, and the process for exercising their rights must be clear and accessible to all parents and students.

v. Comprehensive data collection and reporting

The District is in violation of federal law, insofar as the District is failing to collect and report data on law enforcement referrals and arrests.¹⁴⁶ Moreover, there are inconsistencies amongst the discipline data reported to OCR’s CRDC, the Alabama State Department of

¹³⁹ See, e.g., School Board of Broward County, Florida, et al., *Collaborative Agreement on School Discipline* (Nov. 5, 2013), available at <http://safequalityschools.org/resources/entry/broward-agreement-on-school-discipline>. Donna St. George, *supra* note 136 (“[L]eaders settled on a new protocol for four misdemeanors: fights, disorderly conduct, disruption and failure to follow police instructions. Now, instead of making arrests, police issue warnings for first offenders. Repeat trouble means workshops or mediation. Only then may a student land in court.”).

¹⁴⁰ Jenni Owen, et al., *supra* note 126, at 22 (noting that, in Denver, implementation of the inter-agency agreement reduced law enforcement referrals from 1,399 in 2003-04 to 512 referrals in 2011-12, despite a 12% increase in student enrollment over that timeframe).

¹⁴¹ Strategies for Youth, *If Not Now, When?* 4 (Feb. 2013), available at <http://strategiesforyouth.org> (noting that “most police officers who interact frequently with juveniles are not benefiting from the wealth of new scientific research available about adolescent brain development . . . [or] provided information on promising and best practices for interacting with teens that stem from our growing understanding of how teenagers’ brains differ from those of adults”).

¹⁴² *Id.* at 6.

¹⁴³ *Id.* at 21.

¹⁴⁴ The revised 2016-17 Code of Conduct has improved upon those proceedings, but there remain serious problems with the procedures the District has established to ensure that parents and students have a meaningful opportunity to be heard before exclusionary discipline is implemented. See, e.g., Appendix D (Email to Superintendent Ledbetter detailing, among other things, the concerns with the District’s revised due process proceedings).

¹⁴⁵ See *supra*, note 48.

¹⁴⁶ See *supra*, Section III(B)(iii)(1)-(2).

Education, and the data provided in response to SPLC’s open records request. By failing to collect and report comprehensive, thorough data on discipline and school-related arrests, the District obstructs the ability of parents and students to hold District officials accountable for discriminatory discipline and school-related arrests.

V. Requested Relief

To rectify the District’s discriminatory discipline and school-related arrest policies and practices and to implement the evidence-based alternatives discussed in Section IV(B) of this Complaint, the Complainants, on behalf of themselves and all similarly situated African American students and students with disabilities, request the following systemic relief:

(1) Systemic Relief:

- a. Revising the District’s Code of Conduct to:
 - i. Revise all definitions of “offense” categories to describe conduct in clear, measurable terms.
 - ii. Remove non-serious misconduct (e.g. “Profanity or Vulgarity,” “Unauthorized Activities”) from the Class III level of offenses.
 - iii. Eliminate all expulsions of elementary school students, and expulsions of other students for non-violent, non-serious misconduct.
 - iv. Eliminate all out-of-school suspensions and referrals to P.A.S.S. Academy for elementary school students and all students with disabilities.
 - v. Eliminate the use of out-of-school suspension and referrals to P.A.S.S. Academy except as a true last resort for serious misconduct of secondary students.
 - vi. Eliminate all “mandatory” law enforcement referrals and prohibit administrators from calling SROs except in response to the most severe misconduct.
 - vii. Establish a system of evidence-based positive behavior interventions and supports that includes multiple strategies for addressing student misbehavior in the school and includes in-school supports for students whose behavior “repeatedly disrupts their education and/or the education of other students.”¹⁴⁷
 - viii. Require school administrators to rely primarily on positive interventions and supports to address student misconduct.
- b. Reforming the P.A.S.S. Academy program as follows:
 - i. Elimination of the practice of searching students and the use of metal detectors.

¹⁴⁷ U.S. Departments Educ. & Justice, *supra* note 52.

- ii. Eliminate the practice of placing P.A.S.S. students on behavior contracts.
 - iii. Ensure that all students attend daily classes with full-time instruction by a certified teacher that follow state curriculum standards in accordance with the students' grade level.
- c. Establishing a comprehensive professional development and training program for all District personnel that:
 - i. Provides comprehensive annual training and periodic refresher trainings on policy changes regarding discipline and school-related arrests in the District.
 - ii. Provides comprehensive skill-based training on the evidence-based positive intervention and support system adopted by the District.
 - iii. Provide "cultural awareness training" that includes training on "working with a racially and ethnically diverse student population and on the harms of employing or failing to counter racial and ethnic stereotypes."¹⁴⁸
- d. Revising the MOU between the District and the City of Dothan, on behalf of the Dothan Police Department to:
 - i. Clearly define the role and limitations of SROs to prohibit their involvement except when necessitated by severe misconduct.
 - ii. Prohibit SROs or other police officers from arresting children in school for certain misdemeanor criminal offenses, including, but not limited to, "disorderly conduct,"¹⁴⁹ "loitering,"¹⁵⁰ "harassment,"¹⁵¹ and "criminal trespass."¹⁵²
 - iii. Prohibit the appointment of police officers who have a history of racial profiling or excessive force to an SRO position.
 - iv. Prohibit SROs and other police officers from arresting students with disabilities for behavior related to their disability.
 - v. Require annual training of SROs on adolescent development, students' rights, de-escalation tactics that don't involve the use of physical force, and alternatives to arrest and court referrals.
 - vi. Mandate collection and public reporting of annual data regarding law enforcement referrals and school-related arrests, disaggregated by the race, gender, age, and disability status of students.

¹⁴⁸ *Id.*

¹⁴⁹ Ala. Code § 13A-11-7.

¹⁵⁰ Ala. Code § 13A-11-9(a)(5).

¹⁵¹ Ala. Code § 13A-11-8.

¹⁵² Ala. Code § 13A-7-4.

- e. Revised Due Process procedures that:
 - i. Ensure parents and students a meaningful opportunity to be heard whenever the District seeks to impose exclusionary discipline, including in-school suspensions, out-of-school suspensions, referrals to P.A.S.S. Academy, and expulsions.
 - ii. Require administrators to hold a conference with a parent or guardian before issuing punishment, and where the District seeks to remove a child from his or her “home” school, the District should hold a hearing and give parents and students reasonable notice of the hearing. The hearing should be overseen by neutral parties, and parents and students should have an opportunity to present evidence and direct questions to the District’s witnesses.
- f. Revised data collection and reporting procedures that:
 - i. Ensure the District is collecting and reporting all information, including data on law enforcement referrals and school-related arrests, required by the CRDC.
 - ii. Require District personnel to record comprehensive information about every discipline referral or school-related arrest, including “the date, time, and location of the discipline incident; the offense type; whether an incident was reported to law enforcement; demographic and other information related to the perpetrator, victim, witness, referrer, and disciplinarian; and the penalty imposed.”¹⁵³

In addition to systemic relief, the individual Complainants request the following:

(2) Relief for Individual Complainants:

- a. Complainant I.K. requests that:
 - i. The District conduct a functional behavioral assessment and develop a behavioral intervention that primarily focuses on research-based interventions and eliminates all references to law enforcement, discipline and the Code of Conduct;
 - ii. The IEP Team revise I.K.’s IEP to include measurable supports and data collection aimed at bringing his academic achievement to his grade level; and
 - iii. The District provide compensatory educational services to I.K. to make up for the class time missed while he was involuntarily placed in homebound services, where he received only three hours of instruction per week, for all but 36 days of the 2015-16 school year.

¹⁵³ U.S. Departments Educ. & Justice, *supra* note 52.

- b. Complainant I.C. requests that:
 - i. The suspension from February 17, 2016 be removed from his disciplinary record;
 - ii. The District hold a meeting between a District official¹⁵⁴ and I.C.'s parents to discuss his eligibility for entrance into the magnet school program; and
 - iii. The District provide compensatory educational services to I.C. to make up for the class time missed while he was forced by the District to remain home for a month, from February 17, 2016 to March 22, 2016, without a hearing or other meaningful opportunity to be heard, in violation of his due process rights.
- c. Complainant R.M. requests that:
 - i. The District conduct an objective and thorough evaluation of whether he is eligible for special education services;
 - ii. Notwithstanding the results of the evaluation, the District develop a positive behavior intervention plan with R.M.'s mother that primarily focuses on research-based, classroom interventions and limits the ability of teachers and administrators to issue in-school suspension, out-of-school suspension, or P.A.S.S. Academy referrals to measurable, serious misconduct; and
 - iii. The District provide compensatory educational services to R.M., who has a disability and should have been evaluated and placed on an IEP years ago, to make up for the educational services he was not provided while he was in out-of-school suspension and at P.A.S.S. Academy during the 2015-16 school year.
- d. Complainant J.J. requests that:
 - i. The District conduct a third-party review¹⁵⁵ of the determination by the Board, on November 16, 2016, to discipline him and send him to P.A.S.S. Academy for one-and-a-half years, including all evidence presented by J.J. and the District. If the third-party reviewer overturns the Board's findings and decision, the District will correct its records and send those records to the school J.J. is currently attending; and
 - ii. The District remove from J.J.'s school record the following: all discipline referrals J.J. received at P.A.S.S. Academy in 2015-16 and all other discipline referrals for which the District cannot produce any evidence that the incident actually took place, including but not limited to the disciplinary referrals for "fighting"

¹⁵⁴ The District official must be authorized to make decisions regarding magnet school placement.

¹⁵⁵ Complainant J.J. requests the District to provide J.J.'s mother with three proposed third-party reviewers, and allow her to decide which individual will evaluate the Board's decision.

on May 25, 2011, May 11, 2012, and March 21, 2013. Once the discipline removals are complete, the District will send the updated files to the school J.J. is currently attending.

VI. Conclusion

The District's school discipline and arrest policies and practices unlawfully discriminate against black children and children with disabilities in violation of Title VI of the Civil Rights Act of 1964,¹⁵⁶ Section 504 of the Rehabilitation Act of 1973,¹⁵⁷ and Title II of the Americans with Disabilities Act of 1990 ("ADA"). The Complainants respectfully request that the OCR fully investigate these unlawful policies and practices and issue systemic and individual remedies as requested in this Complaint.

Respectfully submitted,



Natalie Lyons
Attorney for I.K., I.C., R.M., and J.J.
The Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104
(334) 956-8255
natalie.lyons@splcenter.org

Nanyamka Shukura
Community Outreach Advocate
The Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104
(334) 956-8470
nanyamka.shukura@splcenter.org

¹⁵⁶ 42 U.S.C. § 2000d, *et seq.*

¹⁵⁷ 29 U.S.C. § 794.

APPENDIX A:

SPLC Presentation at June 6, 2016 Board Meeting

School Push-Out @ Dothan City Schools



Southern Poverty Law Center



► Board Member Packets

► **We Value Your Time!**

► Agenda

- Southern Poverty Law Center & Children’s Rights
- School Push-Out: *What is it? Why does it Matter?*
- Dothan City Schools
- Proposal for *Change*

Today’s Presentation

▶ The Southern Poverty Law Center:

Fighting hate. Teaching Tolerance. Seeking Justice.

▶ Founded in 1971 in Montgomery, Alabama

▶ Children's Rights: advocating for Alabama's most vulnerable kids

- Black students are 34% of Alabama students. Yet, they represent: **57%** of expulsions, **66%** of school arrests and **72%** of children receiving 1 out-of-school suspension. (OCR 2011-12)
- Only **32%** of Alabama students with disabilities graduate with a regular high school diploma. (ALSDE 2008)
- Alabama ranks **47th** in child poverty among states. (U.S. Census Bureau 2014)

Who is SPLC?

Discipline Policies & Practices—that push kids out of classroom, decrease academic achievement and increase likelihood of criminal justice involvement.

“Zero Tolerance” approach:

School districts “responding to fear of increased school violence and disruption, implement harsh measures to reassure the community that action is being taken.” (R. Skiba 2001)

Examples :

- ✗ Predetermined consequences (applied broadly) for certain “offenses”:
Child expelled for squirt gun (Seattle, WA 1998)
- ✗ Harsh treatment for adolescent misbehavior
4th-grader suspended for talking back (St. Louis 2015)
- ✗ Substituting law enforcement for school discipline
Student arrested for not following teacher’s instructions (Dothan 2015)

School Push-Out: *What is it?*

“Despite *more than ten years* of implementation in school districts around the country, there is no convincing documentation that zero tolerance has in any way contributed to school safety or improved student behavior.” (R. Skiba 2001)

- ▶ Harsh punishment doesn’t teach new behavior
- ▶ Suspended students 3x more likely to drop out by sophomore year
- ▶ Students who drop out 8x more likely to be incarcerated

U.S. Departments of Justice and Education: exclusionary discipline can have “**significant, negative educational and long-term outcomes**”:

- ▶ School avoidance; Diminished educational engagement; Decreased academic achievement; Increased behavior problems; Increased likelihood of dropping out; Substance abuse; and Involvement with juvenile justice systems

School Push-Out: *Why does it matter?*

The Role of the Schools and District:

- ▶ *“We realize we are **educators first**.”*

Superintendent Ledbetter, March 14 Board Meeting on School Safety

- ▶ Disciplinary removal of children “may not deprive such pupils of their full right to an equal and adequate education.”

Ala. Code § 16-1-14

- ▶ What steps will the District and Board take to ensure that adolescent behavior is addressed in the school, by the educators, so that *all kids* have an equal opportunity to succeed?

Keeping Kids in School



SCHOOL PUSH-OUT: ***DOTHAN CITY SCHOOLS***

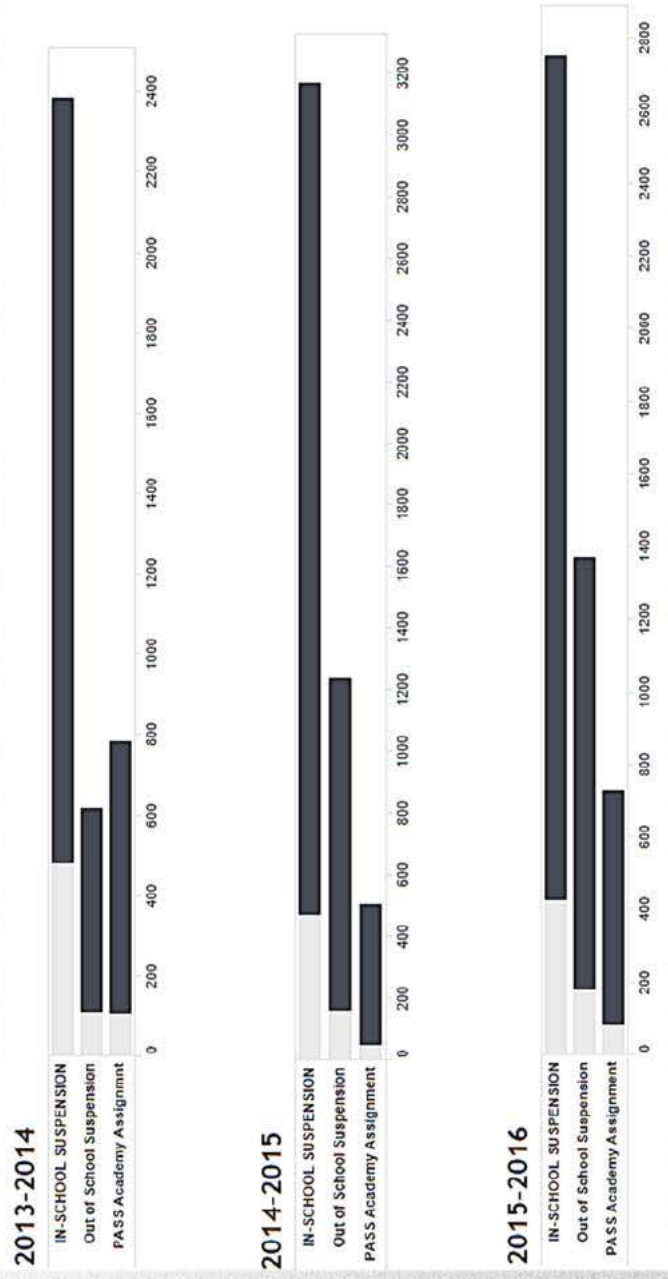
- ➔ Nationally, children of color disciplined at *much higher rates* than white students
- ➔ Racial disparities in exclusionary discipline “cannot be explained away by behavior or the effects of poverty”
 - ▶ There is “economic bias” in discipline—nonetheless a child’s race is an independent factor in overuse of exclusionary discipline
(R. Skiba 2001)
- ➔ U.S. DOJ & DOE: “**Significant and unexplained**” racial **disparities in discipline implicate federal discrimination laws**
 - ▶ On-site investigations—disparities not explained by conduct
 - ▶ Agencies look at every moment in discipline process: from “behavior management in the classroom, to referral to an authority outside the classroom . . . to resolution of the discipline incident.”

Racially Discriminatory Discipline

Last year, African American kids (55% of students) comprised:

- ▶ **85%** in-school suspensions; **87%** out-of-school suspensions; **90%** referrals to P.A.S.S. Academy and **100%** expulsions.

A Trend over the years:



Racial Disparities @ Dothan City Schools

U.S. Dep't of Education (2015): Students with disabilities are “**treated far more harshly** than their peers without disabilities; for example, they are twice as likely to receive an out-of-school suspension (13%) as are students without disabilities (6%).”

Dothan Trend = **Increased discipline of kids with disabilities:**

11% of DCS discipline (2013-14);

14% of DCS discipline (2014-15);

18% of DCS discipline (2015-16).

DOTHAN: out-of-school placement & discipline for behavior related to disability:

- ▶ Children with emotional disabilities received OSS or sent to P.A.S.S. for “defiance,” “disorderly conduct,” or “disruptive demonstration.”
- ▶ Child on “permanent” status at P.A.S.S. for “leaving class/campus”
- ▶ Child “removed” for a “principal’s discretion” offense

Discipline of kids with disabilities

Top “Offenses” of Dothan kids (2013-2016)

Defiance of Authority	28.2%
Leaving Class/Campus without permission	12.6%
Principal discretion	10.4%
Distraction of other students	4.8%
Fighting	4.6%
Truancy	4.2%
Minor Physical Conflict	3.5%
Failure to Follow Specific Instructions	3.5%
General Use of Profanity	2.9%
Profanity/Vulgarity	2.7%

Discipline discretion

- ▶ **Vague**: “Defiance”: “verbal or non-verbal overt refusal to comply with a reasonable directive or order”
- ▶ **Overbroad**: “Leaving class or campus without written permission”
- ▶ **Unknown**: “Principal’s discretion”: “Any other violation which in discretion of the principal may deem reasonable to fall within [Level I, II, or III] after consideration of extenuating circumstances”

Zero Tolerance @ Dothan City Schools

Harsh discipline of elementary students

- Elementary schools accounted for 83% of all discipline incidents
- Over 50% of discipline incidents in elementary schools were for Defiance, Disorderly Conduct and Disobedience

(2014-15 SIR data)

Predominantly black elementary schools

- Faine (95% African American) reported **202 incidents** and Grandview (91% African American) reported **173 incidents** → *more than the total discipline incidents middle and high schools combined*
- At Grandview, 80% of reported incidents were for defiance
- Faine represents one-fourth of all discipline at Dothan City Schools

(2014-15 SIR data)

Discipline of young kids

801 of 894 referrals (90%) to P.A.S.S. were black students

Criminalization of kids at P.A.S.S.

- ▶ Metal Detectors
- ▶ Two designated SROs
- ▶ Kids have to remove clothing when they enter
- ▶ No book bags or personal supplies
- ▶ Minimal teacher assistance
- ▶ No leeway for kids who are late (court papers or medical excuse)

Putting kids in P.A.S.S. for minor misbehavior:

- ▶ 1st-grade girl sent to P.A.S.S. 15 days for “defiance”
- ▶ Kindergarten boy sent to P.A.S.S. 19 days for “disorderly conduct”

No Due Process, even though the average length of time a child will be sent to P.A.S.S. is 15 days.

Referrals to P.A.S.S. Academy

“If ‘Columbine’ happens in my jurisdiction, I want the police at the school protecting the children and **not at the family court over a school yard fight.**”

–Brian Huff, Presiding Judge, Jefferson County Family Court

No data from District on law enforcement referrals and school-related arrests, despite state and federal reporting requirements

Inconsistent & Incomplete data reported for 2011-12

- ▶ Dothan City Schools: reported 1 law enforcement referral to ALSDE *compared to* 102 referrals and zero school-related arrests reported to U.S. Dep’t of Ed
- ▶ Dothan Police: “779 calls for service at Dothan City Schools . . . SRO’s [wrote] 86 offense reports, made a felony arrest for unlawful prescription drug possession and 469 misdemeanor arrests” (Dothan Eagle 2012)

Police are making arrests:

Dothan City Schools, police
address fights at Honeysuckle
Middle School

**Alabama middle school student Tased after
resisting arrest, police say**

**Two Honeysuckle Middle students charged,
including one with assault on teacher**

School Policing



Proposal for *Change*



Can the system work for *all* kids?

► *We think so.*

It's part of Dothan's Strategic Plan: *Every Child-Every Future*

► *Supports*—not punitive measures:

“Foster the health and development of all students through social, emotional, behavioral, and physical supports in collaboration with parents and community partners.”
(Strategic Priority D)

GOAL: Address adolescent behavior AND keep kids in school

Keeping Kids in School

Mobile County schools see 30 percent drop in suspensions; 'changes have been very positive'

MOBILE, Alabama – Nearly a year after LeFlore High School's principal [suspended more than 90 students for uniform violations](#), such incidents have dropped by more than 30 percent throughout the Mobile County school system, according to Terrence Mixon, executive director of student support services.

The changes that led to a 30% drop in suspensions:

- ▶ Suspension is now reserved for “serious infractions” and it is no longer an option for certain minor infractions
- ▶ Disincentive to any suspension of kids 8-years-old and younger
- ▶ Community-based task force created to develop alternatives to suspension
- ▶ Code of Conduct made more clear and easy to read, and informational sessions provided for parents
- ▶ Parents can request school counselor or advocate to attend discipline hearings

Other Districts: Mobile

70% reduction of school referrals to juvenile court:

- ▶ 90% of the cases were misdemeanors “mostly for the kind of trouble once handled by school principals”

“Zero tolerance is zero intelligence” – Judge Teske

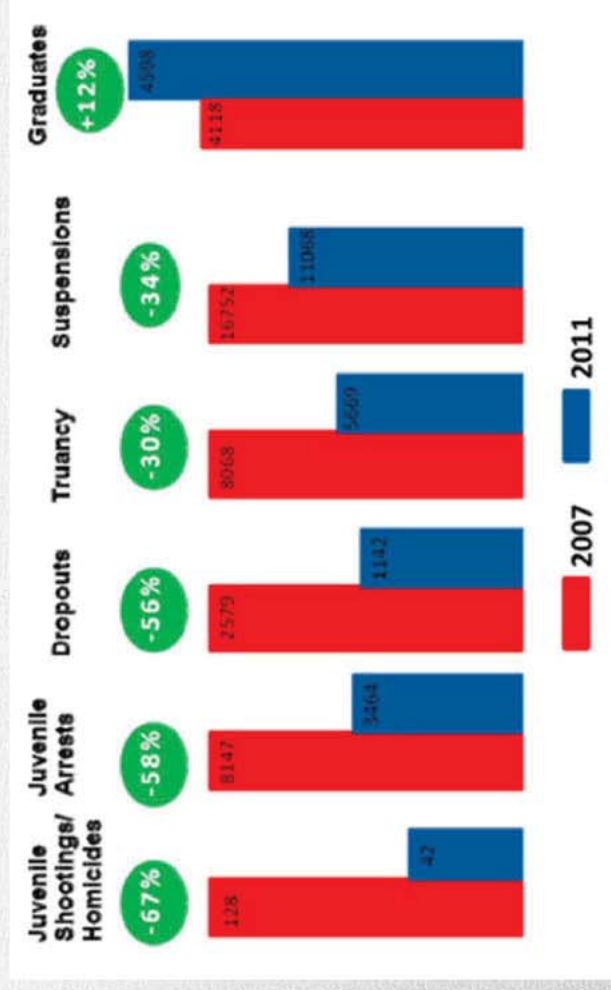
Teske organized stakeholders to develop the “Inter-Agency Governance Agreement on the Handling of School Offenses”

- ▶ *Focused Acts*: “all misdemeanor type delinquent acts except those involving serious bodily harm or drugs”
- ▶ All parties, including police, agreed that “focused acts” (e.g. disorderly conduct, misdemeanor theft, etc.) are “school discipline issues to be handled by school officials.”
- ▶ Juvenile complaints not filed on focused acts unless student had committed at least 3 separate, prior focused acts
- ▶ Alternative responses developed, including school conflict workshops, mediation, and a volunteer restitution program

Other Districts: Clayton County, GA

What They Did:

- ▶ Amended Code of Conduct to limit suspensions to serious offenses.
- ▶ Trained teachers and administrators on effective school discipline and provided them with a menu of alternatives to suspension.
- ▶ Incorporated strategies on building positive relationships between students and staff.



Other Districts: Baltimore

We are asking Dothan City Schools to implement the following reforms:

1. Specific Changes to the Code of Conduct, effective for the 2016-17 school year;
2. Revise due process procedures for parents whose children have been disciplined;
3. Suggest amendments to the Agreement with the City of Dothan regarding the School Resource Officer Program;
4. Accurate collection and reporting of data on law enforcement referrals & school-related arrests; and
5. Train all staff on policy changes.

Proposal for *Change*

The District will submit changes to all Codes of Conduct (Elementary, Secondary and PASS Academy) for a Board vote on July 18 and implementation on January 5, 2017. The revisions will incorporate the following reforms:

1. Eliminate out-of-school suspensions for Level I and II offenses;
2. Eliminate law enforcement referrals for non-serious (Level I and II) offenses;
3. Eliminate “principal’s discretion” offenses and discipline consequences “determined by the school administrator”;
4. Limit referrals to P.A.S.S. Academy solely to Level III infractions and require specific, narrow time limits;
5. Vague offenses should be eliminated or narrowly defined (e.g. “defiance,” “disobedience,” “disorderly conduct,” “obscene”);
6. Overbroad offenses should be eliminated or narrowly defined (e.g. “leaving class or campus,” “intentional or unintentional”);
7. Establish positive interventions (e.g. “conflict resolution,” “peer mediation”) and require their use before the issuance of exclusionary discipline;
8. Eliminate grade limitations on completed work (e.g. “maximum 86% proficiency”) of suspended students; and
9. Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited. (*For example:* the 2015-16 Code of Conduct states that referrals to P.A.S.S. Academy are “a last resort prior to a recommendation for expulsion” but it gives administrators authority to send middle and high school kids to P.A.S.S. for a Level II offense and an indeterminate timeframe).

Code of Conduct Changes

The District will submit the following changes to District discipline procedures (Elementary, Secondary and P.A.S.S. Academy) for a Board vote on July 18 and implementation on January 5, 2017:

1. For out-of-school suspensions and alternative school referrals that are less than 10 days, the school administrator will provide a meaningful opportunity for the student to be heard *before* issuing the discipline, and a conference will be held with the parent;
2. For all expulsions and out-of-school suspensions or referrals to alternative school that exceed 10 days, the District will hold a hearing, conducted by a neutral decision-maker (not a school board lawyer), and a written notice listing the date of the hearing and the charges will be delivered to the parent *before* the hearing;
3. When a student is recommended for expulsion or for out-of-school suspension or referral to alternative school that exceeds 10 days, the school will not send that student home pending the hearing unless he or she poses a threat to students, teachers and/or staff; and
4. The District must provide an appeals process for all disciplinary decisions, and that process must be clearly described in the Code of Conduct.


Due Process Procedures

District will seek written commitment from City of Dothan to amend the Agreement regarding the School Resource Officer Program ("SRO Agreement") by a specified date. The written commitment must be signed by both agencies and submitted to the Board for a vote on July 18, 2016. The revised SRO Agreement should address the following:

As provided in the 2015 SRO Agreement: "Police School Resource Officers are not school disciplinarians." To ensure that this policy is fully implemented in practice, the revised SRO Agreement should:

- Prohibit arrests of students for conduct that amounts to adolescent misbehavior; in particular, prohibiting arrests for the misdemeanor "disorderly conduct." (Ala. Code 13A-11-7).
- Prohibit police officer presence or intervention at every point in the school discipline process, including:
 1. Prohibiting police officers from being present during discussions between students and school staff or administrators that regard student misconduct; and
 2. Prohibiting police officers from transporting "suspended or disruptive" students after they are disciplined.

School Resource Officer Program



The District will submit data collection and reporting procedures and a training schedule to the Board for a vote on July 18 as follows:

- ▶ The data collection and reporting procedures will rectify the District's failure to collect data on every law enforcement referral and school-related arrest. The District will also review its data collection and reporting procedures to ensure it is accurately collecting and reporting all discipline data, as required by state and federal law. Implementation of these procedures will begin on January 5, 2017.

(See, e.g., ALSDE Data Code Manual (2015-16); 34 C.F.R. § 100.6).

- ▶ The training schedule will ensure that all Dothan City School teachers and administrators are comprehensively trained on the new policies and procedures by January 5, 2017.

Data Reporting & Training



These changes will put the Dothan City School District **on the path** to ensuring that:

- 1) ALL kids receive an equal opportunity for academic achievement; and
- 2) The District is meeting its obligations under the joint guidance on school discipline issued by the U.S. Departments of Justice and Education.

We are willing to provide technical assistance as the District works to incorporate these recommended reforms. We will contact Superintendent Ledbetter to discuss how we can most effectively provide that assistance.

SPLC Commitment



QUESTIONS, COMMENTS?

APPENDIX B:

Open Records Request from SPLC to the District

March 2, 2016

Dr. Charles Ledbetter
Superintendent
Dothan City Schools
500 Dusy Street
Dothan, AL 36301-2506

SENT VIA U.S. MAIL AND FAX TO (334) 794-1499

Re: Request for Public Records

Dear Dr. Ledbetter:

We respectfully seek public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Alabama Open Records Act, which provides, in relevant part, that “[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute,” Ala. Code § 36-12-40, and “[e]very public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor . . .” § 36-12-41. *See also Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 862 (Ala. 2004) (“The Open Records Act is remedial and should therefore be liberally construed in favor of the public.”).

We request the following information for the entire Dothan City Schools district (“the district”), and separately for each school within the district,¹ for each of the following school years: 2013-14, 2014-15 and 2015-16. We also request that all data be disaggregated by race/ethnicity, Limited English Proficiency status, and disability status (IDEA and Section 504 eligible), as outlined below. We seek the following:

1. Total number of students;
2. Total number of in-school suspensions;
 - a. Provide the names of any and all Code of Conduct violations on which minors were disciplined with in-school suspension and the number of minors for each named violation;
3. Total number of out-of-school suspensions;
 - a. Provide the names of any and all Code of Conduct violations on which minors were disciplined with out-of-school suspension and the number of minors for each named violation;

¹ Appendix A provides the list of the individual schools in Dothan City School district, as provided on the district’s website. *See* <http://www.dothan.k12.al.us/?PN=Schools2>.

- b. Provide the number of out-of-school suspensions issued for more than ten consecutive days;
4. Total number of expulsions (with and without services);
 - a. Provide the names of any and all Code of Conduct violations on which minors were disciplined with expulsion and the number of minors for each named violation;
5. Total number of referrals to law enforcement;
 - a. Provide the offenses on which minors were referred to law enforcement and the number of minors for each offense;
6. Total number of arrests of students on school property;
 - a. Provide the offenses on which minors were arrested and the number of minors for each offense;
7. Total number of referrals to PASS Academy;
 - a. Provide the names of any and all Code of Conduct violations on which minors were referred to PASS Academy and the number of minors for each named violation; and
8. Total number of students placed on disciplinary probation.

Please be advised that this request is intended to be as broad and inclusive as permitted by law and is intended to apply to all relevant officers, officials, employees, departments, divisions, and any other private agency, person, partnership, corporation or entity acting on behalf of, or with the knowledge of Dothan City Schools. Additionally, please note that this request includes copies of every document related to the matter, regardless of the format in which the information is stored, including information that is stored on a computer.²

Please confirm no later than Monday, March 14, 2016 that the requested information will be provided. If you refuse to provide any of this information, in whole or in part, please advise me in writing of your decision by the same date and include a statement identifying the documentation you intend to withhold, the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld. *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856-857 (Ala. 1989).

We agree to pay a reasonable fee for the actual cost of providing the documents, which includes the cost of preparation, copying, and mailing, but not attorney's fees. Opinion to Honorable Tim Parker Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161. To the extent that the requested documents are available in a computer storage system, we request that they be provided in an electronic storage medium. However, if you anticipate that the fee to provide the requested documents

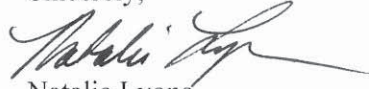
² "[T]he 'public writing' spoken of in . . . § 36-12-40, is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by [the] citizens." *Stone v. Consol. Pub. Co.*, 404 So.2d 678, 681 (Ala. 1981). Anyone "who is appointed to discharge a public duty and receives compensation therefor, in whatever shape, is a 'public officer.'" *Scott v. Culpepper*, 125 So. 643, 643 (Ala. 1930) (citing *Michael v. State ex rel. Welch*, 50 So. 929 (Ala. 1909)).

will exceed \$200, please contact me before fulfilling this request.

If you have any questions or need more information in order to expedite this request, please call me at (334) 306-5020 or via email at natalie.lyons@splcenter.org.

Thank you for your kind assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Natalie Lyons', with a long, sweeping horizontal line extending to the right.

Natalie Lyons
Staff Attorney

Appendix A
Dothan City Schools List

ARC (Accelerated Recovery Center)
Beverlye Magnet School
Carver Magnet School
Cloverdale Elementary School
Dothan High School
Dothan Technology Center
Faine Elementary School
Girard Elementary School
Girard Middle School
Grandview Elementary School
Heard Magnet School
Hidden Lake Elementary School
Highlands Elementary School
Honeysuckle Middle School
Kelly Springs Elementary School
Montana St. Magnet School
Morris Slingluff Elementary School
Northview High School
PASS Academy
Preschool/Head Start Center
Selma Street Elementary School

APPENDIX C:

Technical Assistance Provided by SPLC to the District

APPENDIX C:

Technical Assistance provided by SPLC to the District

June 17, 2016

From: Nanyamka Shukura
To: [Chuck Ledbetter \(cledbetter@dothan.k12.al.us\)](mailto:cledbetter@dothan.k12.al.us)
Cc: ["scfaulk@dothan.k12.al.us"](mailto:scfaulk@dothan.k12.al.us); [Natalie Lyons](#)
Subject: Code of Conduct Recommendations
Date: Friday, June 17, 2016 2:32:44 PM
Attachments: [SPLC Recommendations Dothan Code of Conduct.pdf](#)
[Baltimore City Schools 2014-15-CodeOfConduct.pdf](#)

Dr. Ledbetter,

Per our conversation following the community meeting on June 9th, attached are recommended revisions to the current Dothan City School Code of Conduct. Also attached is a PDF of the Baltimore City Schools code of conduct which I shared with you and Mr. Faulk after the June 9th community meeting.

In our recommended revisions we included changes to areas that are in line with the recommendations we made on June 6 for the Code of Conduct and Due Process procedures. There are a few recommended changes that go beyond our asks, but are based on our thorough review of the Code and what we believe will strengthen the District's commitment to reducing exclusionary discipline. We want to be as helpful as possible and I am happy to chat about any of the revisions recommended in this document.

After the meeting on June 28, I would like to meet to discuss the progress regarding our recommendations to the SRO program, data collection/reporting and training. I haven't received a time for the June 28th meeting but depending on how late it goes we can plan to meet right after or the next morning if you are available.

I hope everything is going well and you are enjoying your vacation. Again if you would like to chat about any of these changes before the meeting on the 28th I am available by phone, 334-425-7575 or email. I look forward to hearing from you soon!

Thanks,

Nanyamka Shukura
Community Advocate
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
334-956-8470
www.splcenter.org

SPLC RECOMMENDATIONS	SUGGESTED CHANGE	PAGE(S)	NOTES
Eliminate out-of-school suspensions for Level I and II offenses;	Remove the language allowing out-of-school suspensions for Level I and Level II offenses.	Pages: 56, 58, 76, 77, 98, 99, 101, 111	
	Remove language allowing automatic recommendations for expulsions for fighting	Pages: 85,110	This is remnant of a “Zero tolerance” type policy with automatic consequences.
	Include time limits for Out of School suspension on Level III offenses.	Pages: 103, 105	This creates clarity, consistency and reduces the likelihood a child will get behind in academics.
	Remove the language allowing out of school suspension after subsequent tardies	Page: 89	If a student misses time from class the appropriate redirection would likely need to be more time in class.
	Remove language allowing out-of-school suspension for unexcused check-ins	Page: 90	Same as above.
	Remove language allowing discretionary law enforcement referrals for Level I and Level II offenses. (e.g. “Any of the above offenses may be reported to the designated law enforcement agency. *May be reported to the Police Department by calling 793-0215 and requesting a police officer.”).	Pages: 57, 65, 83 and 109	This is an extreme consequence for minor misconduct.
Eliminate law enforcement referrals for non-serious (Level I and II) offenses;	Remove asterisk from offenses that do not require reporting under Alabama law, and provide narrow definitions for Level III offenses requiring mandatory law enforcement referral.	Pages: 57, 59-60, 61-64, 77-83, 100-109	State and federal law do not require reporting of offenses to law enforcement unless they relate to drugs, firearms or physical violence against another. See “Required Law Enforcement reporting” below.

	Eliminate “law enforcement unit personnel” from the definition of “School Official”	Page: 20	Federal law (FERPA) counsels against treating School Resource Officers as school officials for purposes of disclosing protected information about the student.
	Eliminate the third paragraph under the “Law Enforcement” header.	Page: 22	This language suggests that law enforcement can be involved in school discipline matters at any offense level.
	Remove language allowing for discretionary law enforcement reporting for SIR and Level III offenses	Pages: 65, 83, 103, and 109	
	Remove language allowing officers to assist in physically restraining students who are not under arrest	Pages: 52, 72, 94	This is involving law enforcement into a disciplinary matter and implicates constitutional protections against uses of force.
	Remove language requiring automatic law enforcement referrals for fighting	Pages: 85,110	This is remnant of a “Zero tolerance” type policy with automatic consequences.
	Remove offenses from the code of conduct titled “any other violation which in the discretion of the principal may deem reasonable to fall within this category after consideration of extenuating circumstances.”	Pages: 56, 57, 60, 61, 76, 77, 79, 80, 85, 98, 99, 100, 101, 105, 106	
Eliminate “principal’s discretion” offenses and discipline consequences “determined by the school administrator” (e.g. “Disobedience).	Remove the language allowing referrals to Pass Academy for Level I and Level II offenses.	Pages: 58, 77	
	Remove language allowing referrals to PASS Academy for unexcused check-ins	Page: 90	
Limit referrals to P.A.S.S. Academy solely to Level III infractions and require specific, narrow time limits.			

	Remove language requiring automatic referrals to PASS Academy for fighting	Page 85	
	Add a time limit to PASS academy placements; removing the word “permanent”	Page: 60, 79	
	Add a time limit on the amount of days for out-of-school suspension at PASS academy for solely Level III offenses	Pages: 103, 105	
Vague offenses should be eliminated or narrowly defined	“Distraction of other students,”	Pages: 56, 76, 98, 99	
	“Failure to follow specific instructions, disobedience,”	Pages: 56, 76, 98, 99	
	“Defiance of School Board employee’s authority,”	Pages: 57, 61, 77, 80, 100, 101, 106	
	“Inciting other students to create a disturbance,”	Pages: 57, 100	
	“Profanity or Vulgarity	Pages 57, 59, 63, 78, 81, 100, 104, 107	this is listed under both Class II and III offenses, except that the Class III offense is directed towards school staff. Seems too minor to be Class III.
	“Unauthorized Activities – Unauthorized activities/organizations – any attempt to use the school day for activities or organizational meetings that are not school-related, school-sponsored, and approved by the school administrator.”	Pages: 59, 78, 82, 104, 109	This is vague and seems too minor to be included under Class III

	“Quarreling, harassment, or intimidation of students” or “Quarreling, minor harassment”	Pages: 56, 76, 98, 99	
	“Minor misbehavior on a school bus”	Pages: 76, 99	
	“Sitting in parked vehicle after arriving at school or returning to vehicle during the school day without permission,”	Pages: 76, 99	
	“Refusal to give name, forgery or intentionally giving false information to authorized person”	Pages: 77, 101	
	“Trespassing – willfully entering or remaining in any school property without being authorized, licensed, or invited, refusing to depart when warned by an authorized person to do so.”	Pages: 57, 63, 82, 100, 108	
	“Inappropriate public display of affection,”	Pages: 56, 76, 98, 99	
Overbroad offenses should be eliminated or narrowly defined	“Inciting or participating in a major student disorder – leading, encouraging or assisting in major disruptions which result in destruction or damage of private or public property or personal injury to participants or others. ““Leaving class or campus without written permission”	Pages: 59, 63, 78, 81, 104, 107 Pages: 57, 100	
	“Leaving class or campus without written permission”	Pages: 57, 100	

Intentionally include alternatives to exclusionary discipline for all offense levels and require their use before exclusionary discipline on Level I and II offenses	Intentionally include alternatives to exclusionary discipline for all offense levels	Pages: 56, 58, 60, 76, 77, 79, 98, 99, 101 103, 105	
Remove language requiring a grade cap of 86% on completed assignments	Remove language requiring a grade cap of 86% on completed assignments	Page 52, 72	If students are allowed to make up their work they should be able to receive the grade they earned.
Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.	Offenses listed under SIR Codes	Pages: 61-64, 80-83, 106-09	These offenses are provided in each Code of Conduct. Some of them are also listed under one of the Levels and some aren't. It is very confusing, therefore, to know what the consequences will be for particular conduct. If this is a coding guide for administrators, the district may want to isolate these pages to a principal's guide/handbook to make the code of conduct more clear.
	Referrals to P.A.S.S. Academy are referred to as "a last resort prior to a recommendation for expulsion." But administrators are given much discretion to refer kids to P.A.S.S. See <i>above for page numbers</i> .	Pages: 53, 72, 94	
Incorporate clear due process procedures in the code of conduct for short and long-term removals. Provide specified information on what a parent and student can expect regarding their rights notice, a hearing, and an opportunity to appeal the decision. Include the timeframes for completion of each	Our Recommendations: <ul style="list-style-type: none"> For out-of-school suspensions and alternative school referrals that are less than 10 days, the school administrator will provide a meaningful opportunity for the student to be heard before issuing the discipline, and a conference 		There are places throughout the Code of Conduct that provide legal boilerplate language informing parents and students of their Due Process rights. However, there is very little information on the process that parents and students are afforded.

<p>step in the process. Establish clear definitions and timelines for disciplinary consequences</p>	<p>will be held with the parent;</p> <ul style="list-style-type: none"> For all expulsions and out-of-school suspensions or referrals to alternative school that exceed 10 days, the District will hold a hearing, conducted by a neutral decision-maker (not a school board lawyer), and a written notice listing the date of the hearing and the charges will be delivered to the parent before the hearing; When a student is recommended for expulsion or for out-of-school suspension or referral to alternative school that exceeds 10 days, the school will not send that student home pending the hearing unless he or she poses a threat to students, teachers and/or staff; and The District must provide an appeals process for all disciplinary decisions, and that process must be clearly described in the Code of Conduct. 		
<p>Alabama law requiring all school suspensions being reported to the DA</p>		<p>Pages: 55, 75, 97</p>	<p>This is not required by law. See “Required Law Enforcement Reporting” below</p>

Other: Clarifying “alternative placement in school during the regular school day” and “alternative placement – regular education”		Pages: 56, 58, 65, 83, 109	It is not clear which refers to placement in another location at the home school and which refers to placement in an out-of-school alternative setting
Other: Discretion to increase the Level of the offense based on repeated acts		Pages: 76, 77	

Required Law Enforcement reporting

Under federal and state statutory laws, an administrator is required to notify law enforcement when a student “violates local board of education policies concerning drugs, alcohol, weapons, physical harm to a person, or threatened physical harm to a person.” *See, e.g., Ala. Code § 16-1-24.1(b)* (incorporating 20 U.S.C. § 4141(b)).

There is no legal requirement to report “all suspensions” to the district attorney, and there is no requirement to report to law enforcement any misconduct that isn’t directly related to drugs, weapons or physical harm to another person.

APPENDIX C:

Technical Assistance provided by SPLC to the District

July 21, 2016

From: Nanyamka Shukura
To: scfaulk@dothan.k12.al.us
Cc: [Jamelia Evans \(jevans@dothan.k12.al.us\)](mailto:Jamelia.Evans@dothan.k12.al.us); [Chuck Ledbetter \(cledbetter@dothan.k12.al.us\)](mailto:Chuck.Ledbetter@dothan.k12.al.us); [Natalie Lyons](#)
Subject: Revisions to the Code of Conduct
Date: Thursday, July 21, 2016 6:45:05 PM
Attachments: [SPLC Recommendations.pdf](#)
[Suspension Appeal Form.pdf](#)

Mr. Faulk,

Thank you for sending the latest revisions to the 2016-2017 Code of Conduct. I want to start by commending you on all the changes you have made. We especially appreciate the elimination of the Willful-Non Compliance category and the elimination of the PASS Academy Code of Conduct.

After reviewing the most recent revisions we still have a few concerns that we have listed in the attached document. Most of our concerns tie directly to the recommendations made during the School Board Presentation on June 6 and the conversation/ working meeting you and I had on July 19.

If there are revisions in the attached document that you will not be able to implement, please let us know, as soon as possible, which revisions will not be included.

Thank you,

Nanyamka Shukura

Community Advocate
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
334-956-8470
www.splcenter.org

Law Enforcement pg. 22
<ul style="list-style-type: none"> We ask that you consider rewording the sentence in the 3rd paragraph under law enforcement to, “on class III offenses that have been marked by an asterisk (*)” instead of “on class III offenses that have been marked”
<ul style="list-style-type: none"> We want it to be clear for everyone reviewing the code of conduct

Due Process Policy pg. 16
<ul style="list-style-type: none"> Please see above suggested language below for the Due Process Policy. If you would prefer to keep the current language, the language listed in the “Student Disciplinary Tribunal Policy” pg. 37 should be the same in the “Due Process Policy” pg. 16
<p>Students will be given an opportunity to present their version of events that led to the suspension hearing, defend their action, present a witness list, and written evidence and/or exhibits to support their case. The parent will be given an opportunity to comment on the incident. Students and parents have the right to have legal counsel at the due process hearing. Instead of legal counsel, the student and parents may request that the school counselor attend the due process hearing to act as an advocate for parents and students, as long as the student or parent provides the school counselor with reasonable advance notice.</p> <p>Students and parents also have the right to have legal counsel or a non-lawyer advocate present during any due process appeals hearing, as long as the student or parent provides the school with reasonable notice in advance of the hearing, including the name of the non-lawyer advocate.</p> <p>Students will be presumed innocent and school administrators will not decide whether to impose a suspension until after the student has received a due process hearing.</p> <p>Once a decision to suspend a student is made, the parent will be provided written notice of the suspension.</p> <p>Language was modified from the Mobile County Public Schools Code of Conduct Jul. 2015-Jul. 2017 pg. 6</p>
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Revise due process procedures for parents whose children have been disciplined;

Appeal Process pg. 16 and 37
<ul style="list-style-type: none"> We ask that language be included on both pages referring to “Appeals” that makes it clear to parents what information the district expects from parents in the appeal.
<ul style="list-style-type: none"> Attached to this email is an Appeal Form used by the Mobile County Public Schools, for your consideration.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> The District must provide an appeals process for all disciplinary decisions, and that process must be clearly described in the Code of Conduct.

Destroying evidence from the “Student Disciplinary Tribunal” pg. 38

<ul style="list-style-type: none"> In the first paragraph pg. 38 there is language about destroying evidence from the “Student Disciplinary Tribunal”
<ul style="list-style-type: none"> These records are a part of a student’s educational file and should not be destroyed at any time
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Revise due process procedures for parents whose children have been disciplined;

<p>“Statement of Responsibility” pg. 46</p>
<ul style="list-style-type: none"> We ask that you consider revising the bolded line in the first paragraph to read, “Violations may result in disciplinary action, please see pages 48-50 for violations and consequences.”
<ul style="list-style-type: none"> As it is currently written, this line suggests that students can be suspended or arrested for any technology violation.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

<p>“Consequence and Procedures” pg. 56, 86, 87</p>
<ul style="list-style-type: none"> Change the bolded language under the “Expulsion” header to “Only the Student Disciplinary Tribunal” has the authority to expel a student from the school system” pg. 56 and 87
<ul style="list-style-type: none"> Change the language directly following the italicized language under the “Suspension” header to “The conference must be held before the suspension” pg. 56 and 86
<ul style="list-style-type: none"> Additionally, we ask that you consider language similar to the following Mobile Code of Conduct language: <i>Students will be presumed innocent and school administrators will not decide whether to impose a suspension until after the student has received a due process hearing.</i>
<p>This relates to our June 6th Board Presentation Recommendations:</p> <ul style="list-style-type: none"> Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited. For out-of-school suspensions and alternative school referrals that are less than 10 days, the school administrator will provide a meaningful opportunity for the student to be heard <i>before</i> issuing the discipline, and a conference will be held with the parent;

<p>Time limits for PASS Academy pg. 57</p>
<ul style="list-style-type: none"> Time limits need to be added under the “PASS Academy” header in the Elementary Code of Conduct
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Limit referrals to P.A.S.S. Academy solely to Level III infractions and require specific, narrow time limits;

<p>Requiring the use of Alternatives, Elementary and Secondary Code of Conduct</p>
<ul style="list-style-type: none"> The language added about the use of interventions/alternatives still does not <i>require</i>

their use.
<ul style="list-style-type: none"> At the 1st offense of every offense category merely says: “Violations will be referred/handled through class and school management plans approved by the principal....” This does not explicitly require the use and documentation of alternatives. Nor is the revised Code clear about what interventions must be in class and school management plans.
<ul style="list-style-type: none"> Also only requiring the use of classroom interventions at the 1st offense level is a disservice to the student and teacher because it doesn’t require the teacher to try different interventions to see what works to redirect the student’s misbehavior.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Establish positive interventions (e.g. “conflict resolution,” “peer mediation”) and require their use before the issuance of exclusionary discipline;

Class I Violations, Elementary and Secondary Code of Conduct
We ask that you consider eliminating the following offenses:
<ul style="list-style-type: none"> 106-Eating or Drinking in an Unauthorized Area pg. 61 and 92 There is a consequence: the student has to throw the item away
<ul style="list-style-type: none"> 108-Possession of radio, tape player, cards... pg. 61 and 92 There is a consequence: the item is confiscated and only released to the parent
<ul style="list-style-type: none"> 130-Gum chewing pg. 62 The offense is only listed in the Elementary Code of Conduct and this is an example of over-penalizing young children. As we noted in our presentation, data from the 2014-2015 school year showed that 83% of all disciplinary incidents reported happened at the Elementary School level
<ul style="list-style-type: none"> 155-Refusal to complete assignments There is a consequence: receiving a zero for the assignment The offense is only listed in the Elementary Code of Conduct. As we noted in our presentation, data from the 2014-2015 school year showed that 83% of all disciplinary incidents reported happened at the Elementary School level

Class II Violations, Elementary and Secondary Code of Conduct
<ul style="list-style-type: none"> 200- Multiple Class I Offenses pg. 64 and 94 During the conversation on July 19 we discussed this offense being a referral to the Problem Solving Team. If a student has committed that many violations in such a short time period, at this time they made need more one on one intervention and redirection.
<ul style="list-style-type: none"> 275- Leaving Class or Campus without permission This category is overbroad. Leaving Class without permission is not as serious as leaving campus without permission. Yet, a child could be given the same punishment for either. This offense is only listed in the Elementary Code of Conduct Leaving Class/Campus without permission was the second-most common “offense” at 12.50% of all discipline. We ask that leaving class without permission be separated from leaving campus without permission, and that leaving class without permission be changed to a Class I

offense.
<ul style="list-style-type: none"> In the Secondary Code of Conduct there is section called “Check Outs” pg. 111. Under the header “Consequences for Leaving Campus or Class without Permission” (Middle and High pg. 111 and 112) We ask that you remove this section from the Secondary Code of Conduct and adopt the same recommendations above, separating the two into Class I and Class II offense.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Overbroad offenses should be eliminated or narrowly defined (e.g. “leaving class or campus,” “intentional or unintentional”) Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

Class III Violations, Elementary and Secondary Code of Conduct
<ul style="list-style-type: none"> 300- Multiple Class II Offenses pg. 69 and 97 Our recommendation said No OSS and PASS Academy referrals for Class I and Class II offenses. This allows the District to punish a child for a Class II offense under Class III consequences, which include OSS and PASS referrals.
<ul style="list-style-type: none"> 304- Profanity and Vulgarity The only difference between the Class II and Class III offense for Profanity and Vulgarity is that one is directed towards a student and the other towards a school board employee. If you look at other offenses in Class III (e.g., “Small Pocket Knife, Assault, Possession of a handgun”) Profanity and Vulgarity does not rise to the level of Class III.
<ul style="list-style-type: none"> 324-Harrassment, the definition is still vague and overbroad with words like annoy and alarm
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Limit referrals to P.A.S.S. Academy solely to Level III infractions and require specific, narrow time limits; Vague offenses should be eliminated or narrowly defined

No Fight Policy, pg. 107
<ul style="list-style-type: none"> The “No Fight Policy” should be removed pg. 107 Language referring to it has been removed; a definition was added to the “fight” offense and the consequence as listed.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

Principal’s Discretion 299 and 399
<ul style="list-style-type: none"> It needs to be made clear that students remain in school pending the hearing, as with the “Student Disciplinary Tribunal Policy” pg. 68, 73, 96, 101
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Eliminate “principal’s discretion” offenses and discipline consequences “determined by the school administrator”;

- Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

APPENDIX D:

July 28, 2016 Email from SPLC to Superintendent Ledbetter

From: [Natalie Lyons](#)
To: [Chuck Ledbetter](#)
Cc: [Nanyamka Shukura](#); [Christine Bischoff](#)
Subject: Following up on today's call
Date: Thursday, July 28, 2016 5:39:09 PM
Attachments: [SPLC Recommendations 07 28 16.pdf](#)

Dr. Ledbetter,

Thank you for speaking with me today. First, I want to reiterate that we recognize and appreciate the efforts you have made to change Dothan's discipline policies and practices. The elimination of "defiance," for example, was a fantastic step in the right direction. And we think it is great that you have scheduled diversity trainings and begun the process of working with Chief Parrish on changes to the SRO Program. However, as pleased as we are by the positive changes, we are steadfast in seeking substantive, immediate change for the parents and children who have been most impacted by the school district's zero tolerance approach to discipline and school-based arrests.

Below, I've provided the list of changes that were provided to you and Mr. Faulk last week—and were not included in the final version of the Code of Conduct. I've also attached the sections from the chart, sent to both of you by Nanyamka last Thursday, which provided detail on [why](#) these changes are important and how they could be made.

A number of the recommendations relate to due process procedures, which are essential to ensuring fairness in discipline proceedings. Other concerns—like the (1) the "multiple offense" categories, (2) the lack of an explicit requirement that administrators use positive interventions, and (3) the vague and overbroad offenses—directly relate to the race disparities we've been discussing with you since we first met in April. As the U.S. Departments of Education and Justice state in their 2014 guidance, these tools provide an opening for "the subjective exercise of unguided discretion in which racial biases or stereotypes may be manifested." We mirrored our recommendations on this guidance, and we believe that the District will not rectify its severe disparities in discipline unless every single recommendation is met—in a meaningful manner.

Finally, though we did not require the District to address these issues, we find it concerning that: (1) the District insists on applying the same punishment to children for offenses like the "use of profanity to school board employees" as applies to violent actions like assault or very serious actions like the possession of an actual firearm or drugs, and (2) despite your words to the contrary, elementary children can still be referred to P.A.S.S. Academy, even for actions like profanity or "unauthorized activities," and for as short a time period as three days.

Your efforts over these last few months have brought us closer to being on the same page about what is right for the Dothan children who are most impacted by the District's zero tolerance discipline. But these areas of impasse confirm to us that we are not close enough.

Thank you, again, and I hope we can continue this discussion in the future months.

Sincerely,

Natalie

Natalie Lyons

Staff Attorney I Southern Poverty Law Center

natalie.lyons@splcenter.org

(334) 956-8255 (direct)

(334) 306-5020 (cell)

**Admitted in AL and CA*

Recommended changes that were not made

Recommendation: Due process procedures.

Change not made: The language regarding due process procedures in the “Student Disciplinary Tribunal Policy” on pg. 37 is not included in the “Due Process Policy” on pg. 16

Recommendation: Appeals process that must be clearly described in the Code of Conduct.

Change not made: The language referring to “Appeals” does not provide parents with the information the district expects from parents in the appeal.

Recommendation: Due process procedures and Appeals process.

Change not made: On p. 38, the actual language about “destroying evidence” was removed, but the District put a time limit on how long it will keep the file, making it possible to get rid of all records from the hearing after the time limit expires.

Recommendation: Eliminate internal conflicts.

Change not made: It is not clear whether the Board or the Tribunal has ultimate authority to expel.

Recommendation: Require positive interventions before the issuance of exclusionary discipline.

Change not made: The language about classroom management plans does not require administrators to use positive interventions, and under Class II in the Secondary Code, a child can be referred for ISS on a first offense.

Recommendation: No out-of-school suspensions for Class II offenses

Change not made: in the Elementary and Secondary Code, multiple Class II offenses can be punished under Class III offenses, which include OSS and PASS referrals.

Recommendation: No out-of-school suspension on Class II offenses.

Change not made: on page 113, “Leaving Class or Campus” can be punished by out-of-school suspension.

Recommendation: Vague and Overbroad offenses.

Change not made: “Leaving Class/Campus” is overbroad. It means that the same punishment can apply to leaving the classroom as when a child leaves the school.

Recommendation: Vague and Overbroad offenses.

Change not made: “Harrassment” is vague and overbroad. It allows the District to punish a child for harassment with “intent to injure” and harassment to “disturb persistently.”

Recommendation: Eliminate internal conflicts.

Change not made: Fighting under Class III and fighting under the “no fight policy” have different consequences.

Recommendation: Due Process procedures.

Change not made: There is no requirement that children who are referred to the tribunal on a “principal’s discretion” offense remain in school until the tribunal, as would be the case for any other offense that is referred to the tribunal.

Email Attachment

SPLC Recommendations 07 28 16

Due Process Policy pg. 16
<ul style="list-style-type: none"> Please see above suggested language below for the Due Process Policy. If you would prefer to keep the current language, the language listed in the “Student Disciplinary Tribunal Policy” pg. 37 should be the same in the “Due Process Policy” pg. 16
<p>Students will be given an opportunity to present their version of events that led to the suspension hearing, defend their action, present a witness list, and written evidence and/or exhibits to support their case. The parent will be given an opportunity to comment on the incident. Students and parents have the right to have legal counsel at the due process hearing. Instead of legal counsel, the student and parents may request that the school counselor attend the due process hearing to act as an advocate for parents and students, as long as the student or parent provides the school counselor with reasonable advance notice.</p> <p>Students and parents also have the right to have legal counsel or a non-lawyer advocate present during any due process appeals hearing, as long as the student or parent provides the school with reasonable notice in advance of the hearing, including the name of the non-lawyer advocate.</p> <p>Students will be presumed innocent and school administrators will not decide whether to impose a suspension until after the student has received a due process hearing.</p> <p>Once a decision to suspend a student is made, the parent will be provided written notice of the suspension.</p> <p>Language was modified from the Mobile County Public Schools Code of Conduct Jul. 2015-Jul. 2017 pg. 6</p>
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Revise due process procedures for parents whose children have been disciplined;

Appeal Process pg. 16 and 37
<ul style="list-style-type: none"> We ask that language be included on both pages referring to “Appeals” that makes it clear to parents what information the district expects from parents in the appeal. Attached to this email is an Appeal Form used by the Mobile County Public Schools, for your consideration.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> The District must provide an appeals process for all disciplinary decisions, and that process must be clearly described in the Code of Conduct.

Destroying evidence from the “Student Disciplinary Tribunal” pg. 38
<ul style="list-style-type: none"> In the first paragraph pg. 38 there is language about destroying evidence from the “Student Disciplinary Tribunal” These records are a part of a student’s educational file and should not be destroyed at any time.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Revise due process procedures for parents whose children have been disciplined;

“Consequence and Procedures” pg. 56, 86, 87
<ul style="list-style-type: none"> Change the bolded language under the “Expulsion” header to “Only the Student Disciplinary Tribunal” has the authority to expel a student from the school system” pg. 56 and 87
<ul style="list-style-type: none"> Change the language directly following the italicized language under the “Suspension” header to “The conference must be held before the suspension” pg. 56 and 86
<ul style="list-style-type: none"> Additionally, we ask that you consider language similar to the following Mobile Code of Conduct language: <i>Students will be presumed innocent and school administrators will not decide whether to impose a suspension until after the student has received a due process hearing.</i>
<p>This relates to our June 6th Board Presentation Recommendations:</p> <ul style="list-style-type: none"> Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited. For out-of-school suspensions and alternative school referrals that are less than 10 days, the school administrator will provide a meaningful opportunity for the student to be heard <i>before</i> issuing the discipline, and a conference will be held with the parent;

Requiring the use of Alternatives, Elementary and Secondary Code of Conduct
<ul style="list-style-type: none"> The language added about the use of interventions/alternatives still does not <i>require</i> their use.
<ul style="list-style-type: none"> At the 1st offense of every offense category merely says: “Violations will be referred/handled through class and school management plans approved by the principal....” This does not explicitly require the use and documentation of alternatives. Nor is the revised Code clear about what interventions must be in class and school management plans.
<ul style="list-style-type: none"> Also only requiring the use of classroom interventions at the 1st offense level is a disservice to the student and teacher because it doesn’t require the teacher to try different interventions to see what works to redirect the student’s misbehavior.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Establish positive interventions (e.g. “conflict resolution,” “peer mediation”) and require their use before the issuance of exclusionary discipline;

Class II Violations, Elementary and Secondary Code of Conduct
<ul style="list-style-type: none"> 200- Multiple Class I Offenses pg. 64 and 94 During the conversation on July 19 we discussed this offense being a referral to the Problem Solving Team. If a student has committed that many violations in such a short time period, at this time they made need more one on one intervention and redirection.
<ul style="list-style-type: none"> 275- Leaving Class or Campus without permission This category is overbroad. Leaving Class without permission is not as serious as leaving campus without permission. Yet, a child could be given the same punishment for either. This offense is only listed in the Elementary Code of Conduct Leaving Class/Campus without permission was the second-most common “offense” at 12.50% of all discipline.

<ul style="list-style-type: none"> We ask that leaving class without permission be separated from leaving campus without permission, and that leaving class without permission be changed to a Class I offense.
<ul style="list-style-type: none"> In the Secondary Code of Conduct there is section called “Check Outs” pg. 111. Under the header “Consequences for Leaving Campus or Class without Permission” (Middle and High pg. 111 and 112) We ask that you remove this section from the Secondary Code of Conduct and adopt the same recommendations above, separating the two into Class I and Class II offense.
<ul style="list-style-type: none"> In the Secondary Code of Conduct alternatives are not re
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Overbroad offenses should be eliminated or narrowly defined (e.g. “leaving class or campus,” “intentional or unintentional”) Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

Class III Violations, Elementary and Secondary Code of Conduct
<ul style="list-style-type: none"> 300- Multiple Class II Offenses pg. 69 and 97 Our recommendation said No OSS and PASS Academy referrals for Class I and Class II offenses. This allows the District to punish a child for a Class II offense under Class III consequences, which include OSS and PASS referrals.
<ul style="list-style-type: none"> 304- Profanity and Vulgarity The only difference between the Class II and Class III offense for Profanity and Vulgarity is that one is directed towards a student and the other towards a school board employee. If you look at other offenses in Class III (e.g., “Small Pocket Knife, Assault, Possession of a handgun”) Profanity and Vulgarity does not rise to the level of Class III.
<ul style="list-style-type: none"> 324-Harrasment, the definition is still vague and overbroad with words like annoy and alarm
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Limit referrals to P.A.S.S. Academy solely to Level III infractions and require specific, narrow time limits; Vague offenses should be eliminated or narrowly defined

No Fight Policy, pg. 107
<ul style="list-style-type: none"> The “No Fight Policy” should be removed pg. 107 Language referring to it has been removed; a definition was added to the “fight” offense and the consequence as listed.
<p>This relates to our June 6th Board Presentation Recommendation:</p> <ul style="list-style-type: none"> Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

Principal’s Discretion 299 and 399
<ul style="list-style-type: none"> It needs to be made clear that students remain in school pending the hearing, as with the “Student Disciplinary Tribunal Policy” pg. 68, 73, 96, 101

This relates to our June 6th Board Presentation Recommendation:

- Eliminate “principal’s discretion” offenses and discipline consequences “determined by the school administrator”;
- Eliminate internal conflicts in Code of Conduct, so that consequences are clear and limited.

APPENDIX E:

2015-2016 Expulsion Data Provided by the District

Infraction	Inf. Date	Disposition	Dispositor	DispositionEnd	Date	G	GR	Age	Ethnicity	SchoolName
S99 Defiance Of Employee's Authority	11/20/2015	LOCAL Expelled	Services	11/23/2015	11/24/2015	Male		7	14 Black/African American	Honeysuckle Middle School
S99 Defiance Of Employee's Authority	11/23/2015	LOCAL Expelled	Services	11/23/2015	11/24/2015	Male		6	12 Black/African American	Honeysuckle Middle School
S99 Other At Principal's Discretion	11/3/2015	LOCAL Expelled	Services	11/4/2015	11/30/2015	Male		11	17 Black/African American	Northview High School
S99 Defiance Of Employee's Authority	1/25/2016	LOCAL Expelled	Services	1/27/2016	2/3/2016	Female		7	13 Black/African American	Beverlye Magnet School
S99 Distraction Of Other Students	3/8/2016	LOCAL Expelled	Services	3/14/2016	3/14/2016	Male		6	11 Black/African American	Honeysuckle Middle School
S99 Late To Class	1/29/2016	LOCAL Expelled	Services	1/29/2016	1/29/2016	Female		12	18 Black/African American	Dothan High School

APPENDIX F:

Agreement between District and City of Dothan Regarding the School Resource Officer (SRO) Program

RESOLUTION NO. _____

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Dothan, Alabama as follows:

Section 1. That the City of Dothan renews the agreement with the Dothan City Board of Education to fund eight full-time police officers assigned as School Resource Officers to the Dothan City Schools, which said agreement follows:

AGREEMENT BETWEEN
THE DOTHAN CITY BOARD OF EDUCATION
AND
THE CITY OF DOTHAN
FOR
THE SCHOOL RESOURCE OFFICER PROGRAM

This agreement is made and entered into this 1th day of July, 2015, by and between THE CITY OF DOTHAN (hereafter referred to as the "City") and THE DOTHAN CITY BOARD OF EDUCATION (hereafter referred to as the "Board of Education").

WITNESSETH:

- A. The City and the Board of Education desire to provide law enforcement and related services to the public schools of the City of Dothan, Alabama, and
- B. A School Resource Officer Program has been proposed for the public school system of Dothan, Alabama, as hereinafter described, and
- C. The City and Board of Education recognize the potential outstanding benefits of the school Resource Officer Program to the citizens of Dothan, Alabama, and particularly to the students of the public school system of the City of Dothan, Alabama and
- D. It is in the best interest of the City and the Board of Education, and citizens of the City of Dothan, Alabama, to establish this program.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the City and the Board of Education hereby agree to the following:

ARTICLE I

A School Resource Officer Program is hereby established in the public school system of the City of Dothan, Alabama.

ARTICLE II

RIGHTS AND DUTIES OF THE POLICE

- A. The Dothan Police Department shall furnish law enforcement officers employed by the Department to serve as Police School Resource Officers assigned to public schools in the City of Dothan School District.
- B. The aforesaid Police School Resource Officers shall each be certified by the State of Alabama as a law enforcement officer.

- C. Police School Resource Officers will instruct specialized short-term programs by invitation of the principal or a member of the faculty.

Any exceptions to the instructional responsibilities outlined above must be mutually agreed upon by the Superintendent or his Designee for Educational Services, the law enforcement agency, and the individual school principal.

- D. Police School Resource Officers shall be certified law enforcement officers, as required by the Police Officer Standards, and Training Commission. Their powers and duties as law enforcement officers shall continue throughout their tenure as a School Resource Officer.

School Resource Officers shall abide by the Board of Education's policies and shall consult with and coordinate activities through the school principal, but shall remain fully responsive to the chain of command of the law enforcement agency in all matters relating to employment.

E. Additional Duties and Responsibilities:

1. Police School Resource Officers will develop expertise in presenting various subjects such as understanding the laws, the police officer, and the police mission.
2. Police School Resource Officers will encourage individual and small group discussions about law enforcement related matters with students, faculty, and parents.
3. Police School Resource Officers are not school disciplinarians. If the principal believes an incident is a law violation, he/she shall contact the Police school Resource Officer who shall then determine whether law enforcement action is appropriate.

Suspended or disruptive students may be transported by Police School Resource Officers, only with the approval of the officer's supervisor.

4. Police School Resource Officers will attend meetings of the schools parents and faculty groups to solicit their support and understanding of the Police School Resource Program and to promote awareness of law enforcement functions.
5. Police School Resource Officers will make themselves available for conferences with students, parents, and faculty members to assist them with problems of a law enforcement or crime prevention nature.
6. Police School Resource Officers will be familiar with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc. They will make referrals when appropriate.
7. Police School Resource Officers and the principal of the school to which they are assigned shall confer when appropriate to develop plans and strategies to prevent and/or minimize dangerous situations on or near the campus or involving students at school-related activities.

Police School Resource Officers are not to be assigned duties regularly assigned to school personnel such as lunchroom or hall duty. Nothing herein, is intended to preclude the officer from being available in areas where interaction with students is expected.

8. Should it become necessary to conduct formal police interviews on a school campus with students or staff, the police agency's personnel shall abide by the Board of Education policy concerning such interviews.
9. Police School Resource Officers shall take law enforcement action as necessary. As soon as practical the Resource Officer will notify the principal of the school to which he is assigned about any law enforcement activity undertaken on that school's campus.

At the principal's request, the Officers will take appropriate law enforcement action against intruders and unwanted guests who appear at school and school-related functions. Whenever practical, the Officer shall advise the principal before requesting additional enforcement assistance on campus.

10. Police School Resource Officers will give assistance to other police officers in matters regarding the Resource Officer's school assignments whenever necessary.
11. To promote citizen awareness of law enforcement efforts, to assure the peaceful operation of school-related programs, and to build support with students, Police School Resource Officers will, whenever possible, participate in or attend school functions.
12. Police School Resource Officers will reaffirm their roles as law enforcement officers by wearing their uniforms unless doing so would be inappropriate for scheduled school activities. The uniform will also be worn at events where it will enhance the image of the Officers and their ability to perform their duties.

F. Regular Duty Hours of School Resource Officer

1. Each School Resource Officer shall be assigned to a specific school on a full-time basis, to be assigned by the school principal in agreement with the Dothan Police Department. During their daily tour of duty, the School Resource Officer may be off campus performing such tasks as may be required by their assignments.
2. Regular working hours may be adjusted on a situational basis with the consent of the School Resource Officer's supervisor. These adjustments should be approved prior to their being required and should be to cover scheduled school related activity requiring the presence of a law enforcement officer.
3. Overtime hours for School Resource Officers that are authorized and approved by the Dothan Police Department shall be paid by the City of Dothan.
4. School Resource Officers who are requested to work overtime hours at their respective campuses by school administration for security, sporting events, and other special programs shall be paid by the School System at a rate of \$27.00 per hour and a minimum of two hours.

ARTICLE III

RIGHTS AND DUTIES OF THE BOARD OF EDUCATION

The Board of Education shall provide to the full-time School Resource Officer of each school the following materials and facilities, which are deemed necessary to the performance of the School Resource Officer's duties:

- A. Access to an air-conditioned and properly lighted private office, which shall contain a telephone, to be used for general business purposes.
- B. A location for files and records which can be properly locked and secured.
- C. A desk with drawers, a chair, a work table, filing cabinet, and office supplies.
- D. Access to a computer and/or secretarial assistance.

ARTICLE IV

FINANCING OF THE SCHOOL RESOURCE OFFICER PROGRAM

The City of Dothan agrees to pay gross annual salaries and fringe benefits for eight of the nine police officers assigned as School Resource Officer with the ninth officer being paid by the Board of Education. This ninth officer will be assigned to Pass Academy.

ARTICLE V

EMPLOYMENT STATUS OF SCHOOL RESOURCE OFFICER

School Resource Officers shall remain employees of the Dothan Police Department and shall not be employees of the Board of Education. The Board of Education and the Police Department acknowledge that the School Resource Officers shall remain responsive to the chain of command of the Dothan Police Department.

ARTICLE VI

APPOINTMENT OF SCHOOL RESOURCE OFFICERS

- A. The Chief of Police will appoint experienced police officers to be assigned as School Resource Officers.
- B. School Resource Officer applicants must meet the following requirements:
 - 1. The applicant must be a volunteer for the position of School Resource Officer.
 - 2. The applicant must be an experienced police officer with a preferred minimum of three (3) years of law enforcement service or equivalent experience.

ARTICLE VII

DISMISSAL OF SCHOOL RESOURCE OFFICER; REPLACEMENT

A. In the event the principal of the school to which the School Resource Officer is assigned feels that the particular School Resource Officer is not effectively performing his or her duties and responsibilities, the principal shall recommend to the Superintendent that the School Resource Officer be removed from the program at his/her school and shall state the reasons therefore in writing. Within a reasonable time after receiving the recommendation from the principal, the Superintendent or his/her designee shall advise the Chief of Police or his/her designee of the principal's request. If the Chief of Police so desires, the Superintendent and Chief of Police or their designees, shall meet with the School Resource Officer to mediate or resolve any problems which may exist.

At such meeting, specified members of the staff of the school to which the School Resource Officer is assigned may be required to be present. If, within a reasonable amount of time after commencement of such mediation, the problem cannot be resolved or mediated or in the event mediation is not sought by the Chief of Police, then the School Resource Officer shall be removed from the Program at the school and a replacement shall be obtained.

B. The Chief of Police may dismiss or reassign a School Resource Officer based upon Department Rules, Regulations and/or General Orders and when it is in the best interest of the citizens of the City of Dothan, Alabama.

C. In the event of resignation, dismissal or reassignment of a School Resource Officer, or in the case of a long term absence by a School Resource Officer, the Chief of Police shall provide a temporary replacement for the School Resource Officer within thirty (30) school days of receiving notice of such absence, dismissal, resignation or reassignment. As soon as practicable, the Chief of Police shall recommend a permanent replacement for the School Resource Officer position.

ARTICLE VIII

TERMINATION OF AGREEMENT

This agreement may be terminated by either party upon ninety (90) days written notice that any other party has failed to substantially perform in accordance with the terms and conditions of the agreement. This agreement may be terminated without cause by either party upon 180 days written notice. Termination of this agreement may only be accomplished as provided herein.

ARTICLE IX

GOOD FAITH

The Board of Education, the City of Dothan, and the Dothan Police Department, their agents, and employees agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the superintendent and the Chief of Police, or their designees.

ARTICLE X
MODIFICATION

This document constitutes the full understanding of the parties and no terms, conditions, understandings or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be charged.

ARTICLE XI
NON-ASSIGNMENT


This agreement, and each and every covenant herein, shall not be capable of assignment unless the express written consent of the Board of Education and the City of Dothan is obtained.

ARTICLE XII
MERGER

This agreement constitutes a final written expression of all the terms of this agreement and is complete and exclusive statement of those terms.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their duly authorized officers.

Mike Schmitz, Mayor
City of Dothan



Dr. Charles Ledbetter, Superintendent
Dothan City Board of Education

Res. No. _____ Renewing the agreement with the Dothan City Board of Education continued.

Section 2. That Mike Schmitz, Mayor of the City of Dothan and in such capacity, is hereby authorized and directed to execute the said agreement for and in the name of the City of Dothan.

PASSED, ADOPTED AND APPROVED on _____.

ATTEST:

City Clerk

Mayor

Associate Commissioner District 1

Associate Commissioner District 2

Associate Commissioner District 3

Associate Commissioner District 4

Associate Commissioner District 5

Associate Commissioner District 6
BOARD OF CITY COMMISSIONERS

APPENDIX G:

Open Records Request to City of Dothan and Communications with Dothan City Attorney

March 2, 2016

Steven L. Parrish
Chief of Police
Dothan Police Department
210 N. Saint Andrews St.
Dothan, AL 36303

SENT VIA U.S. MAIL AND FAX TO (334) 615-3609

Re: Request for Public Records

Dear Chief Parrish:

We respectfully seek public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Alabama Open Records Act, which provides, in relevant part, that “[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute,” Ala. Code § 36-12-40, and “[e]very public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor . . .” § 36-12-41. *See also Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 862 (Ala. 2004) (“The Open Records Act is remedial and should therefore be liberally construed in favor of the public.”).

The following request seeks information law enforcement agencies collect pursuant to the uniform reporting standards issued by the Alabama Criminal Justice Information Center.¹ Ala. Admin. Code r. 265-X-3-.01, *et seq.*

For the years 2013, 2014, 2015, and 2016, please provide the following information, *disaggregated by race, age and gender*, about minors arrested by Dothan Police Department law enforcement officers:

- The number of minors (individuals 19-years old or younger) arrested;
- Any and all criminal offenses on which minors were arrested and the number of minors arrested for each offense;

¹ The requested information does not fall under the exceptions for “investigative reports and related investigative material,” Ala. Code § 12-21-3.1, or for individualized law enforcement records of an identified juvenile. § 12-15-134(a). We are requesting anonymous, aggregate data from arrest reports, not individualized information from internal investigation reports or juvenile files. *Barksdale*, 32 So. 3d at 1271 (distinguishing incident reports from internal investigation reports); *Ex parte Alabama Dep’t of Transp.*, 757 So. 2d 371, 374 (Ala. 1999) (public’s right to records is “broad” and exceptions are “narrow and limited”).

- The number of minors arrested on a felony charge and the number arrested on a misdemeanor charge; and
- The number of minors who were referred to juvenile court, referred to adult court, released to another agency, or released to parents/guardians.

For the years 2013, 2014, 2015, and 2016, please provide the following information, *disaggregated by race, age and gender*, about minors arrested by Dothan law enforcement officers on the property of a school² in the Dothan City School district:

- The number of minors (individuals 19-years old or younger) who were arrested on the property of a school;
- Of the minors arrested on the property of a school:
 - provide the number of minors arrested on a felony charge and the number arrested on a misdemeanor charge;
 - provide any and all criminal offenses on which minors were arrested and the number of minors arrested for each offense; and
 - provide the number of minors who were referred to juvenile court, referred to adult court, released to another agency, or released to parents/guardians.

Please be advised that this request is intended to be as broad and inclusive as permitted by law and is intended to apply to all relevant officers, officials, employees, departments, divisions, and any other private agency, person, partnership, corporation or entity acting on behalf of, or with the knowledge of the Dothan Police Department. Additionally, please note that this request includes copies of every document related to the matter, regardless of the format in which the information is stored, including information that is stored on a computer.³

Please confirm no later than Monday, March 14, 2016 that the requested information will be provided. If you refuse to provide any of this information, in whole or in part, please advise me in writing of your decision by the same date and include a statement identifying the documentation you intend to withhold, the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld. *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856-857 (Ala. 1989).

We agree to pay a reasonable fee for the actual cost of providing the documents, which includes the cost of preparation, copying, and mailing, but not attorney's fees. Opinion to Honorable Tim Parker Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161. To the extent that the requested documents are available in a computer storage system, we request that they be provided in an electronic storage medium. However, if you

² Appendix A provides the list of the individual schools in Dothan City School district, as provided on the district's website. See <http://www.dothan.k12.al.us/?PN=Schools2>.

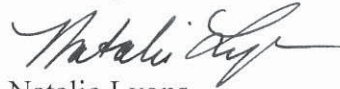
³ "[T]he 'public writing' spoken of in . . . § 36-12-40, is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by [the] citizens." *Stone v. Consol. Pub. Co.*, 404 So.2d 678, 681 (Ala. 1981). Anyone "who is appointed to discharge a public duty and receives compensation therefor, in whatever shape, is a 'public officer.'" *Scott v. Culpepper*, 125 So. 643, 643 (Ala. 1930) (citing *Michael v. State ex rel. Welch*, 50 So. 929 (Ala. 1909)).

anticipate that the fee to provide the requested documents will exceed \$200, please contact me before fulfilling this request.

If you have any questions or need more information in order to expedite this request, please call me at (334) 306-5020 or via email at natalie.lyons@splcenter.org.

Thank you for your kind assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Lyons", with a long horizontal flourish extending to the right.

Natalie Lyons
Staff Attorney

Appendix A
Dothan City Schools List

ARC (Accelerated Recovery Center)
Beverlye Magnet School
Carver Magnet School
Cloverdale Elementary School
Dothan High School
Dothan Technology Center
Faine Elementary School
Girard Elementary School
Girard Middle School
Grandview Elementary School
Heard Magnet School
Hidden Lake Elementary School
Highlands Elementary School
Honeysuckle Middle School
Kelly Springs Elementary School
Montana St. Magnet School
Morris Slingluff Elementary School
Northview High School
PASS Academy
Preschool/Head Start Center
Selma Street Elementary School



THE CITY OF DOTHAN, ALABAMA

126 NORTH ST. ANDREWS • SUITE 313 • P. O. BOX 2128 • DOTHAN, ALABAMA 36302
334-615-3130 • FAX 334-615-3139

LEGAL DEPARTMENT

F. LENTON WHITE
CITY ATTORNEY

D. KEVAN KELLY
ASSISTANT CITY ATTORNEY

JOE E. HERRING, JR.
ASSISTANT CITY ATTORNEY

March 10, 2016

Natalie Lyons
400 Washington Avenue
Montgomery, Alabama 36104

RE: Your Bulk Public Records Request, March 2, 2016

Dear Ms. Lyons:

This is to advise that this office represents the City of Dothan and that pursuant to our representation your above referenced request to the City of Dothan Police Department dated March 2, 2016 has been forwarded to us. It is our pleasure to assist you in whatever way possible according to the State of Alabama's open record laws. Please be advised that FOI Act does not apply to the City of Dothan and there is no requirement under Ala.Code § 36-12-40 to sort or "disaggregate" records. Alabama law requires public records to be made available for inspection, however, there is no requirement that the City of Dothan create documents or reports related to existing records. ?

Your request lists Dothan Police records for four years for arrests of minors; the number of arrests; the offenses for which they were arrested; the number of minors arrested for each offense; the number of arrests for minors for misdemeanors; the number of minors arrested for felonies; the number of cases referred to juvenile court; the number of cases where defendants were released; the number of cases referred to adult court; the number of minor arrests on school property; all school arrests by charge, felony, misdemeanor, nature and court. Your further request records of every type related to any of the above, including anyone acting on behalf of the police department as "broad and inclusive" as possible.

As you may be aware, the public's right under Alabama law to copies of city government records is not without limits. For example, the City of Dothan's procedure for responding to records requests typically involves minimal time and expense with little interference with the duties of its

employees and the normal operation of the City. A preliminary review of the scope of your request, however, indicates there are thousands of documents involved. Any number of these documents could contain personal information of private persons and juveniles which are exempt from disclosure. Review of each document for possible redaction of such information which is not public is necessary prior to allowing public inspection.

This is to further advise that the costs for compliance for requests such as yours have been held by the Alabama Attorney General to be recoupable from the person making the request. Those costs are payable in advance. (See Ala. A.G. Opinions 98-00161; 08-00073).

The City of Dothan's policies relating to public records requests are routinely implemented so as to allow compliance in an expeditious and workable manner while at the same time avoiding civil and/or criminal penalties for improper disclosure of information. The more narrow the request, the fewer documents there are which have to be retrieved and inspected to determine if they are within the request and are in need of redaction. That saves money for the person making the request and reduces the disruption caused to the normal departmental operations.

Based upon the foregoing, the preliminary estimate for the search, retrieval, inspection, handling and copying of the documents requested is \$6,300.00. Please be advised that if you would like to reduce this cost, the scope of your request could be narrowed so as not to be as labor intensive. If you desire to do so, please advise. In the event, however, you desire to pursue this request in its present form, you should also advise that to be your intent. A statement of costs will then be prepared for your pre-payment. In the event actual costs incurred by the City in responding to your request are less than the amount paid, the difference will be refunded.

If you have any questions regarding this or any other matter, please contact me at the above address or telephone.

Yours truly,

A handwritten signature in blue ink, appearing to read 'F. Lenton White', written in a cursive style.

F. Lenton White
City Attorney

FLW/tm

cc: Steve Parrish, Police Chief

April 19, 2016

F. Lenton White
City Attorney
City of Dothan, Alabama
126 North St. Andrews, Suite 313
P.O. Box 2128
Dothan, Alabama 36302

SENT BY U.S. MAIL AND FAX TO (334) 615-3139

Re: SPLC Public Records Request, March 10, 2016

Dear Mr. White,

Thank you for your prompt response to our request.

I believe there may be a more expedient method to produce the requested information than the review of the thousands of documents you cited in your letter on March 10, 2016. The information we requested on March 2, 2016 is recorded on the front page of the Alabama Uniform Arrest Report and should have been inputted into the Dothan Police records management system for reporting to the Alabama Criminal Justice Information Center Commission (ACJIC).¹ See Ala. Code § 41-9-620 (ACJIC provides for a “uniform crime reporting system” throughout the state).

The Dothan Police provided similar aggregate information to the Dothan Eagle in its 2012 article, *Dothan Police: Mentors and protectors*, wherein a Dothan Police sergeant, Benny Baxley, reported that “from August [2011] to February [2012] . . . [school resource officer]’s ha[d] written 86 offense reports, made a felony arrest for unlawful prescription drug possession and 469 misdemeanor arrests.” Like the information provided in 2012, we seek aggregate data from the Dothan Police Department database reporting information about the arrests of juveniles on school property.

¹ On April 15, 2016, I spoke with a statistical analysis coordinator at the Alabama Law Enforcement Agency (ALEA) and confirmed that county and city law enforcement agencies do report information from front page of the uniform arrest report to ALEA.

Nor would this records request for data from the Dothan Police records management system require the agency to generate new information. *See* Ala. Op. Att’y Gen. No. 2007-001 (Oct. 2, 2006) (“This Office has determined that computer records maintained by a public agency are public records that may be supplied to citizens under reasonable conditions.”) (citing Ala. Op. Att’y Gen. No. A.G. No. 88-00047 (November 4, 1987)). Rather, we are seeking information that is electronically stored by the Department, and we understand that the Department may choose the most expedient, cost-efficient method to produce that information.

To expedite your response, I have amended our request to match the data categories located on the front side of the Alabama Uniform Arrest Report (“Arrest Report”), including references to the specific number associated with the category of data, as set out in regulations promulgated by the ACJIC. The request is as follows:

For the years 2013, 2014, 2015, and 2016, please provide the following data gathered and inputted into the Dothan Police Department records management system from arrests of juveniles (individuals 19-years old or younger)² that took place on the property of a school in the Dothan City School district (*see* the Appendix for the names and addresses³ of those schools):

1. the location of the arrest, recorded at number 33 on the Arrest Report;
2. the age of the arrestee, recorded at number 18 on the Arrest Report;
3. the race of the arrestee, recorded at number 8 on the Arrest Report;
4. the sex of the arrestee, recorded at number 7 on the Arrest Report;
5. the charge or charges on which the arrest was made, recorded at numbers 46, 48, 56 and 58 on the Arrest Report;
6. the arrest disposition, recorded at number 66 on the Arrest Report; and
7. the reason for release, if any, recorded at number 67 on the Arrest Report.

See Ala. Admin. Code r. 265-X-3-.05 and Appendix C to r. 265-X-3 (the Alabama Uniform Arrest Report).

Hopefully this response has clarified any concerns that this data request will require a burdensome review of thousands of documents. We are not seeking information from the Arrest Reports themselves; we seek the data collected from those reports and inputted in the Dothan Police records management system.

² Information about the arrestee’s birthdate and age are recorded at numbers 17 and 18, respectively, on the front page of the Alabama Uniform Arrest Report. Ala. Admin. Code r. 265-X-3-.05 and Appendix C to r. 265-X-3 (the Alabama Uniform Arrest Report). If the age of the arrestee is not recorded, please provide information regarding arrests for the following individuals: for arrests occurring in the year 2013, please provide information for arrestees born in 1994 or after; for arrests occurring in the year 2014, please provide information for arrestees born in 1995 or after; for arrests occurring in the year 2015, please provide information for arrestees born in 1996 or after; and for arrests occurring in the year 2016, please provide information for arrestees born in 1997 or after.

³ Information on the location of an arrest is recorded at number 33 on the front page of the Alabama Uniform Arrest Report. *Id.*

I look forward to your response regarding the approximate date or timeframe within which we can expect to receive the requested information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Natalie Lyons', with a long horizontal flourish extending to the right.

Natalie Lyons
Staff Attorney

Appendix A
Dothan City Schools List

ARC (Accelerated Recovery Center)	500 Dusy Street, Dothan, Alabama 36301
Beverlye Magnet School	1025 S. Beverly Rd, Dothan, AL 36301
Carver Magnet School	1001 Webb Road, Dothan, AL 36303
Cloverdale Elementary School	303 Rollins Avenue, Dothan, AL 36301
Dothan High School	1236 South Oates St., Dothan, AL 36301
Dothan Technology Center	3165 Reeves Street, Dothan, AL 36303
Faine Elementary School	1901 Stringer Street, Dothan, AL 36303
Girard Elementary School	522 Girard Avenue, Dothan, AL 36303
Girard Middle School	600 Girard Avenue, Dothan, AL 36303
Grandview Elementary School	900 Sixth Avenue, Dothan, AL 36301
Heard Magnet School	201 Daniel Circle, Dothan, AL 36301
Hidden Lake Elementary School	1475 Prevatt Road, Dothan, AL 36301
Highlands Elementary School	1400 S. Brannon Stand Road, Dothan, AL 36305
Honeysuckle Middle School	1665 Honeysuckle Road, Dothan, AL 36305
Kelly Springs Elementary School	1124 Kelly Springs Road, Dothan, AL 36303
Montana St. Magnet School	1001 Montana Street, Dothan, AL 36303
Morris Slingluff Elementary School	4130 Westgate Parkway, Dothan, AL 36303
Northview High School	3209 Reeves Street, Dothan, AL 36303
PASS Academy	201 East Wilson Street, Dothan, AL 36303
Preschool/Head Start Center	900 West Powell Street, Dothan, AL 36303
Selma Street Elementary School	1501 West Selma Street, Dothan, AL 36301



THE CITY OF DOTHAN, ALABAMA

126 NORTH ST. ANDREWS • SUITE 313 • P. O. BOX 2128 • DOTHAN, ALABAMA 36302
334-615-3130 • FAX 334-615-3139

LEGAL DEPARTMENT

F. LENTON WHITE
CITY ATTORNEY

D. KEVAN KELLY
ASSISTANT CITY ATTORNEY

JOE E. HERRING, JR.
ASSISTANT CITY ATTORNEY

April 21, 2016

Natalie Lyons
400 Washington Avenue
Montgomery, Alabama 36104

**RE: Bulk Records Request of Police Records,
March 2, 2016, Second Response**

Dear Ms. Lyons:

This will confirm that this office is in receipt of your repeated request for juvenile arrest records for the years 2013 to present and has reviewed the authority you have submitted with that request. This will also serve to again confirm that the City of Dothan and its Police Department are committed to assist you and all members of the public with understanding Alabama's laws on the public's right to inspect documents and to make public records available to the fullest extent provided by law.

As stated by letter to you dated March 10, 2016, no duty is imposed by Alabama law for a municipality to either create new documents or to extract and compile selected information from existing public documents to create a new document. Uniform Arrest Reports are stored, however, they are not broken down into any other documents which would reflect the information you have requested. To do so would require the creation of entirely new documents which presently do not exist.

Further, your reliance upon Attorney General King's opinion to Hon. John D. Harrison dated October 2, 2006 as being supportive of your request is misplaced. In fact, the Attorney General clearly states that a state agency "is not required to distribute public records in the manner that a requestor specifies." This opinion therefore runs counter to your contention.

I have also reviewed your assertion that the Dothan Police Department has "provided similar aggregate information to the Dothan Eagle in its 2012 article, Dothan Police: mentors and protectors." This will confirm that no public record request was filed by the Dothan Eagle for the article and that the amount of information furnished was in no way similar to what your request involves. (See enclosed copy referenced Dothan Eagle article).

This office has been ready to assist with your request both times you have made it. I am confident that our responses to this request are in accord with Alabama law and fully expect a Houston County Circuit court to so hold. Since you cannot produce any controlling authority for your objection to our response despite having been given the opportunity to do so and since you have not modified your request, the terms of our original response and its legal basis remain the same as put forward by letter to you dated March 10, 2016. Without any changes either to the scope of your request or to the manner of production requested, any further repeated request will not be considered.

Yours truly,

A handwritten signature in dark ink, appearing to read 'F. Lenton White', written over a horizontal line.

F. Lenton White
City Attorney

FLW/tm
Enclosure

cc: Steve Parrish, Police Chief
Ms. Rhonda Brownstein

Dothan Police: Mentors and protectors

Matt Elofson | Posted: Friday, May 18, 2012 12:00 am

Charles Coachman recalled watching a seventh-grade student stand up at a lunchroom room table and grab his throat.

Coachman, a school resource officer at Honeysuckle Middle School, recently recounted the events around how he saved a student's life several years ago after he spotted the student choking in the cafeteria.

"I happened to spot him, and went over and gave him the Heimlich maneuver. He brought it up, spit it right up," Coachman said. "It was a great feeling knowing I could be there and save him."

Coachman received a life saving award from the Dothan Police Department for his actions in April 2008.

Coachman, who has been the school resource officer at Honeysuckle Middle School for 12 years, said it's important to form mentor-like relationships with the students at the school.

"Being honest and truthful and getting down on their level where they can come and talk to me, not only as a police officer, but on the level as a father figure," Coachman said. "Some of them call me dad now or uncle as I walk the halls that's what keeps me here. I treat them all like they're my children."

Coachman said he recently had a former student come and see him to show him a cell phone video of him winning a Golden Glove through boxing. He said the young man competes with the Dothan Police Athletic League.

"That meant a lot," Coachman said. "It let me know this guy isn't locked up and in jail. He's actually doing something with his life."

Coachman works as one of nine school resource officers for the City of Dothan, who are all supervised by Sgt. Benny Baxley. Baxley said Cpl. Peter Nunez also serves as a school resource officer, but he is currently deployed in the military.



mentors and protectors

Dothan Police serve area schools as resource officers, mentors and protectors.

Baxley said school resource officers started in Dothan through a federal grant after the shooting at Columbine High School in Colorado in 1999, which left a dozen students and a teacher dead. He said each officer has received training through the National Association of School Resource Officers to go along with their regular police officer training.

Baxley said from August to February, officers responded to 779 calls for service at Dothan City Schools. Baxley said the SRO's have written 86 offense reports, made a felony arrest for unlawful prescription drug possession and 469 misdemeanor arrests.

Baxley said they don't have officers at the elementary schools, but they have officers assigned to each elementary school. He said they're required to visit that assigned elementary school at least once a week.

Dothan Police Cpl. Ronnie Anderson, who serves as the SRO at Girard Middle School, said much of the day-to-day work involves interacting with the students at the school.

"I'm pretty much just walking the halls, not so much as a police officer, but as a mentor," Anderson said. "You want that relationship with them. I couldn't tell you how many times they've come to me with information on a knife or weapon."

Anderson said this year alone they've discovered four weapons at the school, which was higher than the normal one per year. He recalled how several years ago a student came running into his office to report another student had a gun in the gym.

"I came real close to shooting him," Anderson said. "He had it out, and I told him to drop it. I drew my firearm, but I never pointed it because he dropped it."

Anderson said he later discovered the gun held by the student was toy. He said the student who pulled the gun had been suspended from another school system when he transferred to Girard.

Anderson, who has served seven years as the school resource officer at Girard Middle School, said he has pulled his gun before while working patrol.

"There's nothing that compares to pulling a gun on a kid," Anderson said. "It's senseless to be so young and be put in that situation."

A few months ago officials suspended a young man after he brought what they thought was a knife, but it turned out to be a "shank."

Anderson said they might not have discovered the weapon had the student not been in trouble for something else. As he searched the student just before charging him with disorderly conduct, he found the weapon, which resulted in a misdemeanor carrying a concealed weapon charge. The student told Anderson he'd brought the weapon for protection after he believed three or four other students were going to "jump" him.

“It’s just crazy stuff,” Anderson said. “From day one you’re here to provide a safe environment and all, but you’re forming that relationship with the students and on top of that you’ve got to form that relationship with the staff and faculty. You can’t be a police officer all the time around the kids. You’ve got to be able to get on their level.”

Dothan Police School Resource Officers

Dothan High School

- Officer Lanice Bonds (5 years as officer)
- Officer Scott Ruddock (12 years as officer)

Northview High School

- Officer Thomas Davis (22 years as officer)

Beverlye Middle School

- Officer Jason Neal (3 years)

Carver Magnet School

- Cpl. RaeMonica Carney (7 years as officer)

Girard Middle School

- Cpl. Ronnie Anderson (21 years as officer)

Honeysuckle Middle School

- Officer Charles Coachman (15 years as officer)

PASS Academy

- Officer Jim Matheny (23 years as officer)

From: Natalie Lyons
To: ["lwhite@dothan.org"](mailto:lwhite@dothan.org)
Cc: [Christine Bischoff](mailto:Christine.Bischoff@dothan.org); ["tmunson@dothan.org"](mailto:tmunson@dothan.org)
Subject: Following-up re: your recent letter
Date: Wednesday, May 11, 2016 2:17:05 PM

Mr. White,

I received your response, dated April 21, 2016, to our amended records request. Thank you, again, for your prompt communications.

I have been trying to reach you by phone for several days. I called twice last week, on Wednesday, May 4 and Friday, May 6, and then again today. My hope has been that you and I could chat, because I think your concerns could be easily mitigated.

In your last letter, you mentioned that "repeated request[s] will not be considered" without a change to the "manner of production requested." That is where I think you and I may be missing each other. We did not intend that our public records request, dated April 19, 2016, for information from the Dothan Police Department records management system ("database") specify the manner in which that data is produced. We were simply amending the original request to seek information from the Police Department's database. And we'd be more than happy come to your office or the Police Department to view and copy the data. We can even bring a mobile copier/printer or an electronic storage device (i.e. flash drive, CD) to retrieve the requested information, if that would be helpful.

We absolutely defer to you and the Police Department on the best manner to receive the information from its database, and as noted, we are willing to do whatever is necessary to retrieve that information in a manner that is most convenient for the Department.

If you would like to discuss this in more detail, I can be reached on my cell phone at (334) 306-5020.

Thank you for your time!

Sincerely,

Natalie

Natalie Lyons
Staff Attorney I Southern Poverty Law Center
natalie.lyons@splcenter.org
(334) 956-8255 (direct)
(334) 306-5020 (cell)

**Admitted in AL and CA*

From: [White, Len](#)
To: [Natalie Lyons](#)
Subject: RE: Following-up re: your recent letter
Date: Wednesday, May 11, 2016 2:38:33 PM

Payment is due in advance as specified.

From: Natalie Lyons [mailto:natalie.lyons@splcenter.org]
Sent: Wednesday, May 11, 2016 2:16 PM
To: White, Len
Cc: Christine Bischoff; Munson, Tracy
Subject: Following-up re: your recent letter

Mr. White,

I received your response, dated April 21, 2016, to our amended records request. Thank you, again, for your prompt communications.

I have been trying to reach you by phone for several days. I called twice last week, on Wednesday, May 4 and Friday, May 6, and then again today. My hope has been that you and I could chat, because I think your concerns could be easily mitigated.

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Thank you for your time!

Sincerely,

Natalie

Natalie Lyons
Staff Attorney I Southern Poverty Law Center
natalie.lyons@splcenter.org

(334) 956-8255 (direct)

(334) 306-5020 (cell)

**Admitted in AL and CA*

From: Natalie Lyons
To: ["White, Len"](#)
Cc: [Christine Bischoff](#)
Subject: RE: Following-up re: your recent letter
Date: Wednesday, May 11, 2016 3:56:24 PM

Mr. White,

Thanks, again, for the quick response! I do understand that payment is due in advance.

I am unclear, however, on why the cost of responding to our request would remain "as specified" in your original letter, dated March 2, 2016. In that letter you stated that the cost would be \$6,300.00, because it required an individual review and possible redaction of "thousands of documents."

Yet, you confirmed in your letter, dated April 21, 2016, that information from the Uniform Arrest Reports is stored in a database. This aligns with information provided to me by the statistical analysis coordinator at ALEA, who indicated that county/city law enforcement agencies maintain "records management systems," for the purpose of reporting information to the state.

If Dothan does maintain a database, where information from Arrest Reports is stored in a searchable format, the production cost should be much less than your original quote. My experience with databases is that they tend to offer much more efficiency in the retrieval and production of information. The goal of our modified records request, to a request for information from the Police Department's database, was to eliminate the need for a review and redaction of actual Arrest Reports.

Could you please clarify? Or, if it would be easier for you, I'd be happy to talk with someone at the Police Department who manages the database about the information we are seeking and the process that would be involved? I could, then, make arrangements with that person and ensure that you are made aware of those arrangements before we proceed. As previously mentioned, we are willing to do whatever we can to minimize the Department's effort in responding to this request.

And, of course, we are happy to pay a reasonable fee for the actual cost of providing the data.

Best,

Natalie

Natalie Lyons
natalie.lyons@splcenter.org
(334) 306-5020 (cell)

From: White, Len [<mailto:LWhite@dothan.org>]
Sent: Wednesday, May 11, 2016 2:39 PM
To: Natalie Lyons
Subject: RE: Following-up re: your recent letter

Payment is due in advance as specified.

From: Natalie Lyons [<mailto:natalie.lyons@splcenter.org>]
Sent: Wednesday, May 11, 2016 2:16 PM
To: White, Len
Cc: Christine Bischoff; Munson, Tracy
Subject: Following-up re: your recent letter

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In your last letter, you mentioned that “repeated request[s] will not be considered” without a change to the “manner of production requested.” That is where I think you and I may be missing each other. We did not intend that our public records request, dated April 19, 2016, for information from the Dothan Police Department records management system (“database”) specify the manner in which that data is produced. We were simply amending the original request to seek information from the Police Department’s database. And we’d be more than happy come to your office or the Police Department to view and copy the data. We can even bring a mobile copier/printer or an electronic storage device (i.e. flash drive, CD) to retrieve the requested information, if that would be helpful.

We absolutely defer to you and the Police Department on the best manner to receive the information from its database, and as noted, we are willing to do whatever is necessary to retrieve that information in a manner that is most convenient for the Department.

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Thank you for your time!

Sincerely,

Natalie

Natalie Lyons
Staff Attorney I Southern Poverty Law Center
natalie.lyons@splcenter.org
(334) 956-8255 (direct)
(334) 306-5020 (cell)

**Admitted in AL and CA*

From: [White, Len](#)
To: [Natalie Lyons](#)
Subject: RE: Following-up re: your recent letter
Date: Wednesday, May 11, 2016 4:01:15 PM

As I said, the terms stand. We cannot release or allow inspection of unredacted juvenile records. This is final.

From: Natalie Lyons [mailto:natalie.lyons@splcenter.org]
Sent: Wednesday, May 11, 2016 3:56 PM
To: White, Len
Cc: Christine Bischoff
Subject: RE: Following-up re: your recent letter

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Best,

Natalie

Natalie Lyons
natalie.lyons@splcenter.org
(334) 306-5020 (cell)

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Subject: RE: Following-up re: your recent letter

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To: White, Len
Cc: Christine Bischoff; Munson, Tracy
Subject: Following-up re: your recent letter

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Natalie

Natalie Lyons
Staff Attorney I Southern Poverty Law Center
natalie.lyons@splcenter.org
(334) 956-8255 (direct)
(334) 306-5020 (cell)

**Admitted in AL and CA*

From: Natalie Lyons
To: ["White, Len"](#)
Cc: [Christine Bischoff](#)
Subject: RE: Following-up re: your recent letter
Date: Thursday, May 12, 2016 5:45:15 PM

Mr. White,

As I understand your most recent email, you are standing by the original "terms" set out in your letter, dated March 2, 2016, requiring Dothan Police Department employees to review and redact potentially "thousands of documents" and SPLC to pay \$6,300.00 in advance of receiving the requested information.

Your statement that those terms are "final" indicates to me that you will not provide any information:

- (1) detailing the reason for which the Police Department will not, or cannot, provide the information from the Department's database, as requested in our amended request, dated April 19, 2016, or
- (2) accounting for the actual costs that the proposed \$6,300.00 fee will reimburse. *See* Opinion to Honorable Bobby M. Jenkins, Etowah County Probate Judge, dated Apr. 8, 2013, A.G. No. 2013-040 (Public entities may "recoup reasonable costs incurred in providing public documents" but the "fee . . . must be reasonable so that the public's right to inspect public documents is not restricted. Actual costs may be charged, so long as those costs are reasonable.").

If my characterization of your position is inaccurate, please let me know immediately. Otherwise, we do not agree that your response is adequate under the Open Records Act and will consider our next steps accordingly.

Regards,

Natalie

Natalie Lyons
Staff Attorney I Southern Poverty Law Center
natalie.lyons@splcenter.org
(334) 956-8255 (direct)
(334) 306-5020 (cell)

**Admitted in AL and CA*

From: White, Len [<mailto:LWhite@dothan.org>]
Sent: Wednesday, May 11, 2016 4:02 PM
To: Natalie Lyons

Subject: RE: Following-up re: your recent letter

As I said, the terms stand. We cannot release or allow inspection of unredacted juvenile records. This is final.

From: Natalie Lyons [<mailto:natalie.lyons@splcenter.org>]
Sent: Wednesday, May 11, 2016 3:56 PM
To: White, Len
Cc: Christine Bischoff
Subject: RE: Following-up re: your recent letter

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Natalie

Natalie Lyons
natalie.lyons@splcenter.org

(334) 306-5020 (cell)

From: White, Len [<mailto:LWhite@dothan.org>]
Sent: Wednesday, May 11, 2016 2:39 PM
To: Natalie Lyons
Subject: RE: Following-up re: your recent letter

Payment is due in advance as specified.

From: Natalie Lyons [<mailto:natalie.lyons@splcenter.org>]
Sent: Wednesday, May 11, 2016 2:16 PM
To: White, Len
Cc: Christine Bischoff; Munson, Tracy
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(334) 306-5020 (cell)

**Admitted in AL and CA*

From: [White, Len](#)
To: [Natalie Lyons](#)
Subject: RE: Following-up re: your recent letter
Date: Friday, May 13, 2016 9:17:24 AM

Mses. Lyons and Bischoff:

Your "characterization" fails to affirm your previously stated wish to have Dothan personnel extract specified categories of information from existing juvenile criminal reports for your inspection. The City can and will, as explained time and time again to you, allow you to inspect and take copies of public records. To be a public document, however, it must exist in the first place. The categories of information you have requested do not exist in such a document. It would have to be extracted and compiled from documents that do exist. Dothan Police Department recordkeeping personnel will testify to this fact.

Your new request is to inspect the documents from which this information would have to be compiled or to sit and watch while Dothan Police Department personnel sift through existing documents to pull out specific information from them for you. These documents, as I have explained, also contain personal information about juveniles which you are not permitted to see. Further, the City of Dothan is subject to criminal penalties for allowing you to see or take copies of these documents without such information first being redacted. Again, as I have previously stated, the City of Dothan is allowed by law to charge for the costs of redacting, retrieving and other costs in providing this information in accordance with the law and would be pleased to do so in this case .

As we have repeatedly stated, we are happy to comply with any request within the terms of the Alabama Open Records Act. We are not, however, able to disregard the law. If you should choose to file legal action to contest this decision, I look forward to the opportunity to further defend and protect the rights of some of the most vulnerable of our citizens both locally and possibly statewide, and to assist the court in that effort.

In the event you should desire to modify your request so as to comport with the Alabama Open Records Act and with the privacy rights of juveniles we will be happy to assist you.

Len White
Dothan City Attorney

Cc: Christine Bischoff

From: Natalie Lyons [mailto:natalie.lyons@splcenter.org]
Sent: Thursday, May 12, 2016 5:44 PM
To: White, Len
Cc: Christine Bischoff
Subject: RE: Following-up re: your recent letter

Mr. White,

As I understand your most recent email, you are standing by the original "terms" set out in your letter, dated March 2, 2016, requiring Dothan Police Department employees to review and redact potentially "thousands of documents" and SPLC to pay \$6,300.00 in advance of receiving the requested information.

Your statement that those terms are "final" indicates to me that you will not provide any information:

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**Admitted in AL and CA*

From: Natalie Lyons
To: ["White, Len"](#)
Cc: [Christine Bischoff](#)
Subject: RE: Following-up re: your recent letter
Date: Wednesday, May 18, 2016 10:59:49 AM
Attachments: [SPLC Response to Dothan PD 4.19.16.pdf](#)

Mr. White,

I do apologize if there has been a misunderstanding. I called you yesterday, and three additional days in May, in the hopes that we might be able to resolve any confusion that has arisen in our written communications. In lieu of a conversation, I will do my best by email to address the areas where I think we are misunderstanding each other.

One point on which I think we may be misunderstanding each other is that we aren't requesting documents, and we aren't asking the Department to produce a new document. We are seeking aggregate, anonymous data, like the information provided by the Department to the Dothan Eagle in the 2012 article previously discussed ([See http://www.dothaneagle.com/news/dothan-police-mentors-and-protectors/article_be27d74b-62fa-52eb-b26f-94a09803ddcd.html](http://www.dothaneagle.com/news/dothan-police-mentors-and-protectors/article_be27d74b-62fa-52eb-b26f-94a09803ddcd.html)). It seems that the Dothan Police Department stores aggregate information about arrests that take place in Dothan, allowing the Department to quickly generate specific, tailored information about those arrests. This understanding is based on several sources, including conversations with ALEA personnel about information reported to them, public crime reports like those listed on the City of Dothan website (<http://www.dothan.org/index.aspx?nid=530>), and the 2012 Dothan Eagle article, where the supervisor of Dothan school resource officers (SROs) provided data about arrests by SROs during a specific timeframe.

So, my question for you is whether there is a database that allows Department employees to conduct searches and produce aggregate information tailored to specific requests?

If the Police Department has a searchable database, and if that database stores the categories of information requested in the attached letter, dated April 19, 2016, we are requesting the actual data stored in the database, not documents. Information stored in a database, whether the information is contained in a document or not, is public information. *See Ala. Op. Att'y Gen. No. 2007-001 (Oct. 2, 2006)*. We aren't asking for or requiring that the Police Department produce any additional documents—rather, we will take the requested data in any form that is efficient for the Department.

Like you, we would never want to divulge personally identifiable information of arrestees, and especially juveniles who have been arrested. We have actually been quite careful to seek information that would not violate the privacy of the arrestees. For example, we didn't ask for the individuals' names, driver's license numbers, social security numbers or any information from "juvenile" section of the arrest report. We requested aggregate, anonymous data (like the data reported by the Department to the Dothan Eagle) that is subject to disclosure under the Open Records Act. *See Ala. Op. Att'y Gen. No. 2015-057 (July 30, 2015)*.

Are you saying that there isn't a searchable database that stores aggregate information about arrests? If so, we can discuss modifying our request so that it is seeking information that actually

exists.

Or, are you saying that, despite the existence of a searchable database that stores aggregate data about arrests, the Department is not required to provide information from that database under the Open Records Act? If so, we are in disagreement.

Hopefully this email provides some clarity from our end. I look forward to hearing from you and resolving this matter.

Sincerely,

Natalie

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Staff Attorney I Southern Poverty Law Center
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(334) 956-8255 (direct)
(334) 306-5020 (cell)

**Admitted in AL and CA*

From: White, Len [mailto:LWhite@dothan.org]
Sent: Friday, May 13, 2016 9:18 AM
To: Natalie Lyons
Subject: RE: Following-up re: your recent letter

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**Admitted in AL and CA*

APPENDIX H:

Alabama State Department of Education Corrective Action Letter

Focused Monitoring Report



Education Agency:

Dothan City

Special Education Coordinator:

Ms. Carol Cunningham

Focused Monitoring Date:

August 24-27, 2015

Special Education Services Team Leader:

Mr. Joe Eiland

Special Education Services Data Analyst:

Mrs. Courtney Utsey

The Continuous Improvement Process is a blend of compliance monitoring and improving outcomes for students. This report is based on findings from the Special Education Coordinator's Questionnaire, Student File Review, Student Services Review, and any other information obtained during the on-site visit.

During the Continuous Improvement Process, a designated number of student files were reviewed to verify compliance with state and federal requirements. Also, during the on-site process, a small number of students were selected to determine student status and related system performance results. Each SSR provides information to determine if there is a match between the individual needs of the student and the services being provided to the student by the agency.

The purpose of this report is to provide feedback to the agency in identifying findings of noncompliance that must be corrected as soon as possible, and in no case later than one year from identification of noncompliance. The report also identifies the corrective action that must be taken by the agency as well as the documentation that must be submitted to the Alabama State Department of Education (ALSDE). In addition, the report informs the agency of the steps the ALSDE will take in order to ensure 100% correction of noncompliance with the statutory requirement(s).

The Focused Monitoring Report will include the following:

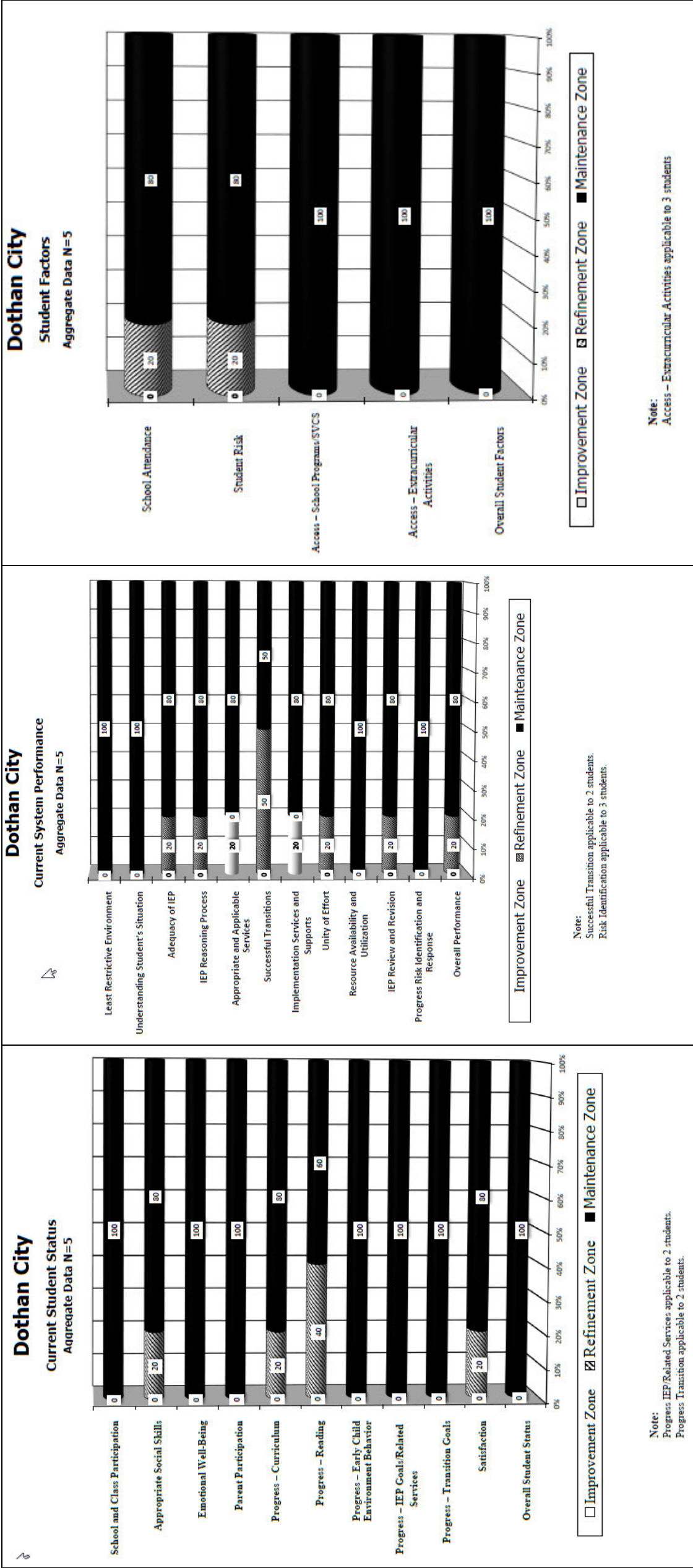
- SSR RESULTS
- FINDINGS OF NONCOMPLIANCE
- IMMEDIATE CORRECTION STRATEGIES
- IMPROVEMENT STRATEGIES
- DOCUMENTATION OF CORRECTIVE ACTION

GLOSSARY

AAA.....	Alabama Alternate Assessment	MD.....	Multiple Disabilities
AAC.....	Alabama Administrative Code	OHI.....	Other Health Impairment
ADRS.....	Alabama Department of Rehabilitation Services	OI.....	Orthopedic Impairment
ALSDE.....	Alabama State Department of Education	OT.....	Occupational Therapy
AMSTI.....	Alabama Math, Science and Technology Initiative	PST.....	Problem Solving Team
ARI.....	Alabama Reading Initiative	PT.....	Physical Therapy
AYP.....	Adequate Yearly Progress	SES.....	Special Education Services
AOD.....	Alabama Occupational Diploma	SETS.....	Special Education Tracking System
CRS.....	Children’s Rehabilitation Services	SLD.....	Specific Learning Disability
CTIP.....	Career Technical Implementation Plan	SLI.....	Speech or Language Impairment
DB.....	Deaf-Blindness	SPDG.....	State Personnel Development Grant
DD.....	Developmental Delay	SSR.....	Student Services Review
ECEC.....	Environmental, Cultural, and/or Economic Concerns Checklist	STI.....	Software Technology Incorporated
ED.....	Emotional Disability	TBI.....	Traumatic Brain Injury
EL.....	Early Intervention	VI.....	Visual Impairment
ESL.....	English as a Second Language	VRS.....	Vocational Rehabilitation Servi
ESY.....	Extended School Year		
HI.....	Hearing Impairment		
ID.....	Intellectual Disability		
IEP.....	Individualized Education Program		
LEA.....	Local Education Agency (to include State-Operated/ State-Supported Agencies)		
LEP.....	Limited English Proficiency		
LRE.....	Least Restrictive Environment		

SSR Results: (Legend—Maintenance Zone=Optimal/Good Conditions; Refinement Zone=Fair/Borderline Conditions; Improvement Zone=Poor/Adverse Conditions)

The graphs depicting the results of the SSR Reviews are based on a selected number of students with disabilities and should not be interpreted to represent the services as a whole for all students with disabilities in the LEA



FINDINGS OF NONCOMPLIANCE	IMMEDIATE CORRECTION STRATEGIES (30-Day items)	IMPROVEMENT STRATEGIES		DOCUMENTATION OF CORRECTIVE ACTION	
		3-Month Training	6-Month Training	3-Month Training	6-Month Training
Protection In Evaluation Procedures					
The Eligibility notice does not include the purpose, time, location, anticipated participants, and inform the parents that they may bring other individuals who have special expertise regarding the child. AAC 290-8-9-.05(b); 34 CFR § 300.322(b)(i)		Provide to the appropriate teachers and administrators information, training, and/or technical assistance on the following: The proper completion of the <i>Notice and Invitation to a Meeting/ Consent for Agency Participation</i> form. (Purpose: Discuss the Need for Additional Data Collection)		Provide to the ALSDE documentation of the information, training, and/or technical assistance provided including, but not limited to, training agenda/outline and participant sign-in forms. The participant sign-in forms should contain columns for the following: name, position, and school/worksite.	
Individualized Education Program (IEP)					
Each student with disabilities does not have an appropriate IEP developed prior to receiving services. AAC 290-8-9-.05(2)(b); 34 CFR § 300.3231(a) Each student's IEP does not include a student profile, detailing how the student's disability affects the student's involvement and progress in the general curriculum or for preschool children as appropriate, how the disability affects the child's involvement. AAC 290-8-9-.05(6)(a); 34 CFR § 300.320(a)(i)(ii) Each student's IEP does not include a statement of measurable annual goals.	Review the IEPs of the students discussed during the on-site visit. Revise IEPs as determined appropriate by the review. Address the components that were not completed as required. Send a copy of the completed/ amended IEP to the parents of the students.	Provide to the appropriate teachers and administrators information, training, and/or technical assistance on the following: The proper completion of the <i>Notice of Proposed Meeting/Consent for</i>		Provide to the ALSDE documentation of the information, training, and/or technical assistance provided including, but not limited to, training agenda/outline and participant sign-in forms. The participant sign-in forms should contain columns for the following:	

FINDINGS OF NONCOMPLIANCE	IMMEDIATE CORRECTION STRATEGIES (30-Day items)	IMPROVEMENT STRATEGIES		DOCUMENTATION OF CORRECTIVE ACTION	
		3-Month Training	6-Month Training	3-Month Training	6-Month Training
<p>AAC 290-8-9-.05(6)(b)(o); 34 CFR § 300.320(a)(i)(ii)</p> <p>Each student's IEP is not written to the general education content standards; or Alabama Extended Standards for students with significant cognitive disabilities who are being assessed with the Alabama Alternate Assessment; or Developmental Standards for preschool children with disabilities. AAC 290-8-9-.05(6)(o)</p> <p>Each student's IEP does not include a statement of the special education and related services and supplementary aids and services or program modifications or supports for school personnel. AAC 290-8-9-.05(6)(c); 34 CFR § 300.320(a)(4)</p> <p>Each student's IEP does not include a statement of how the student's progress toward the annual goal will be measured. AAC 290-8-9-.05(6)(g); 34 CFR § 300.320(a)(3)(i)</p> <p>Each student's IEP does not include documentation of completed progress notes. AAC 290-8-9-.05(6)(g); 34 CFR § 300.320(a)(3)(ii)</p> <p>Each student's IEP does not include, beginning with the IEP in effect when the child is 16, and updated annually thereafter, age-appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and the transition services needed to assist the child in reaching those goals. AAC 290-8-9.05(6)(h); 34 CFR § 300.320(7)(b)(1)(2)</p>	<p>Send the <i>Notice of Proposal or Refusal to Take Action</i> form to the parent with explanation regarding corrective action taken.</p> <p>Document the date sent in the appropriate place on the IEP form.</p> <p>Convene the IEP team to develop a current IEP for the applicable student(s).</p> <p>Develop a progress report reflecting progress toward IEP goals students.</p> <p>Provide a copy of the progress report to the parent.</p> <p>Complete the Persons Responsible form for the students discussed during the onsite visit.</p> <p>Obtain the missing consent form for the students indicated.</p> <p>Complete the <i>Notice of Proposal or Refusal to Take Action</i> form</p>	<p><i>Agency Participation</i> form.</p> <p>The required IEP Team composition.</p> <p>Parental participation in all meetings when decisions are being made regarding identification, evaluation, placement, and provision of services.</p> <p>IEP development that includes completion of the form as well as the process for developing an IEP based on the individual needs of the student. Begin with the profile and continue through the delivery and evaluation of services. Specifically train on all required IEP components.</p> <p>IEP development that includes completion of the form, all required components of the transition page of the</p>	6-Month Training	3-Month Training name, position, and school/worksite.	6-Month Training

FINDINGS OF NONCOMPLIANCE	IMMEDIATE CORRECTION STRATEGIES (30-Day items)	IMPROVEMENT STRATEGIES		DOCUMENTATION OF CORRECTIVE ACTION	
		3-Month Training	6-Month Training	3-Month Training	6-Month Training
<p>The IEP and/or student's file does not document the involvement in each IEP meeting of at least one general education teacher of the child. AAC 290-8-9-.05(3)(b); 34 CFR § 300.321(a)(2)</p> <p>The IEP notice does not include the purpose, time, location, anticipated participants, and inform the parents that they may bring other individuals who have special expertise regarding the child. AAC 290-8-9-.05(b); 34 CFR § 300.322(b)(i)</p> <p>For a student with a disability beginning at age 16, or younger, if appropriate, the notice does not include that a purpose of the meeting will be transition and indicate that the student and other agency representatives are invited. AAC 290-8-9-.05(b); 34 CFR § 300.322(b)(2)(i)(A)</p> <p>The education agency does not provide a copy of the IEP to the parent(s). AAC 290-8-9-.05(f); 34 CFR § 300.322(f)</p> <p>Consent is not obtained prior to the initial provision of special education services. AAC 290-8-9-.04(4)(a); 34 CFR § 300.300(b)(1)</p>	<p>with explanation regarding the missing consent form.</p>	<p>IEP including the requirement and selection of the most appropriate pathway, transition assessments, transition goals, transition services, and appropriate implementation of transition planning as well as the process for developing an IEP based on the individual needs of the student.</p> <p>Procedures for providing a copy of the IEP to parents/students.</p> <p>Progress reports that reflect progress toward IEP goals and are provided to the parent according to the schedule in the IEP.</p> <p>Completion of the notice and consent forms.</p>			

Steps to be taken by the ALSDE to ensure compliance with the Statutory Requirements

1. For each Immediate Correction Strategy (30-day item), the ALSDE will review corrections on line.
2. Sixty calendar days from the date the LEA received notification of the status of the immediate correction strategies, a random sample of updated data will be pulled and reviewed. The education agency must show 100% correction of noncompliance before SES is allowed to clear/close out the focused monitoring process. If the same findings are identified during the review of updated data, the education agency will not show 100% correction of noncompliance and Step 3 will be taken.
3. Twenty calendar days from the last review of new/updated data, a random sample of new/updated data will be pulled and reviewed. The education agency must show 100% correction of noncompliance before SES is allowed to clear/close out the focused monitoring process. If the same findings are identified during the review of updated data, the education agency will not show 100% correction of noncompliance and Step 4 will be taken.
4. Ten calendar days from the last review of new/updated data, a random sample of new/updated data will be pulled and reviewed. The education agency must show 100% correction of noncompliance before SES is allowed to clear/close out the focused monitoring process. If the same findings are identified during the review of updated data, the education agency will not show 100% correction of noncompliance and the ALSDE will determine what enforcement procedures will be considered.

Enforcement Procedures:

1. The Special Education Coordinator will receive a call from the Program Coordinator of Special Education.
2. A letter will be written to the Superintendent outlining the seriousness of correction of noncompliance.
3. A Compliance agreement will be implemented.
4. The Superintendent will be directed to come to the ALSDE and meet with the Director of the Office of Learning Support, Program Coordinator of Special Education, Focused Monitoring Administrator, and the Focused Monitoring Team Leader.
5. Withholding of funds procedures may be implemented.