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Re: Supplement to *Q.B., et al. v. Jefferson Parish Public School System*, Filed with the Office for Civil Rights, January 11, 2012, OCR Reference No. 06121151

To Whom It May Concern:

Please consider this letter a supplement to the January 11, 2012 Complaint filed by the Southern Poverty Law Center on behalf of African American students disproportionately subjected to arrests and seizures in Jefferson Parish Public Schools in violation of Title VI of the Civil Rights Act of 1964.¹ The Complaint was originally filed with the U.S. Department of Education, Office for Civil Rights (“OCR”). By letter dated March 13, 2012, OCR’s Dallas Office informed the Southern Poverty Law Center that it had initiated an investigation into the issue “to determine whether the JPSB [Jefferson Parish School Board] discriminates against Black students based on their race in the administration and application of its discipline policies, in violation of § 100.3(b)(ii).”²

¹ See Exhibit A for a copy of the original Complaint, filed January 11, 2012.

² See Exhibit B for a copy of OCR Dallas’s letter opening an investigation.

However, despite this initial notification that OCR was opening an investigation into the Jefferson Parish Public School System (“JPPSS”), this complaint has been sitting open and unresolved for over three years now. In the meantime, JPPSS continues to operate a school arrest policy that discriminates against African American students. In fact, the problem has only gotten worse: during the 2013-2014 school year, although making up only 41.5% of the student population in Jefferson Parish, African American students comprised a shocking 80% of all school-based arrests and referrals to law enforcement. And as detailed by the stories of the four new Complainants in Section III, *infra*, African American students continue to disproportionately experience the life-long, negative consequences that accompany a school-based arrest.

The intent of this Supplement is to demonstrate that far from being resolved, the problem of discriminatory arrest and law enforcement referral policies persists and has actually worsened in Jefferson Parish, in violation of both Title VI and Title IV of the Civil Rights Act of 1964. Thus, we wish to once again urge OCR, as well as the Department of Justice, to investigate and resolve these claims. Therefore, this Supplement will first give a brief overview of the original Complaint and timeline of events since its filing. Second, it will give an update on the current landscape of Jefferson Parish schools and arrest policies, as well as updated data on the disproportionality of school-based arrests and referrals to law enforcement. Third, it will detail the stories of four new individual Complainants—all African American students who have been subjected to an arrest or seizure from Jefferson Parish schools for minor, nonviolent behavior—and the impact this has had on their lives. Fourth, the Supplement will once again demonstrate how JPPSS’s policy and practice of arresting students for minor misconduct disproportionately impacts African American students in violation of Title VI. And finally, it will demonstrate that JPPSS’s policies and practices also likely amount to intentional discrimination in violation of both Title IV and Title VI of the Civil Rights Act.

Complainants, both old and new, therefore ask OCR and the Department of Justice to: (1) Jointly investigate the arrest policies and practices in Jefferson Parish schools that result in a disproportionate adverse effect on African American students; (2) Compel JPPSS to revise its current school arrest policies and practices; (3) Mandate that JPPSS implement alternative evidence-based programs or initiatives to address disproportionality and reduce law enforcement interaction and arrests on all JPPSS school campuses; (4) Require JPPSS to ensure that discipline is appropriately and equitably applied to African American students; and (5) Monitor and track all police incidents, arrests, and referrals to law enforcement in JPPSS.

I. ORIGINAL COMPLAINT AND TIMELINE

In January 2012, four African American students in Jefferson Parish filed a Complaint to OCR’s Dallas Office on behalf of themselves and all other similarly situated students in JPPSS who have been victimized by JPPSS’s discriminatory district-wide school arrest policies and practices. The Complaint highlighted the fact that JPPSS contracts with local municipalities to assign full and part-time law enforcement officers to Jefferson Parish middle and high schools. The officers, acting as agents of the school district, have been given the unfettered authority to stop, frisk, detain, question, search, and arrest schoolchildren on and off school grounds while they are on duty, without clear guidelines and limitations on what constitutes a school disciplinary issue versus those

matters that need to be handled by the police and juvenile court system. Illustrating the lack of guidelines and limitations, the original Complainants were arrested for such minor offenses as having a cell phone on school premises, walking in the hallway without a pass, engaging in play fighting and horseplay, and using profanity against school officials. Clearly, JPPSS has endorsed a district-wide policy of relying on police officers on campus to enforce routine matters of school discipline through the juvenile justice system.

The Complaint alleged that the above district-wide school arrest and law enforcement policies and practices violate Title VI of the Civil Rights Act of 1964 because they have a discriminatory impact on African American students. During the 2009-2010 and 2010-2011 school years, although African American students made up only 46% of the student population in Jefferson Parish, they comprised approximately 76% of all school-based arrests and seizures. Additionally, the original Complainants were subjected to racially charged statements and slurs verbalized by school police during the course of arrests or seizures on campus, evidencing policies and practices with discriminatory intent.

As demonstrated by the four Complainants, African American students in Jefferson Parish are disproportionately subjected to the life-changing, negative effects that accompany an arrest. Students are placed in handcuffs and led out of the school in front of their teachers and peers, transported in a police vehicle, and booked at the local juvenile detention center, or in the case of students aged 17 years or older, the adult correctional facility. One of the original complainants had his arm broken by police when he was being roughly handcuffed at school. In addition to facing criminal charges, most students receive additional disciplinary consequences for the same underlying incident when they return to school. Missed instructional time from an arrest or suspension causes students to fall further behind in their studies; grades undoubtedly suffer and students are more likely to drop out of school.

However, despite the overwhelming evidence establishing a prima facie case that JPPSS's arrest policies violate Title VI, this Complaint has been pending for over three years with little to no movement. And although OCR's Dallas Office initially opened an investigation, no findings or decisions have been publicly made since that time. In the meantime, the problem of racially discriminatory school-based arrests in JPPSS is getting worse. Last school year, an alarming 80% of the students arrested in JPPSS were African American. And, as set forth in detail below, the disproportionate arrest of African American students from Jefferson Parish schools continues to have devastating, long-lasting impact on real students.

Significantly, while this complaint has been pending, the U.S. Department of Education ("DOE") and the Department of Justice ("DOJ") have expressed their ongoing commitment to ending the problem of racial discrimination in the administration of school discipline. In January 2014, DOJ and DOE issued a comprehensive guidance package in response to overwhelming data demonstrating the vast disparities in the discipline of African American students and other students of color in schools nationwide. This data showed that:

African-American students without disabilities are more than three times as likely as their white peers without disabilities to be expelled or suspended. Although African-American students represent 15% of students in the [Civil Rights Data Collection], they make up 35% of students suspended once, 44% of those suspended more than once, and 36% of students expelled. Further, over 50% of students who were

involved in school-related arrests or referred to law enforcement are Hispanic or African-American.³

In response to the data showing the pervasive and national nature of this problem, DOE and DOJ issued a joint Dear Colleague Letter to assist public schools in “meeting their obligations under federal law to administer student discipline without discriminating on the basis of race, color, or national origin.”⁴ While designating the issue as a priority area for both agencies, the letter also reaffirmed a mutual commitment to investigating complaints of racial discrimination in school discipline policies and practices⁵ and set forth the agencies’ investigative process and legal framework for assessing these complaints under Titles IV and VI of the Civil Rights Act of 1964.⁶

Southern Poverty Law Center’s January 2012 Complaint filed against JPPSS fits squarely within this stated priority area for the DOE and DOJ, yet the Complaint continues to sit open indefinitely. Thus, in light of the urgent nature of this problem, the inaction taken over the last three years by OCR’s Dallas Office, and DOE and DOJ’s stated commitment to the issue of investigating and ending discrimination in school discipline, Complainants bring this matter directly to OCR’s national office, as well as the U.S. Department of Justice,⁷ and ask them to take action to remedy this ongoing violation of federal law immediately.

II. THREE YEARS LATER: THE ONGOING PROBLEM OF SCHOOL-BASED ARRESTS IN JEFFERSON PARISH SCHOOLS

Three years after the filing of the original Complaint, the problem in Jefferson Parish not only continues, but the disproportionate arrest rates of African American students are actually getting worse. JPPSS continues to contract with local law enforcement agencies to put police officers on school campuses without any guidelines or policies delineating their roles and responsibilities in the schools, with dire consequences. First, Jefferson Parish has the highest numbers of school-based arrests and referrals to law enforcement in Louisiana. Second, the vast

³ U.S. Dep’t of Justice, Civil Rights Division & U.S. Dep’t of Education, Office for Civil Rights, “Dear Colleague Letter: Nondiscriminatory Administration of School Discipline,” January 8, 2014, p. 3 (hereinafter, “Dear Colleague Letter”), available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

⁴ *Id.* at 1.

⁵ *Id.* at 2 (“The Departments initiate investigations of student discipline policies and practices at particular schools based on complaints the Departments receive from students, parents, community members, and others about possible racial discrimination in student discipline.”).

⁶ *Id.* at 6-13.

⁷ The Department of Justice’s Civil Rights Division is responsible for enforcing Title IV of the Civil Rights Act of 1964. *See* Dear Colleague Letter, *supra* note 3, at 2. DOJ also has the ultimate responsibility for coordinating and ensuring enforcement of Title VI. *See* Title VI Legal Manual, 108 (2001) (“While each Federal agency extending Federal financial assistance has primary responsibility for implementing Title VI with respect to recipients, overall coordination in identifying legal and operational standards, and ensuring consistent application and enforcement, rests with the Civil Rights Division of the Department of Justice.”).

majority of the arrests and referrals to law enforcement in Jefferson Parish are for minor student misconduct that should be handled in the schools. Third, even more troubling, JPPSS’s arrest policies and practices are impacting African American students at much higher rates than students of other races. This racial disparity is particularly evident when looking at the broad and discretionary, catch-all type offenses that are used to criminalize minor student misbehavior, as well as when looking at the racial composition of the Jefferson Parish schools with the most arrests, which tend to be predominately African American.

A. JPPSS’s School Arrest Policies and Placement of Police on Campus

Jefferson Parish uniquely stands out in Louisiana as the school district with, far and away, the most school-based arrests and law enforcement referrals in the State. Table 1 below depicts the number of students with school-based arrests and the number of students referred to law enforcement for several of the largest school districts in Louisiana, according to the most recent data available from the Civil Rights Data Collection (“CRDC”).

Table 1: School-Based Arrest Data for the Largest School Districts in Louisiana (2011-2012)⁸

School District	Student Population	Students with School-Based Arrests ⁹	Students Referred to Law Enforcement ¹⁰
Jefferson Parish	45,914	706	923
East Baton Rouge Parish	42,985	0	170
Caddo Parish	42,038	101	181
St. Tammany Parish	37,281	0	6
Calcasieu Parish	32,931	2	107
Lafayette Parish	30,577	0	397

⁸ This data is compiled from the U.S. Department of Education, Civil Rights Data Collection (“CRDC”), available at: <http://ocrdata.ed.gov/DistrictSchoolSearch#districtSearch>. The CRDC is a mandatory data collection authorized under Title VI, Title IX, and Section 504, as well as the regulations implementing those statutes. It has collected data on key education and civil rights issues in U.S. public schools since 1968.

⁹ The CRDC defines a “school-related arrest” as “an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official.” U.S. Department of Education, Civil Rights Data Collection, CRDC Data Definitions, CRDC 2011-12 Definitions, available at: <http://ocrdata.ed.gov/DataDefinitions>.

¹⁰ The CRDC defines a “referral to law enforcement” as “an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.” U.S. Department of Education, Civil Rights Data Collection, CRDC Data Definitions, CRDC 2011-12 Definitions, available at: <http://ocrdata.ed.gov/DataDefinitions>.

Table 1 illustrates that Jefferson Parish not only had the most school-based arrests and referrals to law enforcement during the 2011-2012 school year with 706 and 923 respectively, but also that these numbers were *significantly* higher than school districts of a similar size. For example, there were no school-based arrests in East Baton Rouge Parish—the second largest school district in the state—and only 170 total referrals to law enforcement. From this substantial difference in the number of school-based arrests and referrals, one can reasonably conclude that JPPSS has policies in place that directly result in a high number of school-based arrests.

As set forth in the original Complaint, JPPSS contracts with local municipalities to place full and part-time police officers on several of its campuses. Furthermore, JPPSS has endorsed a policy where schools, including those who do not have police on campus, regularly call the police on students at school. However, JPPSS has failed to put in place clear, centralized policies delineating when students will be subject to an arrest for misconduct that does not involve weapons, drugs, or serious bodily injury, and when such conduct should be handled by school officials without police involvement. This failure has caused confusion and an overreliance on police officers and the court system as a method of disciplining students for misbehavior.

JPPSS has contracted with the Jefferson Parish Sheriff’s Office (“JPSO”) in a Cooperative Endeavor Agreement to place police officers, referred to as Police Officers on Campus (“POCs”), at several Jefferson Parish middle and high schools.¹¹ This one-year, estimated \$600,000 contract provides for the placement of ten full-time police officers at nine schools across Jefferson Parish.¹² The Agreement provides for the salaries, wages, overtime, hours, and uniforms for all POCs at JPPSS schools. Thus, through this cooperative endeavor agreement, it is clear that the POCs act as agents of JPPSS.

Under the terms of this Agreement, JPPSS has essentially delegated to these police officers the authority and responsibility for enforcing school rules: “The POC will assist in enforcing school rules, including monitoring student movement in the halls, checking passes and parking permits, etc.”¹³ Yet seemingly contradictory, two lines above, the Agreement states that the “POC shall not act as a school disciplinarian” and that “[d]isciplining students is a school responsibility.”¹⁴ Beyond these conflicting statements, the Agreement does nothing more to outline what types of offenses

¹¹ “Cooperative Endeavor Agreement,” (2014-2015 School Years). *See* Exhibit C. Note that this Agreement is nearly identical to the 2009-2010 contract cited in the original complaint.

¹² *Id.* at 3. These schools include: Helen Cox High School, East Jefferson High School, John Ehret High School, L.W. Higgins High School, Grace King High School, John Martyn Alternative, Riverdale High School, Truman Middle School, and West Jefferson High School. It is important to note that, as highlighted in the Cooperative Endeavor Agreement, other JPPSS schools have other police “details,” placing law enforcement officials on school campuses that are not covered by this agreement. *Id.* at 2. These details are similarly problematic because there are no clear policies in place in JPPSS establishing the POC’s roles and responsibilities and distinguishing them from those of the school.

¹³ *Id.* at Attachment A (“Jefferson Parish Sheriff’s Office Police Officer on Campus POC: Guidelines/Duties and Responsibilities”), p. 8. *See* Exhibit C.

¹⁴ *Id.*

constitute criminal conduct to be handled by the POCs, as opposed to school discipline issues that should be handled through the school.

It is well established that, “[a]bsent specific guidelines, [School Resource Officers] may not have a clear understanding of their role within the larger educational context or the rights and needs of the children they are intended to serve; they may inadvertently, and indeed counterproductively, create an adversarial environment that pushes students, particularly at-risk students, out of school rather than engaging them in a positive educational environment.”¹⁵ Not surprisingly, studies show that the presence of a police officer at school significantly increases the likelihood that school officials will refer students to law enforcement for low-level offenses that are more appropriately handled by school staff.¹⁶ As detailed below, Jefferson Parish POCs have been used inappropriately as agents of the school district to punish typical student misbehavior through arrests and seizures, particularly of African American students, for de minimis, nonviolent offenses such as throwing candy, having a tantrum, and yelling at school administrators, to name a few.

DOE and DOJ guidance directly addresses and provides specific recommendations to school districts on the appropriate use of law enforcement in schools.¹⁷ These recommendations include clearly defining, formalizing, and documenting the specific roles and responsibilities of officers at schools; ensuring that school personnel understand that they, not the officers, are responsible for administering routine student discipline; training school personnel to distinguish between disciplinary infractions appropriately handled by school officials versus major threats to school safety or other serious criminal behavior that warrants police involvement; and ensuring law enforcement officers are adequately trained in bias-free policing and cultural competency, child and adolescent development and age-appropriate responses, and practices such as positive behavior interventions, conflict resolution, and restorative justice.¹⁸

JPPSS has failed to put any of these recommendations in place in contracting with local law enforcement agencies to put officers on campus. There is no articulation of division of authority between POCs versus school administrators in enforcing school discipline. Furthermore, there is no mention of training policies/programs for the POCs assigned to Jefferson Parish schools. As a result of these failures, JPPSS is primarily using its POCs and other law enforcement officials as disciplinarians, rather than as a method of ensuring school safety. And by this policy and contract,

¹⁵ *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools* (ACLU, New York, N.Y.), August 2009, at 6.

¹⁶ See Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 Wash. U. L. Rev. (forthcoming), p. 6 (“[E]ven after controlling for (1) state statutes that require schools to report certain incidents to law enforcement, (2) general levels of criminal activity and disorder that occur at the school, (3) neighborhood crime, and (4) other demographic variables, a police officer’s regular presence at a school significantly increases the odds that school officials will refer students to law enforcement for various offenses, including seemingly minor offenses.”).

¹⁷ Dear Colleague Letter, *supra* note 3, at Appendix, p. 3. See also U.S. Department of Education, “Guiding Principles: A Resource Guide for Improving School Climate and Discipline,” Washington, D.C., 2014, at 9-11 (hereinafter, “DOE Guiding Principles”), available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

¹⁸ Dear Colleague Letter, *supra* note 3, at Appendix, 3-4.

JPPSS has guaranteed that minor violations of school rules will result in criminal arrests, especially for African American students.

B. JPPSS’s Use of Police on Campus and Referrals to Law Enforcement to Discipline Students for Minor Student Misbehavior and De Minimis Violations of School Rules

Not only does Jefferson Parish have the most school-based arrests and referrals in the state, but the overwhelming majority of these arrests and referrals are for nonviolent, minor student misbehavior. For each of the last two school years, approximately 560 JPPSS juvenile students have been arrested. The vast majority of these arrests were for the kind of school-based behavior that is more properly punishable in schools by school administrators and teachers under the Student Code of Conduct rather than through law enforcement and the court system.

Data provided by the Jefferson Parish Sheriff’s Office (JPSO) in response to an open records request clearly shows that JPPSS overwhelmingly uses law enforcement officers to discipline students for common, youthful misbehavior and minor school rule infractions. When disaggregated by offense/charge, the data reveals that during the 2012-13 and 2013-14 school years, the top two offenses that students were arrested for were (1) simple battery, under La. R.S. § 14:35, and (2) intentional interference with an educational facility, under La. R.S. § 14:328.¹⁹

Table 2: Top Offenses Students Arrested for During 2012-13 and 2013-14 School Years

Offense	Number of Students Arrested 2012-2013	Number of Students Arrested 2013-2014	Total Number of Students Arrested
Simple Battery	89	85	174
Interference with an Educational Facility	75	89	164
Ungovernable Juvenile	57	67	124
Child in Need of Supervision	50	38	88
Disturbing the Peace	37	36	73
Battery of a School Teacher	43	30	73
Possession of Marijuana	21	38	59

¹⁹ See Exhibit D for the school arrest data received from JPSO in response to SPLC’s open records request, disaggregated by offense for the 2012-13 and 2013-14 school years.

Louisiana Revised Statute § 14:328 prohibits the intentional interference with an educational facility and allows for the arrest of any person that willfully obstructs or impedes a teacher or staff member in performing their duties or any student in pursuit of his educational activities.²⁰ This statute was enacted in the 1960s as a method of combatting school sit-ins and protests in school, and was never intended to criminalize the minor misbehavior of individual students. As illustrated by the stories of the new Complainants in Section III, *infra*, despite its original purpose, the statute is currently being used as a catch-all to arrest students for a whole host of minor disruptive behavior and school rule infractions, such as student outbursts and profanity, yelling at teachers or school administrators, and disrupting a classroom.

Similarly, schools and police are using Louisiana Revised Statute § 14:35 to arrest students under the charge of simple battery for horseplay and typical student roughhousing and fighting. As detailed below, one of the new Complainants was even arrested and charged with simple battery for allegedly throwing a Skittle at another student.

Arresting and referring children to law enforcement for such petty offenses as throwing Skittles, yelling at school administrators, fighting, and using profanity shows that in Jefferson Parish, criminal sanctions are serving as a wholesale replacement for school disciplinary consequences. All of these listed behaviors are addressed in JPPSS's Code of Conduct and as such, have no place in the juvenile justice system. To further emphasize this point, the majority of these non-violent, misdemeanor school-based arrests are dismissed, refused, or diverted by the juvenile court.²¹

C. JPPSS Policies Result in the Disproportionate Arrests of African American Students

The Southern Poverty Law Center originally filed this complaint in January 2012, outlining that while African American students only made up 46% of the student body in Jefferson Parish Public Schools, that they comprised approximately 76% of all school-based arrests and seizures (2009-10 and 2010-11 school years). And while this complaint has been pending for the last three years, this disparity has increased even further. African American students currently make up approximately 41.5% of the student population,²² and yet during the 2012-2013 school year, accounted for 74% of all school-based arrests. During the 2013-2014 school year, that number has increased to a staggering 80%.

As illustrated in Table 3, during the 2012-2013 school year, 561 JPPSS juvenile students were arrested from school.²³ Of those, 416 (or 74%) were African American students. Similarly,

²⁰ La. Rev. Stat. Ann. § 14:328.

²¹ As noted in the original Complaint, during the 2010-2011 school year, approximately 70% of the non-violent or misdemeanor offenses were dismissed, refused, or diverted by the courts. *See* Exhibit A, at 15 (citing Jefferson Parish School Arrest Data, Dept. of Juvenile Services, 2010-2011).

²² This data is from October 2014. *See* Jefferson Parish Public School System, Facts & Figures, available at <http://jpschools.org/about-us/facts-figures/>.

²³ It is very important to note that this data only includes juvenile arrests from JPPSS schools, meaning the numbers do not include the arrests of seventeen or eighteen year old students from Jefferson Parish schools.

562 JPPSS juvenile students were arrested during the 2013-2014 school year. And of those, 448 (or 80%) were African American students. As such, it is clear that the racial disparity gap in school-based arrests continues to widen.

Table 3: Total Number of Juvenile Arrests from JPPSS by Race/Ethnicity²⁴

School Year	African American	White	Asian	Total Arrests
2012-2013	416	144	1	561
2013-2014	448	110	4	562

Significantly, this racial disparity becomes even more evident when looking at the arrest rates of African American students for certain types of offenses. As noted in Section II(B), *supra*, the two most common offenses for which students are arrested in Jefferson Parish are simple battery and interference with an educational facility. Both are used in schools as catch-all type charges for dealing with common student misbehavior such as using profanity, talking back to teachers, fighting with other students, and throwing candy. And significantly, as illustrated in Tables 4 and 5, the disproportionate rates of arrest for African American students are even more pronounced for these broad and extremely discretionary offenses than for all offenses combined. For example, last school year, of the 89 students arrested under § 14:328 for intentional interference with an educational facility, 83 of those students (or 93%) were African American.

Table 4: Juvenile Arrests in JPPSS for Interference with an Educational Facility

School Year	Total Arrests under § 14:328	African American Students Arrested	White Students Arrested	Percentage of African American Students Arrested
2012-2013	75	62	13	82.7%
2013-2014	89	83	6	93.3%

Thus, the actual number of school-based arrests in JPPSS is likely significantly higher than the 561 and 562 totals cited in this complaint.

²⁴ Note that the JPSO data seemingly only includes the races/ethnicities African American, White, and Asian, and does not appear to track for arrests of Hispanic juveniles or the juveniles of other races and ethnicities. See Exhibits D and E.

Table 5: Juvenile Arrests in JPPSS for Simple Battery

School Year	Total Arrests for Simple Battery	African American Students Arrested	White Students Arrested	Percentage of African American Students Arrested
2012-2013	89	79	10	88.8%
2013-2014	85	70	15	82.4%

Further indicative of JPPSS’s discriminatory arrest policies is the fact that the schools with the highest numbers of arrests and referrals to law enforcement tend to be overwhelmingly African American. Table 6 lists the top JPPSS schools with the most arrests during the 2012-13 and 2013-14 school years as compared to their racial demographics. The data shows that the schools with the highest numbers of arrests and referrals to law enforcement tend to be schools with a significant African American student population, demonstrating that JPPSS arrest practices and policies also disproportionately impact predominately African American schools.

Table 6: Racial Demographics of JPPSS Schools with the Most Arrests²⁵

Top Schools	Total Number of Arrests (2012-13 & 2013-14)	% of Student Body that is African American	% of Student Body that is White
Westbank Community School	120	82%	11.2%
Gretna Middle School	102	54.6%	17.7%
Stella Worley Middle School	100	60.2%	30.2%
Bonnabel Magnet Academy	68	38.9%	19.1%
Higgins High School	57	63.9%	22.3%
Marrero Middle School	55	53.9%	22%
Martyn Alternative School	53	87.5%	12.5%
Truman Middle School	50	71.3%	13.6%
Livaudais Middle School	50	55%	16.4%

Therefore, based on the foregoing, it is clear that JPPSS policies and practices of placing police on school campuses and otherwise endorsing referrals to law enforcement, particularly for

²⁵ The number of arrests are calculated from the data obtained from JPSO in response to SPLC’s open records request, disaggregated by school for the 2012-13 and 2013-14 school years. See Exhibit E. The student body composition data is compiled from the CRDC for the 2011-2012 school year.

minor school misbehavior, have a racially adverse impact on African American students in Jefferson Parish. As set forth below, these policies have significant consequences for students, as young as eight and nine years old, and not just at school, but for the rest of their lives.

III. NEW COMPLAINANTS

The original Complaint highlighted the stories of four African American JPPSS students who had been subject to unreasonable arrests and seizures from Jefferson Parish schools. In addition to the data showing that disproportionate arrests in Jefferson Parish schools continues to be a major problem, new stories continue to pour in from individuals experiencing school-based arrests and referrals to law enforcement for nonviolent and minor misconduct. The new Complainants are four African American students who, within the last 180 days, have been excluded from a Jefferson Parish public school as a result of the school system's arrest and law enforcement referral policies and practices.²⁶ The stories of these individuals provide just a glimpse into the systemic problem in Jefferson Parish and the severe impact these discriminatory policies have on the lives of children and their families.

A. █████

█████ is a fourteen year old, African American female, enrolled in the seventh grade at ██████████ ██████████ in Gretna, Louisiana. ██████ loves learning and playing sports. Her two favorite subjects in school are math and science. ██████ has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD), and currently has an Individualized Education Program (IEP) in place. Her dream job is to teach children how to read and write, especially those children who have learning disabilities. She wants to be a teacher because she believes it is important that all students, even those with disabilities, have teachers that are willing to work with them and help them.

On March 30, 2015, two JPSO officers assigned to ██████████ subjected ██████ to an unreasonable arrest and seizure in the parking lot of the school for shouting and cursing. The day of the arrest, ██████ and her mother went to ██████████ in the morning for a conference regarding a disciplinary incident that had happened at school the previous week. During the meeting, ██████ became upset when school officials began listing all her previous disciplinary incidents, making her feel like she was a bad kid. She walked out of the meeting, down the hall, and out of the front doors of the school. Once outside, she began raising her voice. Two police officers stationed on campus were summoned by the school to follow her out into the parking lot. When confronted by the officers, ██████ became even more emotional and upset and continued to say things like "I don't care." After being warned to stop cursing and yelling or else she would be put under arrest, ██████ again yelled she did not care. Instead of trying to de-escalate her, the JPSO

²⁶ Complainants' juvenile arrest and law enforcement records clearly reveal the minor nature of the underlying misbehavior described below, as well as the complicit nature of the police officers in enforcing simple school disciplinary matters. Unfortunately, pursuant to the Louisiana Children's Code, Complainants are unable to disclose the contents or copies of their juvenile arrest and law enforcement referral records for this Supplement without a court order. La. Child. Code Ann. art. 412 (2009). Complainants are, however, willing to provide their consent to the Departments of Justice and Education to seek these records during the course of its investigation.

officers handcuffed █████, put her in the back of the police car, and took her to Jefferson Parish’s juvenile detention center, Rivarde Detention Center, where she was detained overnight in a cell.

█████ has subsequently been charged with Interference with an Educational Facility. As a result of this incident, she was also suspended from school and missed an additional two days of class.

B. █████

█████ is a nine year old African American female enrolled in the fourth grade at ████████████████████ in Gretna, Louisiana. She is a creative, vibrant, and very smart nine year old whose favorite hobbies include reading, as well as writing and illustrating books. █████ has been diagnosed with ADHD, Generalized Anxiety Disorder, and Adjustment Disorder and currently has an Individualized Education Program (IEP) in place. Although only nine, █████ has had the police called on her three times at school within the last year, all for her “disruptive behavior” that is a manifestation of her disability. The most recent of these incidents occurred on February 11, 2015.

The day of the incident, █████ was acting out in class and the school called the police. After the police arrived at school and began to question her, █████ became distraught and told the police “I can’t do anything right. I don’t want to live.” As a result, the police called █████’s mother, as well as an interventionist and an ambulance which took █████ to Children’s Hospital to be evaluated.

█████’s first encounter with the police at school happened when she was eight years old and attending ████████████████████—another JPPSS school located in Gretna, Louisiana. On April 7, 2014, █████ was having a tough day at school and her school counselor had already called █████’s mother earlier that day. They determined that █████ would remain at school, but that the school would contact her mother if there were any more problems. Soon thereafter, █████ became upset and started having a tantrum. The school called the police, indicating they had a situation with a disruptive student who would not follow directions and was causing a disturbance at school. The police arrived and wrote up an incident report. However, █████ was not taken into custody or charged with an offense due to her age.²⁷

The school never informed █████’s mother that the police had been called. She did not find out until approximately one month later when a diversion officer with the juvenile court called to start █████’s diversion program. Even though █████ is still too young to be charged with a criminal offense, as a result of her arrests, █████ was placed in Families In Need of Services (FINS)—the diversionary program through the court system.

These incidents have had a major impact on █████. They have made her not want to go to school and have made her feel like everyone at the school hates her. Additionally, her mother notes that █████ does not have same innocence she used to have. Her trust in her teachers and the school

²⁷ In Louisiana, a child under the age of ten cannot be officially charged with a criminal offense. *See* La. Rev. Stat. Ann. § 14:13 (“Those who have not reached the age of ten years are exempt from criminal responsibility.”); *See also* La. Child. Code Ann. art. 804(3) (2009) (“‘Delinquent act’ means an act committed by a child of ten years of age or older . . .”).

has been broken, which is not the case for children who have not been involved with police at schools. [REDACTED]'s immense frustration came to a head during the last interaction with the police when she said she felt she could not do anything right and that she did not want to live anymore. [REDACTED]'s mother is frustrated with the way the Jefferson Parish schools have treated her daughter and lives in fear about what will happen when [REDACTED] turns ten years old and can be charged with criminal offenses. She feels she needs to remove [REDACTED] from JPPSS before this can happen to her.

C. [REDACTED]

[REDACTED] is a fifteen year old, African American male currently enrolled in the eighth grade. [REDACTED] is an outgoing and generous kid who loves to play football, basketball, and baseball. Until approximately one month ago, [REDACTED] attended [REDACTED], located in Terrytown, Louisiana. While at [REDACTED], [REDACTED] was arrested from school for throwing a piece of Skittles candy at another student on the school bus.

On January 15, 2015, [REDACTED] was riding the bus home from school when a group of children started throwing Skittles at other children on the bus. The bus driver merely told the children to separate and proceeded to drop everyone off at home as normal without further incident.

The following day, [REDACTED] arrived at school and went to his morning classes as usual. During first period, he was called out of class to the disciplinarian's office where he was asked to write a statement about the bus incident. While there, he heard the father of another student involved in the incident on the bus come into the office and demand that [REDACTED] be suspended or otherwise punished for throwing Skittles at his daughter. The school stated that they could not suspend [REDACTED] without suspending the other child as well. At this point, the police officer on campus encouraged the other parent to press charges against [REDACTED]

[REDACTED] returned to class part-way through second period. During third period, while in the middle of taking a social studies test, the same police officer walked into the classroom, told [REDACTED] he was under arrest and to put his hands behind his back, and then proceeded to roughly handcuff him in front of the entire class. While putting [REDACTED] in handcuffs, the officer twisted [REDACTED]'s arm, hurting him. When [REDACTED] cried out, the officer told him he was going to tack on a charge for resisting arrest, despite the fact that [REDACTED] had willingly complied with the officer's demands. [REDACTED] felt humiliated and ashamed by the experience of being handcuffed in front of his peers.

The officer then proceeded to walk [REDACTED] down to the office, where he said things to [REDACTED] like "I've got you now" and that if he was [REDACTED]'s age, he would "beat the f**k out of him" or that he would get his son to do it. These comments were made in front of the school principal who remained silent. Upon arrival of the transport officer, the POC told the transport officer that [REDACTED] had something against white people. [REDACTED] was then transported to Rivarde Detention Center, where he spent approximately six days in detention. Notably, the day he was released from Rivarde, when appearing in juvenile court, the judge remarked, "Am I to get this right—are we really here about Skittles?"

[REDACTED]'s mother was not contacted by the school to inform her of what had happened and she did not find out [REDACTED] had been arrested and taken to Rivarde until a staff member there contacted her. During the five days that [REDACTED] was incarcerated at Rivarde, the school gave him several unexcused absences.

After the arrest, █████ withdrew from school activities and extracurricular sports. █████ was embarrassed and humiliated by the whole experience and both he and his mother were angry with the way the school handled it. Shortly after the incident, █████'s mother removed him from █████

D. █████

█████ is a ten year old, African American female currently enrolled in the fourth grade at █████ in Kenner, Louisiana. She is a kind and caring child who loves animals and helping out in the care of her four younger siblings. █████ has been diagnosed with Autism and has had an IEP in place since the first grade. Her educational placement at █████ is in a self-contained classroom with several other students. On March 25, 2015, █████ was subject to a violent seizure and excessive use of force when the Kenner Police Department was called on her at school.

The day of the incident, according to the school, █████ began acting up in class, running around the classroom, climbing on desks, and knocking down classroom chairs. She subsequently managed to climb out of the classroom window and up a tree on school property. The school called the Kenner Police Department. The school also called █████'s grandmother and told her to come to the school and pick up █████ immediately because of her behavior. However, █████'s grandmother was not informed that the police had been called. █████'s aunt arrived at the school and found three police cars and several officers at the school.

According to █████ to get her away from the tree, the police grabbed her by the ankles and dragged her away. By the time █████'s grandmother arrived on the scene, she found her small, ten-year-old granddaughter lying face down on the ground, handcuffed with her face pressed so closely to the ground that she was having difficulty breathing due to the grass and dirt that was so close to her nose and mouth.²⁸ An officer was kneeling on top of her, pinning her down with a knee squarely in the small girl's back. Several other officers, as well as several school administrators, stood around the scene watching. █████ was crying and yelling "Help, I'm hurting." Every time █████ tried to move or scream, dirt, grass, and leaves got in her mouth. Several minutes after her grandmother arrived on the scene and demanded that the police get off her granddaughter and release her, the police officers released █████ to her grandmother's custody without further incident.

After this incident, the school illegally informed █████'s mother and grandmother that █████ could not return to school until she was medicated in direct contravention of the IDEA. Because of this, █████ remained out of school for one and a half weeks. During that time, █████ was very confused about why she was unable to return to school and be with her friends. She felt that the school did not want her there.

█████'s mother and grandmother are angry about the way both the school and police handled the situation and about the serious impact this experience has had on █████'s life, especially her attitude towards school and the police. Since this incident, █████ has stated that the police are not her friends and has asked, "Why do they hate me?"

²⁸ A photograph of the incident was taken by █████'s grandmother. See Exhibit F.

IV. JPPSS CONTINUES TO ADMINISTER A SCHOOL ARREST POLICY THAT HAS A DISPROPORTIONATE ADVERSE IMPACT ON AFRICAN AMERICAN STUDENTS IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT

Title VI of the Civil Rights Act and its enacting regulations protect students from discrimination on the basis of race, color, or national origin in all aspects of school administration and activity, including the administration of school disciplinary programs and policies. Specifically, Title VI provides that “no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”²⁹

The U.S. Department of Education has promulgated regulations that “prohibit recipients of its funds from taking certain actions to the extent that those actions have a disparate impact on groups protected by the statute.”³⁰ Specifically, the regulations prohibit recipients of Federal financial assistance from “utiliz[ing] criteria or methods of administration *which have the effect of* subjecting individuals to discrimination because of their race, color, or national origin.”³¹ Thus, schools violate Title VI when they implement disciplinary policies and practices that, although neutral on their face, nonetheless discriminate against students based on race because they disproportionately impact students of a certain race.

The Department of Education’s Office for Civil Rights is responsible for enforcing Title VI as it applies to public schools. The Department of Justice is responsible for coordinating the enforcement of Title VI across all government agencies. Therefore, both Departments may bring enforcement actions against school districts that implement discipline policies that have an unlawful disparate impact on a particular racial group.

To determine liability under a Title VI disparate impact claim, the Departments use a three-part test.³² First, the complainant must demonstrate that the facially neutral policy or practice has a disproportionate impact on students of a particular race as compared with those of other races.³³ This establishes a *prima facie* case of a Title VI disparate impact violation.³⁴ Second, if such a *prima facie* case is made, the burden then shifts to the respondent to demonstrate that the policy or practice is necessary to meet an important educational goal.³⁵ Both the importance of the stated

²⁹ 42 U.S.C. § 2000d.

³⁰ *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993).

³¹ *See* 34 C.F.R. § 100.3(b)(2) (emphasis added).

³² Dear Colleague Letter, *supra* note 3, at 11 (this guidance issued jointly by the DOJ and DOE walks through this three-pronged test step by step).

³³ *Id.* *See also Elston*, 997 F.2d 1394, 1407 (11th Cir. 1993); *Georgia State Conference of Branches of NAACP v. State of Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

³⁴ *See Elston*, 997 F.2d at 1407. *See also* Title VI Legal Manual 49-50 (2001).

³⁵ Dear Colleague Letter, *supra* note 3, at 11.

goal and the tightness of the fit between the stated goal and the method used to achieve it will be considered.³⁶ Finally, if the respondent is able to meet this high burden, then the complainant must show that there exist comparably effective alternative policies or practices that would result in less racial disproportionality or that the justification proffered by the school is actually just a pretext for discrimination.³⁷

JPPSS's policy and practice of arresting students and referring them to law enforcement for minor student misbehavior violates Title VI of the Civil Rights Act because: (1) the practice disproportionately affects African American students, who, although comprising only 41% of the Jefferson Parish student body, account for 80% of all school-based arrests; (2) the practice is not necessary to meet any educational goals and instead has devastating consequences for students; and (3) there are equally effective, less discriminatory alternatives for preventing and responding to minor student misbehavior.

A. JPPSS Administers a School Arrest Policy That Disproportionately Harms African American Students

As set forth in Section II(C), *supra*, school arrest data provided by the Jefferson Parish Sheriff's Office overwhelmingly shows that JPPSS's use of law enforcement officers to discipline students for common, youthful misbehavior has a gross disproportionate impact on African American students. Importantly, according to DOE and DOJ guidance, "[s]tatistical analysis regarding the impact of discipline policies and practices on particular groups of students is an important indicator of potential violations," and "[a]lthough statistical and quantitative data would not end an inquiry under Title IV or Title VI, significant 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."³⁸

According to JPPSS, African American students make up only 41.5% of the Jefferson Parish student body.³⁹ However, during the 2012-2013 school year, African American students comprised 74% of all juvenile arrests from Jefferson Parish schools. Even worse, during the 2013-2014 school year, African American students accounted for 80% of all juvenile arrests from Jefferson Parish schools. This dramatic disparity between the percentage of African American students in Jefferson Parish schools and the percentage of African American students who are arrested from school is enough to establish a *prima facie* case that JPPSS arrest and law enforcement policies and practices have a disproportionate impact on African American students.

This becomes even more evident when looking at the rates of African American students arrested and referred to law enforcement for the broad and highly discretionary, non-violent

³⁶ *See id.*

³⁷ *Id.*

³⁸ *Id.* at 4, 7.

³⁹ Jefferson Parish Public School System, Facts & Figures, *available at*: <http://jpschools.org/about-us/facts-figures/>.

offenses such as intentional interference with an educational facility, disturbing the peace, and simple battery. Last school year, 93% of the students arrested under the charge of interference with an educational facility, 91% of students arrested for disturbing the peace, and 82% of the students arrested for simple battery were African American. Additionally, when arrest rates are broken down by school, it is clear that the schools with the highest numbers of arrests and referrals to law enforcement tend to be schools with a significant population of African American students. Thus, it is clear that JPPSS's arrest policies and practices are being used disproportionately against African American students, particularly for discretionary low-level offenses.

B. JPPSS Cannot Demonstrate that its Practice of Using School-Based Arrests and Referrals to Law Enforcement for Minor Behavioral Infractions Is Necessary to Meet an Important Educational Goal

JPPSS cannot show that its practice of referring students to law enforcement and arresting students from school is necessary to meet an important educational goal. Reasons commonly cited for the presence of law enforcement officers in schools include maintaining school order and keeping students safe to promote a positive educational environment in which all students can learn.⁴⁰ However, the research does not support the assertion that the presence of police officers on campus or the policy of arresting students for minor misbehaviors actually makes schools safer, improves student behavior, or promotes a positive learning environment.⁴¹ Instead, studies time and again have shown the exact opposite—that the improper use of SROs, school-based arrests, and referrals to law enforcement, especially for minor student misbehaviors, actually interferes with education and has a devastating impact on students that may “negatively affect the trajectory of students’ lives.”⁴² And because African American students in Jefferson Parish are disproportionately arrested and referred to law enforcement, they are also disproportionately subjected to the life-changing adverse effects that accompany such an arrest.

For most of these children, referral to law enforcement at school is their first contact with the police and the juvenile justice system. Even if the charges are ultimately dismissed or refused by the courts, a school arrest causes an array of collateral consequences that can impact a student’s life well beyond the classroom. Studies show that arresting a student significantly increases the likelihood that the student will drop out of school.⁴³ This has a huge implication in Jefferson Parish,

⁴⁰ Catherine Y. Kim, *Policing School Discipline*, 77 Brook. L. Rev. 861, 889-91 (2012); *See also* Nance, *supra* note 16, at 50.

⁴¹ Kim, *supra* note 40, at 888-92 (evaluates current discipline practices, particularly school-based arrests and other referrals to law enforcement, and finds that, “in a growing number of jurisdictions that rely on law enforcement to maintain order in schools, it can no longer be said that the investigation and punishment of school misconduct serves the accused student’s educational interests, or even the interests of the larger student body.”).

⁴² Nance, *supra* note 16, at 1. For further discussion of some of the negative consequences following school-based arrests, refer to attached Affidavit of Daphne Glindmeyer, M.D. *See* Exhibit G.

⁴³ Advancement Project, “Education on Lockdown: The Schoolhouse to Jailhouse Track” (2005), p. 12, available at: http://b3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf. *See also* Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Just. Q. 462, 473, 478-79 (2006) (found that a student’s first-time arrest in high school nearly doubled the chance that

where 966 students dropped out of JPPSS schools during the 2013-2014 school year.⁴⁴ Tellingly, all four of the original 2012 Complainants have since dropped out of school. Furthermore, school-based arrests are linked to diminished academic achievement and lower standardized test scores, decreased future employment opportunities, and an increased likelihood of future involvement in the criminal justice system and incarceration as adults.⁴⁵

Arrests also mean lost instructional time for students. Students who miss important instructional time are likely to fall behind their peers in school. For example, ██████ was arrested while taking a social studies test and subsequently transported to the juvenile detention center where he was held for six days. During that time, he missed several days of school and was given unexcused absences by the school and not allowed to make up any of his work, therefore falling behind in his classes. Furthermore, arrests and referrals to law enforcement are typically also accompanied by suspension and/or expulsion from school, leading to even more lost instructional time and imposing long-term consequences on student performance in school.⁴⁶

Finally, while it is often cited that police in schools help to maintain school order, benefitting the larger student population and enhancing a positive learning environment, there exists little empirical evidence to support this claim. Instead, studies show that the presence of police in schools actually interferes with the overall opportunity for students to learn, and in some cases creates the very sense of fear, violence, and distrust that they are supposed to prevent.⁴⁷ Furthermore, using police as disciplinarians in schools tends to build mistrust and adversarial relationships between students and law enforcement officials—both in schools and in their communities.⁴⁸ For instance, after ██████'s terrifying encounter with the police this spring, she has become very afraid of the police in her community.

C. There Are Equally Effective, Less Discriminatory Alternatives Available for JPPSS to Respond to Minor Student Misbehavior Besides Arrests and Referrals to Law Enforcement

Even in the unlikely event JPPSS is able to meet its burden of showing that its policy and practice of arresting students for minor misbehavior is necessary to meet an important educational

he/she would not finish high school and that an arrest plus a court appearance actually quadrupled the chance of dropping out).

⁴⁴ Louisiana Department of Education, District & State Data Reports, “2013 Student Dropout Counts and Rates Site,” available at: <http://www.louisianabelieves.com/resources/library/district-state-data-reports>.

⁴⁵ *Education Under Arrest: The Case Against Police in Schools* (Justice Policy Institute, Washington, D.C.), November 2011, at 17-18 (hereinafter, “Education Under Arrest”). See also Nance, *supra* note 16, at 29.

⁴⁶ Nance, *supra* note 16, at 28.

⁴⁷ Matthew J. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 Ed. & Treatment of Children 333, 349 (1999) (“Creating an unwelcoming, almost jail-like, heavily scrutinized environment, may foster the violence and disorder school administrators hope to avoid.”).

⁴⁸ Education Under Arrest, *supra* note 45, at 19.

goal, JPPSS is still in violation of Title VI because there are comparably effective alternative ways to prevent school violence and promote school safety that would have a significantly less adverse impact on African American students in Jefferson Parish schools.

Research and studies show that there are numerous better methods of addressing school violence and promoting school safety than using law enforcement and the juvenile justice system, which as discussed above have long-lasting negative consequences for children and their families.⁴⁹ Instead of spending huge amounts of money to put police in schools, JPPSS should invest in positive, evidence-based programs. These “positive investments can yield better results in terms of keeping schools safe, holding youth accountable, educating youth, and even boosting achievement without the negative effects of involving youth with the law enforcement or the justice system.”⁵⁰ In January 2014, the U.S. Department of Education released extensive guidance on building a positive school climate and improving school discipline policies and practices.⁵¹

Programs such as Positive-Behavioral Intervention and Supports (PBIS) and restorative justice have been shown to be successful in promoting student safety without the harsh consequences of police involvement. Numerous studies evaluating the use of PBIS in schools show an increase in positive student behavior, a decrease in the number of disciplinary referrals, a decrease in teacher assaults, and overall improvements in academic achievements.⁵² Likewise, restorative justice programs have also proven to be effective in reducing incidents of violence and disorderly conduct, thus improving school safety while avoiding long-term consequences associated with involvement in the juvenile justice system.⁵³

But for these programs to be effective, they must be implemented with fidelity and with a strong commitment from district and school staff that these initiatives will be used as a replacement for arrests and school removals. For instance, while JPPSS claims to be implementing district-wide PBIS, the district’s arrest rates paint a very different picture. Students are being hauled out of school by police for misconduct that could be better addressed as a potential learning opportunity for the student.

If JPPSS continues to place police officers on school campuses, the research shows that one way to decrease unnecessary referrals to law enforcement for minor student misconduct is through clear delineation and definition of the roles of law enforcement officers in schools, to ensure that they do not become involved in routine matters of school discipline. DOE guidance states that officers’ responsibilities should be focused on school safety and addressing and preventing serious,

⁴⁹ For further discussion of alternative and less discriminatory methods that could be used in lieu of arrest and law enforcement referral policies, *see* Glindmeyer Affidavit, Exhibit G.

⁵⁰ Education Under Arrest, *supra* note 45, at 26.

⁵¹ U.S. Department of Education, Guiding Principles: A Resource Guide for Improving School Climate and Discipline, Washington, D.C., 2014, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁵² Education Under Arrest, *supra* note 45, at 26.

⁵³ *Id.*

real, and immediate threats to the physical safety of the school community.⁵⁴ On the other hand, school administrators should have the role of maintaining order and handling routine disciplinary matters.⁵⁵ These roles should be clearly defined in a written agreement with the law enforcement agency.⁵⁶ Finally, school districts should implement extensive training for any law enforcement officers on campus.⁵⁷

JPPSS has been aware of racial disparities in its school arrest data since 2012, and yet has failed to take action to rectify the disparities.

V. JPPSS ARREST POLICIES AND PRACTICES ALSO LIKELY CONSTITUTE DIFFERENT TREATMENT IN VIOLATION OF TITLE IV AND TITLE VI OF THE CIVIL RIGHTS ACT

In addition to disparately impacting African American students, it is likely that Jefferson Parish’s arrest policies and practices also amount to intentional discrimination through different treatment in violation of both Title IV and Title VI of the Civil Rights Act of 1964. As set forth above, Title VI provides that “no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”⁵⁸ Similarly Title IV prohibits discrimination on the basis of race, color, sex, religion or national origin by public elementary and secondary schools.⁵⁹ Thus, both Title IV and Title VI prohibit schools from intentionally disciplining students differently based on their race.⁶⁰

According to DOE/DOJ guidance, intentional discrimination can occur when a school has a discipline policy that is neutral on its face, but the school administers it in a discriminatory manner or allows for the ad hoc and discriminatory discipline of students in areas that the policy does not fully address.⁶¹ This “different treatment” can take many different forms. For example, different

⁵⁴ DOE Guiding Principles, *supra* note 51, at 9.

⁵⁵ *Id.*

⁵⁶ *Id.* at 10.

⁵⁷ *Id.*

⁵⁸ 42 U.S.C. § 2000d.

⁵⁹ 42 U.S.C. §§ 2000c *et seq.* The Department of Justice’s Civil Rights Division is responsible for enforcing Title IV of the Civil Rights Act of 1964. *See* Dear Colleague Letter, *supra* note 3, at 2.

⁶⁰ Dear Colleague Letter, *supra* note 3, at 7. *See also* Consent Order, *Barnhardt v. Meridian Municipal Separate School Dist.*, No. 4:65-cv-01300, p. 4 (S.D. Miss. 2013) (“This Consent Order reflects the District’s obligations under Title IV of the Civil Rights Act of 1964 to administer discipline without discrimination on the basis of race and in a manner that does not perpetuate or further the segregation of students on the basis of race.”)

⁶¹ Dear Colleague Letter, *supra* note 3, at 7.

treatment occurs when similarly situated students of different races are disciplined differently for the same offense.⁶² Likewise, different treatment can also take the form of selective enforcement of a facially neutral policy against students of a certain race, for instance, when a school official decides to overlook a violation of a policy committed by a student of one racial group, but strictly enforces the policy against a student of another racial group.⁶³ Finally, intentional discrimination through different treatment can occur when school officials act based on racially discriminatory motives—for instance, if a teacher or administrator utters a racial slur when disciplining a student, thus suggesting racial animus in disciplining the student.⁶⁴

To determine whether a school has engaged in different treatment in violation of Title IV and Title VI, DOE and DOJ engage in a three-part analysis similar to the Title VI disparate impact analysis. First, the Departments must determine whether the school limited or denied educational services or benefits to a student or group of students of a particular race by treating them differently from similarly situated students of another race in the disciplinary process.⁶⁵ If so, the Departments then ask if the school can articulate a legitimate, nondiscriminatory reason for the different treatment.⁶⁶ And finally, if the reason articulated is determined to be a mere pretext for discrimination, then the school has engaged in intentional discrimination.⁶⁷

In the case at hand, it is clear that JPPSS is selectively enforcing its arrest policies and practices against African American students, particularly for discretionary low-level offenses. Because there are no clear policies delineating what types of school-based offenses can result in an arrest, school officials have a lot of discretion about when to refer minor misbehaviors to law enforcement and police officers on campus have a lot of discretion about when to arrest children for this type of behavior. Data showing that African American students comprised 83 of the 89 arrests (93%) last year for intentional interference with an educational facility clearly demonstrates: (1) that law enforcement is being called in a selective manner strictly against African American students in Jefferson Parish schools for certain types of misbehavior, and (2) that law enforcement officers, acting as school agents, are selectively enforcing these broad laws against African American students for minor school rule infractions.⁶⁸

Further, as alleged in the original complaint, police officers on campus in Jefferson Parish schools have made racial slurs and comments when arresting students for these minor student misbehaviors. For example, when arresting original complainant K.S., the police officer on campus said “n**gers these days.” Likewise, when J.H. was arrested from Bonnabel High School, the

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 8.

⁶⁵ Dear Colleague Letter, *supra* note 3, at 8.

⁶⁶ *Id.* at 9.

⁶⁷ *Id.*

⁶⁸ Importantly, like in a disparate impact analysis, statistical analysis regarding impact of discipline policies and practices on particular groups of students is an important indicator of potential violations. *Id.* at 7.

officer on campus called him a “wannabe thug.” Additionally, one of the new complainants, [REDACTED] was subjected to racially charged language and commentary when the police officer on campus who arrested him told the transport officer, who was white, that [REDACTED] had something against white people.

Based on the foregoing, it is likely that JPPSS’s arrest and law enforcement referral policies and practices constitute intentional discrimination through different treatment in violation of Title IV and Title VI of the Civil Rights Act. Complainants, therefore, ask that DOJ and DOE fully investigate JPPSS policies and practices to ensure compliance with federal law.

VI. CONCLUSION

This Complaint has been pending for over three years. The stories of the new complainants, coupled with new data showing an increasing disparity in arrest rates in Jefferson Parish, demonstrate that JPPSS continues to operate school arrest policies and practices that disproportionately harm African American students in violation of Title VI, as well as likely constitute intentional discrimination under Titles IV and VI. Far from getting better, the situation in Jefferson Parish is actually getting worse. Therefore, Complainants once again ask the OCR and DOJ to: (1) Jointly investigate the arrest policies and practices in Jefferson Parish schools that result in a disproportionate adverse effect on African American students; (2) Compel JPPSS to revise its current school arrest policies and practices; (3) Mandate that JPPSS implement alternative evidence-based programs or initiatives to address disproportionality and reduce law enforcement interaction and arrests on all JPPSS school campuses; (4) Require JPPSS to ensure that discipline is appropriately and equitably applied to African American students; and (5) Monitor and track all police incidents, arrests, and referrals to law enforcement in JPPSS.

Respectfully submitted,

/s/ Sara H. Godchaux

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EXHIBIT INDEX

Exhibit A: Original Complaint, Filed January 11, 2012

Exhibit B: Letter Opening Investigation, March 13, 2012

Exhibit C: Cooperative Endeavor Agreement, 2014-2015 School Year

Exhibit D: School Arrest Data from JPSO, Disaggregated by Offense (2012-13 and 2013-14)

Exhibit E: School Arrest Data from JPSO, Disaggregated by School (2012-13 and 2013-14)

Exhibit F: Photograph

Exhibit G: Affidavit of Daphne Glindmeyer, M.D.

Exhibit H: New Complainant Information and OCR Releases