

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

P.A., on behalf of minor child, <b>A.A.</b> ;	*	
P.B., on behalf of minor child, <b>B.B.</b> ;	*	<b>CIVIL ACTION NO.: 2:23-cv-02228</b>
P.C., on behalf of minor child, <b>C.C.</b> ;	*	
P.D., on behalf of minor child, <b>D.D.</b> ; and	*	<b>JUDGE BRANDON O. LONG</b>
P.E., on behalf of minor child, <b>E.E.</b>	*	
	*	<b>MAGISTRATE JUDGE JANIS VAN</b>
<i>Plaintiffs,</i>	*	<b>MEERVELD</b>
v.	*	
	*	<b>SECTION O</b>
<b>DORIS VOITIER</b> in her official	*	
capacity, as Superintendent of	*	
St. Bernard Parish Public Schools; and	*	
<b>ST. BERNARD PARISH</b>	*	
<b>SCHOOL BOARD</b>	*	
<i>Defendants.</i>	*	

**SECOND AMENDED COMPLAINT**

Plaintiffs, A.A., by and through his parent P.A., B.B., by and through her parent P.B., C.C., by and through her parent P.C., D.D., by and through his parent P.D., and E.E., by and through her parent P.E.<sup>1</sup> (“Plaintiffs”) file this Second Amended Complaint against Defendants Doris Voitier, in her official capacity as Superintendent of St. Bernard Parish Public Schools, and the St. Bernard Parish School Board alleging as follows:

**INTRODUCTION**

St. Bernard Parish School Board (“SBPSB” or the “District”) uses its alternative school program to segregate its most vulnerable students in a highly restrictive, punitive, and inferior alternative educational setting. The District does so, as outlined herein, by denying due process

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<sup>1</sup> Where the Court has granted a joint motion to proceed anonymously, *see* Order, ECF No. 6 (June 29, 2023), Plaintiffs file a Second Amended Exhibit A, under seal, listing the true names of D.D., E.E., P.D., and P.E. The Court granted Plaintiffs’ motion to seal this exhibit in its order on the motion for leave to amend. *See* Order, ECF No. 39, (May 13, 2024).

protections for students facing expulsion, as well as by failing to provide program modifications and accommodations for students with emotional and behavioral disabilities. The result is that the highest-needs youth are warehoused, without appropriate academic and social-emotional supports, at the alternative school program for expelled students in St. Bernard Parish: C.F. Rowley Alternative School (“Rowley”).

The alternative school program at Rowley purports to be therapeutic but is far from it. Students at Rowley, who are disproportionately Black, are consigned to a second-class education, denied access to electives and extracurricular activities, isolated from peers, deprived of the benefits of normal socialization, and subjected to the inherent harms of segregation. To exit the alternative school and return to a mainstream educational environment, students must complete a one-size-fits-all behavioral program to “earn” their way out, and they are required to do so without academic, social, or behavioral accommodations and modifications. As a result, students with disabilities spend months or even years at Rowley. Even more troubling, students do not receive due process protections before receiving a disciplinary placement at Rowley, although this disciplinary placement is indefinite and therefore requires extensive due process procedures under state and federal law.

SBPSB’s policies and practices violate students’ due process rights under Louisiana Revised Statutes § 17:416, the Louisiana Constitution, and the Fourteenth Amendment to the U.S. Constitution. Moreover, SBPSB’s policies and practices constitute disability discrimination under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (“Section 504”), and the Louisiana Human Rights Act (“LHRA”), La. Rev. Stat. § 51:2231 *et seq.* Plaintiffs seek, among other relief, a declaration that Defendants’ policy and practice of expelling Plaintiffs to Rowley without

affording notice and an opportunity to be heard violates their rights under the due process provisions of the Louisiana Constitution and the Fourteenth Amendment to the U.S. Constitution, in addition to their rights as students with disabilities under the ADA, Section 504, and the LHRA.

Plaintiffs further seek to enjoin Defendants, their successors in office, agents, employees and assigns, and all persons acting in concert with them to prevent future violations of Plaintiffs' rights enumerated herein.

### **PARTIES**

1. Plaintiff A.A. is fifteen years old and resides with his mother, P.A., in Chalmette, Louisiana. Plaintiff A.A. is a child with a disability, as that term is used and defined in the ADA, Section 504, and the LHRA, who has a Specific Learning Disability, Attention-Deficit Hyperactivity Disorder ("ADHD"), Depression, and Post-Traumatic Stress Disorder ("PTSD"). He is enrolled in the St. Bernard Parish Public School System ("SBPPS") operated by the SBPSB and completed the 2022-2023 school year as a student enrolled at Rowley. A.A. has been placed at Rowley three times in the last two academic years for disciplinary reasons.

2. Plaintiff B.B. is sixteen years old and resides with her mother, P.B., in Chalmette, Louisiana. Plaintiff B.B. is a child with a disability, as that term is used and defined in the ADA, Section 504, and the LHRA, who has ADHD, Major Depressive Disorder, and Disruptive Mood Dysregulation Disorder. She is enrolled in SBPPS operated by SBPSB and currently attends Chalmette High School. Since middle school, B.B. has been placed two times for disciplinary reasons at Rowley, where she completed the majority of her sixth, seventh, eighth, and tenth grade years.

3. Plaintiff C.C. is seventeen years old and resides with her mother, P.C., in Chalmette, Louisiana. Plaintiff C.C. is a child with a disability, as that term is used and defined in the ADA,

Section 504, and the LHRA, who has ADHD, Bipolar Affective Disorder, and Epilepsy. She is enrolled in SBPPS operated by SBPSB and attended Rowley within the last year.

4. Plaintiff D.D. is fifteen years old and resides with his mother, P.D., in Chalmette, Louisiana. Plaintiff D.D. is a child with a disability, as that term is used and defined in the ADA, Section 504, and the LHRA, who has dyslexia and ADHD. He is enrolled in SBPPS operated by SBPSB and attended Rowley within the last year.

5. Plaintiff E.E. is seventeen years old and resides with her mother, P.E., in Chalmette, Louisiana. Plaintiff E.E. is a child with a disability, as that term is used and defined in the ADA, Section 504, and the LHRA, who has a suspected dyslexia diagnosis. She is enrolled in SBPPS operated by SBPSB and attended Rowley within the last year.

6. Defendant St. Bernard Parish School Board (“SBPSB”) is a governmental body operating under the laws and regulations of St. Bernard Parish, the Louisiana Legislature, the Louisiana State School Board authority, and the Board of Elementary and Secondary Education. SBPSB receives federal financial assistance as a state agency and public entity operating within Louisiana within the meaning of the ADA, 42 U.S.C. § 12131(1), and Section 504, 29 U.S.C. § 794 *et seq.* SBPSB also is charged with establishing and maintaining the public schools within its jurisdiction. La. Rev. Stat. §§ 17:51, 17:81, 17:100.5.

7. Defendant Doris Voitier (“Defendant Voitier”), Superintendent of St. Bernard Parish Public Schools, is charged with establishing and maintaining the public schools within the jurisdiction of SBPSB. La. Rev. Stat. §§ 17:51, 17:81, 17:100.5. Defendant Voitier is sued in her official capacity only.

### **JURISDICTION AND VENUE**

8. This Court has original jurisdiction under 28 U.S.C. § 1331 to hear claims arising under the U.S. Constitution, the ADA, and Section 504.

9. This Court has jurisdiction to order the declaratory and injunctive relief sought in this action, as well as other relief that is “further necessary and proper” under 42 U.S.C. § 1983, 42 U.S.C. § 12133, 29 U.S.C. § 794a, 28 U.S.C. §§ 2201-2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and 42 U.S.C. § 1988.

10. At all times, Defendants acted under color of law.

11. This court also has jurisdiction over any claim raised as an appeal of an Individuals with Disabilities Education Act (“IDEA”) due process hearing decision by an aggrieved party pursuant to 20 U.S.C. § 1415(i)(2); *see also* 20 U.S.C. § 1415(i)(3)(A) (“The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.”).

12. The Court has supplemental jurisdiction to adjudicate any state law claims, which may arise out of the same facts as the federal claims asserted herein pursuant to 28 U.S.C. § 1367.

13. Venue in the United States District Court for the Eastern District of Louisiana is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

### **ADMINISTRATIVE EXHAUSTION**

14. The claims in Counts I through V are exempt from the exhaustion requirement because the gravamen of these claims is something other than the denial of the IDEA’s core guarantee of a Free and Appropriate Public Education (“FAPE”); because systemic relief is sought; and because further exhaustion through a due process hearing is futile for these claims. *See Honig v. Doe*, 484

U.S. 305 (1988); *see also Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154 (2017); *Perez v. Sturgis Pub. Sch.*, 215 L. Ed. 2d 95 (2023). Administrative exhaustion is futile in this matter both because Plaintiffs seek relief not available under the IDEA and because even where Plaintiffs have fully exhausted their claims, the District has demonstrated an unwillingness and inability to comply with corrective action ordered as the result of a due process hearing decision. The claims in Count VI have met all exhaustion requirements pursuant to 20 U.S.C. §§ 1415(i)(2), (l) as the appeal of a due process hearing decision.

### **STATUTORY FRAMEWORK**

#### **The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973**

15. Congress enacted the ADA in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). The ADA acknowledges that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem[.]” *Id.* § 12101(a)(2).

16. In enacting the ADA, Congress found that “[i]ndividuals with disabilities continually encounter various forms of discrimination, including . . . segregation . . . .” *Id.* § 12101(a)(5).

17. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *Id.* § 12132. Similar protections apply as to recipients of federal financial assistance under Section 504. 29 U.S.C. § 794(a).

18. Within the meaning of the ADA and Section 504, Plaintiffs are “qualified individuals with a disability,” meaning they are “individual[s] with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meet[] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131; *see also* 29 U.S.C. § 705(20)(B).

19. Defendant SBPSB administers the St. Bernard Parish school district, or St. Bernard Parish Public Schools (“SBPPS”), which is a “public entity” subject to the nondiscrimination requirements of Title II of the ADA and Section 504. 42 U.S.C. § 12131(1); 29 U.S.C. § 794 *et seq.*

20. The ADA and Section 504 require school districts to educate students with disabilities to the greatest extent possible alongside their non-disabled peers, with appropriate services and support. *See* 42 U.S.C. §§ 12132, 12134; 29 U.S.C. § 794. In accordance with this mandate, public entities such as school districts are prohibited from denying or otherwise failing to afford students with disabilities an opportunity to participate in or benefit from educational aids, benefits, or services that are equal to or as effective as those provided to non-disabled students. 42 U.S.C. §§ 12132, 12134; 29 U.S.C. § 794; *see also* 28 C.F.R. §§ 35.130(b)(1)(i)-(iii); *id.* §§ 41.51(b)(1)(i)-(iii); 34 C.F.R. §§ 104.34(a)-(b); *id.* §§ 104.4 (b)(1)(i)-(iii).

21. Under the same statutory provisions, school districts also are required to provide reasonable accommodations and modifications to students with disabilities, as well as to educate students with disabilities in the most integrated setting appropriate to their needs. 42 U.S.C. §§ 12132, 12134; 29 U.S.C. § 794; *see also* 28 C.F.R. §§ 35.130(b)(7), (d); *id.* § 41.51(d); 34 C.F.R. §§ 104.34(a)-(b); *id.* §§ 104.4(b)(1)(iv), (b)(2). School districts further are prohibited from using criteria or

methods of administration that have the purpose or effect of impairing accomplishment of the objectives of the school district's educational program for students with disabilities. 42 U.S.C. §§ 12132, 12134; 29 U.S.C. § 794; *see also* 28 C.F.R. § 35.130(b)(3); *id.* § 41.51(b)(3); 34 C.F.R. § 104.4(b)(4).

22. The ADA and Section 504 additionally prohibit a school district from “discriminat[ing] against any individual because such individual has opposed any act or practice made unlawful by [the ADA or Section 504] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA or Section 504].” 42 U.S.C. § 12203(a); *see also* 28 C.F.R. § 35.134; 34 C.F.R. § 104.61.

23. Because they share a similar framework, Title II of the ADA and Section 504 generally “are interpreted *in pari materia*.” *Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011).

### **Due Process in School Discipline under the U.S. Constitution and Louisiana Law**

24. The governing authority of each public elementary and secondary school, including the SBPSB, is required to adopt a student code of conduct governing students within its jurisdiction. La. Rev. Stat. § 17:416.13.

25. The disciplinary authority granted to school districts under Louisiana law is limited to conduct that occurs “in school or on the playgrounds of the school, on the street or road while going to or returning from school, on any school bus, during intermission or recess, or at any school-sponsored activity or function,” unless otherwise specifically enumerated in the Louisiana discipline code. *Id.* § 17:416(A)(1)(a).

26. For conduct not occurring on school grounds and unrelated to school activities, school districts may only expel students who are *convicted* of a felony or incarcerated in a juvenile



institution, and they may only do so upon two-thirds vote of the elected members of the school board. *Id.* § 17:416(D)(1); *see also* 28 La. Admin. Code § 1307.

27. Each school district code of conduct must comply with state and federal law regarding student discipline. La. Rev. Stat. § 17:416.13; *see also id.* § 17:416(L).

28. Each school district code of conduct further must include any disciplinary action to be taken against a student who violates the code of conduct. *Id.* § 17:416.13. The code of conduct “shall include progressive levels of minor through major infractions and identify corresponding minor through major interventions and consequences[,]” including for expulsions. *Id.* § 17:416(L).

29. In accordance with this mandate of progressive levels of discipline, state law provides that “[e]xpulsions shall be reserved for the major tier of behavioral infractions involving weapons or drugs, or when the safety of students and staff is at risk.” 28 La. Admin. Code § 1302(4)(b); *see also* La. Rev. Stat. § 17:416(L).

30. The Louisiana Administrative Code specifies the serious offenses for which expulsion is permitted. 28 La. Admin. Code § 1307.

31. Under Louisiana law, an expulsion is defined as “removal from all regular school settings for a period of not less than one school semester.” La Rev. Stat. § 17:416(A)(2)(c).

32. Any student who is expelled from public school is entitled to procedural protections under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and parallel provisions of the Louisiana Constitution. *See Goss v. Lopez*, 419 U.S. 565 (1975); *Christy v. McCalla*, 79 So. 3d 293 (La. 2011). Louisiana Revised Statute § 17:416 further guarantees the right to notice and a hearing for all students facing “out-of-school suspension, assignment to alternative placement, or expulsion.” La. Rev. Stat. § 17:416(A)(3)(b)(i).

33. The process required for expelled students in Louisiana is defined by § 17:416 and includes the following:

- a. A hearing shall be conducted by the superintendent or his designee within fifteen school days of the recommendation by a principal for expulsion. La. Rev. Stat. § 17:416(C)(1).
- b. The school board shall provide written notice of the hearing to the student and his parent or legal guardian, and the notice shall advise the student and his parent or legal guardian of their rights. *Id.*
- c. At the hearing, the student may be represented by any person of their choice. *Id.*
- d. Upon the conclusion of the hearing and upon a finding that the student is guilty of conduct warranting expulsion, the superintendent or their designee shall determine whether such student shall be expelled from the school system or if other corrective or disciplinary action shall be taken. *Id.*
- e. A parent or legal guardian of a student who is expelled may, within five school days after a decision at the expulsion hearing is rendered, appeal to the local school board. *Id.*
- f. If the school board upholds the expulsion, the parent or guardian may, within ten school days, appeal to the district court for the parish in which the student's school is located. *Id.* § 17:416(C)(5)(a).
- g. The parent or legal guardian has the right to appeal even if the recommendation for expulsion is reduced to a suspension. *Id.*
- h. For students who are charged with felony violations, the process for expulsion is different. State law only allows the expulsion of students convicted of or

incarcerated for felony offenses following a vote by the school board, which requires the vote of two-thirds of the elected members. *Id.* § 17:416(D). The period of the expulsion may not last longer than the student’s period of adjudication, as determined by the applicable criminal court. *Id.*

- i. A superintendent who expels a student is required under Louisiana law to place that student in an alternative school or in an alternative educational placement. *Id.* § 17:416(C)(1); *see also id.* § 416.2(A).

34. An alternative school is defined, under Louisiana law, as a “school[] for children whose behavior is disruptive.” La. Stat. Ann. § 17:100.5.

35. Due to an amendment to the Louisiana discipline code in 2012, all expelled students in Louisiana now are required to attend alternative schools. *See* 2012 La. Sess. Law Serv. Act 831 (H.B. 1209) (removing statutory exemptions to alternative school attendance and school district waiver programs); *see also* La. Rev. Stat. §§ 17:416(A)(2)(c), (C)(1); *id.* § 17:416.2(A). In accordance with this amendment, statutory exemptions that previously excluded some categories of children from alternative education have been removed—including, for example, a pre-2012 statutory exemption from alternative education for students expelled for carrying or possessing a firearm at school or a school-related activity. As a result, even students expelled for the most serious offenses now are required to attend an alternative school program during the term of their expulsion, and “total exclusion” from school is no longer an option.

36. Students who attend alternative schools because of an expulsion are required to have the opportunity to make educational progress. As set forth in the Louisiana Revised Statutes, “[a] student who is suspended for more than ten days, or is expelled and receives educational services at an alternative school site, shall be assigned work by a certified teacher and shall receive credit

for school work if it is completed satisfactorily and timely as determined by the teacher.” *Id.* § 17:416(a)(3)(e). “Such work shall be aligned with the curriculum used at the school from which the student was suspended or expelled.” *Id.*

### **STATEMENT OF FACTS**

#### **St. Bernard Parish School Board**

37. SBPSB operates twelve public schools within the St. Bernard Parish Public School system, including one alternative school for middle and high school students: C.F. Rowley Alternative School (“Rowley”).

38. Rowley is a school placement for expelled students in grades six through twelve in SBPPS.

39. There are three middle schools and one high school in SBPPS besides Rowley. These middle schools include Andrew Jackson Middle School, St. Bernard Middle School, and N.P. Trist Middle School. SBPPS has only two high school programs: Chalmette High School and Rowley.

40. Chalmette High School is a high-performing high school with a unique array of education and vocational opportunities, including a dual-enrollment program at a local community college: Nunez Community College in Chalmette, Louisiana. Students in the dual enrollment program at Nunez can gain college-level credit and earn industry-based credentials that allow them to be employable immediately after graduation. Chalmette High School also provides students the opportunity to gain college credit in Advanced Placement courses, including Psychology, English Language and Composition, English Literature and Composition, U.S. History, Biology, and Calculus.

41. Chalmette High School serves over 2,000 students.

42. Andrew Jackson Middle School serves over 500 students; N.P. Trist Middle School serves over 700 students; and St. Bernard Middle School serves over 300 students.

43. Rowley has an approximate student population of merely 160 students between the grades of six through twelve.

44. According to data provided by the District, the proportion of students with disabilities at Rowley is approximately double that of the student population at Chalmette High School, Andrew Jackson Middle School, N.P. Trist Middle School, and St. Bernard Middle School. Because the school district fails to identify and accommodate students with emotional and behavioral disabilities, as outlined further below, this number likely is even higher than reported.

45. Although the population of SBPPS is over two-thirds white, the student population at Rowley is majority-Black.

46. Due to the District's policies and practices, expulsions to Rowley are not reported to the state for accountability monitoring, and students are not provided with the due process procedures required under Louisiana Revised Statutes § 17:416 before serving their expulsion.

47. St. Bernard Parish Public Schools reported no expulsions in the 2021-2022 school year.

48. A student who is expelled from an SBPPS middle school or high school is required to attend Rowley under state law.

49. A disciplinary placement at Rowley is indefinite, not limited to a school semester, and therefore constitutes an expulsion under Louisiana Revised Statutes § 17:416.

50. The District's policies and practices further prevent students with disabilities from exiting the alternative school program. Students remain at Rowley until school staff determine they have "earned" their way out of the alternative school environment by completing a behavioral "program." This behavioral "program" requires that students meet uniform, non-individualized behavioral expectations: to remain "respectful, responsible, and positive." These expectations are not modified for students with disabilities. In addition to completing this behavioral "program,"

students also must meet the following requirements to exit Rowley: (a) minimum 14 weeks attendance; (b) in good standing regarding absences; (c) in good standing academically; and (d) no suspensions.<sup>2</sup> Students placed at Rowley for disciplinary reasons are required to meet these requirements without regard for their disability<sup>3</sup> and without appropriate disability-related modifications and accommodations.

51. Once placed at Rowley, students are denied access to education. While placed at Rowley, students receive little, if any, live academic instruction. Students who attend Rowley may attend in person or remotely; in both settings, students spend most of their days in front of a computer completing Edgenuity courses, and, as a result, receive little to no live instruction. Edgenuity is a self-directed, online education platform often used as supplemental instruction or a credit recovery program. Edgenuity is not a virtual school, and it offers no live instruction or opportunities to socialize with peers in a school environment.

52. The entire high school population at Rowley is served by six teachers. This includes only one math teacher, one science teacher, and two English Language Arts (“ELA”) teachers. No social studies or history teachers are provided, even though either history or biology is a requirement to pass the Louisiana Educational Assessment Program (“LEAP”)—a state graduation requirement. Similarly, only six teachers serve the Rowley middle school population.

53. High school students enrolled at Rowley also are denied the opportunity to gain college credit. At Chalmette High School, students have the opportunity to gain college credit in Advanced Placement courses as well as the dual-enrollment vocational program offered in conjunction with

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<sup>2</sup> C.F. Rowley Alternative School, Student/Parent Handbook at 4 (2022-2023) (“Rowley Handbook”), available at <https://www.sbpb.org/cms/lib/LA01907342/Centricity/Domain/3042/2022-23%20STUDENT%20HANDBOOK%206.17.22.pdf> (last visited June 22, 2023).

<sup>3</sup> The only exception to this rule is that the 14-week attendance requirement may, according to the Handbook, be altered for students with disabilities. *Id.*

Nunez Community College. Over half of graduates from Chalmette High School graduate with college credits completed.

54. Rowley students also lose opportunities to compete for key scholarships provided to Chalmette High School students. According to data provided by the District, two-thirds of graduates from Chalmette High School earn a Taylor Opportunity Program for Students (“TOPS”) scholarship. In addition, Chalmette High School has had at least one student named a Posse Scholarship Recipient in the last five years.

55. Indeed, a significant proportion of students who attend Rowley will never graduate high school at all. Rowley students are less likely to graduate high school, where, according to the Louisiana Department of Education, alternative education students are five times more likely than students in a traditional educational setting to drop out of school,<sup>4</sup> and, as a result, face an increased likelihood of interacting with the criminal justice system and being incarcerated, as well as an increased risk of poverty, reduced earning potential, and even reduced life expectancy.<sup>5</sup> Data provided by the District suggests that the current Rowley graduation rate has been steadily declining since 2018, and, currently, only about half of Rowley students graduate high school, as compared with an over 80% graduation rate statewide.

56. Students at Rowley also face social exclusion from peers. Under school district policy, all students at Rowley are barred from participation in district-wide school-sponsored and extracurricular activities, including after-school sports and prom. This means that high school students at Rowley are denied the opportunity participate in seventeen Louisiana High School

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<sup>4</sup> See Louisiana Dep’t of Educ., Alternative Education Study Group Report at 3 (2017), available at <https://www.louisianabelieves.com/docs/default-source/district-support/alternative-education-study-group-report.pdf?sfvrsn=2> (last visited June 22, 2023).

<sup>5</sup> See, e.g., Jennifer E. Lansford et al., A Public Health Perspective on School Dropout and Adult Outcomes: A Prospective Study of Risk and Protective Factors from Age 5 to 27, 58 J. of Adolescent Health 652 (2016).

Athletic Association sports offered at Chalmette High School, including but not limited to basketball, swimming, football, cross country, and track and field. Rowley students also are denied the opportunity to participate in music, dance, and theatre programs in Chalmette High School's state-of-the-art theater. Students at Rowley are, therefore, also excluded from opportunities to earn college scholarships for these activities.

57. Rowley students further are subjected to other punitive policies that are unique to the alternative school program, including a prohibition on bringing a backpack to school.

58. All Rowley students are subjected to the above policies, excluding them from interactions with peers and post-secondary opportunities, regardless of the reason for their alternative school placement.

### **St. Bernard Parish School Board Disciplinary Policies and Practices**

59. In its administration of the alternative school at Rowley, SBPSB violates students' rights to notice and a hearing prior to long-term disciplinary exclusions under federal and state law.

60. The District's policies and practices in administering its public school program deny students the right to due process prior to long-term disciplinary exclusions, including expulsions.

Those policies and practices include, without limitation:

- a. Disciplinary placement at Rowley is indefinite and therefore constitutes an expulsion under § 17:416.
- b. No expulsion hearing is required prior to a disciplinary placement at Rowley.
- c. Disciplinary placement at Rowley is permitted for a variety of offenses for which punishment of the underlying behavior is not authorized by § 17:416. As outlined in the District Handbook, these offenses include but are not limited to: (i) any



offense the principal deems “serious enough” to warrant such action; and (ii) any felony “arrest” or “charge.”<sup>6</sup>

- d. Rather than provide an expulsion hearing, the District “suspends” students to Rowley for longer than a school semester.
- e. After “suspending” the student, the school coerces parents to “voluntarily” place their children at Rowley by presenting a waiver to parents, which requires them to waive their rights to a due process hearing and accept an off-the-books expulsion at Rowley, or otherwise face expulsion on their permanent record.
- f. Even where parents decline to sign the waiver, students remain in disciplinary placements at Rowley for longer than a school semester without an expulsion hearing.

61. According to the Rowley Handbook, students may only transfer out of Rowley to a mainstream school at the end or start of an academic semester, regardless of when they are first placed at Rowley.<sup>7</sup>

### **Placement at C.F. Rowley Alternative for Students with Disabilities**

62. Rowley purports to serve students with emotional and behavioral disabilities who require a “smaller setting” and therefore cannot be educated in a mainstream environment. Rowley is a disciplinary placement, however, as defined by state law, and, even when students with disabilities are placed at Rowley for purportedly disability-related reasons, they are subjected to the school’s

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<sup>6</sup> See Student & Family Handbook at 51-52 (2022-2023), available at [https://www.sbpb.org/cms/lib/LA01907342/Centricity/Domain/163/MASTER%20Student%20and%20Family%20Handbook\\_2022\\_2023%2008.03.2022.pdf](https://www.sbpb.org/cms/lib/LA01907342/Centricity/Domain/163/MASTER%20Student%20and%20Family%20Handbook_2022_2023%2008.03.2022.pdf) (last visited June 23, 2023).

<sup>7</sup> Rowley Handbook at 4.

punitive policies, including a ban on participation in extracurricular activities, sports, and prom. Students with disabilities also are barred from bringing a backpack to school.

63. At Rowley, students with disabilities are placed in front of a computer screen all day and are denied academic and social-emotional supports required to address their disabilities, including but not limited to social work services.

64. Students with emotional and behavioral disabilities are placed at Rowley because of methods of administration that discriminate against them on the basis of disability, including but not limited to the following policies and practices:

- a. Failure to provide social work, therapy, or similar interventions for students with emotional and behavioral disabilities, including students with mental health diagnoses;
- b. Failure to identify children with mental health diagnoses who, due to their impairments, require services and accommodations, including but not limited to through an Individualized Accommodation Plan or 504 Plan;
- c. Failure to provide behavior, conflict, and bullying intervention training for staff;
- d. Failure to create a resource room, intervention room, or similar space for students to access when experiencing dysregulation;
- e. Promulgation of policies that allow removal of students with disabilities from mainstream educational settings for disciplinary offenses that are vague, subjective, and not recognized under state law; and
- f. Failure to provide students with disabilities access to due process procedures required for all students under state law.

65. The District also places students with disabilities at Rowley upon the grounds that the alternative school is the only school with social-emotional supports available in St. Bernard Parish.

66. The social-emotional supports available at Rowley are limited to a health clinic operated by Louisiana State University (“LSU”). In this clinic, students are prescribed psychiatric medications by medical students participating in the fellowship program of the LSU Department of Psychiatry. Although Rowley students may be prescribed medication through this clinic, students do not otherwise receive basic school-based therapeutic interventions or social work services required to meet their disability-related needs. In other words, the primary social-emotional support available at this alternative school—which, as defined under Louisiana law, is a disciplinary placement—is psychiatric medication.

67. Students with disabilities receive medication for identified mental illness through this clinic, without ever being identified as a child with an emotional or behavioral disability by the school under Section 504 and the ADA.

68. Even if properly identified, few students with disabilities ever exit the alternative school environment, and students with disabilities are placed in the alternative school program far longer than non-disabled peers.

69. Students with disabilities placed at Rowley for disciplinary reasons are denied exit from Rowley if they fail to meet the school’s exit criteria, but these exit criteria are not modified to accommodate students who cannot satisfy the exit criteria due to their disabilities. As a result, students with disabilities are denied reentry to mainstream school environments on account of their disabilities.

70. Instead of assessing the need for individual, disability-related accommodations for Plaintiffs, as well as programmatic modifications to Rowley's exit criteria, the District warehouses students with emotional and behavioral disabilities at the alternative school program.

71. Even if a student with an emotional or behavioral disability is able to meet the District's exit criteria, the lack of programmatic modifications described above in the mainstream school environment guarantees their swift return to the punitive and inferior alternative school setting. Accordingly, even if a student with a disability escapes a disciplinary placement at Rowley, they face a significant risk of return to the alternative school site within a short period of time.

### **Plaintiff-Students**

#### **a. A.A.**

72. A.A. is an eleventh-grade student with a disability, who has, among other impairments, a Specific Learning Disability, ADHD, Depression, and PTSD. These impairments significantly limit A.A.'s ability to learn, think, concentrate, communicate, and socialize.

73. Throughout his high school experience in SBPPS, A.A. has been denied appropriate academic and behavioral supports and accommodations required to address his disabilities.

74. Rather than provide A.A. with supports and services that would allow him to engage in a mainstream educational environment, the District has instituted a revolving door of alternative school placements.

75. On or about September 18, 2021, A.A. was the victim of a shooting. The incident, which resulted in a gunshot wound to A.A.'s leg, occurred off-campus, outside of school hours, and was unrelated to any school activity. When A.A. attempted to return to Chalmette High School on September 27, 2021, following his hospitalization, SBPSB barred his entry and instructed him to report to an immediate disciplinary placement at Rowley.

76. Tommie Powell, acting in his official capacity as SBPPS Supervisor of Child Welfare and Attendance, informed A.A.'s mother that the reason for the disciplinary placement was the District's policy regarding felony arrests and charges. At the time he was enrolled at Rowley, however, A.A. had not been arrested for, charged with, or adjudicated delinquent of any offense. Without any disciplinary hearing or Manifestation Determination Review ("MDR") meeting, the District placed A.A. at Rowley on or around October 1, 2021.

77. Following advocacy from his attorneys, A.A. was permitted to return to Chalmette High School on or about November 29, 2021, but only under highly restrictive conditions. He was placed in an in-school suspension setting, where he was required to submit to random searches of his person and belongings throughout the school day.

78. On January 14, 2022, school officials reportedly found what were described as "grains of marijuana" in his jacket pocket. The school suspended A.A. and required his attendance in a disciplinary placement at Rowley starting on January 18, 2022.

79. The school district also presented P.A. with a waiver. The waiver explained that there was a right to a hearing on the disciplinary placement at Rowley, but presented her with an impossible choice: accept her son's off-the-books expulsion at Rowley without a hearing, or face expulsion on A.A.'s permanent record. Under these circumstances, P.A. signed the waiver presented by the school along with a separate agreement entered into with the assistance of counsel, which limited A.A.'s assignment to Rowley to the end of the 2021-2022 school year and guaranteed A.A. an opportunity to return to Chalmette High School at the start of the 2022-2023 school year.

80. For the remainder of the 2021-2022 school year, A.A. was enrolled at Rowley, where he experienced continued academic failure and did not receive the special education instruction and related services, including social work services, to which he was entitled.

81. A.A. was not identified as a special education student until on or around March 8, 2022, when he was identified with a Specific Learning Disability by the District. SBPSB did not conduct a Functional Behavior Assessment (“FBA”) or do behavioral interventions as part of the evaluation, and no Behavior Intervention Plan (“BIP”) was developed for A.A.

82. At the start of the 2022-2023 school year, the District informed P.A. that A.A. would remain placed at Rowley for the remainder of the school year, notwithstanding the signed agreement. No MDR meeting was held prior to the disciplinary placement, and no end date to the disciplinary placement at Rowley was provided.

83. The District informed P.A. that the reason A.A. would be denied placement at Chalmette High School was that the therapeutic supports and behavioral interventions he required were only available at Rowley. This change in placement was not reflected in the student’s Individualized Education Plan (“IEP”). Neither P.A. nor A.A. were presented with any notice of the alternative school placement, or otherwise provided with a means by which to appeal A.A.’s placement at Rowley in the 2022-2023 school year.

84. On or about August 15, 2022, P.A. through counsel filed an expedited due process hearing request on behalf of A.A. to secure his placement at Chalmette High School. Following presentation of the evidence and a hearing, the Administrative Law Judge (“ALJ”) determined that A.A. had been wrongfully given a disciplinary placement at Rowley at the start of the 2022-2023 school year, in violation of his procedural right to an MDR. The ALJ ordered his immediate return to Chalmette High School with compensatory social work services.

85. In accordance with the ALJ’s decision, A.A. reenrolled at Chalmette High School on or around September 27, 2022.

86. On November 17, 2022, an IEP team meeting was held for A.A. to review an FBA and draft a BIP. This was the first FBA or BIP ever developed for A.A. by the District.

87. On or around February 15, 2023, A.A. was again given a disciplinary placement at Rowley. On that day, A.A. was arrested for a fight on campus involving another student who had previously harassed, intimidated, and threatened A.A. The same student had engaged in acts of violence against A.A.'s younger brother and also his close friend.

88. Prior to the incident, P.A. had informed officials from Rowley, Chalmette High School, and SBPSB numerous times by phone and at meetings of his IEP or evaluation team of ongoing harassment by other students, including the student involved in the fight on February 15, 2023.

89. Following the February 15, 2023 incident, no expulsion hearing was ever held. Instead, the school district simply notified A.A. that he had been suspended and given a disciplinary placement at Rowley.

90. The District did not provide any end date to the disciplinary placement at Rowley.

91. On or about March 29, 2023, P.A. through counsel filed a second expedited due process hearing request on behalf of A.A. Following presentation of the evidence and a hearing, the ALJ released an opinion on or around May 15, 2023, in which she agreed that the school's disciplinary action was improper where: (a) the February 15 fight had a direct and substantial relationship to the student's disabilities; and (b) the school's failure to implement the IEP, including a BIP and social work services, resulted in A.A. being unable to identify his triggers, regulate his emotions, and cognitively restructure his response to prevent an externalizing trauma response. Once again,

the ALJ ordered A.A.'s immediate reinstatement in the general education curriculum at Chalmette High School.<sup>8</sup>

92. Despite the hearing officer's order, A.A. has been prevented from returning to Chalmette High School. A.A. is currently serving a one-year period of probation for the same underlying behavior determined to be the fault of the school district in the expedited due process hearing.

93. The reason A.A. is not currently permitted to return in-person to Chalmette High School is the direct result of retaliation by the District. Just one day after P.A. through counsel filed the second expedited due process hearing request referenced above, representatives of SBPSB appeared in a juvenile delinquency proceeding hearing to advocate for A.A.'s exclusion from Chalmette High School as a condition of his probation.

94. On March 30, 2023, Assistant Superintendent of SBPPS Mary Lumetta, acting in her official capacity as a representative of SBPPS and SBPSB, appeared at A.A.'s plea hearing in juvenile court and attended a meeting in the offices of the District Attorney prior to the hearing. At the pre-hearing meeting in the prosecutor's office, Ms. Lumetta and Joseph Cipollone, the District's Supervisor of Special Education for Middle and High School, discussed the terms of the proposed plea deal with the prosecutor and counsel for A.A. During this conversation, the SBPSB officials requested that, as a condition of A.A.'s release into the community, the prosecutor impose

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<sup>8</sup> In addition to immediate return to the general education curriculum at Chalmette High School with the delivery of appropriate services, including implementation of A.A.'s BIP, the ALJ also ordered: compensatory education resulting from SBPSB's denial of FAPE to be delivered by both SBPSB and by a private academic tutor of P.A.'s choosing and paid for by SBPSB; increased social work services of 60 minutes per week; and weekly counseling by a private school or certified psychologist. Despite this order, the District has not delivered necessary services and compensatory services. For several months after the ALJ's ruling, the District delayed increasing social work services, and A.A. did not receive these services in accordance with his IEP until October, 2023, when counsel requested service logs for the social work services. The District also delayed implementing a private tutor until November 2023 and has limited the tutoring hours available to him to two hours per week. No compensatory services have been delivered to date, despite P.A.'s request for such services to commence. And, to date, A.A. remains in a virtual Edgenuity educational setting, without special education instruction, as further explained herein.



a condition that he “not seek to go back to Chalmette High,” at any point in the future. Upon information and belief, SBPSB officials also unsuccessfully advocated that the prosecutor include as a condition of the plea deal withdrawal of A.A. and P.A.’s request for due process, which was pending at the time. In other words, the District leveraged delinquency charges against A.A. to deprive him of his education rights in retaliation for filing special education due process hearing requests to defend his rights under the IDEA, Section 504, and the ADA.

95. During the hearing, the prosecutor noted a conversation held earlier that day with SBPSB officials where the terms of the plea agreement were discussed. When asked if SBPSB approved the plea deal with a condition excluding A.A. from Chalmette High School, Ms. Lumetta responded affirmatively.

96. Ms. Lumetta was not a direct witness, party, or victim in the juvenile delinquency proceeding. Rather, she attended A.A.’s juvenile court hearing as a direct representative of the school district.

97. Upon information and belief, prior to discussions between SBPSB officials and the prosecutor handling A.A.’s case, exclusion of A.A. from Chalmette High School was not a condition of release proposed or sought by the State in the juvenile delinquency matter. Accordingly, A.A.’s current exclusion from Chalmette High School is the direct result of the District’s retaliatory actions.

98. Further evidence of the District’s retaliatory motive emerged in the expedited special education due process hearing ultimately held for A.A. on May 2 and 3, 2023. At the hearing, Mr. Cipollone testified that, on or around March 30, 2023, no discussion occurred between Mr. Cipollone, Ms. Lumetta, and the District Attorney’s office regarding: (a) preventing A.A. from returning to Chalmette High School; or (b) requiring withdrawal of the pending due process

request as a condition of the plea agreement. Likewise, Ms. Lumetta denied remembering either of those terms being a subject of discussion in the pre-hearing conversation with the prosecutor. Evidence to the contrary, in the form of a direct on-the-record statement by the prosecutor memorializing the pre-hearing conversation with SBPSB officials, appears in the juvenile court transcript record from the March 30, 2023 juvenile court hearing.

99. Due to the District's actions and failures to act, A.A. continues to be deprived of interaction with peers in a school environment and of in-person attendance in the educational setting appropriate for his disability-related needs: Chalmette High School. Until well after the commencement of this lawsuit, A.A. did not receive any live instruction, special education instruction, or related services in his isolated virtual setting. He also lacks access to vocational and other transition services to date. A.A. currently participates in school exclusively through a remote, virtual-only, self-directed Edgenuity curriculum, without any live interaction with teachers or peers.

100. A.A. is on track to graduate at the end of the 2023-2024 school year but, upon information and belief, has been continuously excluded from graduation activities available to graduating students at Chalmette High School. For example, A.A. was not invited to participate in the ring ceremony for graduating students on or around October 27, 2023. Likewise, A.A. and P.A. did not receive any information about senior pictures, participating in graduation, or ordering items for graduation when this information was provided to graduating peers.

**b. B.B.**

101. B.B. is an eleventh-grade student with a disability who has Type I Diabetes, ADHD, Major Depressive Disorder, and Disruptive Mood Dysregulation Disorder. These impairments substantially limit B.B.'s ability to learn, think, concentrate, communicate, and socialize.

102. In 2018, when she was in the sixth grade, B.B. received a 504 Plan, or Individualized Accommodation Plan, to address her Type I Diabetes. Due to her diabetes, B.B. is required to receive insulin on a regular basis, which she receives through an insulin pump.

103. Throughout her experience in SBPPS, B.B. has been the frequent target of bullying by other students in school, online, and in the community. The bullying started when she was very young, and it centered on her diabetes diagnosis. Other students told her she was “going to die” and made fun of her insulin equipment.

104. Rather than address the bullying or provide B.B. with necessary support and services that would allow her to engage in school, the District has instituted a revolving door of disciplinary alternative placements.

105. As a result of the constant bullying she faced, B.B. became involved in an incident with an older female student in the lunch line at Andrew Jackson Middle School in 2018. Mere weeks into her sixth-grade year, B.B. was sent to Rowley on a disciplinary placement.

106. During the remainder of her sixth-grade year, B.B. had at least six (6) more disciplinary infractions. During one incident on April 9, 2019, a School Resource Officer (“SRO”) at Rowley was called to deescalate a fight between B.B. and another student, and the SRO slammed B.B.’s head to the ground, resulting in a concussion for which she continues to need neurological care.

107. Also during her sixth grade year at Rowley, in February of 2019, B.B. was hospitalized by the school after a behavior incident. She was placed on a Physician Emergency Certificate (or “P.E.C”) by the school “due to behavioral problems” and subsequently hospitalized in a teen psychiatric unit at a behavioral health hospital in Shreveport, LA for three days. During or around this period of hospitalization, she received diagnoses of Major Depressive Disorder and Disruptive Mood Dysregulation Disorder. During both her sixth and seventh grade years at Rowley, B.B. also

received psychiatric medication management services from the LSU Health Services Clinic at Rowley.

108. In total, B.B. received a total of at least one hundred disciplinary writeups during her middle school career at Rowley, including 94 disciplinary writeups in a pandemic-shortened 2019-2020 school year, without receiving any additional supports, services, or intervention. The offenses for which she was written up included non-violent behaviors directly related to her disabilities, including minor infractions such as “deliberate choice to break a school rule” and “talking back”, as well as more serious infractions directly related to her mental health diagnoses such as “aggressive action” and “behavior causing a major disruption.” B.B. was also placed on a shortened day schedule due to behavior during the 2019-2020 school year. Nevertheless, at no point during her middle school years did the District ever address B.B.’s behavioral health diagnoses, or her resulting academic and behavioral needs, through her 504 Plan, by referring her for a Bulletin 1508 special education evaluation, or by developing a BIP.

109. Unable to complete the academic and behavior exit criteria due to her disabilities, B.B. remained enrolled at Rowley, with no opportunity to return to a mainstream school environment, until approximately mid-way through her eighth-grade year.

110. B.B. started high school in a mainstream setting at Chalmette High School. However, just a few weeks into her tenth-grade year, she was again removed to Rowley. On or around September 19, 2022, several male students at Chalmette High School, some of whom had been bullying B.B. both online and in the community, approached B.B. and began verbally assaulting her. As they approached her and continued to verbally assault and threaten her, she allegedly used mace in self-defense. B.B. was arrested for this incident.

111. Prior to the incident, both B.B. and her mother had alerted the principal of Chalmette High School to the bullying, but no action was taken.

112. By letter dated September 20, 2022, B.B. was suspended and required to attend a disciplinary placement at Rowley for “discharge of a weapon” and “behavior causing major disruption of instruction or any school activity and/or repeatedly violating any school rules in any areas.” No expulsion hearing was either scheduled or held by SBPSB, despite the law requiring an expulsion hearing for all students removed from regular school settings for longer than a school semester. La. Rev. Stat. § 17:416.

113. After the alternative school placement was upheld at an MDR meeting which considered only B.B.’s diabetes diagnosis, the school district attempted to coerce P.B. to “voluntarily” place B.B. at Rowley by presenting a waiver, which required B.B. to accept an off-the-books expulsion at Rowley without a hearing, or otherwise face expulsion on her permanent record.

114. P.B. did not sign the waiver, yet no further disciplinary hearings were held.

115. B.B. remained enrolled at Rowley for the remainder of her tenth-grade year. Upon the recommendation of SBPSB, B.B. was placed in the remote program at Rowley due to the inappropriateness of the highly chaotic and triggering in-person setting to her disability-related needs.

116. While enrolled at Rowley, B.B. received only computer-based programming, with no live instruction. She participated in school exclusively through the Edgenuity program, a setting entirely inappropriate to her needs. She had no opportunity to interact with peers during school hours or after school during school-sponsored extracurricular activities. Likewise, in addition to not receiving any instruction, she did not participate in any school-based counseling or other related services. Upon information and belief, B.B. did not receive any accommodations in

accordance with her 504 Plan or any other behavioral or academic services or supports while in the virtual setting at Rowley. She finished her 10<sup>th</sup> grade year at Rowley with only 9 earned credits and a 0.7 GPA.

117. Due to her disabilities, B.B. could not satisfy Rowley's uniform "exit criteria," including behavioral expectations contingent upon in-person attendance.

118. On or about March 7, 2023, P.B. through counsel filed an expedited due process hearing request on behalf of B.B. alleging violations of the IDEA, including its state law implementing regulations, as well as Section 504 and the ADA. The ALJ dismissed claims of disability discrimination arising under Section 504 and the ADA.<sup>9</sup> The ALJ also dismissed claims of FAPE denial under the IDEA arising under Louisiana Bulletin 1706 § 530(C).<sup>10</sup> Thereafter, the parties reached a preliminary settlement agreement regarding the expedited claim under the IDEA in March of 2023. In May of 2023, the parties reached a second settlement agreement as to the remaining IDEA claim requiring 400 hours of tutoring and reinstatement at Chalmette High School. In accordance with the terms of that agreement, B.B. has been reinstated at Chalmette High School.

119. Neither settlement agreement waived B.B.'s right to pursue relief under Section 504 and/or the ADA.

120. Only after P.B. retained counsel who requested a special education evaluation on March 7, 2023 did SBPSB finally evaluate B.B. for special education services. By an evaluation disseminated on June 2, 2023, B.B. was found eligible for special education under a primary exceptionality of Other Health Impairment and a secondary exceptionality of Emotional

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<sup>9</sup> See Order Denying Parent's Mot. to Adjudicate Claims Related to Illegal Expulsion Placement in Expedited Hr'g and Granting Sch. District's Exception of Lack of Subject Matter Jurisdiction, In the Matter of Parent on Behalf of Minor, No. 2023-2489-DOE-IDEA (Mar. 29, 2023).

<sup>10</sup> *Id.*

Disturbance. B.B.'s support needs were identified as: academic supports in the areas of math problem-solving, math calculations, reading comprehension, and listening comprehension, as well as supports for her impulsive behavior related to her ADHD. She qualified for both counseling and social work as related services. An IEP and BIP were developed on July 28, 2023. The BIP lists explicit supports and services to address target behaviors of (1) inappropriate peer interactions such as yelling, name-calling, verbal or physical altercations and (2) aggressive behavior such as throwing objects, using objects as weapons, fighting other students, or threatening other students.

121. In the absence of an order enjoining SBPSB policies, B.B. remains at imminent and significant risk of a subsequent disciplinary placement at Rowley.

c. C.C.

122. C.C. is an eleventh-grade student with a disability who has ADHD, Bipolar Affective Disorder, and Epilepsy. These impairments substantially limit C.C.'s ability to learn, think, concentrate, socialize, and engage in physical activities.

123. C.C. first received a 504 Plan, or Individualized Accommodation Plan, when she was in elementary school at a public charter school located in New Orleans, Louisiana that has subsequently closed. C.C. was held back in school and had to repeat the second grade.

124. Upon information and belief, C.C. was never exited from Section 504 eligibility, but during her middle or high school years, her 504 Plan did not follow her when she transferred schools.

125. C.C. transferred into SBPPS in August 2022, at the beginning of the tenth grade at Chalmette High School for the 2022-2023 school year. At that time, SBPSB did not identify her as a student with a disability under Section 504. While SBPPS did not inquire of her previous school if she was a student with a disability, upon her registration, the school counselor for

Chalmette High School contacted C.C.'s former high school to inquire whether she had been terminated from the school for a discipline issue or whether she had been sent to an alternative site.

126. On or around September 13, 2023, C.C. was involved in an altercation at Chalmette High School when defending herself against six other girls who approached her to fight. Prior to the incident, both C.C. and her mother had reached out to Chalmette High School staff and administration for assistance on how to handle the brewing conflict and threats from the other students, but were told nothing could be done until something happened.

127. By letter sent via text message dated the same day, P.C. was informed that C.C. was assigned to C.F. Rowley Alternative School for the remainder of the 2023-2024 school year. C.C. was not provided with an expulsion hearing as a matter of right, but the letter explained that she could "appeal" the expulsion and alternate placement decision by contacting the St. Bernard Parish School Board within 5 days of receiving the notice.

128. P.C. called and scheduled an appeal hearing where she was represented by counsel. Based on C.C.'s medical diagnoses, her previous 504 Plan, and the presentation of evidence that the six other students instigated the fight, the District's Hearing Officer reduced the term of C.C.'s disciplinary placement at Rowley to terminate at the start of the next semester. The determination letter stated that the decision was "final" and therefore no further right to appeal would be provided.

129. C.C. now attends Rowley virtually due to ongoing safety concerns with the other students involved in the altercation who, upon information and belief, were likewise expelled and placed at Rowley.



130. After a request for an evaluation was sent by counsel for C.C. and P.C. on or around October 4, 2023, C.C. was found eligible under Section 504 of the Rehabilitation Act of 1973 on or around October 18, 2023, and a 504 Plan was developed and put in place the same day. The Plan lists necessary accommodations for academics, physical activities, and to help C.C. cope with frustration caused by peer or adult interactions.

131. C.C. remained placed at C.F. Rowley for the remainder of the fall 2023 semester, where she attended school exclusively online through the virtual-only, self-directed Edgenuity curriculum, without any live interaction with teachers or peers. She also lacked access to vocational and other transition services. Upon information and belief, she did not receive her 504 accommodations in the virtual setting or any other educational supports or services.

**d. D.D.**

132. D.D is a ninth-grade student with a disability who has ADHD, dyslexia, and mental health conditions. These impairments substantially limit D.D.'s ability to learn, think, concentrate, socialize, and engage in physical activities.

133. D.D. has had an IEP since the fourth grade at Arabi Elementary in SBPPS. At that time, SBPSB identified that D.D. had dyslexia and ADHD, and the District created an IEP to provide services and accommodations in school accordingly. At the time D.D. was identified as a student with a disability, he already had major deficits that the school district previously failed to address. He was behind grade level in all subjects and reading on a first-grade level.

134. The initial special education evaluation completed by the school district also revealed that D.D. had behaviors resulting from his disabilities. The evaluation revealed that, due to his disabilities, D.D. has difficulty keeping his mind on his work, makes careless mistakes, becomes easily distracted, and is bored easily. He experiences significant issues remaining motivated to

attend school and avoids his schoolwork at times. He can exhibit high activity levels, be restless or impulsive, have difficulty being quiet, and may interrupt others or talk too much. He also experiences poor self-control and high levels of anger, which can result in destructive tendencies.

135. In his seventh-grade year, D.D. was first referred to Rowley from Andrew Jackson Middle School under a policy that requires alternative school placements for children who have more than three disciplinary offenses. D.D.'s offenses were minor and the direct result of his disability, such as not paying attention in class. Still, rather than provide appropriate supports and services for his disabilities, the District sent D.D. to Rowley.

136. At Rowley, D.D. continued to struggle because he lacked the disability-related supports he required. In the classroom at Rowley, he was left alone in front of a computer to do his work. The classroom was very distracting due to other students' behavior. The classwork was not modified to his academic level, and he made no academic progress.

137. D.D. continued to feel frustrated in school at Rowley due to the lack of accommodations, services, and supports, and, as a result, received minor disciplinary write-ups and avoided attending class.

138. Upon information and relief, while D.D. was enrolled at Rowley, several teachers strongly encouraged P.D. to put D.D. on ADHD medication, saying he should take it before he came to school. Faced with this repeated pressure, P.D. consented for D.D. to take medication that was prescribed through the LSU Health Clinic at Rowley. But he had serious side effects. D.D. got terrible headaches and had even more trouble concentrating, and he lost his appetite. Due to the side effects, P.D. revoked authorization for the medication but continued to receive calls from Rowley staff encouraging her to put D.D. on medication again. Even after P.D. provided a doctor's

note from Dr. Kristen LeBlanc recommending that D.D. not take the recommended medication, Rowley continually advocated for D.D. to take ADHD medication before school.

139. Upon information and belief, D.D. wanted to leave Rowley and return to his mainstream school, but D.D. was told by his teacher that he did not have good enough grades. P.D. was informed he could not go back because he had not earned enough positive behavioral points yet.<sup>11</sup>

140. At the start of his first year of high school on or around September 2023, D.D. was not permitted to return to Chalmette High School. Because P.D. knew Rowley could not meet her son's disability-related needs, she withdrew him from the District and enrolled him in a paid homeschool program. Unfortunately, this was not a good solution. P.D. works full-time, and the virtual program could not accommodate her son's disabilities. P.D. decided that she needed to reenroll him in an in-person program.

141. On or around January 2024, P.D. called the front office at both Rowley and Chalmette High School asking if she could enroll her son at Chalmette High School. Upon information and belief, P.D. was told that, if D.D. re-enrolled in the District, he would have to attend Rowley. Then, on or around February 1, 2024, P.D. called Chalmette High School and spoke with Jennifer Guerra. Ms. Guerra informed P.D., again, that D.D. could only attend Rowley because he had not "finished his time."

142. Shortly thereafter, P.D. retained counsel in this matter. Counsel sent an email to the school district demanding D.D.'s immediate enrollment in Chalmette High School. He was thereafter reenrolled at Chalmette High School on or around February 26, 2024.

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<sup>11</sup> To the extent that any allegations in ¶¶ 132-139 predate March 26, 2023, these allegations are provided as relevant factual background only. In accordance with the Court's order, untimely claims preceding March 23, 2024 have been removed. *See* ¶¶ 156-172, 179-191; *see also* Order, ECF No. 39 (May 13, 2024).

143. In the absence of an order enjoining SBPSB policies, D.D. remains at imminent and significant risk of a subsequent disciplinary placement at Rowley.

e. **E.E.**

144. E.E. is an eleventh-grade student with a disability who has a suspected dyslexia diagnosis. This impairment substantially limits E.E.'s ability to learn, think, and concentrate.

145. E.E. has been enrolled in the District since elementary school and remains enrolled as a student to date.

146. Although she is placed currently at Chalmette High School, E.E. has been placed at Rowley for most of her high school career.

147. E.E. has always struggled academically in school and has never passed the LEAP. In middle school, she was bullied frequently, and, overall, her experience with school has been very negative.

148. Upon information and belief, in the summer of 2022, E.E. opted to attend summer school after completing the ninth grade. During the summer school session, she was accused of using marijuana on campus. Following the accusation, she was brought to the administrative office. The School Resource Officer ("SRO") told E.E. that, if she did not admit to drug use, they could send her to jail. Faced with this coercion, she admitted to marijuana use on campus. She later recanted. Without a hearing, E.E. was involuntarily placed at Rowley beginning on or around August 5, 2022 because of the alleged conduct.

149. Upon information and belief, at Rowley, E.E. was required to submit to drug tests and participate in a drug education program. P.E. refused to require E.E. to submit to these activities, because she felt they were inappropriate. She wanted her daughter focused on her academics at school. But while enrolled at Rowley, E.E. was left alone in front of a computer to do her

schoolwork in a classroom without the instruction, supervision, and accommodations she requires to make academic progress.

150. E.E. aspires to graduate early to begin her career. However, because she has been denied education and disability-related supports at Rowley, E.E. has not passed the LEAP test required to graduate.<sup>12</sup>

151. Because P.E. refused to submit to drug testing, E.E. was enrolled at Rowley for her entire tenth grade year. At the beginning of the 2023-2024 school year, P.E. agreed to the drug tests because she knew that, if she did not, E.E. would never leave Rowley. Thereafter, E.E. was permitted to exit Rowley on or around January 5, 2024. Due to the District's actions and failure to act, E.E. spent her entire tenth-grade year, and half of her eleventh-grade year, at the alternative school, without the disability-related supports she requires.

152. E.E. does not currently have an IEP or 504 Plan, and she did not throughout her enrollment at Rowley. While E.E. was enrolled at Rowley, E.E. struggled academically and had not passed the LEAP. Upon information and belief, in the first nine weeks of E.E.'s eleventh grade year, at a report card conference, P.E. met with one of E.E.'s teachers at Rowley, Ms. Stephanie Anders, to discuss E.E.'s ongoing difficulty with learning. In particular, P.E. expressed concern that E.E. had a dyslexia diagnosis. But the teacher did not refer E.E. for a special education evaluation. Instead, the teacher informed P.E. that she should obtain an outside evaluation because it would be "faster." That outside evaluation is still pending.

153. On or around February 6, 2024, P.E. retained counsel on behalf of E.E.

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<sup>12</sup> To the extent that any allegations in ¶¶ 144-150 predate March 26, 2023, these allegations are provided as relevant factual background only. In accordance with the Court's order, untimely claims preceding March 23, 2024 have been removed. *See* ¶¶ 156-172, 179-191; *see also* Order, ECF No. 39 (May 13, 2024).

154. Only after counsel was retained did Mr. Cipollone meet with P.E. on February 23, 2024 to discuss evaluating whether E.E. has dyslexia. Upon information and belief, the meeting on February 23, 2024 was held because E.E. has never passed the LEAP but has completed all course requirements to graduate. Mr. Cipollone informed P.E. that they would do a “study” for the next couple weeks and begin testing her for dyslexia, and, if she does have dyslexia and needs special education, then the school district will be able to help her waive the LEAP requirement after three (3) failed attempts. If she does not pass the LEAP or have it waived, E.E. has been informed she will go to school next year and participate only in extracurriculars.

155. Although E.E. rematriculated at Chalmette High School as of January 2024, in the absence of an order enjoining SBPSB policies, E.E. remains at imminent and significant risk of a subsequent disciplinary placement at Rowley.

### **CLAIMS FOR RELIEF**

#### **COUNT I: DEFENDANTS’ DISCRIMINATION AGAINST PLAINTIFFS IN VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

156. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

157. Defendant SBPSB is a public entity within the meaning of the ADA. Defendant Voitier, as Superintendent of SBPPS, is charged with establishing and maintaining the public schools within the jurisdiction of SBPSB. 42 U.S.C. § 12131(1).

158. Plaintiffs are individuals with disabilities within the meaning of the ADA and Section 504. Their disabilities substantially limit one or more major life activities, including learning, reading, concentrating, thinking, communicating, or developing and maintaining relationships. 42 U.S.C. § 12102; 29 U.S.C. § 705.

159. As school-age children who live in the District, Plaintiffs are qualified to participate in Defendants' educational programs and services. 42 U.S.C. § 12131(2).

160. Through the acts and omissions described above, Defendants are violating the ADA, 42 U.S.C. § 12132, by<sup>13</sup>

- a. Denying all Plaintiffs an opportunity to participate in and benefit from educational services that are equal to those afforded to non-disabled students;
- b. Denying all Plaintiffs educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as those provided to non-disabled students;
- c. Denying Plaintiffs A.A., B.B., C.C., and E.E. disciplinary protections required under Louisiana Revised Statutes § 17:416, where these disciplinary protections are required for non-disabled students;
- d. Denying all Plaintiffs the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs, where such placement is appropriate to their needs, not opposed by Plaintiffs, and can be reasonably accommodated;
- e. Failing to reasonably modify SBPPS programs and services as needed to avoid discrimination against all Plaintiffs; and

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<sup>13</sup> In accordance with the Court's order on the motion for leave to amend, *see* Order, ECF No. 39 (May 13, 2024), the claims of D.D. and E.E. "may proceed, but only concerning their experiences at Rowley (including issues related to the exit procedures) on or after March 26, 2023, one year prior to the date plaintiffs sought leave to amend." *Id.* Accordingly, to the extent ¶¶ 156-164 can be interpreted as related to D.D. and E.E.'s discriminatory referral to Rowley and placement at Rowley before March 26, 2023, those claims are excluded for D.D. and E.E.

- f. Utilizing methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of Defendants' educational programs with respect to all Plaintiffs.

161. Granting relief to Plaintiffs would not fundamentally alter Defendants' programs, services, and activities.

162. The acts and omissions of Defendants have caused and will continue to cause Plaintiffs to suffer irreparable harm.

163. Plaintiffs are entitled to damages and nominal damages, declaratory, and injunctive relief to remedy violations of the ADA by Defendants.

164. Under the ADA, Plaintiffs are entitled to attorneys' fees and costs as appropriate and permitted by law, pursuant to 42 U.S.C. § 12205.

**COUNT II: DEFENDANTS' DISCRIMINATION AGAINST PLAINTIFFS IN VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973**

165. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

166. Defendant SBPSB is a public entity within the meaning of the ADA and Section 504. Defendant Voitier, as Superintendent of SBPPS, is charged with establishing and maintaining the public schools within the jurisdiction of SBPSB. 29 U.S.C. § 794; 42 U.S.C. § 12131(1).

167. Plaintiffs are individuals with a disability within the meaning of the ADA and Section 504. Their disabilities substantially limit one or more major life activities, including learning, reading, concentrating, thinking, communicating, or developing and maintaining relationships.

168. As school-age children who live in the District, Plaintiffs are qualified to participate in Defendants' educational programs and services. 29 U.S.C. § 794; 42 U.S.C. § 12131(2).



169. Through the acts and omissions described above, Defendants are violating the ADA, 42 U.S.C. § 12132, and Section 504 by:<sup>14</sup>

- a. Denying all Plaintiffs an opportunity to participate in and benefit from educational services that are equal to those afforded to non-disabled students;
- b. Denying all Plaintiffs educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as those provided to non-disabled students;
- c. Denying Plaintiffs A.A., B.B, C.C., and E.E. disciplinary protections required under Louisiana Revised Statutes § 17:416, where these disciplinary protections are required for non-disabled students;
- d. Denying all Plaintiffs the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs, where such placement is appropriate to their needs, not opposed by Plaintiffs, and can be reasonably accommodated;
- e. Failing to reasonably modify SBPPS programs and services as needed to avoid discrimination against all Plaintiffs;
- f. Placing all Plaintiffs outside the regular educational environment at Chalmette High School, where Plaintiffs can be educated in a mainstream school environment with the use of supplementary aids and services; and

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<sup>14</sup> In accordance with the Court's order on motion for leave to amend, *see* Order, ECF No. 39 (May 13, 2024), the claims of D.D. and E.E "may proceed, but only concerning their experiences at Rowley (including issues related to the exit procedures) on or after March 26, 2023, one year prior to the date plaintiffs sought leave to amend." *Id.* Accordingly, to the extent ¶¶ 165-172 can be interpreted as related to D.D. and E.E.'s discriminatory referral to Rowley and placement at Rowley before March 26, 2023, those claims are excluded for D.D. and E.E.

- g. Failing to allow all Plaintiffs to participate in vocational programs, extracurricular services, and activities on the basis of their disabilities.

170. Granting relief to Plaintiffs would not fundamentally alter Defendants' programs, services, and activities.

171. The acts and omissions of Defendants have caused and will continue to cause Plaintiffs to suffer irreparable harm.

172. Plaintiffs are entitled to damages and nominal damages, declaratory, and injunctive relief to remedy violations of Section 504 by Defendants.

**COUNT III: DEFENDANTS' RETALIATION AGAINST PLAINTIFF A.A. IN VIOLATION OF SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

173. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

174. Defendant SBPSB is a public entity within the meaning of the ADA and Section 504. Defendant Voitier, as Superintendent of SBPPS, is charged with establishing and maintaining the public schools within the jurisdiction of SBPSB. 42 U.S.C. § 12131(1); 29 U.S.C. § 794.

175. Plaintiff A.A. is an individual with a disability within the meaning of the ADA and Section 504. His disabilities substantially limit one or more major life activities, including learning, reading, concentrating, thinking, communicating, or developing and maintaining relationships.

176. Plaintiff A.A., by and through his mother, P.A., engaged in protected activity under the ADA where he filed a special education due process hearing request against SBPSB on or around March 29, 2023.

177. Because A.A. engaged in this protected activity, Defendants took adverse action against A.A. where, among other activities, Defendants appeared in juvenile court and advocated for a

new condition of release: permanent exclusion of A.A. from Chalmette High School and waiver of his educational rights to a special education due process hearing.

178. As the direct causal result of Defendants' actions, the juvenile court imposed exclusion from Chalmette High School as a condition of release, and, consequently, A.A. has been denied reentry to Chalmette High School despite the ruling of a special education due process hearing officer to the contrary.

**COUNT IV: DEFENDANTS' VIOLATION OF THE PROCEDURAL DUE PROCESS RIGHTS OF A.A., B.B., C.C. and E.E. IN SCHOOL DISCIPLINE MATTERS UNDER U.S. CONST. AMEND. XIV; LA. CONST. ART. 1, § 3**

179. Plaintiffs A.A., B.B., C.C., and E.E.<sup>15</sup> incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

180. Defendant SBPSB is an independent governing authority in St. Bernard Parish.

181. Defendants SBPSB and Superintendent Voitier, in her official capacity, are responsible for developing and implementing the District's disciplinary and alternative school policies, as well as the exit criteria for students to transition from alternative schools back to mainstream schools.

182. The following of Defendants' policies and practices violate Plaintiff A.A., B.B., C.C., and E.E.'s due process rights under the Louisiana Constitution, Article 1, § 3, and the Fourteenth Amendment to the United States Constitution:

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<sup>15</sup> The Court's order on Plaintiffs' motion for leave to amend held that D.D.'s due process claims were untimely but did not hold that E.E.'s due process claims are untimely. *See* Order, ECF. No. 39 (May 13, 2024). Plaintiffs' position is that E.E.'s placement at Rowley at the start of the 2023-2024 school year constituted: (1) a new disciplinary placement at Rowley without due process, after her initial expulsion to Rowley in the 2022-2023 school year; and (2) in the alternative, a continued expulsion from the 2022-2023 school year. However, in accordance with the Court's order, only due process protections violations arising from E.E.'s placement at Rowley at the start of the 2023-2024 school year are raised in Counts IV and V. Any due process claims arising from E.E.'s placement at Rowley at the start of the 2022-2023 school year are not raised. To the extent the Court issues a clarification on its previous ruling, or otherwise that determines E.E.'s due process claims from her placement at Rowley in August of 2023, are untimely, Plaintiffs request leave to amend their Complaint accordingly as to Counts IV and V.

- a. Expelling students to an alternative school without notice and the opportunity to be heard;
- b. Subjecting students to exclusionary discipline on more than one occasion for the same underlying disciplinary offense;
- c. Coercing students, parents, and/or guardians to sign a waiver of a right to a disciplinary hearing that is neither voluntary, knowing, or intelligent; and
- d. Utilizing the juvenile court process to expel students without notice and the opportunity to be heard.

183. The acts and omissions of Defendants have caused and will continue to cause Plaintiffs A.A., B.B., C.C., and E.E. to suffer irreparable harm.

184. The Fourteenth Amendment violation also entitles Plaintiffs A.A., B.B., C.C., and E.E. to obtain damages, nominal damages, declaratory and injunctive relief, and attorneys' fees, pursuant to 42 U.S.C. § 1983.

**COUNT V: DEFENDANTS' VIOLATIONS OF DISCIPLINARY PROCEDURES AND SAFEGUARDS REQUIRED UNDER STATE LAW AGAINST A.A., B.B., C.C., and E.E.**

185. Plaintiffs A.A., B.B., C.C., and E.E. incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

186. In Louisiana, the procedural protections afforded to any student facing expulsion are guaranteed within Louisiana Revised Statute § 17:416.

187. Expulsion is defined as "a removal from all regular school settings for a period of not less than one school semester" and placement in an alternative school or other alternative educational placement. Louisiana Revised Statute § 17:416(A)(2)(c).

188. Louisiana's expulsion statute provides in pertinent part:

Upon the recommendation by a principal for the expulsion of any student as authorized by Subsection B of this Section or a school board's code of conduct, a hearing shall be conducted by the superintendent or his designee within fifteen school days to determine the facts of the case and make a finding of whether or not the student is guilty of conduct warranting a recommendation of expulsion. The school board shall provide written notice of the hearing to the student and his parent or legal guardian, and such notice shall advise the student and his parent or legal guardian of their rights. Upon the conclusion of the hearing and upon a finding that the student is guilty of conduct warranting expulsion, the superintendent or his designee shall determine whether such student shall be expelled from the school system or if other corrective or disciplinary action shall be taken.

La. R.S. § 17:416(C)(1).

189. The following SBPSB policies and practices violate Plaintiffs' rights as defined under Louisiana Revised Statute § 17:416:

- a. Expelling students to an alternative school without notice and the opportunity to be heard;
- b. Expelling students to an alternative school for off-campus behavior unrelated to school or school activities and over which SBPSB has no disciplinary authority;
- c. Subjecting students to exclusionary discipline on more than one occasion for the same underlying disciplinary offense;
- d. Coercing students, parents, and/or guardians to sign a waiver of a right to a disciplinary hearing that is neither voluntary, knowing, or intelligent;
- e. Denying appeal rights to students whose expulsion is reduced to a suspension; and
- f. Utilizing the juvenile court process to expel students without notice and the opportunity to be heard.

190. Defendant SBPSB violated the statutory rights of Plaintiffs A.A., B.B., C.C., and E.E. by failing to schedule, hold, or provide notice of a disciplinary hearing before the District's

superintendent or her designee for the purposes of determining whether either of the students were guilty of the alleged conduct and, if so, whether the conduct warranted expulsion.

191. The acts and omissions of Defendants have caused and will continue to cause Plaintiffs A.A., B.B., C.C., and E.E. to suffer irreparable harm.

**COUNT VI: APPEAL OF ERRONEOUS DUE PROCESS RULING DISMISSING B.B.’S CLAIM DUE TO LACK OF JURISDICTION DESPITE SBPSB’S FAILURE TO FOLLOW DISCIPLINARY PROCEDURES IN THE SAME MANNER APPLICABLE TO STUDENTS WITHOUT DISABILITIES AS REQUIRED TO PROVIDE FAPE**

192. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

193. Defendant SBPSB is a Local Education Agency within the meaning of the IDEA. 20 U.S.C. § 1415(a); 20 U.S.C. § 1401(19)(A).

194. An Administrative Law Judge (“ALJ”) in a dispute under the IDEA has broad jurisdiction “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education [‘FAPE’] to such child.” 20 U.S.C. § 1415(b)(6)(A).

195. Even where an MDR meeting is held, a FAPE violation may occur where a district fails to apply disciplinary procedures applicable to students without disabilities to students with disabilities. *See* Louisiana Bulletin 1706 § 530(C); *see also* 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(b)(1).

196. On March 29, 2023, the ALJ declined to exercise jurisdiction over B.B.’s claim under Louisiana Bulletin 1706 § 530(C).

197. The ALJ erred in declining jurisdiction over B.B.’s claim under Louisiana Bulletin 1706 § 530(C).

**COUNT VII: DEFENDANTS' VIOLATION OF THE LOUISIANA HUMAN RIGHTS ACT PROHIBITIONS AGAINST DISABILITY DISCRIMINATION**

198. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

199. The Louisiana Human Rights Act (“LHRA”) safeguards individuals within the state against discrimination based on disability with regard to public accommodations. La. R.S. § 51:2231.

200. Plaintiffs A.A., B.B., C.C., D.D., and E.E. are all individuals with a disability within the meaning of the statute, which defines disability as “a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of such impairment, or being regarded as having such an impairment.” La. R.S. § 51:2232(3)(a). A.A., B.B., C.C., D.D., and E.E. all have disabilities that substantially limit one or more major life activities, including learning, reading, concentrating, thinking, communicating, or developing and maintaining relationships.

201. Discrimination in connection with public accommodations means “any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age, disability, national origin, or natural, protective, or cultural hairstyle.” La. R.S. § 51:2232(5).

202. As public high schools, Chalmette High School and C.F. Rowley Alternative School are public accommodations in accordance with the statute. A “place of public accommodation” is defined as “any place, store, or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public, or which is supported directly or indirectly by government funds.” La. R.S. § 51:2232(10).

203. Defendants have violated the LHRA by excluding Plaintiffs from Chalmette High School due to their disabilities; assigning Plaintiffs to C.F. Rowley Alternative School and segregating them from their nondisabled peers; denying Plaintiffs the opportunity to participate in and benefit from the same educational services that are afforded to their nondisabled peers; limiting Plaintiffs' access to Chalmette High School and the same educational opportunities afforded there that their nondisabled peers receive; and refusing to reasonably accommodate Plaintiffs in a manner that avoids discrimination.<sup>16</sup>

204. The acts and omissions of the Defendants have caused and continue to cause the Plaintiffs emotional harm entitling them to compensatory damages to remedy discrimination prohibited by the LHRA. La. R.S. § 51:2264.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray that the Court grant the following relief:

- A. Order and declare, as relevant to Counts I, II, IV, and V, that: (a) disciplinary placement at Rowley is tantamount to expulsion from the public school system where the disciplinary placement: (i) is indefinite, (ii) satisfies the definition of an expulsion under Louisiana Revised Statute § 17:416, and/or (iii) operates as a total exclusion from school due to, among other factors, lack of live instruction, exclusion from the mainstream curriculum, and lack of access to special education and related services for students with disabilities; (b) Defendants' policy and practice of expelling Plaintiffs to Rowley without affording notice and opportunity to be heard violates their rights under the due process provisions of

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<sup>16</sup> To the extent the Court construes the LHRA claims as having the same statute of limitations as Plaintiffs' 504 and ADA claims, and in accordance with the Court's order on motion for leave to amend, *see* Order, ECF No. 39 (May 13, 2023), the claims of D.D. and E.E "may proceed, but only concerning their experiences at Rowley (including issues related to the exit procedures) on or after March 26, 2023, one year prior to the date plaintiffs sought leave to amend." *Id.*



the Louisiana Constitution and the Fourteenth Amendment to the U.S. Constitution, as well as Louisiana Revised Statute § 17:416; (c) Defendants are violating the rights of Plaintiffs under the ADA, Section 504, and the LHRA; and (d) as relevant to B.B., ALJs acting as due process hearing officers have the authority and jurisdiction to determine whether a school district has violated 20 U.S.C. § 1415(k)(1)(C) and/or Louisiana Bulletin 1706 § 530(C) by failing to apply the disciplinary procedures applicable to student without disabilities in the same manner to students with disabilities;

- B. Permanently enjoin, as relevant to Counts I, II, IV, and V, Defendants, their successors in office, agents, employees and assigns, and all persons acting in concert with them, to: (1) prevent future violations of Plaintiffs' rights under the Louisiana Constitution, the Fourteenth Amendment to the U.S. Constitution, and Louisiana Revised Statute § 17:416; and (2) develop policies and procedures required to prevent discriminatory placement in the alternative school program; provide Plaintiffs the opportunity to participate in and benefit from the same educational and extracurricular services afforded to non-disabled peers; reasonably accommodate Plaintiffs' disability-related needs; and provide Plaintiffs with educational programs and services in the most integrated setting, as required by Section 504 and the ADA;
- C. Enter an order, as relevant to B.B. in Count VI, reversing the denial of Parent's Motion to Adjudicate Claims Related to Illegal Expulsion Placement in Expedited Hearing and Granting School District's Exception of Lack of Subject Matter Jurisdiction and remanding proceeding bearing DAL docket number 2023-2489-DOE-IDEA for adjudication of the erroneously dismissed claim under Louisiana Bulletin 1706 § 530(C);

- D. As relevant to all claims (Counts I – VII), award compensatory damages, including for emotional distress arising from a violation of the LHRA pursuant to La. R.S. § 51:2231 *et seq.*, compensatory education services and programming as relevant to Count VI, as well as any other appropriate form of compensatory damages;
- E. To the extent compensatory damages are unavailable for any claim (Counts I – VII), award nominal damages;
- F. Award Plaintiffs’ attorneys’ fees and costs as appropriate and permitted by law, including pursuant to 42 U.S.C. § 12205, 42 U.S.C. § 1983, and La. R.S. § 51:2264; and
- G. Award any other relief the Court deems proper.



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**Counsel for Plaintiffs**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system which will send notice of electronic filing to the following:

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I further certify that copies of the documents manually filed under seal were sent to above counsel via email.

This 20th day of May, 2024.



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