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

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

Dear Ms. Simons and Mr. Castillo:

Please consider this letter a supplement to the Complaint filed by the Southern Poverty Law Center on behalf of English language learner (“ELL”) students and their limited English proficient (“LEP”) families against the Jefferson Parish Public School System (“JPPSS” or “the

In an effort to assist the Departments with their investigation into the District's compliance with the EEOA, which requires state and local educational agencies to take appropriate action to overcome language barriers that impede equal participation

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

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

If a court determines that a district “has adopted a sound program for alleviating the language barriers impeding the educational progress of some of its students and made bona fide efforts to make the program work,” one final test must be met. “If a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate

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

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

- (1) *Designated ESL classes*, required if there are 15 or more LEP students in a grade level at that school. The class must contain a mix of LEP and English-speaking students.

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

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

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

Because of the improper allocation of resources, the ESL program in JPPSS is understaffed. There are not enough ESL-certified teachers to properly carry out the ESL curriculum and effectively teach ELL students English so that they can succeed in school. In his report, Professor López explains that while the District's chosen ESL curriculum appears to be solid,

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

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

Not only is the District f

The failure to ensure that an ESL teacher or paraprofessional is bilingual in the native language of the LEP students has been found to illustrate inadequate implementation of an ESL curriculum. *Keyes v. School Dist. No. 1, Denver, Colo.*, 576 F. Supp. 1503, 1516-17 (D. Colo. 1983). Furthermore, the Fifth Circuit noted that “[a]

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

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

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

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

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

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

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

alternative exit criteria. For example, high school junior Y.A. reports that she was removed from ESL classes and ceased to receive any ESL instruction after her freshman year at West Jefferson High School, during the 2010-2011 school year. She reports that she simply stopped being enrolled in ESL classes, and when asked about it, was told that she had been transferred out. Her transcript reflects that she ceased receiving ESL instruction after her freshman year. Yet, her Spring 2011 ELDA composite score was Level 2—with her reading score at Level 1, the lowest level of proficiency.

Under the No Child Left Behind Act of 2001 (“NCLB”), districts that accept federal funding “to improve the education of limited English proficient children, by assisting the children to learn English and meet challenging State academic content and student academic

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

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

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

Notably, high school LEP students failed to meet AMO in English Language Arts all four years for which data was available.³⁰ As explained in Professor López's report, "[n]ormally, not

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

b. Although Most Elementary Students Demonstrate Annual Progress on

- Complainant J.C.A., who has completed high school coursework but

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

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

CONCLUSION

Based on the above, Complainants respectfully request that DOJ and OCR consider the