

**Administrative Complaint against Richmond Public Schools Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990**

**I. Introduction**

This Complaint is filed with the U.S. Department of Education Office of Civil Rights (“OCR”) against City of Richmond Public Schools (“RPS”) on behalf of two African American students with disabilities, the Richmond branch of the National Association for the Advancement of Colored People (“NAACP”), and all African American students and students with disabilities who have been subjected to discriminatory discipline policies and practices while attending schools within RPS.

RPS’ discipline policies and practices have an adverse disparate impact on African American students in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”); students with disabilities (“SWD”) in violation of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Title II of the Americans with Disabilities Act of 1990 (“ADA”); and especially African American SWD in violation of Title VI, Section 504, and the ADA. This Complaint asks OCR to investigate RPS’ discipline policies and practices and to require the division to adopt adequate remedies, including those detailed below.

**II. Statement of Jurisdiction**

RPS is a public school division and local education agency in the Commonwealth of Virginia. As a public entity that receives federal funding from the U.S. Department of Education, RPS is subject to all non-discrimination laws enforced by OCR. This complaint is timely because each student complainant was subject to discriminatory discipline policies and disciplinary removal from school within the last 180 days. Further, the adverse disparate impact of RPS’ discipline policies and practices is ongoing.

**III. Richmond Public Schools**

RPS serves approximately 24,000 students and comprises 26 elementary schools (including one charter school), eight middle schools, five comprehensive high schools and three specialty schools.<sup>1</sup> RPS is racially segregated and plagued by academic failure and massive achievement gaps.

**A. Inter-Division Segregation**

RPS’ student population is predominantly African American and economically disadvantaged. RPS is encircled by two divisions—Chesterfield County Public Schools (“CCPS”) and Henrico County Public Schools (“HCPS”)—with student populations that are predominantly White and not economically disadvantaged. On September 30, 2015, RPS’ student population was 74.73% African American and 69.89% economically disadvantaged. In stark contrast, CCPS’ student population was 26.10% African American and 38.92% economically disadvantaged, and HCPS’ student population was 36.41% African American and

43.36% economically disadvantaged. Statewide, the public school population was 22.9% African American and 38.92% economically disadvantaged. RPS also served a disproportionate number of SWD; its student population for the 2015-16 school year was 17.70% SWD, compared to 11.69% in CCPS, 12.00% in HCPS, and 12.47% statewide.<sup>2</sup>

## **B. Intra-Division Segregation**

Schools within RPS are also racially segregated. On September 30, 2015, only 9.86% of RPS' elementary school students were White, but three elementary schools had student populations that were over 30% White: Linwood Holton Elementary (30.27%); William Fox Elementary (64.47%); and Mary Munford Elementary (74.30%). Nearly three-quarters of all White elementary school students within RPS (72.95%) attend these three schools. Meanwhile, there were 12 elementary schools in which less than two percent of students were White.<sup>3</sup>

More than two-thirds of White middle school students attended just two of RPS' seven middle schools. The student population of Albert Hill Middle was 26.07% White, and the student population of Lucille Brown Middle was 17.87% White. In contrast, the student populations at Elkhardt-Thompson, Thomas H. Henderson, Martin Luther King, Jr., and Thomas C. Boushall Middle Schools were each less than 5% White.<sup>4</sup>

At Thomas Jefferson High School, White students made up 20.99% of the student population and accounted for 46.13% of all White students who attended RPS' traditional high schools. The student populations at the four other traditional high schools were between 1.75% and 5.80% White. At Open High, a specialty school to which students must apply, the student population was 39.77% White. In contrast, RPS' disciplinary alternative school had *one* White student and a student population that was 96.86% African American.<sup>5</sup>

## **C. Academic Failure and Achievement Gaps**

RPS is one of the lowest-performing school divisions in the Commonwealth. During the 2015-16 school year, five schools within RPS were denied state accreditation. Statewide, 78% of schools are fully accredited; in RPS, only 38.64% of schools (17 of 44) are fully accredited.<sup>6</sup> In 2014-15, among the 132 school divisions in Virginia, RPS had the:

- Highest dropout rate;<sup>7</sup>
- Lowest high school attendance rate (tied with three other divisions);<sup>8</sup>
- Lowest passage rate on Standards of Learning (“SOL”) tests in writing;<sup>9</sup>
- 2<sup>nd</sup> lowest passage rate on SOL tests in reading;<sup>10</sup>
- 4<sup>th</sup> lowest passage rate on SOL tests in history and social science;<sup>11</sup>
- 5<sup>th</sup> lowest passage rate on SOL tests in science;<sup>12</sup> and
- 6<sup>th</sup> lowest passage rate on SOL tests in mathematics.<sup>13</sup>

#### **IV. Discipline Policies and Practices**

RPS maintains a written system of discipline policies and practices. RPS' School Board Bylaws and Policies manual ("Board Policy") broadly lays out the school discipline policies for the division.<sup>14</sup> Section 8, Article III of Board Policy requires the division superintendent to issue "Standards of Student Conduct and a list of possible corrective actions for violations of the Standards of Student Conduct."<sup>15</sup> The code of conduct issued by the superintendent is titled "Student Code of Responsible Ethics" ("the SCORE").<sup>16</sup> A memorandum of understanding ("MOU") between the Richmond Police Department ("RPD") and RPS briefly outlines the duties of armed, uniformed RPD officers assigned to law enforcement duty in RPS middle and high school buildings.<sup>17</sup> The entire system of discipline policies and practices is vague and ambiguous, and it lacks clear standards for application.

##### **A. Prohibited Conduct is Not Clearly Defined**

At more than 70 pages long, the SCORE for the 2015-16 school year is a disorganized and internally inconsistent assortment of narrative, lists, and charts. Student conduct and discipline policies as outlined in the SCORE are so vague that they provide inadequate notice of prohibited conduct and allow for subjective interpretation and selective enforcement. The SCORE prohibits a variety of behaviors that lack clear definition, including:

- Violating "any verbal or written instructions given by school personnel within the scope of their authority";<sup>18</sup>
- "Any physical or verbal disturbance within the school setting or during related activities, which interrupts or interferes with teaching or orderly conduct of school activities";<sup>19</sup>
- Attire or appearance that is "immodest";<sup>20</sup>
- "Any conduct which materially and substantially interferes with the ongoing education process or which is otherwise a violation of federal, state or local law";<sup>21</sup>
- Possessing, exhibiting, or disseminating "obscene literature, materials, illustrations, and/or images";<sup>22</sup>
- "Profane, obscene or abusive language, obscene gestures, or...obscene conduct,"<sup>23</sup> and
- "Engaging in behavior that interferes with the learning of others" (disruptive demonstration).<sup>24</sup>

##### **B. Lack of Standards for Applying Consequences**

RPS discipline policies are overly broad and lack clear standards for applying interventions and consequences to instances of misconduct. At first glance, the SCORE appears to tier offenses and consequences by grade level. However, the section for "Pre-K – 5<sup>th</sup> Grade Discipline" and the section for "6<sup>th</sup> – 12<sup>th</sup> Grade Discipline" are identical. "Level 2 consequences," which include out-of-school suspensions for up to five school days, are available for all offenses within the SCORE. In other words, RPS policies authorize out-of-school suspension for all grade levels—including pre-kindergarten—and for all misconduct, including minor offenses such as cutting class, tardiness, disrespect, defiance, insubordination, disruption, and cell phone possession.<sup>25</sup> Moreover, out-of-school suspension for six to 10 school days is

*expressly permitted* for many relatively minor, non-violent offenses, including disruption, gambling, possession of a cell phone, and “other conduct.”<sup>26</sup> Despite the excessively vague definition of “disruptive demonstration,” the full range of disciplinary consequences—including expulsion—is available for *all grade levels* for that offense.”<sup>27</sup>

### C. Suspensions and Expulsions

Virginia law defines short-term suspension as “any disciplinary action whereby a student is not permitted to attend school for a period not to exceed 10 school days.”<sup>28</sup> During the 2014-15 school year, RPS issued 6,667 short-term suspensions to 3,203 students, including more than 1,800 short-term suspensions issued to students in kindergarten through fifth grade. Eight RPS schools, including two elementary schools, suspended more than a quarter of their students. See Figure 1. A substantial portion of the short-term suspensions were issued for relatively minor, non-violent, subjective offenses: 299 were issued for “disrespect/walking away,” 1,511 for “defiance of authority/insubordination,” 2,071 for “disruptive demonstration,” and 1,095 for “classroom or campus disruption.”<sup>29</sup>

**Figure 1: RPS schools with the highest short-term suspension rates (2014-15)**

School	Pop.	# of Students Suspended	% of Students Suspended
Richmond Alternative	242	238	98.35
Boushall Middle	606	201	33.17
Wythe High	908	277	30.51
Woodville Elementary	518	156	30.12
Henderson Middle	495	142	28.69
Fairfield Court Elementary	541	144	26.62
Elkhardt Middle	483	127	26.29
MLK Middle	729	187	25.65

Source: VDOE Data.

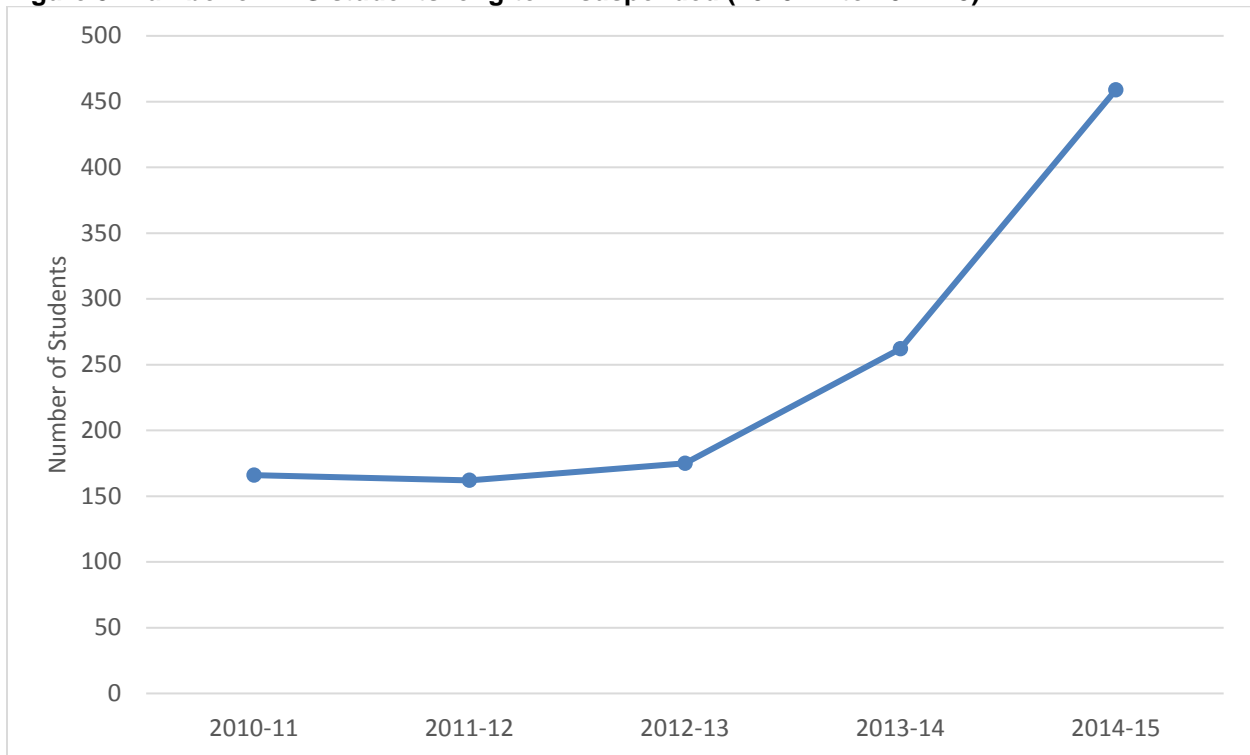
Long-term suspension is “any disciplinary action whereby a student is not permitted to attend school for more than 10 school days but less than 365 calendar days.”<sup>30</sup> During the 2014-15 school year, RPS issued 491 long-term suspensions to 459 students. Its long-term suspension rate was the highest in the Commonwealth, more than two times greater than the division with the second highest rate.<sup>31</sup> Martin Luther King, Jr. Middle School long-term suspended 71 students, which was more than all but nine entire *school divisions*. See Figure 2. From 2010-11 to 2014-15, RPS’ long-term suspension rate increased by 170.70%. See Figure 3.

**Figure 2: RPS schools with the most students long-term suspended (2014-15)**

School	Students Long-Term Suspended	School	Students Long-Term Suspended
MLK Middle	71	Thomas Boushall Middle	23
Richmond Alternative	60	Henderson Middle	19
Armstrong High	58	Lucille Brown Middle	19
George Wythe High	40	Thomas Jefferson High	19
Huguenot High	34	Fred Thompson Middle	17
John Marshall High	28	Elkhardt Middle	12

Source: VDOE Data.

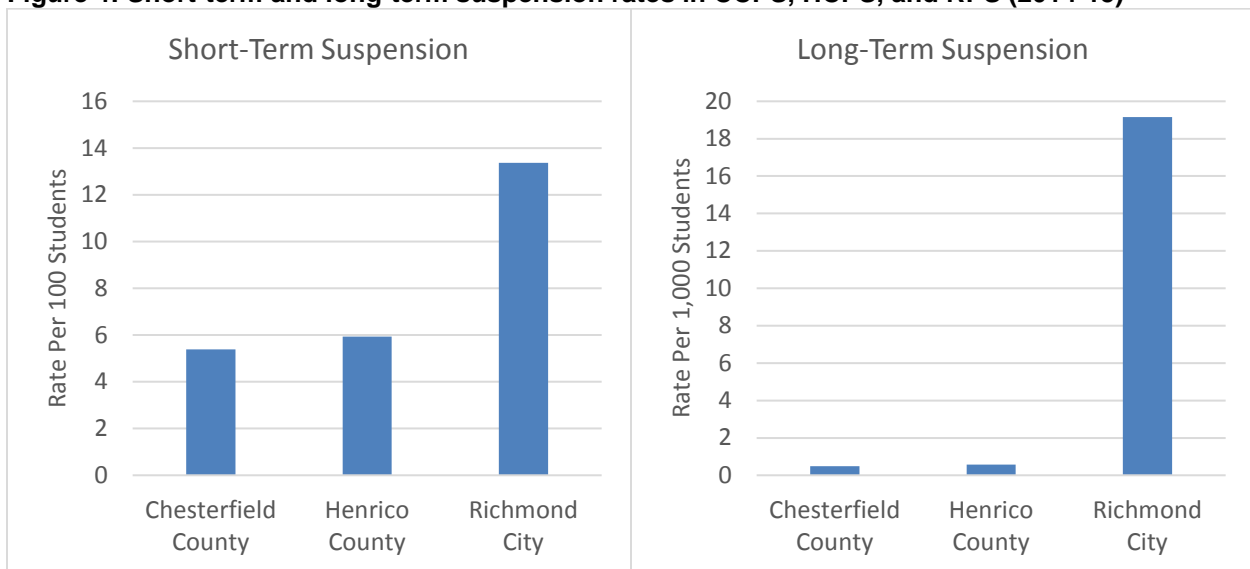
**Figure 3: Number of RPS students long-term suspended (2010-11 to 2014-15)**



Source: VDOE data and OCR Civil Rights Data Collection.

RPS suspended students at significantly higher rates than the surrounding school divisions during the 2014-15 school year. RPS' short-term suspension rate was 2.48 and 2.25 times larger than the rates in CCPS and HCPS, respectively. RPS' long-term suspension rate was 39.46 and 33.67 times larger than the rates in CCPS and HCPS, respectively. See Figure 4.

**Figure 4: Short-term and long-term suspension rates in CCPS, HCPS, and RPS (2014-15)**



Source: VDOE Data.

Virginia law defines expulsion as “any disciplinary action imposed by a school board or a committee thereof, as provided in school board policy, whereby a student is not permitted to attend school within the school division and is ineligible for readmission for 365 calendar days after the date of the expulsion.”<sup>32</sup> During the 2014-15 school year, RPS issued 35 expulsions. Another 65 recommendations for expulsion were reduced to suspension. RPS enrolled 1.87% of the Commonwealth’s public school students but issued 9.02% of all expulsions during that school year. In contrast, 80 *entire school divisions* in Virginia did not expel any students. From 2010-11 to 2014-15, RPS had the 3<sup>rd</sup>, 7<sup>th</sup>, 3<sup>rd</sup>, 2<sup>nd</sup>, and 2<sup>nd</sup> most expulsions among Virginia divisions, respectively.<sup>33</sup>

#### **D. Disciplinary Alternative Education in Richmond Public Schools**

RPS uses two forms of disciplinary alternative education: home-based educational services and assignment to Richmond Alternative School (“RAS”).<sup>34</sup> While RPS routinely refers students to home-based services and RAS, there is remarkably little written policy that substantively addresses disciplinary alternative education in the division. The policies that do exist are exceedingly vague and lack standards for application.

Board policy and the SCORE state that the School Board may permit or require students suspended or expelled to attend an alternative education program provided by the School Board for the term of such suspension or expulsion.<sup>35</sup> “Referral to Alternative Learning Program” is listed as a “Level 3” consequence requiring a hearing officer consultation in the SCORE.<sup>36</sup> Board Policy 8-2.5 allows the superintendent or his designee to reassign students to an alternative school. The reassignment decision has been delegated to a hearing officer in the Office of Pupil Personnel Services.<sup>37</sup> Board Policy states that reassignments are “final unless altered by the School Board, upon timely written petition, as established by regulation, by the student or his/her parent or guardian, for a review of the record by the School Board.”<sup>38</sup> Therefore, a single hearing officer’s discretion to reassign students to disciplinary alternative education is virtually unlimited. Moreover, the student must attend the alternative school during the pendency of the appeal.<sup>39</sup>

##### **i. Richmond Alternative School**

RAS is a brick-and-mortar school serving students “who demonstrate significant behavioral challenges resulting in multiple disciplinary infractions and/or severe infractions that adversely impact their learning or that of others.”<sup>40</sup> Students are placed *indefinitely* at RAS for a minimum of 90 days by the RPS hearing officer or School Board as a result of a behavioral infraction or via principal recommendation to the hearing officer as a result of ongoing challenges in academic progress, behavior, and/or attendance.<sup>41</sup> As of September 30, 2015, RAS served 233 students in grades six to 11.<sup>42</sup> There are no publicly available regulations or guidelines pertaining to standards for the terms of assignment to RAS, transitioning in and out of RAS, support services at RAS, or curriculum and instruction at RAS.

RAS has a chaotic and inadequate learning environment; it is often described by parents as unsafe. RAS has four security officers, but only one counselor and one social worker.<sup>43</sup> It

offers significantly fewer courses and co-curricular and extracurricular activities than RPS' traditional schools. During 2014-15, 15% of its core academic classes were taught by teachers who did not meet the federal definition of "highly qualified," and 13% of its teachers were only provisionally licensed, compared to 5% and 9%, respectively, for RPS as a whole.<sup>44</sup> The attendance rate was only 83%, compared to 93% for RPS as a whole and 95% statewide.<sup>45</sup> RAS passage rates on the SOL tests in 2014-15 were abysmal: 24% in reading; 9% in mathematics; 14% in writing; 15% in history; and 12% in science.<sup>46</sup> Nearly half of RAS students in grades nine to 12 (88 out of 186 students) dropped out.<sup>47</sup>

On March 21, 2016, the RPS School Board received a proposal to privatize RAS. The proposal notes the "stagnant and/or decreasing overall academic achievement at RAS over the past three academic years" and the "significant number of RAS students dropping out of school."<sup>48</sup> In July 2016, the School Board hired a Texas-based private instruction company, Camelot Education, to manage Richmond Alternative School for the 2016-17 school year.<sup>49</sup> The \$1.8 million contract is unlikely to improve academic performance or school climate within RAS. According to a recent complaint filed by public school students against the School District of Lancaster, PA, an alternative high school run operated by Camelot in Lancaster has a "highly restrictive and overtly confrontational environment" in which

[s]tudents are subject to pat-down searches, prohibited ofrom bringing belongings into or out of the school, forced to wear colored shirts that correspond with behavior and not allowed to wear watches or jewelry, expected to "confront" peers "exhibiting negative behavior," and can be subjected to physical and even violent restraint, as part of the school's disciplinary policy.<sup>50</sup>

## ii. Home-Based Services

RPS issued a "Guide for Homebound/Homebased Services" ("the Guide") for the 2015-16 school year.<sup>51</sup> It reads: "Home-based services are . . . requested by the Disciplinary Review Hearing Officer for discipline related reasons. Students who have been charged with 'certain' charges as indicated in VA Code 16.1-260(G) will receive home-based services until charges are reviewed and resolved."<sup>52</sup> The Guide specifies that home-based instruction may be authorized for students:

- Who are waiting for a disciplinary panel hearing;
- Who have been long-term suspended or expelled;
- Who have been placed in an Interim Alternative Educational Setting ("IAES") for weapons, drugs, and serious bodily injury; or
- Whose IEP teams have determined that the least restrictive environment for a student is home-based instruction.<sup>53</sup>

During the 2015-16 school year, the SCORE required all students *merely charged* with any offense listed in Va. Code § 16.1-260(G) to be *automatically assigned* to home-based education, without any opportunity to be heard.<sup>54</sup>

RPS places hundreds of students on home-based education each school year.<sup>55</sup> Students receiving home-based services are banned from school-related extracurricular activities, non-academic activities, school property, and school-sponsored activities.<sup>56</sup> Home-based instruction is limited to core courses only;<sup>57</sup> therefore, students receiving home-based services must either fail or withdraw from elective courses. The amount of instruction is limited and varies from five hours per week with a maximum of 20 hours per month for elementary school students to 10 hours per week with a maximum of 40 hours per month for high school students.<sup>58</sup>

### **E. School Policing**

Armed Richmond Police Department officers—called “School Resource Officers” (“SROs”)—are posted inside every RPS middle and high school.<sup>59</sup> Virginia law defines SROs as certified law-enforcement officers “hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.”<sup>60</sup> Rather than relying on SROs for law enforcement and security services only, RPS uses SROs to carry out routine disciplinary duties with few limitations on SRO authority or protections for students. Board Policy and the SCORE are silent with respect to the roles and responsibilities of SROs, qualifications and selection of SROs, training for SROs, use of force on students, data collection about school policing practices, and accountability for SRO conduct. The role of SROs in RPS school buildings is governed only by the MOU between RPS and RPD.

The MOU contains no requirements for SRO qualifications (*e.g.*, experiencing working with youth), SRO selection (*e.g.*, input from students, parents, and school division staff), data collection and publication, program evaluation, community involvement and accountability (*e.g.*, a grievance system for students and parents), use of force (*e.g.*, when and what force is permissible and how it should be documented), or interrogations of students. The MOU requires SROs to complete the Virginia Center for School Safety’s “School Resource Officer Basic and School Security Officer Certification” course, but it does not specify when the training must be completed, and it does not address on-going training. Moreover, the MOU does not limit the offenses for which students can be arrested or subjected to a court complaint. It incorporates few of the best practices recommended by the U.S. Department of Education for school-based law enforcement.<sup>61</sup> The MOU is not publicly available or distributed to students, parents, and staff.

As of September 2014, RCPS also employed 54 school safety officers,<sup>62</sup> defined by state law as individuals who are:

employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.<sup>63</sup>



According to data provided by the Virginia Department of Juvenile Justice, during the 2013-14 school year there 377 school-based offenses that resulted in students entering the juvenile justice system. Nearly one quarter of the offenses were for disorderly conduct.<sup>64</sup>

## **V. Complainants**

### **A. J.R.**

J.R. is an African American, 13-year-old, rising eighth grade student who attended T.C. Boushall Middle School (“Boushall”) within RPS during the 2015-16 school year. J.R. is a student with disabilities and eligible to receive special education services under the Individuals with Disabilities Education Act (“IDEA”) for emotional disabilities. J.R. receives instruction in his core classes in a special education classroom. J.R. appears to be physically small for his age.

On April 7, 2016, J.R. was serving as the classroom helper for one of his teachers and was performing a task when the bell rang. His teacher exited the classroom and another teacher entered while J.R. was finishing the task. The new teacher confronted J.R. for being out of place. Focused on finding his actual teacher to receive a pass, J.R. left the classroom. In the hallway, a school security officer confronted J.R., and J.R. became agitated. The officer moved J.R. into a classroom and restrained him on the ground, allegedly because J.R. had clenched his hands into fists. J.R. asserts that he did not move his hands above his waist or intend to strike anyone. During the physical restraint, the officer applied pressure to J.R.’s leg, on which J.R. had recently undergone surgery. J.R. moved his legs and inadvertently made contact with the officer. J.R. was moved to the school office, where he was restrained once again. School officials called the City of Richmond Police Department. Officers arrived and handcuffed J.R. until his mother arrived to pick him up. As a result of being restrained on the floor, J.R. needed medical treatment for facial contusions.

J.R. was suspended and lacked any educational services for 13 days. On April 25, 2016, J.R. was reassigned to Richmond Alternative School until a disciplinary hearing could be held. On April 28, 2016, J.R. enrolled at RAS, where he was placed in a classroom by himself with a counselor but no teacher. On April 29, 2016, the RAS counselor did not show up, and J.R. was sent home. On May 1, 2016, J.R. was informed that he was no longer eligible to attend RAS, as a hearing officer had rendered a decision recommending expulsion. Home-based services were provided for about ten hours per week beginning around the second week of May 2016 and continuing until the end of school in mid-June. J.R. successfully appealed the expulsion recommendation and will return to RPS at the beginning of the 2016-2017 school year.

### **B. A.L.**

A.L. is an African American, 12-year-old, sixth grade student who attended Martin Luther King, Jr. Middle School (“MLK”) within RPS during the 2015-16 school year. A.L. is a student with disabilities. A.L. is eligible for services under a Section 504 plan for his ADHD. A.L. has had academic troubles since kindergarten and was diagnosed with ADHD and Asperger’s Syndrome in 2010. During the summer of 2015, A.L.’s mother began to reach out to

school counselors and administrators at MLK to ensure they were aware of his disabilities. Despite her best efforts, the school did not arrange a meeting to discuss A.L.'s disabilities and to review a behavioral intervention plan for A.L. until February 2016.

On or about January 5, 2016, A.L. was involved in an altercation with a staff member at MLK. He was suspended for 10 days and referred for a superintendent's hearing. RPS did not perform a Manifestation Determination Review ("MDR") to determine whether the misconduct was related to A.L.'s disabilities. A.L. received no further information about his status until his mother called RPS. He was allowed to return to school on February 1, 2016. While A.L. was suspended and awaiting the decision of his panel hearing, he received no school work or services. On or about February 8, 2016, A.L. was involved in a physical altercation with another student. RPS conducted a MDR and determined the conduct was not causal; thus, A.L. received five days of out of school suspension. On or about March 8, 2016, A.L. was again involved in a physical altercation with a student. RPS conducted a MDR and determined the conduct was not causal; thus, A.L. received five days of out of school suspension.

On or about March 23, 2016—only one day after school administrators met with A.L.'s mother to review a functional behavioral assessment and behavioral intervention plan—RPS notified A.L.'s mother that A.L. would be reassigned to Richmond Alternative School effective April 4, 2016. A.L.'s mother attempted to appeal the decision by arranging a meeting with MLK administrators. Only one administrator attended the meeting, and the reassignment decision was upheld. A.L. alleges that, at the time of reassignment, neither he nor his mother were made aware that reassignment decisions could be appealed with RPS' Executive Director of Exceptional Education and Student Services. A short time after the reassignment meeting, A.L.'s mother formally appealed, and A.L. was allowed to return to MLK.

### **C. National Association for the Advancement of Colored People – Richmond Branch**

Founded in 1909, the NAACP is the national's oldest and largest civil rights organization. Its mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The Richmond, Virginia, branch of the NAACP has a standing committee on education. The goals of the education committee include eliminating segregation and other discriminatory practices in public education, studying local educational conditions that effect minority groups, investigating the public school system, stimulating school attendance, staying informed of school conditions and striving to correct abuses where found, investigating the effects of standardized and high stakes testing practices; monitoring teacher certification, and promoting parental involvement in education.<sup>65</sup> The elimination of RPS policies that have discriminated against African American students and students with disabilities is directly in line with the national mission of the NAACP, as well as the stated goals of the Richmond Branch's standing Committee on Education.

#### **D. Similarly Situated Students**

This complaint is filed on behalf of all other African American students and SWD within RPS who have experienced discrimination as a result of RPS discipline policies and practices.

#### **VI. Richmond Public Schools Discipline Policies Discriminate Against African American Students and Students With Disabilities**

U.S. Department of Education regulations implementing Title VI, Section 504, and the ADA prohibit policies and practices that have a disparate impact on the basis of race or disability, even if there is no discriminatory intent behind them. The regulations prohibit practices that have “the effect of subjecting individuals to discrimination because of their race, color, or national origin,”<sup>66</sup> as well as conduct that has “the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.”<sup>67</sup>

In the student discipline context, a disparate impact analysis proceeds in three steps.<sup>68</sup> The first step is to ascertain whether a district’s discipline policy has resulted in an adverse impact on students of a particular race or students with disabilities as compared with students of other races or students without disabilities. An adverse impact may include, but is not limited to, instances where students of a particular race or students with disabilities, as compared to students of other races or students without disabilities, are disproportionately sanctioned at higher rates or removed from the regular school setting to an alternative setting.<sup>69</sup> Second, if an adverse impact exists, the discipline policy is unlawful unless the district can demonstrate that the policy is necessary to meet an important educational goal. The inquiry into this step includes a consideration of the importance of the goal and the tightness of the fit between the stated goal and the means employed to achieve it. Finally, even if the policy is necessary to meet an important educational goal, it is unlawful if comparably effective alternative policies or practices would meet the division’s stated educational goal with less burden or adverse impact on the disproportionately affected groups.

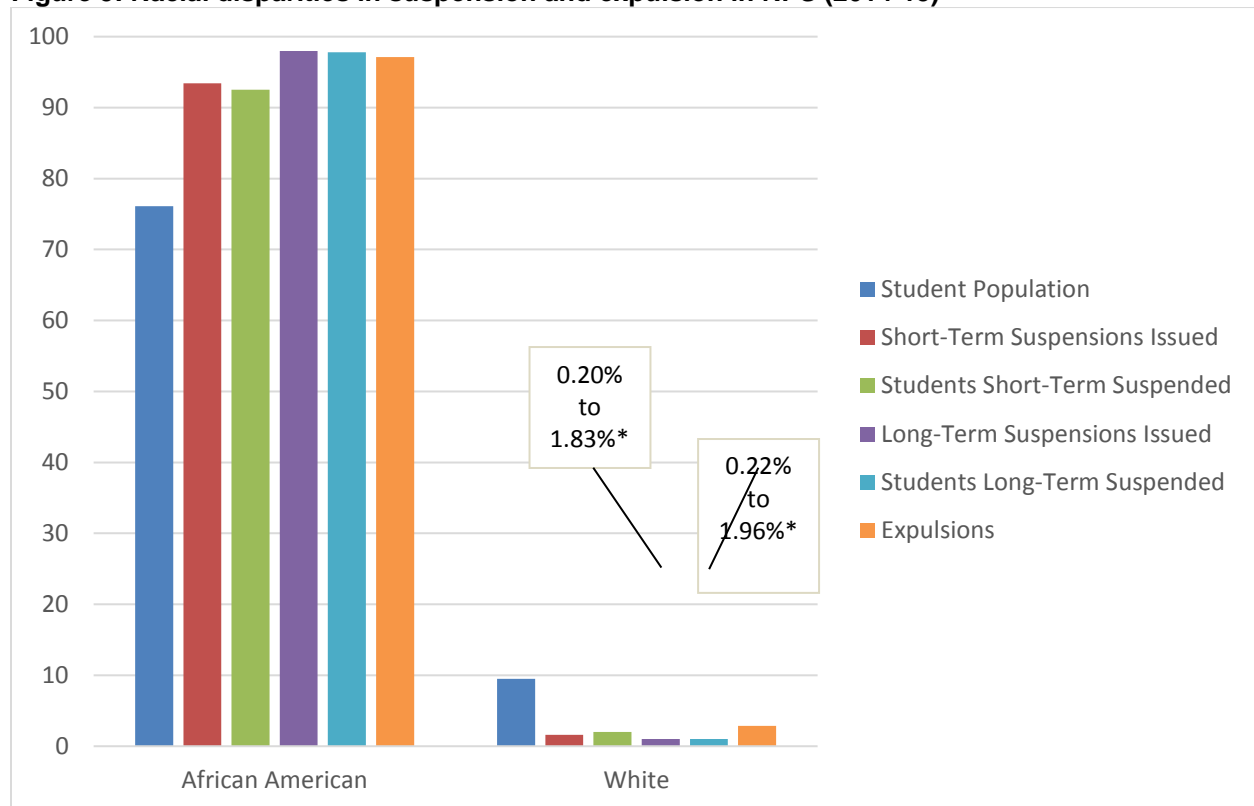
RPS’ discipline policies and practices discriminate against African American students and SWD. These students are disproportionately subjected to suspension, expulsion, placement in alternative educational settings as compared to White students and students without disabilities. RPS discipline policies are not narrowly tailored to meet the goal of a safe and orderly learning environment, and there are less discriminatory and more effective alternative discipline policies that RPS could employ.

#### **A. African American Students and Students with Disabilities Are Suspended and Expelled at Disproportionately Higher Rates than White Students and Students Without Disabilities**

During the 2014-15 school year, African American students made up 76.09% of the total student population in RPS but were issued 93.44% of short-term suspensions, 97.96% of long-term suspensions, and 97.14% of expulsions. See Figure 5. The short-term suspension risk<sup>70</sup> for African American students was 16.26% (*i.e.*, 16.26% of African American students were short-

term suspended at least once) compared to 2.86% for White students, for a risk difference of 13.4%.<sup>71</sup> African American students were 5.685 times more likely than White students to be short-term suspended (*i.e.*, the “risk ratio”). Among the 102 Virginia school divisions that short-term suspended at least 10 African American and 10 White students, RPS had the eighth highest risk difference.

**Figure 5: Racial disparities in suspension and expulsion in RPS (2014-15)**

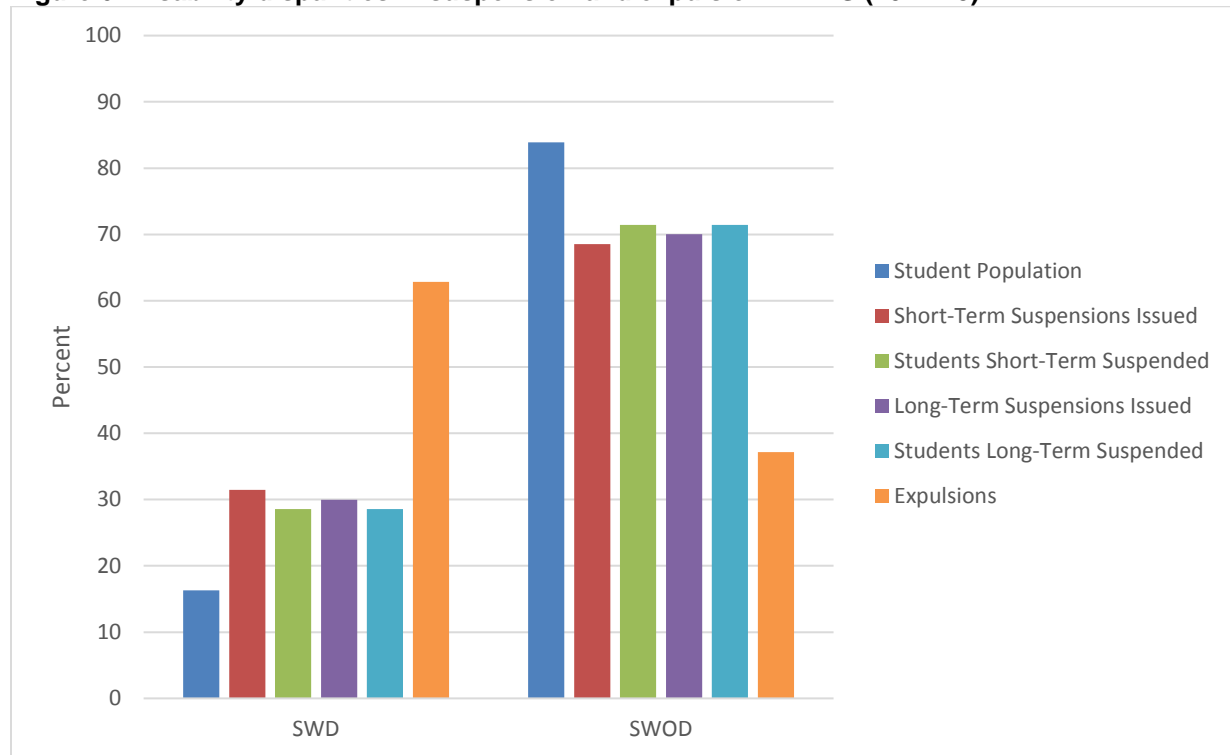


Source: VDOE Data.

\* Exact percentages are unavailable because VDOE suppresses data points with fewer than 10 students.

During 2014-15, SWD made up 16.1% of the RPS’ student population but were issued 31.48% of short-term suspensions, 29.94% of long-term suspensions, and a staggering 62.86% of expulsions. The short-term suspension risk for SWD was 23.84%, compared to 11.36% for students without disabilities (“SWOD”), for a risk difference of 12.48 percentage points and a risk ratio of 2.77. Among the 123 Virginia school divisions that short-term suspended at least 10 SWD and 10 SWOD, RPS had the sixth highest risk difference. See Figure 6.

**Figure 6: Disability disparities in suspension and expulsion in RPS (2014-15)**



Source: VDOE Data.

The disparities at certain schools were much worse than the huge division-wide average differences. At Albert Hill Middle School—which has the largest population of White students of all RPS middle schools, *supra*—28.88% of African American students were short-term suspended at least once, compared to 0.78 to 6.98% of White students, for a risk difference of 21.82 to 28.02.<sup>72</sup> The risk difference for SWD was greater than 16 percentage points at eight RPS schools that short-term suspended at least 10 SWD and 10 SWOD. See Figure 7. Additionally, RPS’ African American-White and SWD-SWOD risk differences were significantly larger than the differences in CCPS and HCPS, as well as average statewide differences. See Figures 8 and 9.

**Figure 7: RPS schools that short-term suspended at least 10 SWD and 10 SWOD and had the highest risk differences in the division (2014-15)**

School	% of SWD Short-Term Suspended	% of SWOD Short-Term Suspended	Risk Difference
Albert Hill Middle	41.05	16.55	24.51
Thomas Boushall Middle	49.64	28.27	21.37
Fred Thompson Middle	35.71	14.82	20.89
Swansboro Elementary	35.71	15.08	20.63
Elkhardt Middle	41.98	23.13	18.84
Lucille Brown Middle	33.01	15.36	17.65
Bellevue Elementary	22.00	4.53	17.47
Thomas Jefferson High	24.48	8.43	16.05

Source: VDOE Data.

**Figure 8: Racial disparities in RPS compared to CCPS, HCPS, and statewide (2014-15)**

Division	% of African American Students Short-term Suspended	% of White Students Short-term Suspended	African American-White Risk Difference
Statewide	12.38	3.40	8.98
CCPS	11.05	3.06	7.99
HCPS	12.23	2.23	10.00
RPS	16.26	2.86	13.40

Source: VDOE Data.

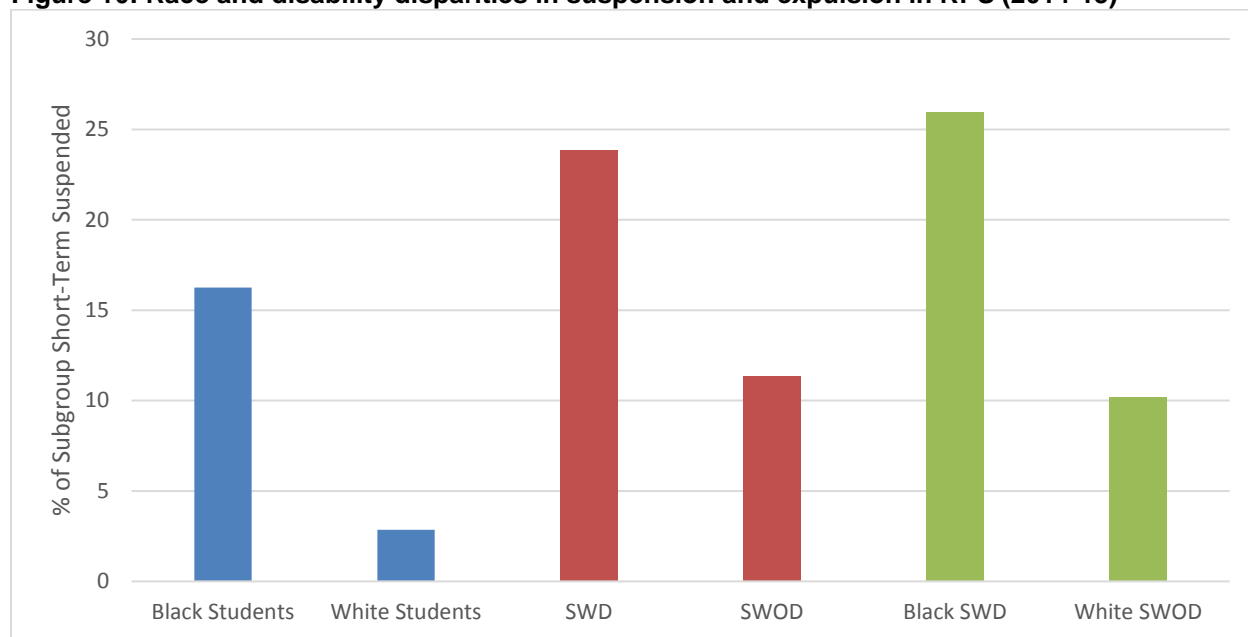
**Figure 9: Disability disparities in RPS compared to CCPS, HCPS, and statewide (2014-15)**

Division	% of SWD Short-term Suspended	% of SWOD Short-term Suspended	SWD-SWOD Risk Difference
Statewide	10.90	4.61	6.29
CCPS	12.54	4.49	8.05
HCPS	13.34	4.99	8.35
RPS	23.84	11.36	12.47

Source: VDOE Data.

During 2014-15, African American SWD were 13.93% of the total student population in RPS, but were 27.04% of students short-term suspended at least once and 28.54% of students long-term suspended at least once. The short-term suspension risk for African American SWD was 25.94%, compared to 2.01% for White SWOD, for a difference of 23.93 percentage points. In RPS, an African American SWD is 12.91 times more likely than a White SWOD to be short-term suspended. See Figure 10. There is no evidence that the discipline disparities in RPS can be explained by differences in student behavior.

**Figure 10: Race and disability disparities in suspension and expulsion in RPS (2014-15)**



Source: VDOE Data.

At the start of the 2015-16 school year, in a letter to RPS superintendent Dana Bedden, the Virginia Department of Education identified serious problems involving the discipline of students with disabilities, including a failure to implement positive behavioral interventions and supports with fidelity, failure to hold manifestation determination reviews to determine whether instances of misbehavior were caused by students' disabilities, and a failure to consider behavior intervention strategies for children with disabilities when required by law. These failures, , lead directly to the disproportionate suspension of students with disabilities.<sup>73</sup>

The disproportionate impact of RPS discipline policies on African American students, and students with disabilities causes long-lasting harm to these children and can result in fewer opportunities well into their adult lives. Research shows that students who are suspended and expelled from school are more likely to experience school avoidance and diminished educational engagement,<sup>74</sup> decreased academic achievement,<sup>75</sup> increased behavior problems,<sup>76</sup> dropping out,<sup>77</sup> substance abuse,<sup>78</sup> and justice system involvement.<sup>79</sup> In its "Guiding Principles" document issued in January 2014, the U.S. Department of Education noted:

The widespread overuse of suspensions and expulsions has tremendous costs. Students who are suspended or expelled from school may be unsupervised during daytime hours and cannot benefit from great teaching, positive peer interactions, and adult mentorship offered in class and in school. Suspending students also often fails to help them develop the skills and strategies they need to improve their behavior and avoid future problems. Suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system. When carried out in connection with zero-tolerance policies, such practices can erode trust between students and school staff, and undermine efforts to create the positive school climates needed to engage students in a well-rounded and rigorous curriculum. In fact, research indicates an association between higher suspension rates and lower schoolwide academic achievement and standardized test scores. Schools and taxpayers also bear the steep direct and indirect costs from the associated grade retention and elevated school dropout rates.<sup>80</sup>

**B. African American Students and Students with Disabilities are Disproportionately Subject to Placement in Alternative Disciplinary Education**

African American students and SWD are disproportionately subject to placement at Richmond Alternative School. On September 30, 2015, RPS' student population was 74.43% African American, but RAS' student body was 96.86% African American. RAS had only *one* White student. SWD made up 17.70% of the total RPS student population but 21.08% of the students at RAS. African American SWD were 14.85% of the total RPS population but 21.08% of students at RAS. None of RPS' 273 White SWD were placed at RAS.<sup>81</sup>

Neither RPS nor the Virginia Department of Education publish any data about the use of home-based services. However, based upon information and belief, the Complainants assert that African American students and students with disabilities are disproportionately reassigned to home-based education.

Assignment to RAS or home-based education provides students with grossly inferior opportunities to learn. Students assigned to RAS or home-based education face stigmatization and feelings of alienation.<sup>82</sup> An audit of homebound and home-based education in RPS,<sup>83</sup> issued in June 2010, uncovered broad dysfunction in the provision of services, including:

- “There was a lack of management oversight of the Specialist of Pupil Placement and/or homebound/home-based program. Controls were not in place to evaluate the staff’s performance and no adjustments were made to processes that may need improvement.”
- Between one-quarter and one-half of students were provided services by individuals who did not hold a teacher’s license.
- Teachers improperly reported hours and were improperly paid.
- There were delays in the initiation of services.<sup>84</sup>

### **C. African American Students and SWD are Disproportionately Subject to School-Based Interaction with Law Enforcement**

Schools districts may not divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on outside law enforcement, and OCR may hold RPS accountable for the discriminatory actions taken by SROs, including violations of Title VI, Section 504, and the ADA.<sup>85</sup> The use of police officers to handle routine and minor misbehaviors fails to improve school safety. Instead, this practice exacerbates and escalates discipline incidents and creates a negative school climate.

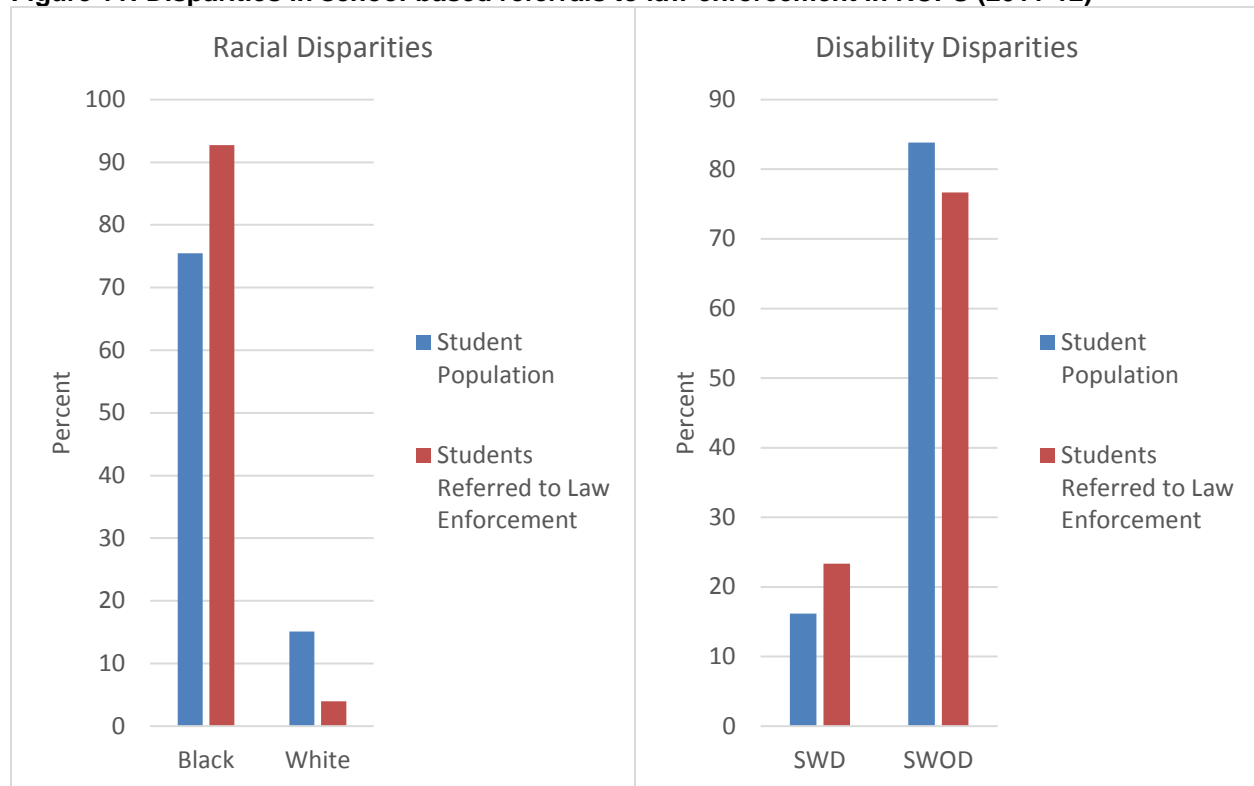
African American students and SWD in RPS are disproportionately subject to referral to law enforcement and school-based law enforcement complaints. According to OCR data for the 2011-12 school year, RPS reported 784 school-based referrals to law enforcement.<sup>86</sup> African American students made up 75.5% of the student population but 92.74% of students referred to law enforcement. African American students were 4.69 times more likely than White students to be subjected to school-based referral to law enforcement. SWD made up 16.18% of the student population but 23.34% of students referred to law enforcement. SWD were 1.54 times more likely than SWOD to be subjected to school-based referral to law enforcement. Black SWD were 14.75% of the total student population, but 22.83% of students subjected to school-based referral to law enforcement. See Figure 11.<sup>87</sup>

According to data provided to the Richmond Juvenile Justice Collaborative by the City of Richmond Court Services Unit, school-based offenses dropped significantly during the 2015-16 school year compared to the 2014-15 school year. Armstrong High saw a particularly steep



decline in school-based offenses: only six school-based offenses for the 2015-16 school year, compared to 40 during the 2014-15. Boushall, Elkhardt, Henderson, and Thompson Middle Schools also saw declines. The overall improvement in school-based offense rates can likely be attributed to the Richmond Police Department’s implementation of the Law Enforcement Intervention Focused on Education (“LIFE”) program in partnership with RPS. LIFE is a diversionary program focused on helping students gain better decisionmaking skills to avoid future misbehavior. It remains to be seen, however, to what extent the partnership will continue or if it will result in necessary changes to the SRO MOU in place between RPS and RPD.

**Figure 11: Disparities in school-based referrals to law enforcement in RCPS (2011-12)**



Source: OCR Civil Rights Data Collection, 2011-12.

**D. RPS Discipline Policies Are Not Necessary to Meet Important Educational Goals**

The presumed goal behind RPS’ discipline policies and practices is to ensure that schools are safe and orderly. While this is an important educational goal, RPS’ current discipline policies are not necessary to meet this goal. There is not a tight fit between the goal of school safety and RPS’ vague and overly broad system of school discipline, and there is no evidence that RPS discipline policies and practices actually improve school safety and order.

Suspension and expulsion have not been shown to deter misbehavior or improve school safety or school climate, especially when used to punish students for relatively minor misbehavior. In fact, the opposite is true. High levels of suspension and expulsion can damage school climate and increase misbehavior, according to the American Psychological Association,<sup>88</sup> the American Academy of Pediatrics,<sup>89</sup> the National Association of School Psychologists,<sup>90</sup> the National Education Association,<sup>91</sup> the American Federation of Teachers,<sup>92</sup> the American Association of School Administrators,<sup>93</sup> the National Parent Teacher Association,<sup>94</sup> and the U.S. Department of Education,<sup>95</sup> as well as many researchers.<sup>96</sup> A recent study by The Civil Rights Project of the University of California-Los Angeles found that even when controlling for other causes, suspension itself increased the risk of not graduating from high school by 12 percentage points.<sup>97</sup> There is no evidence that placement in alternative disciplinary education improves school order or safety. In fact, the extremely low test scores, high suspension rates, and high dropout rates at RAS raise the question of what educational necessity assignment to RAS could possibly serve. Data similarly show the detrimental relationship between arrest and dropping out. A 2006 study of national data found that “[a]rrest doubles the probability of dropout even when controlling for arrest expectations, college expectations and concurrent delinquency, grade retention, school suspension, middle school grade point average, and a number of demographic factors.”<sup>98</sup>

## **E. Comparably Effective Alternatives**

Even if RPS’ discipline policies are determined to be necessary to meet an important educational goal, there are more effective policies and practices that would meet the division’s presumed goal with less adverse impact on African American students and SWD. *Suspended Progress*, a recent report by the JustChildren Program of the Legal Aid Justice Center, details proven interventions and alternatives that could help RPS reduce misbehavior and improve the educational environment, including some described below.<sup>99</sup>

### **i. Positive Behavioral Interventions and Supports**

Implementing school-wide Positive Behavioral Interventions and Supports (“PBIS”) with fidelity would reduce student misconduct and disciplinary removal.<sup>100</sup> PBIS involves three levels to reduce the need for disciplinary action: 1) core strategies for all students to prevent academic and behavioral struggles, 2) interventions of moderate intensity for students at some risk, and 3) interventions of higher intensity for students at high risk. Examples of interventions include effectively designing the physical environment of the classroom, individualized behavioral intervention plans, and functional behavioral assessments. Research indicates that PBIS is effective in reducing the need for disciplinary action, improvement school climate, and improving students’ academic, emotional, and behavioral health outcomes.<sup>101</sup>

### **ii. MyTeachingPartner**

Supportive teacher-student relationships and effective teacher-student interactions are essential to preventing misbehavior. MyTeachingPartner (“MTP”) is professional development system designed to improve teacher-student interactions and student engagement. MTP provides

online resources, activities, coaching, and video feedback for teachers. The MTP coaching model uses the Classroom Assessment Scoring System (“CLASS”) to provide teachers with regular and rigorous feedback about their behavior in the classroom and interactions with students. Teachers are evaluated in the areas of emotional support, classroom organization, and instructional support. Studies of MTP have found statistically significant beneficial effects tied to positive classroom climate, teacher sensitivity, teacher regard for adolescent perspectives, instructional learning formats, and analysis and inquiry.<sup>102</sup> One randomized, controlled trial of MTP showed that MTP nearly eliminated racial discipline gaps.<sup>103</sup>

### **iii. Social and Emotional Learning Programs**

RPS could reduce misbehavior and eliminate punitive behavioral consequences by implementing one or more proven social and emotional learning (“SEL”) programs in all grade levels.<sup>104</sup> SEL is the process through which children and adults acquire and apply the knowledge, attitudes, and skills necessary to understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions.<sup>105</sup> SEL programs create learning environments that meet the social and emotional needs of students—including feelings of belonging, safety, and community—and thus provide ideal conditions for academic and personal success.<sup>106</sup> Rigorous studies of several SEL structures demonstrate improvements in student behavior. Significant findings include reductions in aggression and disruptive behavior, decreases in antisocial behavior, increases in socially competent behavior, and less bullying and argumentative behavior.<sup>107</sup>

### **iv. Implicit Bias and Cultural Competency Training**

RPS could reduce disparities in referrals from classrooms to administrators and law enforcement by implementing mandatory, on-going, high-quality professional development for staff in the areas of implicit bias, cultural competency, culturally responsive classroom management, and working effectively with students with disabilities, including de-escalation strategies.<sup>108</sup> Enhancing staff awareness of their own implicit or unconscious biases can help ensure equitable and fair responses to student misconduct.<sup>109</sup>

### **v. Threat Assessments**

Threat assessment is a violence prevention strategy that involves identifying student threats to commit a violent act, determining the seriousness of the threat, and developing intervention plans that protect potential victims and address the underlying problem or conflict that stimulated the threatening behavior.<sup>110</sup> The Virginia Student Threat Assessment Guidelines (“VSTAG”), an evidence-based model for schools to use in conducting student threat assessments, was developed at the University of Virginia in 2002. VSTAG has been extensively examined and tested through field studies. A 2015 study compared 166 middle schools using the Virginia Guidelines to 119 schools not using threat assessment and 47 schools using an alternative model of threat assessment.<sup>111</sup> According to statewide surveys, schools using the Virginia Guidelines had fairer discipline and lower levels of aggressive student behaviors.

Analysis of school records found that the longer a school used the Virginia Guidelines, the lower its long-term suspension rates. All analyses controlled for school size, minority composition, and socioeconomic status of the student body

#### **vi. Restorative Justice Processes**

The U.S. Department of Education defines restorative justice (“RJ”) practices as “non-punitive disciplinary responses that focus on repairing harm done to relationships and people, developing solutions by engaging all persons affected by a harm, and accountability.”<sup>112</sup> The RJ process generally involves the offender, victim, community (*e.g.* staff, family, and other students), and a facilitator. It proceeds in two steps: a non-adversarial, facilitated dialogue about the harms and needs of participants; and the development of a plan for how everyone involved will contribute to repairing the harm done, preventing future harm, and restoring relationships. Examples of RJ processes include community conferencing, peer juries, class meetings, peer mediation, and circle processes. Empirical studies report a decrease in exclusionary discipline and harmful behavior after the implementation of RJ programs.<sup>113</sup>

#### **vii. Revising Written Discipline Policies**

RPS could reduce the frequent and disparate use of harsh discipline by overhauling its entire code of student conduct to: more narrowly describe prohibited conduct; be clear to people with lower reading levels;<sup>114</sup> more narrowly tailor disciplinary consequences to each offense; mandate the use of appropriate behavioral interventions and alternatives; and prohibit suspension and expulsion for relatively minor, non-violent offenses.<sup>115</sup> In addition, RPS could establish clear and comprehensive policies and regulations governing disciplinary alternative education, including objective criteria and transparency for reassignment and finite lengths of stay. Finally, RPS could cease using SROs or revise its MOU with RPD to require that SROs not enforce SCORE and receive more comprehensive training in de-escalation strategies for youth.

### **IX. Requested Remedies**

Based on the foregoing, Complainants respectfully request that OCR accept jurisdiction and fully investigate their claims. Complainants further request that OCR require RPS to eliminate discipline disparities based on race and disability and safeguard against future discrimination through implementing the measures below.

- 1) RPS should adopt the less discriminatory disciplinary alternatives described above.
- 2) RPS should create a written, publicly available corrective action plan to ensure future compliance with Title VI, Section 504, and the ADA. OCR should monitor the corrective action plan for a period no less than five school years.
- 3) RPS should make comprehensive discipline data available on a quarterly basis in reports to the School Board and on its website. Data should include office referrals, in-school suspensions, bus suspensions, short-term suspensions, long-term suspensions, expulsions,

referrals to law enforcement, arrests, delinquency and criminal complaints, uses of force, and disciplinary placements in alternative education. The data should be disaggregated by: school name; student's grade, race, sex, and disability status; offense(s); and consequence(s).

- 4) RPS should commission an independent, expert evaluation that:
  - a. Identifies the sources of its race and disability disparities through site visits; interviews of RPS teachers and administrators at all leadership levels; meetings with parents and students; analysis of policies, regulations, and guidelines; and the collection and analysis of data at each decision-making point, including the classroom level, school administration level, and district level;
  - b. Analyzes the adequacy, quality, and legality (*e.g.*, compliance with special education laws and regulations) of its disciplinary alternative education, including an audit of homebound and home-based education services; and
  - c. Develops comprehensive recommendations for reform.
- 5) RPS should implement a well-publicized grievance process that students, parents, and staff may use when school security personnel, including SROs and SSOs, engage in misconduct.
- 6) RPS should develop a district-level leadership team tasked with reducing discipline disparities.
- 7) RPS should require professional development for all staff, including SROs and SSOs, on positive behavioral interventions, restorative justice, and trauma-informed approaches to education.
- 8) RPS should convene at least 6 "town hall" sessions on the student code of conduct and best ways to reduce discipline disparities. Town halls should include parents and community members and should be held at accessible RPS locations at convenient times for working families.

Finally, Complainants request that OCR provide any other remedies deemed appropriate.

## **VI. Conclusion**

RPS' discipline policies and practices discriminate against African American students in violation of Title VI, SWD in violation of Section 504 and the ADA, and African American SWD in violation of Title VI, Section 504, and the ADA. This Complaint asks OCR to investigate RPS' discipline policies and to encourage the RPS to adopt adequate remedies,

including those detailed above, to improve school climate and to give each student the best chance for success in school and in life.

Respectfully submitted,

J.R. and A.L.

NAACP Richmond Branch

By Counsel:

By Counsel:



Rachael Deane (Va. Bar. # 80289)  
Lisa Bennett (Va. Bar # 30288)  
Angela Ciolfi (Va. Bar #65337)  
JustChildren Program  
Legal Aid Justice Center  
123 East Broad St.  
Richmond, VA 23219  
(804) 521-7304  
rachael@justice4all.org  
lisa@justice4all.org  
angela@justice4all.org

Charles H. Schmidt, Jr. (Va. Bar # 84416)  
American Civil Liberties Union of Virginia  
701 East Franklin Street, Suite 1412  
Richmond, Virginia 23219  
(804) 644-8022  
cschmidt@acluva.org

*The Legal Aid Justice Center has been providing legal advice and representation for low-income individuals in Virginia since 1967. Its mission is to serve those who have the least access to legal resources. LAJC's JustChildren Program is Virginia's largest children's law program. Through litigation, community education and organizing, collaboration, and legislative and policy advocacy, JustChildren strives to ensure that the Commonwealth's most vulnerable young people receive the services and supports they need to lead successful lives in their communities.*

*The American Civil Liberties Union of Virginia is a private, non-profit organization that promotes civil liberties and civil rights for everyone in the Commonwealth through public education, litigation and advocacy with the goal of securing freedom and equality for all.*

---

<sup>1</sup> <http://web.richmond.k12.va.us/AboutRPS.aspx>.

<sup>2</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/index.shtml).

<sup>3</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/index.shtml).

<sup>4</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/index.shtml).

<sup>5</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/index.shtml).

<sup>6</sup> [http://www.doe.virginia.gov/statistics\\_reports/accreditation\\_federal\\_reports/accreditation/index.shtml](http://www.doe.virginia.gov/statistics_reports/accreditation_federal_reports/accreditation/index.shtml).

<sup>7</sup> [http://www.doe.virginia.gov/statistics\\_reports/graduation\\_completion/dropout\\_statistics/index.shtml](http://www.doe.virginia.gov/statistics_reports/graduation_completion/dropout_statistics/index.shtml).

<sup>8</sup> [http://www.pen.k12.va.us/statistics\\_reports/supts\\_annual\\_report/2014\\_15/index.shtml](http://www.pen.k12.va.us/statistics_reports/supts_annual_report/2014_15/index.shtml).

<sup>9</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/index.shtml](http://www.doe.virginia.gov/statistics_reports/school_report_card/index.shtml).

<sup>10</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/index.shtml](http://www.doe.virginia.gov/statistics_reports/school_report_card/index.shtml).

<sup>11</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/index.shtml](http://www.doe.virginia.gov/statistics_reports/school_report_card/index.shtml).

<sup>12</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/index.shtml](http://www.doe.virginia.gov/statistics_reports/school_report_card/index.shtml).

<sup>13</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/index.shtml](http://www.doe.virginia.gov/statistics_reports/school_report_card/index.shtml).

<sup>14</sup> See Appendix A.

<sup>15</sup> Board Policy 8-3.1.

<sup>16</sup> See Appendix B.

<sup>17</sup> See Appendix C.

<sup>18</sup> SCORE, p. 22.

<sup>19</sup> SCORE, p. 22.

<sup>20</sup> SCORE, p. 22.

<sup>21</sup> SCORE, p. 26.

<sup>22</sup> SCORE, p. 28.

<sup>23</sup> SCORE, p. 32.

<sup>24</sup> SCORE, p. 54. RPS issued 2,071 short-term suspensions for “disruptive demonstration” during the 2015-16 school year, making it the most common violation of the SCORE. However, the phrase “disruptive demonstration” appears only four times in the SCORE.

<sup>25</sup> SCORE p. 9.

<sup>26</sup> SCORE, pp. 10-17.

<sup>27</sup> SCORE, pp. 9, 14.

<sup>28</sup> Va. Code § 22.1-276.01(A).

<sup>29</sup> The sources of the suspension and expulsion data in this Complaint are public records provided by the Virginia Department of Education (“VDOE”) in a January 6, 2016 email to Legal Aid Justice Center and the VDOE’s online Safe Schools Information Resource (collectively, “VDOE Data”). The SSIR is available at <https://p1pe.doe.virginia.gov/pti/>. Exact percentages for figures lower than 10 are unavailable because VDOE suppresses data points with fewer than 10 students represented.

<sup>30</sup> Va. Code § 22.1-276.01(A).

<sup>31</sup> VDOE Data.

<sup>32</sup> Va. Code § 22.1-276.01(A)

<sup>33</sup> VDOE Data.

<sup>34</sup> In September 2015, RPS opened the Aspire Academy (“Aspire”) inside of the Richmond Technical Center. According to RPS, Aspire is a half-day “nontraditional high school program” for “students with academic and attendance and/or behavioral challenges.” Aspire is not a disciplinary punishment.

<http://web.richmond.k12.va.us/Portals/0/assets/PublicInformation/pdfs/Other/AspireAcademyFrequentlyAskedQuestions8.20.15.pdf>.

<sup>35</sup> SCORE, ppp. 37-38; Policy 8-3.15.

<sup>36</sup> SCORE, p. 8.

<sup>37</sup> <http://web.richmond.k12.va.us/Departments/PupilPersonnelServices/Services.aspx>.

<sup>38</sup> <http://web.richmond.k12.va.us/SchoolBoard/Bylaws.aspx>.

<sup>39</sup> See Appendix D.

<sup>40</sup> [http://www.doe.virginia.gov/boe/meetings/2015/04\\_apr/agenda\\_items/item\\_c.pdf](http://www.doe.virginia.gov/boe/meetings/2015/04_apr/agenda_items/item_c.pdf).

<sup>41</sup> [http://www.doe.virginia.gov/boe/meetings/2015/04\\_apr/agenda\\_items/item\\_c.pdf](http://www.doe.virginia.gov/boe/meetings/2015/04_apr/agenda_items/item_c.pdf).

<sup>42</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/index.shtml).

<sup>43</sup> <http://web.richmond.k12.va.us/acdc/Contact.aspx>.

<sup>44</sup> <https://p1pe.doe.virginia.gov/reportcard/>.

<sup>45</sup> <https://p1pe.doe.virginia.gov/reportcard/>.

<sup>46</sup> [http://www.doe.virginia.gov/statistics\\_reports/school\\_report\\_card/](http://www.doe.virginia.gov/statistics_reports/school_report_card/).

<sup>47</sup> [http://www.doe.virginia.gov/statistics\\_reports/graduation\\_completion/dropout\\_statistics/index.shtml](http://www.doe.virginia.gov/statistics_reports/graduation_completion/dropout_statistics/index.shtml).

<sup>48</sup> See Appendix E.

<sup>49</sup> [http://www.richmond.com/news/local/city-of-richmond/article\\_e232f4a7-0640-5d72-95b0-8c5ea4e012d3.html](http://www.richmond.com/news/local/city-of-richmond/article_e232f4a7-0640-5d72-95b0-8c5ea4e012d3.html).

<sup>50</sup> <http://www.elc-pa.org/wp-content/uploads/2016/07/Issa-Complaint-07-19-2016.pdf>.

<sup>51</sup> See Appendix F.

<sup>52</sup> <http://web.richmond.k12.va.us/Portals/0/assets/PupilPersonnel/pdfs/GuideHomebound-Home-basedInstruction2015-2016.pdf>, p. 1.

<sup>53</sup> <http://web.richmond.k12.va.us/Portals/0/assets/PupilPersonnel/pdfs/GuideHomebound-Home-basedInstruction2015-2016.pdf>, p. 3.

<sup>54</sup> SCORE, p. 46. In October 2015, LAJC filed a lawsuit against RPS asserting that the policy violated students' due process and special education rights. RPS eventually agreed to revise the SCORE to provide students with notice and an opportunity to be heard effective May 16, 2016, and to comply with state and federal special education laws and regulations.

<sup>55</sup> The total expenses for homebound instruction in fiscal year 2015 was \$767,720. This figure presumably includes home-based education since home-based services are not listed separately in the division's budget.

<http://web.richmond.k12.va.us/Portals/0/assets/BudgetReporting/pdfs/SCHOOL%20BOARD%20APPROVED%20FY17%20BUDGET%202016-02-08-4.pdf>.

<sup>56</sup> <http://web.richmond.k12.va.us/Portals/0/assets/PupilPersonnel/pdfs/GuideHomebound-Home-basedInstruction2015-2016.pdf> pp. 6, 10.

<sup>57</sup> <http://web.richmond.k12.va.us/Portals/0/assets/PupilPersonnel/pdfs/GuideHomebound-Home-basedInstruction2015-2016.pdf> p. 1.

<sup>58</sup> <http://web.richmond.k12.va.us/Portals/0/assets/PupilPersonnel/pdfs/GuideHomebound-Home-basedInstruction2015-2016.pdf> p. 9.



<sup>58</sup> MOU, pp. 1-2, <http://wtvr.com/2012/12/21/area-parents-warming-to-idea-of-school-resource-officers-packing-heat/>.

<sup>60</sup> Va. Code § 9.1-101.

<sup>61</sup> <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

<sup>62</sup> <http://wtvr.com/2014/09/23/richmond-public-schools-may-put-body-cameras-on-safety-officers/>.

<sup>63</sup> Va. Code § 9.1-101.

<sup>64</sup> Data was provided by email to members of the Richmond Juvenile Justice Collaborative.

<sup>65</sup> <http://www.richmondbranchnaacp.com/naacp-standing-committees.html>.

<sup>66</sup> 34 C.F.R. § 100.3(b)(2).

<sup>67</sup> 28 C.F.R. § 41.51(b)(3)(i).

<sup>68</sup> *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014).

<sup>69</sup> Guidance letter, p. 11.

<sup>70</sup> Risk is the percent of the subgroup short-term suspended at least once.

<sup>71</sup> Risk difference is the percentage point difference between the risk of an outcome for one student subgroup and the risk of an outcome for a second student subgroup.

<sup>72</sup> Exact percentages are unavailable because VDOE suppresses data points with fewer than 10 students.

<sup>73</sup> Letter to Dana T. Bedden, Virginia Department of Education (September 24, 2015), available at <https://mgtvwric.files.wordpress.com/2016/08/rps-rda-report.pdf>. <http://wric.com/2016/08/08/board-member-calling-for-external-audit-of-rps-special-ed-program/>.

<sup>74</sup> Emily Arcia, *Achievement and Enrollment Status of Suspended Students: Outcomes in a Large, Multicultural School District*, 38 *Educ. & Urb. Soc'y* 359 (2006).

<sup>75</sup> Emily Arcia, *Achievement and Enrollment Status of Suspended Students: Outcomes in a Large, Multicultural School District*, 38 *Educ. & Urb. Soc'y* 359 (2006).

<sup>76</sup> S.A. Hemphill, et al., *The Effect of School Suspensions and Arrests on Subsequent Adolescent Antisocial Behavior in Australia and the United States*, 39 *J. Adolescent Health* 736 (2006); S.A. Hemphill, et al., *Pathways from School Suspension to Adolescent Nonviolent Antisocial Behavior in Students in Victoria, Australia and Washington State, United States*, 40 *J. Community Psychol.* 301 (2012); Irwin A. Hyman & Donna C. Perone, *The Other Side of School Violence: Educator Policies and Practices That May Contribute to Student Misbehavior*, 36 *J. Sch. Psychol.* 7 (1998); Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, 2003 *New Directions Youth Dev.* 17 (2003).

<sup>77</sup> Emily Arcia, *Achievement and Enrollment Status of Suspended Students: Outcomes in a Large, Multicultural School District*, 38 *Educ. & Urb. Soc'y* 359 (2006); T. Fabelo, et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (Council of State Governments Justice Center, 2011); Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, 99 *New Directions for Youth Dev.* 17 (2003); Lawrence M. DeRidder, *How Suspension and Expulsion Contribute to Dropping Out*, 56 *Educ. Digest* 44 (1991).

- 
- <sup>78</sup> S.A. Hemphill, et al., *The Impact of School Suspension on Student Tobacco Use: A Longitudinal Study in Victoria, Australia, and Washington State, United States*, 39 *Health Educ. & Behav.* 45 (2012).
- <sup>79</sup> V. Costenbader & S. Markson, *School Suspension: A Study with Secondary School Students*, 36 *J. Sch. Psychol.* 59 (1998); T. Fabelo, et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (Council of State Governments Justice Center, 2011).
- <sup>80</sup> U.S. Department of Education, *Guiding Principles: A Resource for Improving School Climate and Discipline* (Jan. 2014).
- <sup>81</sup> [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/index.shtml](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/index.shtml).
- <sup>82</sup> *Deconstructing the Marginalization of Underclass Students: Disciplinary Alternative Education*, 42 *U. Tol. L. Rev.* 429 (2010-2011); *Separate and Invisible: Alternative Education Programs and Our Educational Rights*, 50 *B.C. L. Rev.* 197 (2009).
- <sup>83</sup> See Appendix G.
- <sup>84</sup> <http://web.richmond.k12.va.us/Portals/0/assets/InternalAudit/pdfs/HomeboundAuditReport.pdf>, pp. 2-5.
- <sup>85</sup> <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> p. 6. P. 6, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.
- <sup>86</sup> <http://ocrdata.ed.gov/>.
- <sup>87</sup> <http://ocrdata.ed.gov/>.
- <sup>88</sup> *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations* (Dec. 2008).
- <sup>89</sup> *Policy Statement: Out-of-School Suspension and Expulsion* (Mar. 2013).
- <sup>90</sup> *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers* (2001).
- <sup>91</sup> *The School-to-Prison Pipeline: Time to Shut It Down* (Jan. 5, 2015); Dennis Van Roekel, former President (Mar. 13, 2014).
- <sup>92</sup> *Reclaiming the Promise: A New Path Forward on School Discipline Practices*.
- <sup>93</sup> *School Discipline: Dismantle the Pre-K to Prison Pipeline*.
- <sup>94</sup> *Addressing the Out-of-School Suspension Crisis: A Policy Guide for School Board Members* (Apr. 2013).
- <sup>95</sup> *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014).  
U.S. Department of Education, *Guiding Principles: A Resource for Improving School Climate and Discipline* (Jan. 2014); U.S. Department of Health and Human Services and U.S. Department of Education, *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings* (Dec. 10, 2014.)
- <sup>96</sup> [http://nepc.colorado.edu/files/ResourceSheet\\_School\\_10-3.pdf](http://nepc.colorado.edu/files/ResourceSheet_School_10-3.pdf); [http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity\\_Policy\\_010915.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_Policy_010915.pdf);  
[http://www.pbis.org/common/cms/files/Coach\\_Trainer/Articles/Safety%20Without%20Suspensions.pdf](http://www.pbis.org/common/cms/files/Coach_Trainer/Articles/Safety%20Without%20Suspensions.pdf).
- <sup>97</sup> Russell W. Rumberger and Daniel J. Losen, *The High Cost of Harsh Discipline and Its Disparate Impact* (July 2016), available at [https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA\\_HighCost\\_6-2\\_948.pdf](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA_HighCost_6-2_948.pdf) (last visited Aug. 22, 2016).

- <sup>98</sup> Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462, 473-477 (2006).
- <sup>99</sup> See Appendices H and I.
- <sup>100</sup> Dear Colleague, Appendix, p. 2.
- <sup>101</sup> 2 Emily Morgen et. al., *The School Discipline Consensus Report*, The Council of State Governments Justice Center, 52(June 3, 2014), available at [http://csgjusticecenter.org/wp-content/uploads/2014/06/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf); David Osher et. al., *How Can We Improve School Discipline?*, 39 Educational Researcher 48, 50-53 (2010), available at [https://www.district287.org/uploaded/A\\_Better\\_Way/HowCanWeImproveSchoolDiscipline.pdf](https://www.district287.org/uploaded/A_Better_Way/HowCanWeImproveSchoolDiscipline.pdf); Russell Skiba and Jeffrey Sprague, *Safety Without Suspensions*, Educational Leadership (Sept. 2008), available at [http://www.pbis.org/common/cms/files/Coach\\_Trainer/Articles/Safety%20Without%20Suspensions.pdf](http://www.pbis.org/common/cms/files/Coach_Trainer/Articles/Safety%20Without%20Suspensions.pdf)); Russell Skiba and M. Karega Rausch, *School Disciplinary Systems: Alternatives to Suspension and Expulsion*, The Center for Evaluation and Education Policy, Indiana University, 96, available at [http://www.indiana.edu/~equity/docs/Alternatives\\_to\\_Expulsion.pdf](http://www.indiana.edu/~equity/docs/Alternatives_to_Expulsion.pdf) (last visited Dec. 14, 2015).
- <sup>102</sup> J.P. Allen et. al., *An Interaction-Based Approach to Enhancing Secondary School Instruction and Student Achievement*, Science, Vol. 333, Issue 6024 (Aug. 2011); Daniel Losen et. al, *Eliminating Excessive and Unfair Exclusionary Discipline in Schools Policy Recommendations for Reducing Disparities*, The Atlantic Philanthropies, 7 (Mar. 2014), available at [http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity\\_Policy\\_010915.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_Policy_010915.pdf); available at [http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity\\_NewResearch\\_010915.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf); University of Virginia Curry School of Education, *Measuring and Improving Teacher Student Interactions in PK-12 Settings to Enhance Students' Learning*, Center for Advanced Study of Teaching and Learning, 3, available at [http://curry.virginia.edu/uploads/resourceLibrary/CLASS-MTP\\_PK-12\\_brief.pdf](http://curry.virginia.edu/uploads/resourceLibrary/CLASS-MTP_PK-12_brief.pdf) (last visited Dec. 14, 2015); University of Virginia Curry School of Education, *My Teaching Partner (Pre-K) A Series of NICHD- Funded Studies*, available at [http://curry.virginia.edu/uploads/resourceLibrary/Research\\_Brief\\_MTP-PreK\\_NICHHD2.pdf](http://curry.virginia.edu/uploads/resourceLibrary/Research_Brief_MTP-PreK_NICHHD2.pdf) (last visited May 10, 2016).
- <sup>103</sup> Anne Gregory et. al., *The Promise of a Teacher Professional Development Program in Reducing Racial Disparity in Classroom Exclusionary Discipline*, in D. Losen (ed.), *Closing the School Discipline Gap*, New York: Teachers College Press (2015).
- <sup>104</sup> Dear Colleague, Appendix, p. 2.
- <sup>105</sup> 8 Collaborative for Academic, Social, and Emotional Learning, *What is Social and Emotional Learning?*, available at <http://www.casel.org/social-and-emotional-learning/> (last visited Aug. 23, 2016).
- <sup>106</sup> Marc A. Brackett and Susan E. Rivers, *Transforming Students' Lives with Social and Emotional Learning*, Yale Center for Emotional Intelligence, 4, available at <http://ei.yale.edu/wp-content/uploads/2013/09/Transforming-Students%E2%80%99Lives-with-Social-and-Emotional-Learning.pdf> (last visited Dec. 14, 2015); see also Maanvi Singh, *Why Emotional Learning May Be as Important as the ABCs*, NPR (Dec. 31, 2013, 11:03 A.M.), available at <http://www.npr.org/sections/ed/2014/12/31/356187871/why-emotional-literacy-may-be-as-important-as-learning-the-a-b-c-s>.
- <sup>107</sup> David Osher, et. al., *How Can We Improve School Discipline?* (2010), available at [https://www.district287.org/uploaded/A\\_Better\\_Way/HowCanWeImproveSchoolDiscipline.pdf](https://www.district287.org/uploaded/A_Better_Way/HowCanWeImproveSchoolDiscipline.pdf) (last visited Mar. 20, 2016).
- <sup>108</sup> Dear Colleague, Appendix, pp. 2-3.
- <sup>109</sup> <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.
- <sup>110</sup> National Association of School Psychologists, *Threat Assessment for School Administrators and Crisis Teams*, available at <http://www.nasponline.org/resources-and-publications/resources/school-safety->

and-crisis/threat-assessment-at-school/threat-assessment-for-school-administrators-and-crisis-teams (last visited May 10, 2016); Dewey G. Cornell & Shane Jimerson, *Threat Assessment at School: A Primer for Educators*, National Association of School Psychologists, available at [https://safesupportivelearning.ed.gov/sites/default/files/NASP\\_Threat%20Assessment\\_Dewey\\_Cornell.pdf](https://safesupportivelearning.ed.gov/sites/default/files/NASP_Threat%20Assessment_Dewey_Cornell.pdf) (last visited May 10, 2016).

<sup>111</sup> E. Nekvasil & D. Cornell, *Student threat assessment associated with positive school climate in middle schools*, *Journal of Threat Assessment and Management*, 2 (2015), 98-113, available at <http://dx.doi.org/10.1037/tam0000038>.

<sup>112</sup> <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

<sup>113</sup> 2 Trevor Fonious, et. al., *Restorative Justice in US Schools: A Research Review*, WestEd Justice & Prevention Research Center (Feb. 2016), available at [http://jprc.wested.org/wp-content/uploads/2016/02/RJ\\_Literature-Review\\_20160217.pdf](http://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf) (last visited Mar. 20, 2016).

<sup>114</sup> Dear Colleague, Appendix p. 21.

<sup>115</sup> Dear Colleague, Appendix, pp. 4-6.