

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

P.A., on behalf of minor child, **A.A.**;

P.B., on behalf of minor child, **B.B.**

Plaintiffs,

v.

* **CIVIL ACTION NO.:**

* **COMPLAINT**

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INTRODUCTION

St. Bernard Parish School Board (“SBPSB” or the “District”) uses its alternative school program to segregate its most vulnerable students in a highly restrictive, punitive, and inferior alternative educational setting. The District does so, as outlined herein, by denying due process protections for students facing expulsion, as well as by failing to provide program modifications and accommodations for students with emotional and behavioral disabilities. The result is that the highest-needs youth are warehoused, without appropriate academic and social-emotional supports, at the alternative school program for expelled students in St. Bernard Parish: C.F. Rowley Alternative School (“Rowley”).

The alternative school program at Rowley purports to be therapeutic but is far from it. Students at Rowley, who are disproportionately Black, are consigned to a second-class education, denied access to electives and extracurricular activities, isolated from peers, deprived of the benefits of normal socialization, and subjected to the inherent harms of segregation. To exit the

alternative school and return to a mainstream educational environment, students must complete a one-size-fits-all behavioral program to “earn” their way out, and they are required to do so without academic, social, or behavioral accommodations and modifications. As a result, students with disabilities spend months or even years at Rowley. Even more troubling, students do not receive due process protections before receiving a disciplinary placement at Rowley, although this disciplinary placement is indefinite and therefore requires extensive due process procedures under state and federal law.

SBPSB’s policies and practices violate students’ due process rights under Louisiana Revised Statutes § 17:416, the Louisiana Constitution, and the Fourteenth Amendment to the U.S. Constitution. Moreover, SBPSB’s policies and practices constitute disability discrimination under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (“Section 504”). Plaintiffs seek, among other relief, a declaration that Defendants’ policy and practice of expelling Plaintiffs to Rowley without affording notice and an opportunity to be heard violates their rights under the due process provisions of the Louisiana Constitution and the Fourteenth Amendment to the U.S. Constitution, in addition to their rights as students with disabilities under the ADA and Section 504.

JURISDICTION AND VENUE

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

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

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

8. This court also has jurisdiction over any claim raised as an appeal of an Individuals with Disabilities Education Act (“IDEA”) due process hearing decision by an aggrieved party pursuant to 20 U.S.C. § 1415(i)(2); *see also* 20 U.S.C. §

[the ADA or Section 504] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA or Section 504].” 42 U.S.C. § 12203(a); *see also* 28 C.F.R. § 35.134; 34 C.F.R. § 104.61.

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

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

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

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

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- b. The school board shall provide written notice of the hearing to the student and his parent or legal guardian, and the notice shall advise the student and his parent or legal guardian of their rights. *Id.*
- c. At the hearing, the student may be represented by any person of their choice. *Id.*
- d. Upon the conclusion of the hearing and upon a finding that the student is guilty of conduct warranting expulsion, the superintendent or their designee shall determine whether such student shall be expelled from the school system or if other corrective or disciplinary action shall be taken. *Id.*
- e. A parent or legal guardian of a student who is expelled may, within five school days after a decision at the expulsion hearing is rendered, appeal to the local school board. *Id.*
- f. If the school board upholds the expulsion, the parent or guardian may, within ten school days, appeal to the district court for the parish in which the student's school is located. *Id.* § 17:416(C)Tee(r. d. tA parent 2 (or)-2 (l)-4(e)-1 (ga)-1 (l)-2 (gua)-1 (r)-2 (d3 (di

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

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

32. Due to an amendment to the Louisiana discipline code in 2012, all expelled students in Louisiana now are required to attend alternative schools. *See* 2012 La. Sess. Law Serv. Act 831 (H.B. 1209) (removing statutory exemptions to alternative school attendance and school district waiver programs); *see also* La. Rev. Stat. §§ 17:416(A)(2)(c), (C)(1); *id.* § 17:416.2(A). In accordance with this amendment, statutory exemptions that previously

STATEMENT OF FACTS

St. Bernard Parish School Board

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

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

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

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

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

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

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

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

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

47. The District's policies and practices further prevent students with disabilities from exiting the alternative school program. Students remain at Rowley until school staff determine they have

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

52. Indeed, a significant proportion of students who attend Rowley will never graduate high school at all. Rowley students are less likely to graduate high school, where, according to the Louisiana Department of Education, alternative education students are five times more likely than students in a traditional educational setting to drop out of school,³ and, as a result, face an increased likelihood of interacting with the criminal justice system and being incarcerated, as well as an increased risk of poverty, reduced earning potential, and even reduced life expectancy.⁴ Data provided by the District suggests that the current Rowley graduation rate has been steadily declining since 2018, and, currently, only about half of Rowley students graduate high school, as compared with an over 80% graduation rate statewide.

53. Students at Rowley also face social exclusion from peers. Under school district policy, all students at Rowley are barred from participation in district-wide school-sponsored and extracurricular activities, including after-school sports and prom. This means that high school students at Rowley are denied the opportunity participate in seventeen Louisiana High School Athletic Association sports offered at Chalmette High School, including but not limited to basketball, swimming, football, cross country, and track and field. Rowley students also are denied

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

⁴ See, e.g., Jennifer E. Lansford et al., A Public Health Perspective on School Dropout and Adult Outcomes: A Prospective Study of Risk and Protective Factors from Age 5 to 27, 58 J. of Adolescent Health 652 (2016).

offense the principal deems “serious enough” to warrant such action; and (ii) any felony “arrest” or “charge.”⁵

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

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

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

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

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

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

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

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

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

73. Tommie Powell,

78. A.A. was not identified as a special education student until on or around March 8, 2022, when he was identified with a Specific Learning Disability by the District.

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

80. The District informed P.A. that the reason A.A. would be denied placement at Chalmette High School was that the therapeutic supports and behavioral interventions he required were only available at Rowley. This change in placement was not reflected in the student’s IEP.

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

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

83. On November 17, 2022, an IEP team meeting was held for A.A. to review a Functional Behavioral Assessment (“FBA”) and draft a Behavior Intervention Plan (“BIP”). This was the first FBA or BIP ever developed for A.A. by the District.

84. On or around February 15, 2023, A.A. was again given a disciplinary placement at Rowley. On that day, A.A. was arrested for a fight on campus involving another student who had previously

harassed, intimidated, and threatened A.A. The same student had engaged in acts of violence against A.A.'s younger brother and also his close friend.

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

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

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

88. On or about

second expedited due process hearing request referenced above, representatives of SBPSB appeared in a juvenile delinquency proceeding hearing to advocate for A.A.'s exclusion from Chalmette High School as a condition of his probation.

91. On March 30, 2023, Assistant Superintendent of SBPPS Mary Lumetta, acting in her official capacity as a representative of SBPPS and SBPSB, appeared at A.A.'s plea hearing in juvenile court and attended a meeting in the offices of the District Attorney prior to the hearing. At the pre-hearing meeting in the prosecutor's office, Ms. Lumetta and Joseph Cipollone, the District's Supervisor of Special Education for Middle and High School, discussed the terms of the proposed plea deal with the prosecutor and counsel for A.A. During this conversation, the SBPSB officials requested that, as a condition of A.A.'s release into the community, the prosecutor impose a condition that he "not seek to go back to Chalmette High," at any point in the future. Upon information and belief, SBPSB officials also unsuccessfully advocated that the prosecutor include as a condition of the plea deal withdrawal of A.A. and P.A.'s request for due process, which was pending at the time. In other words, the District leveraged delinquency charges against A.A. to deprive him of his education rights in retaliation for filing special education due process hearing requests to defend his rights under the IDEA, Section 504, and the ADA.

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

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

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

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

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

psychiatric unit at a behavioral health hospital in Shreveport, LA for three days. During or around this period of hospitalization, she received diagnoses of Major Depressive Disorder and Disruptive Mood Dysregulation Disorder. During both her sixth and seventh grade years at Rowley, B.B. also received psychiatric medication management services from the LSU Health Services Clinic at Rowley.

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

105. In total, B.B. received a total of at least one hundred disciplinary writeups during her middle school career at Rowley, including 94 disciplinary writeups in a pandemic-shortened 2019-2020 school year, without receiving any additional supports, services, or intervention. The offenses for which she was written up included non-violent behaviors directly related to her disabilities, including minor infractions such as “deliberate choice to break a school rule” and “talking back”, as well as more serious infractions directly related to her mental health diagnoses such as “aggressive action” and “behavior causing a major disruption.”

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

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

108.

regulations, as well as Section 504 and the ADA. The ALJ dismissed claims of disability discrimination arising under Section 504 and the ADA.⁷ The ALJ also dismissed claims of FAPE denial under the IDEA arising under Louisiana Bulletin 1706 § 530(C).⁸ Thereafter, the parties reached a preliminary settlement agreement regarding the expedited claim under the IDEA in March of 2023. In May of 2023, the parties reached a second settlement agreement as to the remaining IDEA claim, and, in accordance with the terms of that agreement, B.B. has been reinstated at Chalmette High School.

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

116. In accordance with the parties' settlement agreements, B.B. is attending summer school at Chalmette High School and will resume full enrollment there in the 2023-2024 school year.

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

CLAIMS FOR RELIEF

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

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

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

⁷ See Order Denying Parent's Mot. to Adjudicate Claims Related to Illegal Expulsion Placement in Expedited Hr'g and Granting Sch. District's Exception of Lack of Subject Matter Jurisdiction, In the Matter of Parent on Behalf of Minor, No. 2023-2489-DOE-IDEA (Mar. 29, 2023).

⁸ *Id.*

120. Plaintiffs are individuals with disabilities

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

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

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

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

COUNT II: DEFENDANTS' DISCRIMINATIONS

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

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

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

133. Plaintiffs are entitled to declaratory and injunctive relief to remedy violations of Section 504 by Defendants.

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

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

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

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

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

138. Because A.A. engaged in this protected activity, Defendants took adverse action against A.A. where, among other activities, Defendants appeared in juvenile court and advocated for a new condition of release: permanent exclusion of A.A. from Chalmette High School and waiver of his educational rights to a special education due process hearing.

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

**COUNT IV. DEFENDANTS' VIOLATION OF STUDENTS' PROCEDURAL DUE
PROCESS RIGHTS IN SCHOOL DISCIPLINE MATTERS UNDER 104 C.S.R. 101.01 (D.)**

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