

May 13, 2014

Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Educational Opportunities Section, PHB
Washington, D.C. 20530

Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Attorney General Eric Holder and Secretary Arne Duncan:

During this week that marks the 60th anniversary of *Brown v. Board of Education*, community organizations in Chicago, Newark, and New Orleans, all members of the national Journey for Justice Alliance, file three complaints under Title IV and Title VI of the Civil Rights of 1964 with the Education Opportunities Section of the Department of Justice's Civil Rights Division ("DOJ") and the Department of Education's Office for Civil Rights ("OCR").

As we commemorate the landmark civil rights victory that struck down the "separate but equal" doctrine and the system of codified racism in our public schools, we respectfully request that you open an investigation of the racially discriminatory school closings that are the subject of these complaints.

Journey for Justice is a coalition of grassroots organizations in twenty-one cities across the country. The coalition has come together because, across our communities, education "reformers" and privatizers are targeting neighborhood schools filled with children of color, and leaving behind devastation. By stealth, seizure, and sabotage, these corporate profiteers are closing and privatizing our schools, keeping public education for children of color, not only separate, not only unequal, but increasingly not public at all.

Adding insult to injury, the perpetrators of this injustice have cloaked themselves in the language of the Civil Rights Movement. But too many of the charter and privately-managed schools that have multiplied as replacements for our beloved neighborhood schools are test prep mills that promote prison-like environments, and seem to be geared at keeping young people of color controlled, undereducated, and dehumanized. Children of color are not collateral damage. Our communities are not collateral damage.

Thus, we stand in solidarity, Kenwood Oakland Community Organization in Chicago, Coalition for Community Schools, Conscious Concerned Citizens Controlling Community Changes, and Vietnamese American Young Leaders of New Orleans in New Orleans, New Jersey's Parents Unified for Local School Education in Newark, and Journey for Justice member organizations across the country, to shed light on the racial injustice of school closings. Neighborhood schools are the hearts of our communities, and the harm caused by just one school closure is deep and devastating. This is death by a thousand cuts.

We wait with hopefulness for DOJ and OCR to investigate our civil rights complaints so that we can begin the work of rebuilding our communities and using sustainable and community accountable school transformation models to build schools that meet all children's needs.

Respectfully,

Kenwood Oakland Community Organization (*Chicago, IL*), Coalition for Community Schools (*New Orleans, LA*), Conscious Concerned Citizens Controlling Community Changes (*New Orleans, LA*), Vietnamese American Young Leaders of New Orleans (*New Orleans, LA*), New Jersey Parents Unified for Local School Education (*Newark, NJ*), and the national Journey for Justice Alliance



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VIA MAIL

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VIA EMAIL AND MAIL

Taylor August
Regional Director
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U.S. Department of Education
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Re: Civil rights complaint filed against the Louisiana Department of Education, Recovery School District, and Louisiana State Board of Elementary and Secondary Education

I. INTRODUCTION

In August 2005, Hurricane Katrina and the consequent levee breach ravaged the City of New Orleans. Thousands of lives were lost, citizens were displaced, and homes, businesses, and entire communities were destroyed. While many New Orleanians were struggling to rebuild their lives— at the urging and with the financial support of the federal government and private foundations—

Louisiana politicians and business leaders were plotting behind closed doors to turn New Orleans into the nation's first all-charter school district.¹

Three months after Katrina, the Louisiana legislature passed Act 35 allowing the state-run Recovery School District ("RSD") to take over 107 New Orleans public schools previously controlled by the Orleans Parish School Board ("OPSB").² OPSB then fired over 7,500 school employees, including 4,000 teachers. The stated goal of Act 35 was to allow the RSD to "meet the educational needs of *all* students residing in the jurisdiction of the transferring school system."³ This did not happen. What did happen was the implementation of RSD's real agenda to privatize public education by recklessly closing or converting all district-run schools.⁴

The results of that plan are clear: in May 2014, RSD will close the last five public schools and become the first all-charter district in the nation.⁵ RSD told parents and community members that it was closing schools to improve the educational outcomes and increase academic achievement, but that was false. Today, most students in RSD still attend underperforming or failing schools.⁶

As cities across America are hailing the New Orleans "experiment" as a national example of "education reform,"⁷ and profit-driven investors, researchers and philanthropists claim "victory," many African-American New Orleanians tell a cautionary tale.⁸ Most African-American students are still trapped in failing or near-failing public schools, experience a deeper, more severe form of

¹ See *cf.* RECOVERY SCHOOL DISTRICT, LEGISLATIVELY REQUIRED PLAN 4 (2006) (Hurricane Katrina created a "once-in-a-lifetime opportunity to create a fundamentally better public education system in New Orleans.") available at: <http://www.louisianaschools.net/lde/uploads/8932.doc> (last viewed May 4, 2014); RAY NAGIN, BRING NEW ORLEANS BACK COMMISSION RECOMMENDATIONS (2006). Private foundations and the federal government exerted significant influence on the State and New Orleans to increase the presence of charter schools. The federal government offered Orleans Parish School Board a \$20.9 million grant to help support new and existing charter schools. Similar money was not provided for the district-run public schools. Robert Garda, *The Politics of Education Reform: Lessons from New Orleans*, 40 J.L. & EDUC. 57, 67 (Jan. 2011). Arne Duncan said Katrina was "the best thing that happened to the education system in New Orleans." Mary Bruce, "Duncan: Katrina Was the 'Best Thing' for New Orleans School System" ABC NEWS (Jan. 29, 2010, 5:26PM), <http://abcnews.go.com/blogs/politics/2010/01/duncan-katrina-was-the-best-thing-for-new-orleans-schools/>; see also BOSTON CONSULTING GROUP, THE STATE OF PUBLIC EDUCATION IN NOLA, April 1, 2008 (explaining that Hurricane Katrina presented "both tragedy and opportunity" for New Orleans.).

² LA. REV. STAT. ANN. § 17:10.7 (2005).

³ *Id.* (emphasis added)

⁴ In this complaint, the terms "closure" or "school closure" are meant to capture when a school district closes a school or changes its management and enrollment status resulting in the removal and exclusion of a significant percentage of the school's staff and students. This includes what are often described as "turnarounds" and "conversions" when a district turns over the management of a school to a charter organization. These are some of the actions required for districts to receive federal school improvement grants.

⁵ Danielle Dreilinger, *Recovery School District will be country's first all-charter district in September 2014*, THE TIMES-PICAYUNE, Dec. 19, 2013, http://www.nola.com/education/index.ssf/2013/12/recovery_school_district_will_3.html.

⁶ CHARLES HATFIELD, RESEARCH ON REFORMS, RECOVERY SCHOOL DISTRICT IN NEW ORLEANS: NATIONAL MODEL FOR REFORM OR DISTRICT IN ACADEMIC CRISIS 2 (2012), <http://www.researchonreforms.org/html/documents/Paperon2012SPSk.pdf>.

⁷ Several districts have already duplicated reforms in New Orleans and are awaiting the results. See Stacy Teicher Khadaroo, *New Orleans goes all in on charter schools. Is it showing the way?* THE CHRISTIAN SCIENCE MONITOR, March 1, 2014.

⁸ See generally Kristen L. Buras, *New Orleans Education Reform: A Guide for Cities or a Warning for Communities?* (*Grassroots Lessons Learned, 2005-2010*), 4 BERKELEY REVIEW OF EDUCATION 1, 123-160 (2013).

charter school "pushout" and exclusion, and have been forced into classrooms with an increased reliance on high-stakes testing.⁹

The vast majority of public schools closed by RSD in the past five years¹⁰ were in poor and working class, African-American neighborhoods—communities that were hit hardest by Hurricane Katrina and, even before the storm, had experienced years of disinvestment, over-incarceration, and unemployment. Closing these schools on the heels of Katrina has been a second storm for these communities. Many of the schools existed for over a hundred years before being closed and had been attended by multiple generations in one family. These schools employed teachers and administrators who have taught in our communities for decades—staff who hold community knowledge, understand the hardships that face our students, and pass down our shared values. These schools have been cornerstones in our communities. And after everything that we lost in Katrina, it has been devastating to lose our schools as well.

This complaint is filed with the Office for Civil Rights of the Department of Education ("OCR") and the Educational Opportunities Section of the Department of Justice's Civil Rights Division ("DOJ"). We file this complaint pursuant to Titles IV and VI of the Civil Rights Act of 1964 on behalf of African-American students enrolled at the last five remaining district-run public schools in RSD scheduled to close in May 2014: Banneker ES, Tureaud ES, Cohen HS, Carver HS and Reed HS.¹¹ This complaint alleges two separate, but related claims. First, complainants challenge the State of Louisiana's policy and practice of subjecting African-American students to school closures at much higher rates than White students. Second, complainants challenge the State's policy and practice of discriminating against African-American students by failing to provide adequate educational alternatives once their schools were closed. In essence, the State has robbed these children of their neighborhood schools while keeping them trapped in failing, underperforming schools. This complaint is also filed on behalf of students who would have attended these schools in the future had they not been closed, and the parents, teachers, and communities who have been impacted by these closures.

⁹ BARBARA FERGUSON, RESEARCH ON REFORMS, NEW ORLEANS SCHOOLS SHOULD NOT SERVE AS A NATIONAL MODEL (2012), <http://www.researchonreforms.org/html/documents/NOSchoolsNotServeasNatModel.pdf>.

¹⁰ In this complaint, the phrase "public school" is used to describe schools that are directly operated by a government (local or state) school district—not charter schools.

¹¹ Cohen HS, which the State has been phasing out for several years, will graduate its final class in May 2014. Even though there are no students who would have remained had Cohen not closed, this policy has been very harmful to the remaining students at Cohen. We file this complaint on behalf of the students who would have attended Cohen had it not been phased out.

II. COMPLAINANTS

Complainants are two New Orleans-based community groups and members of Journey for Justice, an alliance of grassroots community, youth, and parent-led organizations dedicated to resisting school closures, privatization, and the dismantling of public schools across the nation.

The Coalition for Community Schools (“CCS”) is comprised of parents, community members, teachers, and former teachers concerned about education in New Orleans and the lack of parent and community involvement in state education decision-making process. CCS has pushed for community-based neighborhood schools in New Orleans and believes community schools are essential to ensure sustainable communities.

Conscious Concerned Citizens Controlling Community Changes (“C-6”) members include teachers, administrators, and parents of students in New Orleans. Many C-6 members live in historically African-American New Orleans communities that have suffered as a result of school closures. Several C-6 members are veteran African-American teachers who dedicated over twenty years to the school system before they were terminated in November 2005 or have since been pushed out due to the influx of teachers from fellowship programs like Teach for America. Many of these veteran teachers were born and raised in New Orleans, chose to return to the city post-Katrina, and now because of the “educational reform” policies are being forced to find jobs in neighboring parishes or leaving the teaching profession altogether.

III. RESPONDENT

The State of Louisiana is ultimately responsible for the discrimination against African-American students alleged because of the control it exercises over public education in New Orleans. In 2003, two years before Hurricane Katrina, the Louisiana legislature passed an act creating the RSD. The RSD, which is administered by the Louisiana Department of Education (“LDOE”) with the Louisiana Board of Elementary and Secondary Education’s (“BESE”) approval, was initially created to take over “failing” or “academically unacceptable” schools.¹² Three months after Katrina, Louisiana passed controversial law, Act 35, which allowed RSD to take over all “below average” OPSB schools. Act 35 increased the size of RSD from 5 to 112 schools overnight. It effectually created two separate and unequal school systems: one filled with high-performing, more diverse public schools that have remained open and stable; and another with below average, nearly 100% African-American schools that soon after transfer to RSD were closed or chartered. Thus, amidst the chaos that followed Hurricane Katrina, the State of Louisiana implemented a policy of education reform

¹² LA. REV. STAT. ANN. § 17:1990 (2003); LA. REV. STAT. ANN. § 17.10.5 (2003).

that they claimed was intended to improve academic achievement for all students, but was actually designed to turn traditional public schools into charter schools at the expense of African-American students and communities.

The State of Louisiana controls several critical aspects of New Orleans schools through the combined authority of the LDOE, the BESE and the RSD.

- i. The LDOE is statutorily required to identify low-performing schools and provide interventions to prevent these schools from failing.¹³ In regard to its responsibility to identify low-performing schools, LDOE compiles and distributes district and school report cards and data on all elementary and secondary schools, including charter schools, and submits an annual report on the “condition of, the progress made, and the improvements needed” in those schools.¹⁴ LDOE also administers RSD with BESE’s approval.
- ii. The BESE with LDOE establishes the school performance scores (“SPS”) or letter grade system for the state and determines which schools are failing.¹⁵ BESE also adopts the Minimum Foundation Program formula to be approved by the legislature that establishes how much money each locality, including charter schools, will receive.¹⁶ Although charter schools receive some private money, a significant portion of their budgets come from public school funds. Public money distributed to charter schools reduces funds available for public schools and ultimately contributes to district decisions about which schools should close. Together with the OPSB, BESE also approves the school facilities master plan, which determines what public school facilities will be renovated, refurbished or newly built.¹⁷ BESE is also the direct authorizer of four charter schools and oversees approximately 50 charter schools under RSD. Louisiana law requires charter schools to abide by relevant state laws and regulations, operate with fiscal integrity and make demonstrable improvements in student performance, including improvements in SPS scores.¹⁸ Failure to follow these rules or meet performance standards can result in BESE placing a charter under its

¹³ LA. REV. STAT. ANN. § 17:10.8 (2008).

¹⁴ LA. REV. STAT. ANN. § 17:10.1 (1997); LA. REV. STAT. ANN. § 17:22(7)(a) (1975).

¹⁵ LA. REV. STAT. ANN. § 17:10.1 (1997).

¹⁶ LA. DEP’T OF EDUC., MINIMUM FOUNDATION PROGRAM 2011-2012 HANDBOOK (2011), <https://www.louisianabelieves.com/docs/minimum-foundation-program/2011-2012-minimum-foundation-program-handbook.pdf?sfvrsn=2>.

¹⁷ COWEN INSTITUTE, THE STATE OF PUBLIC EDUCATION IN NEW ORLEANS 2013 REPORT 12 (2013).

¹⁸ LA. REV. STAT. ANN. § 17:3992 (1997).

authority on probation or revoking its charter.¹⁹ BESE makes the final decision on what happens to charter schools under RSD.

- iii. RSD is operated by the LDOE with BESE's approval.²⁰ It functions as the third state-arm in New Orleans' publicly-funded schools. RSD operates the last five public schools slated for closure at the end of the year and is the authorizer of over thirty charter schools. Louisiana law requires RSD to create plans that will increase education for all students under their jurisdiction and ensure schools are open and available to students "in reasonable proximity to the neighborhoods" where students live.²¹ Additionally, RSD, with BESE's approval, decides whether schools will be phased out, closed, or converted.²²

IV. JURISDICTION

Under Title VI, 42 U.S.C. §§ 2000c *et seq.*, 34 C.F.R. Part 1000, OCR has jurisdiction over discrimination based on race, color, or national origin by institutions that receive federal financial assistance from the Department of Education. LDOE, BESE and RSD all are recipients of federal financial assistance from the Department of Education, providing OCR with jurisdiction over this complaint.

DOJ is responsible for enforcing Title IV of the Civil Right Act of 1964, 42 U.S.C. §§2000c *et seq.* which prohibits discrimination in public elementary and secondary schools based on race, color, or national origin among other bases.²³ DOJ also has jurisdiction over Title VI complaints against recipients of DOJ funds or upon a referral from the Department of Education.²⁴ Therefore, DOJ also has jurisdiction over this complaint.

This complaint is timely as the discriminatory acts for both claims described below occurred within the past 180 days and are of an ongoing and continuing nature. In 2010, pursuant to its policy and practice, RSD, which is administered by LDOE and with BESE's approval, began shutting down or converting all of its district-run schools. LDOE and BESE's actions influenced RSD's decision to close schools by their: (1) determinations of which schools were failing; (2) failure to provide interventions and adequate funding; and (3) school facility assessments. In three

¹⁹ *Id.*; LA. BD. OF ELEMENTARY AND SECONDARY EDUC., Title 28, Part CXXXIX, Bulletin 126.

²⁰ The interactions between RSD, BESE and LDOE are depicted in the "accountability" section of RSD's website found here: http://www.rsdl.net/apps/pages/index.jsp?uREC_ID=197336&type=d.

²¹ LA. REV. STAT. ANN. § 17:10.7(B)(2)(a)(ii) (2005).

²² *Id.* § 17:10.7A(2)(a)(ii).

²³ U.S. DEP'T OF JUSTICE & U.S. DEP'T OF ED., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 2 (Jan. 8. 2014).

²⁴ *Id.* at n.2.

years, RSD closed almost thirty schools. In December 2013, RSD announced its decision to close the five remaining district-run schools at the end of the 2013-2014 school year. This complaint is being filed within 180 days of that decision.²⁵

Additionally, under its policy and practice of granting charter schools and select OPSB public schools more freedom and less accountability, RSD, administered by LDOE, discriminates against African-American students by implementing a confusing and biased enrollment system and by blindly allowing charter and OPSB public schools to institute admissions criteria like zip code preferences and admissions exams that disproportionately affect and exclude African-American students. This exclusion, which is also carried out by charters under BESE's authority, is particularly devastating for these students who are displaced by one school closure only to be pushed into another failing or near-failing school. Recent acts pursuant to this discriminatory policy occurred in April 2014 when parents at Tureaud ES, Banneker ES, Carver HS, and Reed HS received decision letters from RSD informing them where their children had been admitted for the 2014-2015 school year. Most of the impacted students were only admitted to underperforming schools.

V. FACTUAL BACKGROUND

The "New Orleans experiment" has failed, and African-American students have borne the brunt of this failure. Using the alleged damage caused by Hurricane Katrina as an excuse, the Louisiana legislature through Act 35 required the transfer of over 100 schools to RSD. Relying on population data and flood insurance statistics, RSD kept several schools shuttered. Most of these schools sit in poor, African-American neighborhoods and are slated to remain permanently closed. When RSD did reopen schools, it was a major indication to the community that life was returning to that neighborhood. However, the schools did not stay open for long. Within a few years, RSD has either closed or converted to a charter school all of the traditional public schools reopened after Hurricane Katrina. Today, there are no neighborhood schools that serve historically African-American neighborhoods in New Orleans. The two schools in New Orleans that give preference to students living in surrounding neighborhoods are located in mostly White, middle class communities.

²⁵ Danielle Dreilinger, *Groups petition for return of New Orleans school from Recovery School District*, THE TIMES-PICAYUNE, Dec. 9, 2013, available at: http://www.nola.com/education/index.ssf/2013/12/parents_petition_for_return_of.html; Danielle Dreilinger, *Recovery school district will be country's first all-charter district in September 2014*, THE TIMES-PICAYUNE, Dec. 19, 2013, http://www.nola.com/education/index.ssf/2013/12/recovery_school_district_will_3.html.

Since 2005, the BESE and RSD have closed nearly thirty schools that served majority African-American students and communities. These school closures have severely harmed African-American communities. The State discriminates against African-American students by instituting policies that subject them to school closures at much higher rates than White students, and by instituting policies that exclude African-American students, especially those displaced by closures, from attending high-performing schools.

A. The State of Louisiana by its policy and practice of closing New Orleans public schools discriminates against African-American students.

i. Under the State's policy and practice, African-American schools are closed at a much higher and faster rate than schools with greater percentages of White students.

According to Louisiana law, once RSD takes over a school, it must make a recommendation to BESE detailing what should happen to the school. RSD can recommend that a school:

- Continue in the RSD
- Continue in RSD with a change in its operational status.
- Close.
- Return to OPSB.²⁶

Despite pleas of local residents to return RSD schools to OPSB, RSD has never recommended any schools return to OPSB nor has it recommended any schools continue operating in RSD, even in cases where the school achieved consistent improvements in performance scores. Instead, RSD, implemented through LDOE with BESE's approval, embraced a policy and practice of starving schools of resources, phasing out, and eventually shutting down or converting to charter all public schools—schools that were overwhelmingly filled with African-American students and staffed by veteran African-American teachers.

Of the four options available to RSD, closing or changing a school's operating status from public school to charter is the most severe. In 2009, RSD ran 34 public schools. Since then, it has closed or chartered 29 of those schools.²⁷ In May 2014, RSD will close or convert to charter the last five traditional public schools:

- Benjamin Banneker Elementary School
- A.P. Tureaud Elementary School
- George Washington Carver High School

²⁶ LA. REV. STAT. ANN. § 17:10.5(C)(2)(b) (2003).

²⁷ Danielle Dreilinger, *The permanent, dwindling Recovery School District*, THE TIMES-PICAYUNE, Dec. 13, 2013, available at: http://www.nola.com/education/index.ssf/2013/12/new_orleans_recovery_school_di.html.

- Walter Cohen High School
- Sarah T. Reed High School.²⁸

This policy and practice of choosing to close, rather than invest in, schools disparately impacts African-American students, teachers, and communities. African-American students comprise roughly 82% of all public school students in New Orleans, but are 96.64% of the students in the five schools slated to close.²⁹ The White student population in the schools slated to close is less than 0.64%. Of the students impacted by these last five school closures, approximately 1,000 are African-American students and only approximately 5 are White students.

The closures of these last five district-run schools disparately impact African-American students and were decided in violation of RSD’s own standards. Under Louisiana law, a school in the RSD that fails to meet performance criteria after five years “must be restructure[d] or close[d]” unless the school has implemented an intervention plan that has resulted in recent score increases of at least five points.³⁰ According to Louisiana’s performance metric,³¹ three of the five schools scheduled to close at the end of the 2013-2014 school year received passing scores for at least two consecutive years prior to RSD’s decision to close that school.³² Nearly *all* of the schools had shown consistent improvements in student performance. Three had not received consecutive failing scores. Cohen High School achieved a SPS score of 81.9 during the 2011-2012 school year, which is higher than several schools that are not closing. At Banneker Elementary, in three years the

²⁸ RSD will also close John McDonogh High School, a nearly 100% African-American school run by the charter organization Future Is Now, at the end of the 2013-2014 school year. Although students will be displaced by this closure and it further demonstrates the State’s discriminatory policy of school closures, this complaint focuses on the closures of public, district run schools and will, therefore, not discuss in detail the closures of charter schools like John McDonogh.

²⁹ Numbers are calculated from LDOE’s “Multiple statistics by site for public elementary/secondary students” spreadsheet dated Feb. 1, 2014. The numbers are approximations as the data on the spreadsheet was rounded “to protect the privacy of students in compliance with the Family Educational Rights and Privacy Act.” LA. DEP’T OF EDUC., *Multiple statistics by site for public elementary/secondary students*, Feb. 1. 2014, <http://www.louisianabelieves.com/resources/library/data-center>.

³⁰ LA. REV. STAT. ANN. § 17:10.7(B)(2)(a)(i) (2005) (“The authority provided in this Paragraph includes the authority to determine and act on which schools should be operated, which schools should be closed, which schools should be relocated or rebuilt, and what range of grades should be operated in each school.”); PAUL PASTOREK & PAUL VALLAS, RECOVERY SCHOOL DISTRICT, *Conditioning for Success: A Process to Transfer Schools Placed in the Recovery School District* (2010) (“For a school not above the accountability bar after a five year period in the RSD, the RSD must restructure or close the school unless it has implemented an intervention model within the last two years yielding adequate academic growth (i.e., a growth score the greater of either five SPS growth points or the state average growth score).”).

³¹ The School Performance Score or “SPS” is calculated annually by the BESE with LDOE. The SPS metric is calculated primarily from standardized test scores, which research has found to be racially and culturally biased and unreliable measures of assessment. Additionally, there have been several allegations of test cheating in New Orleans that have gone ignored. In 2011, Frank Buckley, founder of C-6, reported standardized testing irregularities to Louisiana State Superintendent John White. Superintendent White ignored his complaint, and Mr. Buckley was fired a few days later—allegedly because of a “reduction in force.” Mr. Buckley, currently employed by Jefferson Parish Schools, knows other teachers and administrators who have reported testing irregularities to RSD and LDOE, but their allegations have all fallen on deaf ears.

³² RSD attributes its decision to close these schools to “shifting demographics” and claimed there were available seats at high-performing schools. As explained later, students pushed out of closed schools have not been able to obtain seats at the high-performing schools.

school's scores increased from 60.9 to 74.7—nearly 14 percentage points. And despite low performance scores, both Carver High School and Sarah T. Reed High School saw increases of more than ten percentage points between the 2009-2010 and 2011-2012 school years, double the statutorily required amount to prove recent improvements. A.P. Tureaud is the only school that experienced a decrease between 2009–2012, but it was a minuscule 0.4 percentage points.³³

Figure 1.³⁴ *Source: New Orleans Parents' Guide to Public Schools (Spring 2013)*

School	Total Students	% Black	% White	2009-10 Score	2010-11 Score	2011-12 Score	Change '09 to '12
Banneker ES	404	95.0%	1.2%	60.9	D+ (66.5)	F (74.7)	+13.8
A.P. Tureaud ES	246	95.5%	0%	76.3	D (77.9)	D (75.9)	-0.4
Cohen High School	502	95.6%	2%	73.4	D- (67.6)	D (81.9)	+ 8.5
Carver High School	169	100%	0%	31.9	F (44.8)	F (46.4)	+ 14.5
Sarah T. Reed HS	259	90.3%	0%	34.9	F (33.7)	F (47.6)	+ 12.7

The closures of these last five schools are consistent with the State's ongoing discriminatory policy of closing traditional, district-run public schools that serve majority African-American communities. This policy began soon after Hurricane Katrina when Louisiana eliminated neighborhood school preference and made schools open enrollment schools. In 2006, RSD reported to BESE that it would invest large amounts of money and resources to ensure "all students have access to a high-quality public education."³⁵ The community never saw the fruits of this promise in the public schools.

Despite RSD's claims, its plan was always to close or convert all district-run public schools. Karran Harper Royal, CCS member and New Orleans education advocate, said the schools felt like "holding cells." Within a few years, RSD has recommended that all district-run schools be closed or converted to charter schools. Leslie Jacobs, a former local and state board member who helped

³³ NEW ORLEANS PARENT ORGANIZING NETWORK, NEW ORLEANS PARENTS' GUIDE TO PUBLIC SCHOOLS (Spring 2013). LDOE changed the grading scale for the 2012-2013 school year making it difficult to do multi-year comparisons. Under the new scale, Tureaud's score dropped from 88.8 to 67.7 while scores for RSD-charters Success Preparatory Academy and Lagniappe Academies of New Orleans, both of which had received failing scores for the previous two consecutive years, increased by 30-40 points. LA DEP'T OF ED., "2013 School Performance Scores/Letter Grades (Alphabetical by District)" chart. In fact, LDOE has changed what score constitutes an 'F' several times. "In 2012, the LDOE gave an F grade to schools earning an SPS below 75, up from 65 in 2011 and 60 in the years prior." COWEN INSTITUTE *supra* note 17. One researcher concludes, "[LDOE] standards of 'success' and 'failure' were manipulated to justify converting public schools into charter schools, and then to justify keeping them as charter schools." KRISTEN BURAS, NAT'L EDUC. POLICY CTR., *Review of the Louisiana Recovery School District: Lessons for the Buckeye State* (2012).

³⁴ Demographic and enrollment data are from the 2012-2013 school year.

³⁵ RECOVERY SCHOOL DISTRICT, LEGISLATIVELY REQUIRED PLAN 34 (2006).

form the RSD, makes clear that RSD was never intended to directly run a lot of schools.³⁶ Their ultimate goal was to increase charter schools and abolish district-run schools.³⁷

These practices were not necessary to meet important educational goals, but to entice dollars from pro-charter private foundations and business leaders. The Walton Family Foundation, which began in New Orleans after Hurricane Katrina, donated over \$4.8 million to the public schools in 2010.³⁸ The increase in charter schools has led to an explosion of government contracts for things like busing, food, classroom equipment, and school uniforms. It has also resulted in increased government spending on education.³⁹ In New Orleans, RSD pursues their business goals at the expense of African-American students and communities. As discussed below, data reveals most students displaced by school closures are sent to other failing or near-failing schools; yet RSD continues to close schools.

In 2011, two of the first RSD schools re-opened after Katrina, Craig Elementary and Clark Senior High School, were closed down and converted to charter schools. Both schools were located in Tremé, a historic African-American community in New Orleans, and both were converted to open-enrollment charter schools with no neighborhood preference.

At the end of the 2012-2013 school year, the RSD with BESE's approval closed Abramson ES, a school filled almost entirely with students of color, even though more than seventy percent of its students scored at or above grade level.⁴⁰ From 2007 to 2011, Abramson's SPS score increased 33 points from 44.7 to 78.1 before being closed.⁴¹ Before Murray Henderson Elementary, another district-run public school with over 98% African-American population, closed last year, its students' scores were some of the highest in New Orleans. Nearly 95% of fourth graders scored at or above grade level in English and nearly 99% scored at or above grade level in math. Henderson's SPS score increased 25.3 points from 2006 to 2011; yet, RSD still decided to close it.⁴²

During that same time frame, there were several charter schools under RSD and BESE control with higher percentages of White students and low performance scores, but they turned a blind eye and allowed those schools to remain open. International High School is a BESE-authorized charter school. White students at International High School make up 11.6% of the school population, which is 11 times more than the White population in RSD. As Figure 2 shows,

³⁶ Dreilinger, *supra* note 27.

³⁷ Sarah Carr, *New Orleans charter schools will outnumber traditional schools 2 to 1 next year*, THE TIMES-PICAYUNE, May 5, 2010.

³⁸ HUFFINGTON POST, *Walton Family Foundation gives \$157 Million toward education reform*, June 28, 2011, available at: http://www.huffingtonpost.com/2011/0/28/walton-family-foundation-_n_886112.html.

³⁹ COWEN INSTITUTE, THE STATE OF PUBLIC EDUCATION IN NEW ORLEANS 19 (2012).

⁴⁰ Jessica Williams, *Closure of unneeded, failing schools causes disruption for students and teachers*, THE LENS, May 30, 2013.

⁴¹ NEW ORLEANS PARENT ORGANIZING NETWORK, NEW ORLEANS PARENTS' GUIDE TO PUBLIC SCHOOLS (Spring 2012).

⁴² *Id.*; Williams, *supra* note 40.

the African-American student population at International High School is 59.5% nearly 40% less than the African-American student population in RSD and 16% less than OPSB's African-American student population. Despite consistent overall low scores, BESE did not revoke their charter or place them on probation.

For the past three school years, Gentilly Terrace, a RSD-authorized charter school with a higher White student population than every RSD direct-run school and most RSD-charters, received a D in 2011, followed by a T—a “transition” score given when a school fails, but is excused from receiving a failing score because the school is “transitioning” or being taken over by a charter school—in 2012, and then a C in 2013, as illustrated in Figure 2. Although LDOE typically gives a “T” score to a charter school during its first two years of management, Gentilly Terrace has been under the same charter management organization for more than five years. Instead of closing Gentilly for poor scores like the district-run public schools, RSD and LDOE essentially gave Gentilly a waiver.

Lycée Français de la Nouvelle-Orléans (“Lycée”) is another BESE-authorized charter school. White students make up approximately 63% of the population at Lycée, and African-American students are only 14% of the population. State law requires Type 2 charter schools like Lycée to enroll a percentage of at-risk students equivalent to the district's percentage of 67 percent.⁴³ During the 2012-2013 school year, only 40 percent of Lycée students received a free or reduced lunch, one of the factors that determine at-risk population.⁴⁴ Lycée has also been plagued with internal tensions, frequent changes in leadership, and parent complaints about fiscal mismanagement.⁴⁵ And as reflected in the chart below, because Lycée will only begin enrolling fourth graders during the 2014-2015 school year, the LDOE has not given Lycée an SPS score for four years essentially granting them a waiver from state-mandated academic assessments. By law, BESE can revoke a charter if it determines that the charter “violated any provision of law applicable to a charter school” or “failed to meet generally accepted accounting standards of fiscal management.”⁴⁶ Despite claims of mismanagement and the lack of academic benchmarks, the BESE did not revoke Lycée's charter or place them on probation.

⁴³ Della Hasselle, *RSD's offer to Abramson kids: Leave one F school for another*, THE LENS, Jan. 10, 2013.

⁴⁴ Louisiana law has a number of different criteria that determine whether a student is “at-risk.” The ones most applicable at Lycée are (a) if the student receives a free or reduced lunch or (b) if the student is in the Louisiana's LA4 program for pre-kindergartners from low-income families.

⁴⁵ Rebecca Catalanello, *Lycée Français parents want resignation of 2 board members*, THE LENS, Jan. 11, 2013. State Supt. John White even offered direct assistance to Lycée to help sort out the troubles. Danielle Dreilinger, *State steps in as problems continue at French immersion charter Lycée Français*, THE TIMES-PICAYUNE, Jan. 15, 2013.

⁴⁶ LA. REV. STAT. ANN. § 17:3992(C)(4) (1997).

The treatment of these charter schools shows that RSD's selection of schools to close is discriminatory. All of these schools are under state control, have higher percentages of White students, and received low or no performance scores yet were not closed. Since 2005, RSD has only closed six charter schools for failing to meet standards.⁴⁷

Figure 2.⁴⁸ Source: *New Orleans Parents Guide to Public Schools* (Spring 2014)

School	Total students	% African-American	% White	2009-10	2010-11	2011-12	2012-13
Lycée Français ⁴⁹	396	14.1%	63.1%	No score	No score	No score	No score
International High School	476	59.5%	11.6%	No score	No score	D (81.5)	D (66.9)
Gentilly Terrace	452	96.2%	2%	No score	D (65.3)	T (74.9)	C (74.2)

ii. School closures harm African-American students, families, teachers and communities.

In 1952, A.P. Tureaud, a New Orleans civil rights attorney, filed a case to integrate the schools. Over sixty years later, the elementary school named in his honor lies in shambles, is nearly 100% African-American, and is one of the schools whose doors will close at the end of the 2013-2014 school year. The State's decision to close these neighborhood schools robs us of these critical institutions, the relationships they hold, and the much-desired stability they provide. It sentences our communities to a slow and painful death.

African-American students in New Orleans have experienced the most direct and painful impacts of school closures. Like other major changes in a child's life, school closures can cause a great degree of fear and anxiety.⁵⁰ If the new school is in a different area of town and does not provide transportation, it may require the student to walk longer distances, across busy intersections and through dangerous neighborhoods.⁵¹ Even if transportation is provided, if the school is far away, it may require early morning pick up times like in New Orleans East where students wait for buses as early as 5:30am and 6am. School closures also disrupt a child's academic

⁴⁷ Khadaroo *supra* note 7.

⁴⁸ Enrollment data is from the 2013-2014 school year.

⁴⁹ Lycée has no reported performance data because in 2009 they accepted their first pre-kindergarten class and have added a new grade each year. For the past four years, the State has not issued a score for Lycée Français because they did not have any students in fourth grade. The 2014-2015 school year will be the first year they have students in the fourth grade.

⁵⁰ Pauline Lipman & Nathan Haines, *From Accountability to Privatization and African American Exclusion: Chicago's Renaissance 2010*, 21 EDUC. POLICY 471 (2007).

⁵¹ Several students have been struck by cars on their way to bus stops. The most recent incident happened on Feb. 3, 2014, when a six-year-old boy was killed walking to his bus stop across a busy intersection. Ken Daley, *Child killed in Gentilly hit-and-run identified as Akili Academy first grader*, THE TIMES-PICAYUNE, Feb. 3, 2014.

development. Megan, the mother of a sixth grader with special needs at Banneker Elementary, is very worried about how the closure will affect her son. Her son has grown to trust the Banneker staff, and the staff have learned the unique ways to work with her son. As a result, her son's academic performance has improved significantly in the last few years. Disrupting his education now and sending him to a school where he does not know anyone, Megan fears, will set him back years. This fear is supported by research.⁵² Some students in New Orleans have experienced more than one school closure. At the end of 2012-2013 school year, Johnson Elementary was closed. Most Johnson students were sent to Banneker Elementary School. A few months after the first day of school, parents at Banneker were informed that it too would close. These students and parents have experienced two school closures in two years. And as discussed below, because of the lack of high-quality options, they will continue to be forced into other failing or near-failing schools.⁵³ These students are experiencing the domino effect of school closings motivated by a desire to sabotage all of the public schools to force their closure; meanwhile, the students are being tossed around at the expense of their educational opportunities.

School closures also harm parents and families. Parents have been excluded from the decision-making process to close schools and have few ways to hold State officials accountable. When parents are informed about closures, the decision is final. Finding another school can very stressful and time-consuming. Transportation costs often increase and if parents have children at multiple schools, they often have different pick up times, board meeting dates, and holiday and spring break schedules, among other things. Without transportation, poor parents are unable to send their children to some schools or are forced to spend money on transportation that takes away from other essential household needs.⁵⁴ For neighborhood schools that had been attended by multiple members of one family, closing these schools robs these families of the ability to continue that legacy.

When schools close or are converted to charters, teachers and staff are fired and often replaced by first or second-year teachers who are not from New Orleans or Louisiana. Prior to being closed, many public schools were staffed by veteran African-American teachers some of whom had spent twenty and thirty years in the classroom. Now, in the Recovery School District,

⁵² CONSORTIUM ON CHICAGO SCHOOL RESEARCH, *WHEN SCHOOLS CLOSE: EFFECTS ON DISPLACED STUDENTS IN CHICAGO PUBLIC SCHOOLS 25-26* (Oct. 2009); Ben Kirshner, *Tracing Transitions: The Effect of High School Closure on Displaced Students*, 32 *EDUC. EVALUATION & POLICY ANALYSIS* 407 (2010).

⁵³ The State claims that extreme, relentless measures like school closures are necessary yet the State has failed to provide adequate educational alternatives. The State should rely on less discriminatory alternatives like investing in the schools or returning them to their original parish rather than shutting them down.

⁵⁴ Della Hasselle & Marta Jewson, *Cost of busing students in New Orleans rises as parents exercise school choice*, *THE LENS*, Sept. 12, 2013, available at: <http://thelensnola.org/2013/09/12/cost-of-busing-students-in-new-orleans-rises-as-parents-exercise-school-choice/>.

26% of teachers are in their first year of teaching. Teachers that come through programs like Teach for America receive minimal training and lack cultural competency. As a result, teachers rely more on suspension, exclusion, harsh discipline and punishment. In 2012-2013, one RSD charter high school had a suspension rate of 68%--nearly eight times the OPSB average.⁵⁵ Another charter had a rate of 61%.⁵⁶

Lastly, school closures harm communities. As one New Orleans parent asserts, these schools were “anchors” in their communities. They are a sign of life and stimulate growth and economic development. When schools close, it is a slow death sentence for our communities. Many African-American New Orleanians believe this is RSD’s and BESE’s motivating reason for the closures—to force them to leave the city.

B. The State of Louisiana through its policies and practices discriminates against African-American students by keeping them trapped in failing schools.

i. Under the State’s policy and practice, African-American students, particularly those displaced by school closures, remain trapped in failing schools while White students are disproportionately granted seats at high-performing schools.

The State of Louisiana discriminates against African-American students in New Orleans, particularly those displaced by school closings, by implementing and approving policies that reduce their access to high-performing schools. As a result, thousands of these students remain permanently stuck in failing, underperforming schools.⁵⁷ Yet, White students are allowed seats in the top-ranked schools even when those schools are unavailable to African-American students.

Last school year, in an effort to streamline student enrollment, RSD and OPSB launched a citywide enrollment process called “OneApp.”⁵⁸ Parents rank their top eight school choices, and RSD, who administers the OneApp program, makes the final decision. OneApp’s metric is unclear, but according to the website, RSD and OPSB use a “sophisticated student assignment technology” based on “priority structures” such as siblings at the school and geography.⁵⁹ With no accountability or oversight, Complainants believe RSD uses the OneApp process to deny admission

⁵⁵ OCR Complaint filed on April 15, 2014 by students and parents of George Washington Carver Preparatory Academy, George Washington Carver Collegiate Academy, and Sci Academy (on file with attorneys).

⁵⁶ *Id.*

⁵⁷ Jessica Williams, *RSD’s school closure process has uneven effect on students at failing schools*, THE LENS, Jan. 8, 2014, <http://thelensnola.org/2014/01/08/rsds-school-closure-process-has-uneven-effect-on-students-at-failing-schools/>.

⁵⁸ Kari Dequine Harden, *Orleans Parish School Board, RSD launch OneApp program*, NEW ORLEANS ADVOCATE, Jan. 17, 2013, <http://theadvocate.com/news/neworleans/4925968-148/orleans-parish-school-board-rsd>.

⁵⁹ RECOVERY SCHOOL DISTRICT, *Frequently Asked Questions*, <http://enrollnola.org/2013/08/02/frequently-asked-questions/> (last visited May 13, 2014).

to African-American students and grant seats to White students at New Orleans' top schools.⁶⁰ Complainants know of at least one White mother who was able to get her child into a selective school in New Orleans after the OneApp deadline had passed and the school was listed as being "full."

The highest-performing public and charter schools are not on the OneApp form, and, as a result, many parents do not know about them. Last year, the State allowed several schools to opt out of the OneApp. These schools include *all* of New Orleans' A-ranked schools and many of the top B schools, which created their own collaborative charter school application process, and a creative arts school that has a separate application process. To apply to a school in the collaborative, parents must complete an application for each individual school. The application requires three separate proofs of residency. One Tureaud Elementary School mother said she had never heard of the schools in the collaborative and did not know she could apply there. The OneApp form although intended to provide uniformity, without full participation or oversight, has become another way in which the State, through the RSD, discriminates against African-American students by disproportionately preventing their access to high-performing schools.

In addition, pursuant to State law, many charter schools have admissions criteria that disproportionately exclude African-American students. The state legislature passed a law that specifically allows admissions criteria,⁶¹ and they are approved by charter authorizers, BESE, and OPSB. Ann, an African-American mother of a pre-kindergarten student at Tureaud was dismayed when she learned the school would close in May 2014. She applied for her daughter to attend an A-ranked OPSB public school, but was told her six-year-old daughter had to pass an admissions exam before she would be accepted. Her daughter failed the test by four points. Ann is unsure where her daughter will attend school next year.

LDOE and BESE are aware of the disparate impact these criteria have on African-American students, but turn a blind eye.⁶² The result is that New Orleans' "A" rated schools, which include several OPSB schools and one BESE school, have African-American student populations well below the city average. White students make up roughly 10% of the student population in New Orleans, but around 40% of population at most high-performing schools as seen in Figure 3. African-

⁶⁰ *Id.*

⁶¹ LA. REV. STAT. ANN. § 17:1990 ; LA. REV. STAT. ANN. § 17:3972; LA. REV. STAT. ANN. § 17:3991; BARBARA FERGUSON, RESEARCH ON REFORMS, JOHN MERROW INTENTIONAL OMITTS NEW ORLEANS' SELECTIVE CHARTER SCHOOL PROCESS IN 'REBIRTH' FILM (May 2013).

⁶² Sarah Carr, *Getting into New Orleans charter schools can be tough task*, THE TIMES-PICAYUNE, May 17, 2008. Complainants were also informed that in January 2013 a parent filed a complaint against OPSB for their discriminatory admission policies.

American students are over 80% of the student population in New Orleans, but only around 30-47% of the student population at these high-performing schools.

Figure 3. Source: U.S. Dep’t of Educ. & La. Assoc. of Pub. Charter Schools⁶³

A-rated schools	Total Students	% African-American	% White
Benjamin Franklin HS	878	33.7%	41.8%
Audubon Charter (K-3)	817	47.7%	39.3%
Hynes (K-8)	668	47.3%	44.0%
Lusher Charter School	1711	30.1%	58.9%
International School of Louisiana (K-8)	826	47.1%	25.7%

Spurred by State law and LDOE’s lack of oversight, BESE and OPSB charter schools use a number of explicit admissions criteria that exclude African-American students as illustrated in Figure 4.⁶⁴ At least six schools have academic or language requirements. It is believed that only two schools in New Orleans have neighborhood preference: Lusher Charter School and Hynes Charter School. Hynes gives preference to students living in the 70124 zip code, which has the lowest percentage of people living below 150% of the federal poverty line in New Orleans and the highest life expectancy.⁶⁵ Both neighborhoods around Lusher and Hynes have higher average income and higher percentages of Whites, which means that their neighborhood preference policy limits the number of seats available to African-American students. Louisiana law also allows charter schools to develop their own expulsion policies, which has resulted in a disparate number of African-American students being suspended and expelled, another often undetected form of exclusion.⁶⁶ Harsh discipline also becomes a mechanism for push-out and disposal of “unwanted” children.

⁶³ U.S. DEP’T OF EDUC., CIVIL RIGHTS DATA COLLECTION (2011); LA. ASSOC. OF PUB. CHARTER SCHOOLS, CHARTER DISCOVERY, <http://www.charterdiscovery.com/schools/profiles/>; NEW ORLEANS PARENTS’ GUIDE TO PUBLIC SCHOOLS 2014.

⁶⁴ Louisiana charter school law prohibits schools from making decisions on the basis of race, disability, gender, and other protected classes; however, due to the lack of transparency, it is difficult to determine every factor that affects admissions decisions.

⁶⁵ NEW ORLEANS HEALTH DEP’T, *Community Health Data Profile: Health Disparities in New Orleans*, June 2013, <http://www.nola.gov/nola/media/Health-Department/Publications/Health-Disparities-in-New-Orleans-Community-Health-Data-Profile-final.pdf>.

⁶⁶ See generally *supra* Ferguson note 61.

Figure 4. Source: Research on Reforms

School	Admissions criteria
Benjamin Franklin HS	Admissions matrix calculated from student’s GPA and test scores in reading, language and mathematics.
Audubon Charter (K-3)	Admissions matrix, which includes performance on an admissions test, standardized test scores and GPA.
Hynes (K-8)	Students are given priority if they live within the Lakeview community (zip code 70124). University of New Orleans faculty given priority.
Lusher Charter School	For admission to Lusher Primary School, students are given priority if they live within the “Lusher District,” a narrow section of approx. ten streets surrounding the school. <i>See Attachments A and B.</i> 75% of remaining seats are allocated to students who perform highest on the performance matrix, which includes an admissions test and state standardized test scores. Remaining 25% seats are filled through a lottery for all students. ⁶⁷ Tulane & Loyola faculty given priority.
Lycée Français	Parents must attend an open house or participate in a discussion with Lycée staff (in person or via phone) regarding the mission and curriculum of the school Students must pass an assessment of French language proficiency ⁶⁸ Charges tuition for pre-K parents
International School of Louisiana (K-8) ⁶⁹	First, students must complete “entrance assessment.” Families must submit a “Unique Environment Form” and supplemental application. Students who submit necessary admissions documents are then placed in the admissions lottery.

Despite RSD claims that these closures provide better educational options, as a result of State policies and practices, African-American students impacted by RSD closures remain trapped in underperforming schools. RSD, with BESE approval, closed three district-run schools last year: Abramson, Johnson, and Henderson. Students affected were almost entirely African-American. At Abramson, after the first round of OneApp process, 77 percent of students were forced to attend another “F” school. At Johnson, 72 percent of students were sent to “F” schools—most of them to

⁶⁷ Jessica Williams, *Live blog: Lusher holds lotteries to select students for 2014-2015 school year*, THE LENS, March 18, 2014, available at: <http://thelensnola.org/2014/03/18/live-blog-lusher-holds-lotteries-to-select-students-for-2014-15-school-year/>.

⁶⁸ LYCÉE FRANÇAIS, ADMISSIONS, <http://lfno.org/admissions/applications/>.

⁶⁹ INTERNATIONAL SCHOOL OF LOUISIANA, ADMISSIONS, <http://isl-edu.org/admissions/application-process>.

Banneker, which is now slated to close.⁷⁰ Henderson Elementary students got priority at a D-ranked school. Data showed that no student from these closed schools assigned in the first round was admitted to an A- or B-ranked school.⁷¹ RSD’s real motive is clear: provide charter schools with as much flexibility and freedom as possible even at the expense of the children of New Orleans. A recent report by the Louisiana Department of Education found that 79 percent of charter schools were rated as a “D” or “F”.⁷² Thus, *all* children are not able to access high-quality education; it is reserved for the few, who are disproportionately White.

Figure 5. Source: THE LENS

School	Abramson	Mays (charter)	Johnson ES	Henderson ES
Total Students	279	237	252	79
C or better	9.68% (27)	37.13% (88)	12.3% (31)	12.66% (>10)
D	13.62% (38)	31.22% (74)	8.33% (21)	64.56% (51)
F	62.01% (173)	9.28% (22)	73.02% (184)	16.46% (13)
T	10.04% (28)	6.33% (15)	3.97% (10)	13.92% (11)
No grade	4.66% (13)	16.03% (38)	2.38% (6)	6.33% (>5)

As seen in Figure 6, in late April 2014, RSD released the list of three schools that the majority of students from each the four schools will attend.⁷³ Most of the top transfer schools received a “C” or lower performance score, but even C-rated schools are not adequate alternatives for the students forced out of their schools and uprooted from their communities, particularly when their schools were improving.

⁷⁰ Jessica Williams, *Most students leaving RSD’s 4 closed, failing schools are headed to other substandard schools*, THE LENS, June 11, 2013, available at: <http://thelensnola.org/2013/06/11/most-students-leaving-from-rsds-4-closed-failing-schools-are-headed-to-other-substandard-schools/#>.

⁷¹ *Id.*

⁷² Andrea Gabor, *Post-Katrina, The Great New Orleans Charter Tryout Newsweek*, Newsweek, Sept. 9, 2013, available at <http://www.newsweek.com/2013/09/20/post-katrina-great-new-orleans-charter-tryout-237968.html>.

⁷³ The data did not reveal how many students were attending each school, but just that these schools were the top three receiving schools. This data may also not reveal what will happen to the children of parents who did not complete the OneApp form.

Figure 6. Source: THE LENS ⁷⁴

Top 3	Tureaud		Banneker		Carver		Reed	
1	Akili Academy	C (71.8)	Lafayette Academy	C (79.7)	Landry-Walker	B - (85.7)	Lake Area New Tech	C (74.1)
2	KIPP Leadership	C- (70.7)	KIPP Believe	C (78.1)	Joseph Clark	F/T (57.7)	ReNEW Accelerated	*no data
3	Mary Coghill	*no score; previous score was a D)	Samuel Green	C (78.4)	McDonogh 35	*no data	The NET	F (9.1)

ii. Excluding African-American students from high-performing schools in New Orleans is discrimination and extremely harmful to these students, their families and communities.

Proponents of “education reform” in New Orleans acknowledge that school closures are destructive and extreme measures, but believe these pro-charter school measures are necessary to provide students with a quality education.⁷⁵ However, this is false. Because of State policies and practices that allow discriminatory charter school policies, African-American students, particularly those pushed out of closed schools, are pushed back into underperforming schools. Choosing between failing and near-failing schools is not a sufficient choice.

As a result of the State’s discriminatory policies and practices, African-American students have reduced access to AP classes, gifted classes, and arts and language programming. African-American students are more likely to live in neighborhoods that are “underserved” or have a higher percentage of school-age students that lack access to high-performing public schools.⁷⁶ And an estimated 4,000 teens, ten percent of the student population, in New Orleans are not enrolled in school.⁷⁷ Without federal intervention, these policies and practices will continue to have negative impacts on African-American students, their families and communities.

⁷⁴ Jessica Williams, *Most students from closing, failed schools win admission to one of their top choices*, THE LENS, April 25, 2014, <http://thelensnola.org/2014/04/25/most-students-from-closing-failed-schools-get-in-to-a-top-choice/#>.

⁷⁵ RECOVERY SCHOOL DISTRICT, ANNUAL REPORT 2013, available at: [http://www.boarddocs.com/la/bese/Board.nsf/files/9DDNPW60F35B/\\$file/RSD_COW_3-2_RSD_School_Annual_Report_2013.pdf](http://www.boarddocs.com/la/bese/Board.nsf/files/9DDNPW60F35B/$file/RSD_COW_3-2_RSD_School_Annual_Report_2013.pdf).

⁷⁶ JILL ZIMMERMAN, UNIVERSITY OF NEW ORLEANS, *School Choice, Opportunity and Access: A Geographic Analysis of Public School Enrollment in New Orleans* (2013), available at:

<http://scholarworks.uno.edu/cgi/viewcontent.cgi?article=2650&context=td>

⁷⁷ Gabor *supra* note 72.

VI. CLAIMS

A. The State of Louisiana by its policy and practice of closing direct-run public schools in New Orleans discriminates against African-American students.

i. *Different treatment*

Title IV and Title VI of the Civil Rights Act of 1964 prohibit treating students differently because of their race. The racial disparity caused by RSD's policy of school closures, authorized by BESE and implemented by LDOE, provides circumstantial evidence of intentional discrimination. African-American students comprise roughly 80% of all public school students in New Orleans, but are 96.64% of the students in the five schools slated to close. The White student population in the schools slated to close is 0.64%. Of the students impacted by these last five school closures, approximately 1,000 are African-American students and only approximately 5 are White students. Moreover, these racial disparities are not unique to this latest round of closings, but are part of a pattern and practice of racially discriminatory closings

While the State will no doubt deny its decisions to close schools are based on race and instead point to facially non-discriminatory criteria, that these criteria have been applied in a discriminatory manner shows that these justifications are pretextual. The State through RSD, BESE, and LDOE brazenly refuse to close charter schools with low performance scores with higher percentages of White students like International High School.⁷⁸ Instead, RSD, approved by BESE and with LDOE implementation, decided to close five, nearly all African-American district-run schools that were showing improvements and had met the minimum improvement required by law. Rather than follow the law, State officials ignored the gains and chose instead to destroy a school community, displace the children, fire the teachers and shut the schoolhouse doors. RSD, LDOE and BESE's contradictions reveal their real, misled motivation: to eliminate district-run, majority African-American schools in order to promote and protect business and philanthropic interests and investments at the expense of the educational opportunities of African-American children.

ii. *Disparate impact*

The state's policies and practices also violate Title IV and Title VI because of their unjustified disparate racial impact. As discussed above, African-American students comprise about 80% of all public school students in New Orleans, but are 96.64% of the students in the five schools slated to close with white students being 0.64% of the students affected.

⁷⁸ See *supra* Section V.A.i.

This disparate impact cannot be excused because the policies and practices that created them are not necessary to meet an important educational goal. The State claims the closures are to remove students from schools that are failing and provide better educational alternatives, but this is not true. As discussed above, most students displaced by closed schools were at schools that were showing improvements despite years of disinvestment and, because of the closures, were pushed into other underperforming and failing schools.

Even if the closures were necessary to meet an important educational goal, there are less discriminatory alternative. These include providing the struggling schools with additional resources and supports and implementing sustainable, community-based models for meeting the needs of struggling schools. The “Sustainable School Transformation” model, which was originally developed by Communities for Excellent Public Schools,⁷⁹ represents a more targeted, community-based, and community-informed method of improving school quality. It requires that school community—including parents, educators, students, and other community members—to conduct a comprehensive needs assessment so that local solutions are tailored to local problems. What is more, versions of this model of school transformation have worked both at the school and district level and shown results.⁸⁰

B. The State by its policy and practice discriminates against African-American students, particularly those displaced by school closures, by trapping them in failing schools.

i. Different treatment

The State of Louisiana—through RSD’s administration of the OneApp program with little LDOE and BESE oversight, and LDOE, BESE, and RSD’s blind-approval of charter and OPSB public schools’ exclusive admissions and harsh discipline policies—discriminates against African-American students by giving priority placement to White students while keeping most African-American students locked out of quality schools and trapped in low-performing schools. As described in more detail in section above, that some of these policies are implemented in a different manner depending on the race of the students involved, provides strong circumstantial evidence of disparate treatment. For example, upon information and belief, White students are allowed into schools that African-American students are told are “full.” High performing schools in areas with more White students are allowed to provide admissions preferences to students in their

⁷⁹ See Attachment C; COMMUNITIES FOR EXCELLENT PUBLIC SCHOOLS, A PROPOSAL FOR SUSTAINABLE SCHOOL TRANSFORMATION (July 2010), www.turnexchange.net/national_turn/archives-news/a-proposal-for-sustainable-school.attachment/attachment/Sustainable%20School%20Transformation%20Proposal_CEPS.pdf.

⁸⁰ See JOURNEY FOR JUSTICE, DEATH BY A THOUSAND CUTS: RACISM, SCHOOL CLOSURES, AND PUBLIC SCHOOL SABOTAGE, VOICES FROM AMERICA’S AFFECTED COMMUNITIES OF COLOR app. (forthcoming May 2014).

neighborhoods, but no schools in African-American neighborhoods are allowed to do the same. This ongoing, discriminatory practice is especially egregious for students displaced by school closures whose education has been terribly disrupted and who have already suffered the painful experience of losing their friends, teachers, and school community. Complainants are aware of no legitimate explanation for this disparity of treatment, nor can they imagine one could exist. If the State does posit such an explanation during the investigation, we respectfully request that OCR and DOJ carefully scrutinize that explanation.

ii. *Disparate impact*

LDOE, RSD and BESE's blanket acceptance of charter school and OPSB public school policies disparately impacts African-American students reducing their access to high-performing schools and keeping them trapped in failing schools. The result is that New Orleans' "A" rated schools, which include several OPSB schools and one BESE school, have African-American student populations well below the city average. White students make up roughly 10% of the student population in New Orleans, but 40% of population at high-performing schools. African-American students are over 80% of the student population in New Orleans, but only around 30-47% of the student population at these high-performing schools.

Although the State claims charter schools and these policies of freedom and flexibility are necessary to provide a quality education, this is false. The selective and restrictive admissions criteria imposed by charter schools harm children and their educational experience, and have not proven to increase overall academic achievement. A recent report by the Louisiana Department of Education found that 79% of charter schools were rated as a "D" or "F". Thus, the disparate racial impact of these policies cannot be justified as being necessary to meet an important educational goal.

Moreover, once again there is a less discriminatory alternative: providing the struggling schools with additional resources and supports and implementing sustainable, community-based models for meeting the needs of struggling schools.

VII. REQUESTED RELIEF

Complainants request the following remedies:

1. Require the State to halt closures of Banneker ES, Tureaud ES, Cohen HS, Carver HS and Reed HS and provide students with additional supports and resources to meet their academic, social, and emotional needs;
2. Require the State to declare a moratorium on school closings, conversions to charters, and renewals in New Orleans;
3. Require the State to ensure neighborhood public schools are evenly-distributed across the City of New Orleans;
4. Require that the Louisiana Department of Education fully fund New Orleans public schools so that all students will succeed academically;
5. Require the State of Louisiana, through LDOE, OPSB and RSD, to fully implement the Sustainable Schools Model in New Orleans, including conducting a needs assessment and creating a collaborative process that engages parents, students, educators and other communities to create locally designed school improvement.

Thank you for your attention to this complaint and requests for relief. Please feel free to contact us if you have any questions.

Respectfully submitted by:

CONSCIOUS CONCERNED CITIZENS
CONTROLLING COMMUNITY CHANGES

COALITION FOR COMMUNITY SCHOOLS -
NEW ORLEANS

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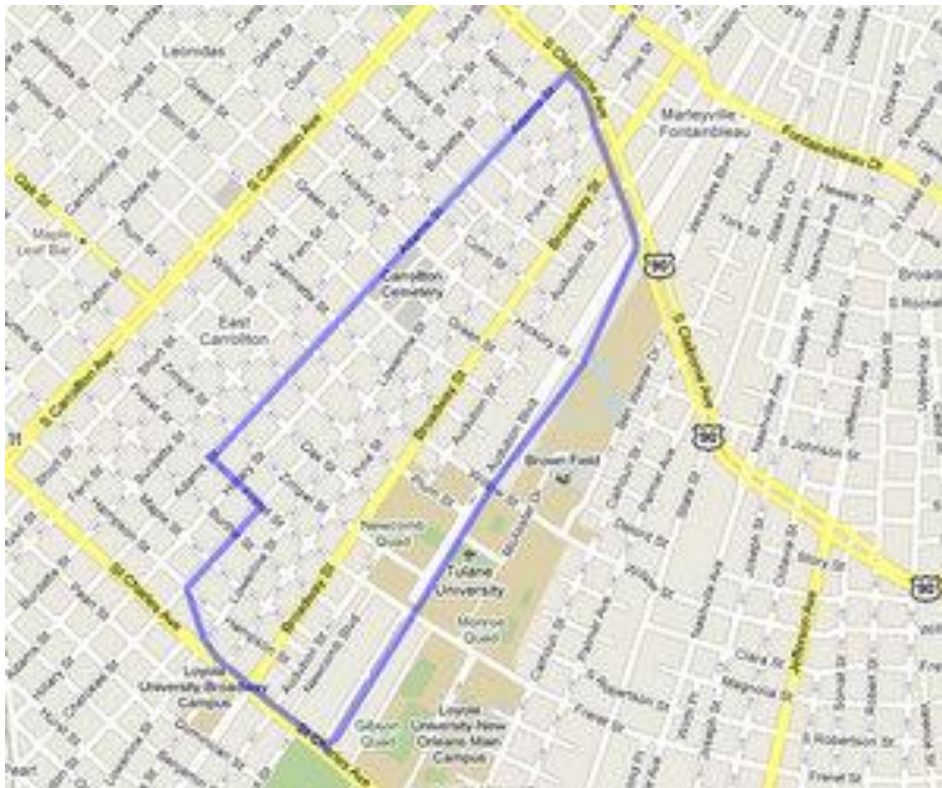
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APPENDIX

- ATTACHMENT 1 Lusher map
- ATTACHMENT 2 Lusher list of address
- ATTACHMENT 3 Sustainable School Transformation Model
Electronically attached as a separate file.

ATTACHMENT 1



ATTACHMENT 2

In-District Addresses

From	To	Street	Side
1000	2340	Adams St.	Odd Numbers
1	248	Audubon Blvd.	Both
1	70	Audubon Place	Both
610	2199	Audubon St.	Both
7030	7330	Birch St.	Both
7530	7630	Birch St.	Both
610	2230	Broadway St.	Both
6821	7460	Burthe St.	Both
600	930	Cherokee St.	Odd Numbers
1000	1140	Cherokee St.	Both
6500	6640	S. Claiborne Ave.	Even Numbers
7000	7610	S. Claiborne Ave.	Even Numbers
7000	7620	Cohn St.	Both
1	7	Dunlieth Ct.	Both
6700	7440	Freret St.	Both
7500	7640	Freret St.	Odd Numbers
7000	7340	Green St.	Both
7000	7450	Hampson St.	Both
6900	7630	Hickory St.	Both
1010	1540	Hillary St.	Both
1800	1840	Hillary St.	Both
7000	7340	Jeannette St.	Both
7500	7640	Jeannette St.	Both
620	2330	Lowerline St.	Both
7000	7450	Maple St.	Both
55	89	Neron Pl.	Both
1	70	Newcomb Blvd.	Both
7200	7630	Oak St.	Both
7000	7430	Panola St.	Both
610	2299	Pine St.	Both
7100	7330	Plum St.	Both
7500	7650	Plum St.	Both
7000	7440	Spruce St.	Both
6821	7460	St. Charles Ave.	Odd Numbers
7000	7330	Sycamore St.	Both
7600	7640	Sycamore St.	Both
6500	6610	Willow St.	Both
7000	7330	Willow St.	Both
7500	7630	Willow St.	Both
7000	7640	Zimple St.	Both
Loyola University - all on campus housing			
Tulane University - all on campus housing			
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