New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street, NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

February 4, 2021

Via Electronic Mail

David Koperski, Esq.
Counsel for the Pinellas County School Board
301 Fourth Street SW
Largo, Florida 33770
koperskid@pcsb.org

Re: *Bradley v. Pinellas County School Board*, No. 8:64-cv-98-T-23B (M.D. Fla.)

Dear Mr. Koperski:

On behalf of the plaintiff class in the above-captioned lawsuit, we appreciate the opportunity – even at very short notice – to review and comment on the proposed Interagency Agreement between the Pinellas County School Board (the "District"), the Pinellas County Sheriff's Office, the Pinellas County Schools Police Department, the University of South Florida, and the municipalities of Belleair, Clearwater, Gulfport, Indian Shores, Kenneth City, Largo, Pinellas Park, St. Petersburg, Tarpon Springs, and Treasure Island ("proposed Agreement"), which would replace the 2006 and 2014 agreements between those entities and municipalities.

The District continues to be bound by several federal court orders that set forth the District's federal school desegregation obligations, including the August 17, 2000 Amended Final Order, the August 30, 1999 Amended Order, the June 29, 2000 Amended Stipulation, the December 22, 1999 Stipulation, the latter three of which incorporate by reference the June 18, 1998 and December 15, 1998 stipulations. These orders were designed to ensure the District's compliance with federal law – including the Fourteenth Amendment of the U.S. Constitution, Title IV of the Civil Rights Act of 1964, which prohibits racial discrimination in public schools, and Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination by recipients of federal financial assistance. Among other things, the District is obliged "to apply discipline to all students fairly, and with sensitivity, without regard to race." ECF No. 181 at 28.

Based on our initial review of the draft you provided, the proposed Agreement is internally inconsistent and directly conflicts with the letter and spirit of the operative agreements in the federal school desegregation case. The proposed Agreement: (1) would be an abdication of the District's promise to ensure that law enforcement does not supplant the critical role of educators in deploying developmentally appropriate, pedagogically sound interventions to student misbehavior, and (2) would abandon important provisions that protect the rights of students whom law enforcement seeks to question on campus.

The District Should Ensure Transparency and Community Input in the Future.

Members of the plaintiff class are dismayed that the District and 13 local law enforcement agencies quietly negotiated the proposed Agreement without the input of parents and students and with scarcely any input from educators. Unbeknownst to us, the school board was scheduled to vote on the proposed Agreement on January 12, 2021. A school board member removed the proposed Agreement from the queue of items to be voted on and arranged a meeting to solicit community input, but the meeting is only scheduled for an hour, despite an ambitious eight-item agenda, leaving little time for substantive discussion. The meeting appears to have been noticed only on the District's website without the use of social media, mail, email, or robocalls, and we ourselves were not told of it until seven days beforehand.

School safety and school discipline are critical issues that our clients care deeply about given their significant impact on students' well-being. And it is, of course, to everyone's benefit for the District to work collaboratively with students, parents, and educators to achieve the best outcome for all students. The steps taken by the District to develop the proposed Agreement run counter to that approach by excluding the expertise and perspectives of key stakeholders. Moving forward, the District should refrain from bringing the proposed Agreement to a vote until it meaningfully solicits and considers the input of students, parents, and educators.

The District Should Revise the Proposed Agreement to Clearly Define the Roles of Educators and Law Enforcement Officers Vis-à-vis Addressing Student Behavior; Educators Should Teach Students About Decorum; Law Enforcement Should Only Become Involved When Student Misconduct Imminently and Seriously Threatens Someone's Physical Safety.

While Paragraph 21 of the proposed Agreement provides that school principals or their designees should handle non-criminal student misconduct, other provisions of the Proposed Agreement would result in law enforcement officers supplanting the role of educators in addressing childhood misbehavior. For example, the proposed Agreement contemplates that law enforcement will investigate and triage all incidents as potential crimes. The proposed Agreement gives law enforcement unfettered discretion to determine when to allow educators to guide student behavior and whether to treat a particular incident as a crime. The proposed Agreement also strikes an entire section from the now-operative 2014 agreement that: (a) delineates the role of school administrators, (b) acknowledges that Florida law prohibits zero tolerance policies from being "rigorously applied to petty acts of misconduct," and (c) consistent with Florida law, defines "petty acts of misconduct" as "[t]hose acts that do not pose a direct threat to the safety of students, staff, volunteers, or other persons, or a threat of harm to school district property; such acts include, but are not limited to, minor fights and disturbances." Fla. Stat. Ann. § 1006.13 (West). The proposed Agreement further omits language from the now-operative 2014 agreement that states: "many types of minor student misconduct may technically meet the statutory requirements for non-violent

misdemeanors, but are best handled outside of the criminal justice system." 2014 Agreement at 2. Likewise, the proposed Agreement omits language from the now-operative 2006 agreement that specifies that, absent certain exceptions, "simple batteries that occur between students at the elementary level" should not be reported to law enforcement. 2006 Agreement at 9. Instead, the proposed Agreement requires educators to report even subjective infractions – which are particularly vulnerable to racially discriminatory enforcement – like "campus disturbances" and "disorderly conduct" to law enforcement.

As we have previously explained, "[s]tudents who attend schools where a school resource officer is present are more likely to be referred to law enforcement for typical childhood behaviors that previously would have been handled by educators using developmentally appropriate, pedagogically sound interventions."[1] "For example, police have arrested students, some as young as five years old, for throwing a tantrum, texting, passing gas, violating the school dress code, arriving late, bringing a cell phone to school, or having a nonviolent verbal disagreement with a schoolmate."[2] This is gravely concerning since, although Black students do not misbehave more than white students,[3] the District's Black students have long been at greater risk of losing valuable instructional time to exclusionary discipline (e.g., suspensions, expulsions, arrests) issued for subjective, non-violent infractions.[4] The proposed Agreement would gravely exacerbate this problem by giving it criminal justice implications.

Indeed, the "criminalization of developmentally appropriate childhood misbehavior has dire consequences."[5] "Turning police into school disciplinarians increases student anxiety, creates alienation and distrust, diminishes students' faith in the legitimacy of the authority of school staff, and can trigger, rather than prevent, misbehavior."[6] "Furthermore, harsh disciplinary practices,

---

1 Letter from Todd Cox, Monique Dixon, Michaele N. Turnage Young, and Nicole Dooley, NAACP Legal Defense and Educational Fund, to Florida Sheriffs, School Boards, Superintendents, and School Resource Officers (March 15, 2018) (citing Jason Nance, *Students, Police, and the School-to-Prison Pipeline*, University of Florida Levin College of Law, 2016, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577333), available at https://www.naacpldf.org/files/about-us/3.5.2018%20LDF%20Letter%20to%20FL%20Sheriffs%2C%20Superintendents%2C%20and%20School%20Boards.pdf

2 *Id.*

3 R. Skiba, et al., *Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior: A Summary of the Literature*, Ind. Univ. (March 2014), http://www.indiana.edu/~atlantic/wpcontent/uploads/2014/03/African-American-Differential-Behavior_031214.pdf

4 *See, e.g.*, ECF No. 181 at 28 (the Court acknowledges Plaintiffs' concern "about disparate rates of discipline in 'subjective' areas (as opposed to 'objective' areas, such as possession of drugs in which rates of discipline for [B]lack and non-[B]lack students are roughly equal, or alcohol offenses, in which rates of discipline for [B]lack students are less than those of non-[B]lack students).")

5 Letter, *supra* note 1.

6 *Id.* (citing Philip J. Cook, et al., *School Crime Control and Prevention*, 39 CRIME & JUST. 313, 372 (2010), Matthew J. Meyer et al., *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 EDUCATION AND TREATMENT OF CHILDREN 333, 352 (1999), Randall R. Beger, *The Worst of Both*

such as school-based arrests, increase the risk that students will fail a grade, drop out of school, and become entangled in the criminal justice system."[7]

The District has an obligation to eliminate these racial disparities and guard against the criminalization of childhood misbehavior. To that end, The District must renegotiate the proposed Agreement to carefully distinguish the role of law enforcement officers from the role of educators. The proposed Agreement must make clear that petty acts of misconduct and misdemeanors committed by children, including but not limited to minor fights and disturbances, and misbehavior that does not pose an imminent threat to anyone's physical safety should be handled through the school disciplinary process. Such "offenses" should not result in referral to law enforcement or arrest. To the extent that a law enforcement officer is the first adult to witness an instance of misbehavior that does not threaten anyone's physical safety, the District should require that law enforcement officer to divert involved students to school-based discipline. The proposed Agreement does the opposite: rather than treating childhood misbehavior as a discipline issue to be handled by school administrators, it creates a near presumption of law enforcement involvement for even minor, non-violent incidents.

The Proposed Agreement Must Be Revised To Better Address Law Enforcement Interrogations of Minors.

For years, the District's Black families have expressed grave concerns about the interrogation of children at school without parental notice or consent. This continued practice, despite District agreements and assurances to the contrary, has severely damaged the community's trust. Given this, it is of particular importance that the District take this opportunity to strengthen its commitment to honoring basic due process protections for children who are the subject of questioning. Children often do not understand that they are not required to speak to law enforcement or that they have a right to have an attorney present when questioned. Yet, at school, children have no parent or guardian present with them to advocate for their interests. Instead, if taken out of class by a teacher or administrator to be questioned by law enforcement, students are

---

Worlds, 28 CRIM. JUST. REV. 336, 340 (2003), and Kathleen Nolan, POLICE IN THE HALLWAYS: DISCIPLINE IN AN URBAN HIGH SCHOOL 53 (2011))

[7] *Id.* (citing Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force* (2006), available at http://www.apa.org/pubs/info/reports/zero-tolerancereport.pdf, Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (2011), Centers for Disease Control, *Health Risk Behaviors among Adolescents Who Do and Do Not Attend School – United States*, 1992, 43 MORBIDITY AND MORTALITY WEEKLY REPORT, 129 (Mar. 4, 1994), and Robert Balfanz et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade* (Dec. 2012) (Paper prepared for the Closing the School Discipline Gap: Research to Practice national conference in Washington, D.C., Jan. 10, 2013) (finding that students who were suspended even one time in ninth grade doubles their chance dropping out of school)).

likely to believe that they are being directed by the school to answer questions that may place their futures in jeopardy.

Accordingly, the District must ensure that law enforcement conduct on-campus interviews of students only as a last resort and, consistent with Florida law, Fla. Stat. Ann. § 985.101 (West), only with prior notification to and, preferably, consent from, the student's parents and/or guardians or, at a minimum, after a good faith, sustained effort to notify his/her parents and/or guardians and in the presence of an adult looking out for the child's best interests. In any event, questioning should not proceed until the student has been given a developmentally appropriate warning against self-incrimination and the questioner has confirmed the student's understanding and obtained a developmentally appropriate, informed waiver of any relevant rights. *See, e.g.*, *B.M.B. v. State*, 927 So.2d 219, 220 (Fla. Dist. Ct. App. 2006). Furthermore, questioners should presume that certain children are incapable of a knowing, willing, voluntary waiver of his or her right to remain silent (e.g., children who are 14 years old or younger, have a learning disability, are English language learners who have not been provided an interpreter). However, rather than protecting students' legal rights in the event of law enforcement interrogation, the proposed Interagency Agreement gives law enforcement broad discretion to question students, even regarding non-school incidents, without the presence, notification, and consent of parents or the presence of someone to look out for the child's interests.

Conclusion

Given the foregoing, on behalf of the plaintiff class, the NAACP Legal Defense and Educational Fund ("LDF") demands that the school board reject the proposed Agreement and enter into an agreement that honors the District's prior commitments regarding school discipline and the role of law enforcement. Indeed, the school board should take full advantage of this opportunity to go beyond the status quo, inspire the confidence of the community (including its Black families), and meaningfully improve the way that the District exercises its duty of care to its students.

Thank you for your prompt attention to this matter. Please contact Lauren Johnson and Michaele N. Turnage Young at 202-682-1300 with any questions or concerns.

Sincerely yours,

/s/ Michaele N. Turnage Young
Michaele N. Turnage Young
Lauren A. Johnson
NAACP Legal Defense and
Educational Fund, Inc.
700 14th Street NW, Suite 600
Washington, DC 20005

mturnageyoung@naacpldf.org
ljohnson@naacpldf.org

/s/James Michael Shaw, Jr.
Butler Weihmuller Katz Craig LLP
400 N. Ashley Drive, Suite 2300
Tampa, FL 33602
jshaw@butler.legal

Counsel for the Plaintiff Class