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## Civil Rights Complaints About Special Education, Language Minority Students and School Closures

Questions have been raised about the ability of New Orleans' charter schools to provide adequate special education services and whether these schools actively discourage students with disabilities from enrolling.

- Historically, charter schools in the Recovery School District, composed of schools taken over by the state following Hurricane Katrina, had a significantly smaller percentage of students in special education than non-charter public schools in the RSD—8 percent and 13 percent respectively in 2009-10.<sup>1</sup> By 2012-13, RSD charter schools enrolled 11 percent of students in special education compared with the state average of 13 percent.<sup>2</sup>
- Just 40 percent of students receiving special education services passed the state assessments in 2012-13, compared with 69 percent of students in Louisiana overall.<sup>3</sup>
- In October 2010, the Southern Poverty Law Center (SPLC) filed a federal civil rights lawsuit (*P.B. et al. v. Pastorek*) documenting violations of federal special education law in more than 30 schools in the RSD.<sup>4</sup> This class action lawsuit represented some 4,500 students with disabilities who asserted that they were denied appropriate services and/or access to public schools in New Orleans, the majority of them charters.<sup>5</sup>
- Three years after the initial filing, a 2013 SPLC legal filing reads like a guidebook for how charters can and do circumvent federal laws to force out students with special needs.<sup>6</sup> The filing declares the system for providing special education in New Orleans is thoroughly broken and charges that the defendants are still failing to comply with their statutorily imposed duties to monitor, supervise and remediate known problems with special education.
- In December 2014, the parties reached a consent judgment<sup>7</sup> with Louisiana, the RSD and Orleans Parish School Board which, under the supervision of an independent monitor, requires defendants to:
  - » Develop a schedule identifying the assignment of federally mandated “child find” responsibilities for identifying, locating and evaluating individuals ages 3-21 suspected of having a disability.
  - » A new charter school application and renewal processes requiring (1) a description of the charter school staff providing pupil appraisal services and their qualifications, and (2) plans for offering the full array of related services, including special transportation.

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- » A review of the code of conduct and/or discipline policy of each charter school for compliance with special education laws, including a written description of the disciplinary procedural protections for students with disabilities. Defendants must also provide technical assistance and professional development for each charter school regarding prohibited practices and disseminate information to parents about prohibited practices.
- » A complaint investigation protocol made available to parents and placed on each school's website.
- » Annual statistical calculations that will flag charter schools deviating from average levels for *targeted monitoring*, including the rate at which each charter school (1) identifies new students as eligible for special education services, (2) provides related services to students eligible for such services, (3) removes students with disabilities for disciplinary purposes for more than 10 cumulative days in an academic year, and (4) fails to re-enroll students with disabilities.

Plaintiffs were awarded \$800,000 for attorneys' fees to be paid from an appropriation made in the 2015 legislative session.

Language minority students and their families have also taken civil rights actions:

- In 2014, the Vietnamese American Young Leaders Association of New Orleans and the Asian American Legal Defense and Education Fund filed a complaint with the U.S. Justice and Education departments alleging that several New Orleans schools are violating civil rights law by failing adequately to serve non-native English-speaking families.<sup>8</sup> The complaints name the local Orleans Parish School Board and the RSD plus individual charter schools.
- A majority of Asian American and Latino respondents to a 2011 Vietnamese American Young Leaders Association survey said no adults at their schools spoke their parents' native tongue.<sup>9</sup> Three-quarters said their parents weren't offered interpreters for important school meetings. Interviewed subjects described ESL classes that encouraged "watching movies and sleeping." Some thought they were stuck in ESL classes due to their last names.

Federal officials from the Education Department's Office for Civil Rights (OCR) visited New Orleans late in 2014 to investigate whether the RSD violated the civil rights of black children by closing and chartering five of the city's public schools. Several groups filed a complaint in May 2013.<sup>10</sup> OCR examined the schools that closed and the facilities where children were sent instead. Students and parents affected by the closures said they weren't provided an adequate alternative. The parents and communities that lost their public schools have had no voice in the process. The complaint alleges that:

- Most African-American students are still trapped in failing or near-failing public schools; experience a deeper, more severe form of charter school "pushout" and exclusion; and have been forced into classrooms with an increased reliance on high-stakes testing.
- The vast majority of public schools closed by RSD in the past five years 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.
- 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.

## ENDNOTES

<sup>1</sup> Cowen Institute. *The 2011 State of Public Education in New Orleans*, New Orleans: Author, 2011.

<sup>2</sup> Cowen Institute. *The 2014 State of Public Education in New Orleans*. New Orleans: Author, 2014.

<sup>3</sup> New Schools for New Orleans. *New Schools for New Orleans Awards 11 Grants for Special Education Programs at Charter Schools*, New Orleans: Author, Dec. 18, 2014.

<sup>4</sup> Southern Poverty Law Center. *Special Education in New Orleans Public Schools*, 2010. Retrieved from [www.splcenter.org/access-denied/special-education-in-new-orleans-public-schools](http://www.splcenter.org/access-denied/special-education-in-new-orleans-public-schools).

<sup>5</sup> In one case, for example, an 8-year-old student who is blind and developmentally delayed applied to eight different charter schools. Five said they would take the application but could not accommodate him; a sixth said it would accept him but was stretched thin; and a seventh said it had a solid program but access was not guaranteed due to a selective application process. The eighth school, which he attended, "had no services, materials, or support staff to help him."

<sup>6</sup> For a copy of the Plaintiff's Memorandum of Law in Support of Their Renewed Motion for Class Certification, visit: [www.katrinaresearch.org/uploads/files/2993273/SPLCfiling2013.pdf](http://www.katrinaresearch.org/uploads/files/2993273/SPLCfiling2013.pdf).

<sup>7</sup> For a copy of the Consent Judgment, visit: [www.splcenter.org/get-informed/news/splc-negotiates-landmark-settlement-to-halt-discrimination-against-new-orleans-stu](http://www.splcenter.org/get-informed/news/splc-negotiates-landmark-settlement-to-halt-discrimination-against-new-orleans-stu).

<sup>8</sup> Danielle Dreilinger. "New Orleans Public Schools Inadequate for Non-English Speakers, critics say," *Times-Picayune*. August 1, 2013.

<sup>9</sup> Vietnamese American Young Leaders Association. "Six Public High Schools, Six Years After the Storm: Student Voices from Inside New Orleans' Educational Experiment." Sept. 6, 2011.

<sup>10</sup> Coalition for Community Schools, civil rights complaint filed against the Louisiana Department of Education, Recovery School District, and Louisiana State Board of Elementary and Secondary Education, May 13, 2014, <http://bit.ly/1L7N4Of>.