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January 22, 2024

Gene Walker
President, District 9
Board of Directors
Pittsburgh Public Schools
341 S. Bellefield Ave.
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VIA ELECTRONIC MAIL

RE: Concerns Regarding PPS’s Summary Citation Policies and Practices

Dear President Walker:

We write on behalf of the NAACP Pittsburgh Branch and 412 Justice, two grassroots organizations dedicated to protecting young people’s right to education, in response to the scheduled end of Pittsburgh Public School District’s (“PPS” or “the District”) moratorium on the use of summary citations at the end of this month. After conducting significant community outreach and review of relevant PPS policies and discipline data, we are concerned that PPS is disparately using summary citations against Black students in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”). For years, PPS employees have issued summary citations to students in a racially disproportionate manner, without regard for the long-term consequences that citations impose on students and their families. Although summary citations are an ineffective disciplinary tool with a known disparate impact, PPS has failed to abolish the practice or to implement a specific framework for the use of restorative practices and other alternatives to exclusionary discipline. The District must implement comprehensive changes to comply with federal civil rights law and avoid future liability.

Summary citations are not an effective disciplinary tool, as there is no evidence that summary citations reduce student misbehavior. Instead, summary citations push students into the criminal legal system for minor alleged infractions, such as posting a disparaging remark on social media¹ or spraying silly string on a car.² Magistrate judges that oversee summary citation hearings frequently issue fines in the hundreds of dollars to students for the infraction that led to the summary citation, in addition to court processing fees that themselves can total several hundred

¹ PITTSBURGH PUB. SCHS., SEPTEMBER 2021 TO JUNE 2022 ARREST, CITATION, AND CHARGES REPORT TO THE BOARD 8 (2023).

² See *Non-Traffic Citation Issued to Ten-Year-Old Black Boy in Allegheny County* (June 29, 2021) (on file with authors).

dollars.³ These costs can place a particularly significant burden on students from low-income families. When students cannot afford to pay the hundreds of dollars of associated fees, fines, and other costs, they often receive a separate “failure to comply” charge and are referred to the juvenile system for further punishment, beginning a new wave of interaction with the criminal legal system. Further, because summary citations are adult criminal offenses, they remain in a student’s record and must be reported on job and college applications, adding challenges to students’ future academic and employment prospects. While appropriate interventions are necessary to address students’ behavior at school, the consequences of summary citations severely outweigh their utility.

In addition to causing long-term harm to students and their families, PPS’s summary citation discipline practice violates federal civil rights law. PPS administrators and the staff they oversee, including school police officers, are required to comply with Title VI, which protects students from discriminatory school discipline.⁴ The Department of Education Office of Civil Rights (“OCR”) investigates violations of Title VI, including disparate impact violations pursuant to 34 C.F.R. § 100.3(b)(2). Schools that receive federal funds are prohibited from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishments of the objectives of the program as respect individuals of a particular race, color, or national origin.”⁵ Title VI also protects students from disparate treatment based on race and prohibits schools from creating a racially hostile environment.⁶

The stark racial disparities in PPS’s issuance of summary citations, evidenced by data collected over at least a decade, show a clear disparate impact violation. PPS issues summary citations to Black students at significantly higher rates than their white peers. Although Black

³ HAROLD JORDAN & GHADAH MAKOSHI, STUDENT ARRESTS IN ALLEGHENY COUNTY PUBLIC SCHOOLS 13 (2022), <https://www.aclupa.org/en/publications/student-arrests-allegheny-county-schools-need-transparency-and-accountability>. One example from a student’s citation paperwork showed costs/fees totaling over \$150. The \$40.25 fee on most citations covers the J.C.P./A.T.J./C.J.E.A./O.A.G. fee (Judicial Computer Project/Access to Justice/Criminal Justice Enhancement/Office of Attorney General). This fee is authorized in Section 1795.1-E of the Fiscal Code, 72 P.S. § 1795.1-E. The \$40.25 is then broken down into these accounts so that each account gets a portion of the total fee. The \$40.25 fee is one part of the larger costs and fees that students are charged.

⁴ “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d; *see also* 34 C.F.R. § 100.3(b)(1)-(2); U.S. Dep’t of Educ., Off. for C.R., *Resource on Confronting Racial Discrimination in Student Discipline* (May 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/tvi-student-discipline-resource-202305.pdf> (finding that a school district’s duty to not discriminate extends to its security staff, other contractors, and school police officers or school resource officers).

⁵ 34 C.F.R. § 100.3(b)(2); U.S. Dep’t of Educ. Off. for C.R. & U.S. Dep’t of Just. C.R. Div., *supra* note 4.

⁶ 34 C.F.R. § 100.3.

students make up approximately 53% of the PPS student population,⁷ they account for over 75% of all students involved in incidents that lead to a summary citation.⁸ Overall, Black students in Pittsburgh schools are twelve times more likely to receive a summary citation than white students, and Black girls are twenty-four times more likely to receive a summary citation than white girls, while Black boys with disabilities are the most likely to receive a summary citation.⁹ These disparate trends have continued in recent years: during the 2021-22 school year, 87% of all summary citations were issued to Black students, and while 38% of all citations were issued to Black girls, only one white girl received a summary citation that same year.¹⁰

Unfortunately, the District's disparate use of summary citations is part of a larger troubling pattern of racially disproportionate punishment. PPS has long been on notice of the racially disproportionate impact of its exclusionary discipline practices but has failed to take necessary corrective action. This notice dates back over three decades when, in 1992, the Advocates for African Americans filed a complaint alleging that PPS discriminated against Black students through harsh discipline and excessive suspensions.¹¹ Pursuant to a 2022 agreement resulting from that litigation, PPS hired an independent investigator to conduct a racial equity audit, which found that Black students still face higher suspension rates than their peers.¹² Despite representing just over half of the student population, Black students receive 74.6% of all in-school suspensions, 76.5% of out-of-school suspensions, and 77.9% of expulsions.¹³ PPS also refers Black students to the police at much higher rates than other student groups. Between 2013 and 2020, 80% of incidents leading to arrest in PPS schools involved Black students.¹⁴ The highest percentage of these incidents occurred at Perry High School, Westinghouse Academy, and Carrick High School, schools in which the majority of students are Black.¹⁵ Further, 75% of incidents in which the police

⁷ C.R. Data Collection, *LEA Summary of Selected Facts* (2017), <https://ocrdata.ed.gov/profile/9/district/27033/summary>.

⁸ Jordan & Makoshi, *supra* note 3, at 14.

⁹ *Id.*

¹⁰ Pittsburgh Pub. Schs., *supra* note 1, at 7.

¹¹ Memorandum of Understanding, *Advocates for African Americans v. Pittsburgh Public Schools*, Pa. Hum. Rels. Comm'n (Oct. 19, 2022).

¹² MGT, *THE CURRENT STATE OF RACIAL EQUITY AT PITTSBURGH PUBLIC SCHOOLS* 112 (2023).

¹³ C.R. Data Collection, *Pittsburgh, PA Discipline Report* (2017), <https://ocrdata.ed.gov/profile/9/district/27033/disciplinereport>.

¹⁴ RMC RESEARCH CORP., *INCIDENCE OF CALLS FOR SERVICE, CITATIONS, AND ARRESTS* 18 (2021), <https://www.endzerotolerance.org/rmc-research-corp-report-for-pps>.

¹⁵ *Id.* at 20. Approximately 43% of students at Carrick High School, 75% of students at Perry High School, and 92% of students at Westinghouse Academy identify as African American. Pittsburgh Pub. Schs., *Enrollment Summary* (2023), <https://www.pghschools.org/enrollmentsummary>.

were called involved only Black students, while less than 20% of calls involved only white students.¹⁶ These severe racial disparities cannot be explained by differences in behavior.¹⁷

PPS has also long been aware of the racially disparate impact of summary citations, including through its own data and studies of the practice. On June 18, 2020, a group of community and advocacy groups, including the ACLU of Pennsylvania (“ACLU-PA”), sent a letter to the Board highlighting the racial disparities in the District’s disciplinary practices and recommending that PPS place a moratorium on summary citations.¹⁸ Following the letter, Ghadah Makoshi, ACLU-PA Advocacy and Policy Strategist and PPS parent, testified to the Board about the District’s harmful, racially disparate summary citation and policing practices.¹⁹ In March 2021, PPS hired RMC Research to analyze data on arrests and citations by student demographic group.²⁰ RMC Research found that, dating back to at least 2013, Black students have disproportionately received summary citations.²¹ Further, on January 18, 2022, ACLU-PA published, and later sent to the District, *Student Arrests in Allegheny County Schools: The Need for Transparency and Accountability*, a report that showed that PPS arrests and issues summary citations to its Black students at much higher rates than its white students.²² ACLU-PA also sent several letters to the Board and spoke at school board meetings to call for a permanent end to PPS’s summary citations practice throughout 2022.²³

On May 22, 2023, Ghadah Makoshi again testified about the disproportionate issuance of summary citations to Black students and the long-term consequences of citations at a school board

¹⁶ RMC Research Corp., *supra* note 14, at 7.

¹⁷ See Russell Skiba & Natasha T. Williams, *Are Black Kids Worse? Myths and Facts about Racial Differences in Behavior—A Summary of the Literature*, Equity Project at Ind. Univ. (Mar. 2014), https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/african_american_differential_behavior_031214.pdf (“[T]here is virtually no support in the research literature for the idea that disparities in school discipline are caused by racial/ethnic differences in behavior.”).

¹⁸ Letter from Community and Advocacy Groups to Pittsburgh Public School District Board of Directors on the School-to-Prison Pipeline (June 18, 2020) (on file with authors).

¹⁹ Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Policing and Policies that Criminalize Students (June 22, 2020); Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Policies, Systems and Cultures that Harm Students of Color (July 20, 2020).

²⁰ RMC Research Corp., *supra* note 14.

²¹ *Id.* at 13.

²² Jordan & Makoshi, *supra* note 3.

²³ Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Inconsistent School Policies and Procedures (Feb. 21, 2022); Letter from ACLU-PA to Ira Weiss on Restricting PPS School Police Issuance of Summary Citations (June 16, 2022) (on file with authors); Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Summary Citations (June 21, 2022); Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Ending the Use of Summary Citations as a Disciplinary Tool (July 25, 2022).

meeting.²⁴ ACLU-PA sent another letter to the school board on June 26, 2023, recommending changes to the Code of Conduct to address the racial disparities, including placing a moratorium on the use of summary citations.²⁵ The same day, parents and activists gathered outside the PPS administrative building to call for an end to summary citations and for the District to “eliminate policies, practices, and funding that contribute to the surveillance, militarization, and criminalization of students and schools.”²⁶

Two days later, the Board of Education (“the Board”) met to vote on an amendment to the Code of Conduct (“the Code”) provisions regarding summary citations. Board Member Pam Harbin proposed temporarily ending the use of summary citations, citing the District’s obligations under federal civil rights law and the need to establish new disciplinary policies to comply with the law.²⁷ Recognizing the harms and inequities caused by the District’s summary citation practice, the Board voted to place a moratorium on the use of summary citations until November 30, 2023.²⁸ In an interview following the vote, Board President Udin expressed that the Board was to blame for the severe racial disparities, stating: “We don’t point the finger at ourselves and that’s where the finger needs to be pointed.” The amended Code states that the moratorium will be in place until the Board approves a new policy and administrative guidance, and it authorizes the Board to extend the moratorium at its discretion.²⁹

In addition, PPS has failed to consider less discriminatory, effective disciplinary methods when issuing summary citations to students. Though the District has recognized the value and implemented the use of Positive Behavioral Interventions and Supports (“PBIS”),³⁰ social emotional learning (“SEL”),³¹ and restorative practices,³² it does not consistently utilize these

²⁴ Ghadah Makoshi, Address to Pittsburgh Public School District Board of Directors on Summary Citations (May 22, 2023).

²⁵ Letter from Ghadah Makoshi to Pittsburgh Public School District Board of Directors on Changes to the Code of Conduct (June 26, 2023) (on file with authors).

²⁶ Julia Felton, *Activists Call on Pittsburgh Public Schools to Stop Issuing Citations Against Students, Cut Back on Suspensions*, TRIBLIVE (June 26, 2023, 6:12 PM) <https://triblive.com/news/education-classroom/activists-call-on-pittsburgh-public-schools-to-stop-issuing-citations-against-students-cut-back-on-suspensions/>.

²⁷ Pittsburgh Public Schools Legislative Meeting at 24:00 (June 28, 2023), <https://vimeo.com/showcase/4425491/video/840817579>.

²⁸ Pittsburgh Pub. Schs., *Board of Directors Meeting Minutes* (June 28, 2023), <https://go.boarddocs.com/pa/pghboe/Board.nsf/Public>.

²⁹ *Id.*

³⁰ Pittsburgh Pub. Schs., *Positive Behavior Interventions and Supports (PBIS)*, <https://www.pghschools.org/PBIS> (last visited Nov. 16, 2023).

³¹ Pittsburgh Pub. Schs., *Social Emotional Learning (SEL)*, <https://www.pghschools.org/SEL> (last visited Nov. 16, 2023).

³² Pittsburgh Pub. Schs., *Restorative Practices*, <https://www.pghschools.org/restorativepractices> (last visited Nov. 16, 2023).

alternatives in incidents leading to the issuance of summary citations. The racial equity audit commissioned by PPS highlighted the absence of a specific restorative practice framework in the District’s discipline policies and the subsequent disparities that can result between those students offered restorative processes and those who are not.³³ Thus, while the District understands that it should be implementing these alternative practices, it fails to do so consistently and equitably. By not outlining clear guidelines on when and how alternative practices should be used for each type of infraction in its discipline code, PPS permits its staff to default to issuing summary citations, an ineffective, harmful form of discipline that the District administers in a racially disparate manner.

PPS is responsible for the discriminatory actions of its staff, including school police officers. OCR has held other school districts to be in violation of Title VI because of their school police officers’ discriminatory use of citations.³⁴ For example, in 2022, OCR determined that Victor Valley Union High School, a high school in southern California, discriminated against Black students on account of their race by disciplining them through law enforcement citations more frequently and more harshly than similarly situated white students, in violation of Title VI.³⁵ During its investigation, OCR found that such citations were issued disproportionately to Black students, often in connection with minor and subjective behavioral infractions such as “defiance,” “disruption,” and “inappropriate behavior,” which mirror the behaviors that have been used to justify the issuance of summary citations to Black students in PPS, such as “disorderly conduct.” Although PPS removed disorderly conduct from its Code of Conduct in June 2021,³⁶ at least thirty students in the District received a summary citation for disorderly conduct in the 2021-2022 school year.³⁷ The data on subjective offenses in PPS, namely summary citations, suggests that OCR would find that the District is not meeting its obligations under Title VI to treat students equally and avoid disciplinary policies that have a disparate impact on race.

Solutions and Remedies

We urge PPS to move forward in a positive direction by taking immediate corrective action to implement data-based approaches to student discipline that do not violate federal civil rights law. The moratorium on issuing summary citations has been an important first step in addressing

³³ MGT, *supra* note 12, at 29.

³⁴ See generally U.S. Dep’t of Educ. Off. for C.R. & U.S. Dep’t of Just. C.R. Div., *supra* note 5 (summarizing OCR investigations involving student discipline policies and outlining the types of remedies the Departments of Education and Justice have previously obtained).

³⁵ U.S. Dep’t of Educ., *U.S. Department of Education’s Office for Civil Rights Reaches Settlement with Victor Valley Union High School District in California* (Aug. 16, 2022), <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-reaches-settlement-victor-valley-union-high-school-district-california>.

³⁶ TyLisa C. Johnson, *Disorderly Conduct Cut from PPS Code of Conduct*, PUBLICSOURCE (June 23, 2021), <https://www.publicsource.org/pittsburgh-public-disorderly-conduct-cut-code-conduct-advocates-suspensions-pps/>.

³⁷ *September 2021 to June 2022 Arrest, Citation, and Charges Report to the Board*, *supra* note 1.

the problem. Now PPS must take definitive action to effectively address the harms caused by summary citations and the broader racial disparities in PPS’s disciplinary practices.

To resolve the violations we have described and to avoid future liability, we urge PPS to take immediate action to:

1. Permanently end the use of summary citations as a school disciplinary practice;
2. Expand programming on restorative justice, PBIS, and other alternatives to exclusionary discipline;³⁸
3. Retain an expert to provide comprehensive training to staff on racial equity, the law governing student discipline, and the effective implementation of alternatives to summary citations;³⁹
4. Analyze and make public data on racial and disability-based disparities in summary citations, suspension, expulsion, arrest, and other forms of exclusionary discipline, as already required by PPS’s own [Resolution to Reimagine School Safety in PPS](#), to inform further improvements to PPS disciplinary policies and practices and to reduce disparities;⁴⁰
5. Meaningfully engage key stakeholders, including affected students, parents, and their representatives and advocates, in this process of discipline reform;⁴¹

³⁸ See, e.g., Resolution Agreement with Loleta Union Elementary School District, U.S. Dep’t of Educ. Off. for C.R., Case No. 09-14-1111 (Nov. 20, 2017),

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141111-b.pdf> (requiring the school district to review and implement research-based practices like restorative justice and PBIS).

³⁹ See, e.g., Resolution Agreement with Waverly Community Schools, U.S. Dep’t of Educ. Off. for C.R., Case No. 15-14-1250 (Jan. 25, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15141250-b.pdf> (“[T]he District will retain an expert(s), subject to OCR’s review and approval, in nondiscriminatory discipline practices, data analysis, and research-based strategies to address any practices and policies leading to or resulting in disproportionate disciplinary outcomes for African American students.”).

⁴⁰ See, e.g., Resolution Agreement with Yav Pem Suab Academy, U.S. Dep’t of Educ. Off. for C.R., Case No. 09-14-1170 (Oct. 14, 2015), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141170-b.pdf> (directing the Academy to create uniform standards to ensure accurate and complete reporting of student disciplinary data).

⁴¹ See, e.g., Resolution Agreement with Durham Public Schools, U.S. Dep’t of Educ. Off. for C.R., Case No. 11-13-1175 (Feb. 1, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131175-b.pdf> (agreeing to implement a districtwide plan to engage community stakeholders in disciplinary reform).

6. Administer a climate survey to all middle and high school students in the District and develop a plan to improve school climate based on the results;⁴²
7. Develop an accountability body responsible for tracking reform efforts, with input from the community and access to independent experts;⁴³
8. Examine the root causes of the racial disparities in the District’s discipline of students and develop a Corrective Action Plan describing the corrective actions it has identified to ensure nondiscrimination based on race and color in the discipline of its students;⁴⁴
9. Eliminate vague, subjective, or redundant offense categories in other forms of school discipline, including categories that allow for a high degree of subjectivity in enforcement (e.g., disorderly conduct, willful defiance, disruptive behavior, or inappropriate behavior) to the extent permitted by state and federal law.⁴⁵

We request that you respond in writing by February 1, 2024, with a commitment to permanently end the use of summary citations in PPS. We would welcome the opportunity to discuss alternative solutions before the end of the moratorium.

⁴² See, e.g., Resolution Agreement with Forsyth County Schools, U.S. Dep’t of Educ. Off. for C.R., Case No. 04-22-1281 (May 19, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-b.pdf>

(agreeing to administer a climate survey to students and develop a plan to improve the climate based on the results).

⁴³ See, e.g., Resolution Agreement with East Side Union High School District, U.S. Dep’t of Educ. Off. for C.R., Case No. 09-14-1242 (Dec. 13, 2017),

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141242-b.pdf> (requiring the District to establish a Stakeholder Equity Committee made up of school administrators, staff, parents, and students to review disciplinary data based on race and to make recommendations on policy changes).

⁴⁴ See, e.g., Resolution Agreement with Victor Valley Union High School District, U.S. Dep’t of Educ., Off. for C.R., (Aug. 15, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-b.pdf> (requiring the school district to examine the root causes of racial disparities in the discipline of its students by reviewing data and analysis on its discipline practices, reviewing the district’s discipline policies, evaluating employee training practices, and engaging employees, students, and community stakeholders to identify short- and long-term corrective actions to address such root causes).

⁴⁵ See, e.g., Resolution Agreement with Victor Valley Union High School District, U.S. Dep’t of Educ. Off. for C.R., (Aug. 15, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-b.pdf> (directing the district to eliminate vague and subjective offense categories which afforded a high degree of subjectivity in enforcement).



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