

September 19, 2016

Dr. John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202

Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Request for Legal Guidance on Law Enforcement Activities in Public Schools

Dear Secretary King and Principal Deputy Assistant Attorney General Gupta:

On behalf of the Legal Strategies Collaborative (LSC) – a nationwide coalition of education advocates and litigators addressing discriminatory disciplinary policies and practices in public schools, we would like to thank you for releasing guidelines to state and local governments on how to responsibly include law enforcement officers, also known as school resource officers (SROs), in public educational environments. We appreciate the Safe School-based Enforcement through Collaboration, Understanding and Respect (SECURE) Rubrics that detail steps school districts should take to ensure that police in schools have a limited and defined role, and their activities comply with civil rights laws. While the guidelines represent a productive first step, we urge the Departments of Education and Justice (Ed Department and DOJ) to go further by releasing a Dear Colleague letter detailing SROs' legal obligations under constitutional and civil rights laws.

The Ed Department and DOJ released a similar legal guidance in January 2014 which outlined, in great detail, public elementary and secondary schools' obligation to administer student discipline in a nondiscriminatory manner under Titles IV and VI of the Civil Rights Act of 1964.¹ The guidance noted that both Departments could hold schools accountable for discriminatory conduct of SROs.² However, it did not detail SROs' legal obligations under Title VI, other civil rights laws and the U.S. Constitution. Such a legal guidance is warranted for the reasons stated below.

I. Over-Reliance on School Resource Officers Has a Disproportionate Impact on Students of Color.

¹ See U.S. Department of Education and U.S. Department of Justice, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, Jan. 8, 2014, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

² *Id.* at 6.

The presence of police in schools disproportionately impacts students of color. As discussed below, these disparities raise serious concerns under civil rights laws, such as Title VI of the Civil Rights Act.³ Title VI prohibits discrimination on the basis of race, color, or national origin by any program that receives federal financial assistance.⁴ The Departments' effective enforcement of Title VI is critical to addressing issues of systemic discrimination, particularly in response to policies and practices that have a discriminatory impact based on race, color, or national origin.⁵

Nationwide, police presence in schools has become ubiquitous. Nearly a quarter of elementary schools and 42% of high schools have SROs.⁶ According to DOJ, 19,000 police officers are stationed in schools across the United States.⁷ Over three in four high schools and the vast majority of schools with 1,000 or more students have armed security staff.⁸ Schools where at least half of the students are of color, as well as high-poverty schools (meaning those where at least 75% of students are eligible for free or reduced-price lunch), are home to the highest percentages in the country of K-12 school law enforcement.⁹

Consequently, African-American students are 2.3 times as likely to receive a referral to law enforcement or be subject to a school-related arrest as white students.¹⁰

In the past several years, parents and education advocates have confronted and challenged SRO violence against students of color. Examples of such incidents include:

- In October 2015, a cell phone video captured a South Carolina SRO violently flipping a female student who was seated at a desk, despite the fact that she posed no threat to the officer or her fellow students.¹¹ After the assault, the student's

³ 42 U.S.C. §§ 2000d *et seq.*

⁴ 34 C.F.R. § 100.

⁵ See *Alexander v. Sandoval*, 532 U.S. 275, 289-90 (2001) (holding that only federal agencies have the authority to enforce Title VI's disparate impact provision).

⁶ Maya T. Miller and Walter Jean-Jacques, *Is School Policing Racially Discriminatory?*, The Century Foundation, June 14, 2016, <https://tcf.org/content/commentary/school-policing-racially-discriminatory/>.

⁷ Mark Keierleber, *Why So Few School Cops Are Trained to Work with Kids*, THE ATLANTIC, Nov. 5, 2015, <http://www.theatlantic.com/education/archive/2015/11/why-do-most-school-cops-have-no-student-training-requirements/414286/>.

⁸ Melinda Anderson, *When Schooling Meets Policing*, THE ATLANTIC, Sept. 21, 2015, <http://www.theatlantic.com/education/archive/2015/09/when-schooling-meets-policing/406348/>.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ Sarah Aarthun and Holly Yan, *Student's Violent Arrest Caught on Video; Officer Under Investigation*, CNN, Oct. 27, 2015, <http://www.cnn.com/2015/10/26/us/south-carolina-spring-valley-high-school-student-video/>.

arm was placed in a cast and she reported neck and back injuries.¹² In April 2016, DOJ reached an agreement with Richland County requiring the Sheriff's Department to provide intensive annual training for officers working in schools.¹³

- A video from November 2015 documented a SRO in Florida grabbing a 13-year old African-American youth, slamming him to the ground, and then twisting his arm for approximately 40 seconds, while the student writhed in pain.¹⁴ As police documents revealed, the student “never showed any aggression towards [the officer].”¹⁵
- In October 2015, a SRO in Oklahoma City, Oklahoma was charged with punching a student in the face after a dispute over a hall pass.¹⁶ A video of the incident captured the officer approaching the student at a drinking fountain.¹⁷ After the student walked away from the officer, the officer pursued the student and punched him multiple times.¹⁸
- In April 2016, the parents of three children filed a lawsuit alleging that a SRO in Abilene, Texas violently assaulted them on three separate occasions without justification.¹⁹ The SRO “used a ‘pain compliance’ maneuver called an arm-bar against a six-year-old kindergarten student, a chokehold against a twelve-year old student, and repeatedly slammed a fifteen-year old student against the wall and to the ground.”²⁰

¹² Craig Melvin and Erik Ortiz, *South Carolina Deputy Ben Fields Fired After Body Slamming Student*, NBC News, Oct. 28, 2015, <http://www.nbcnews.com/news/us-news/south-carolina-deputy-ben-fields-fired-job-sheriff-n452881>.

¹³ Similarly, in 2013, DOJ entered into a consent decree with the Meridian Municipal Separate School District limiting the use of SROs in the District and requiring appropriate training. See Consent Decree, *Barnhart, et al. v. Meridian Municipal Separate School District, et al.*, No. 4:65-cv-1300 (S.D. Miss. Mar. 22, 2013), available at <http://www.naacpldf.org/document/barnhardt-and-us-v-meridian-joint-consent-order>.

¹⁴ Tobias Salinger, *Video Shows Florida Police School Resource Officer Slamming 13-Year-Old Boy to the Ground, Twisting His Arm*, N.Y. DAILY NEWS, Nov. 11, 2015, <http://www.nydailynews.com/news/crime/video-shows-florida-officer-slamming-boy-13-ground-article-1.2430410>.

¹⁵ *Id.*

¹⁶ Alfred NG, *Oklahoma City School Resource Officer Charged After Punching Student Over Hall Pass*, N.Y. DAILY NEWS, Oct. 29, 2015, <http://www.nydailynews.com/news/crime/okc-school-resource-officer-charged-punching-student-article-1.2417075>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Press Release, University of Texas School of Law, *Three Students File Lawsuit Alleging Excessive Use of Force by Abilene ISD School Resource Officer*, April 28, 2016, <https://law.utexas.edu/clinics/2016/04/28/lawsuit-force-against-schoolchildren/>.

²⁰ *Id.*

- In March 2016, three Baltimore SROs were placed on administrative leave after a video captured one of the officers slapping a young man three times – one slap loud enough to hear a pop – and then kicking him while yelling profanities.²¹ Baltimore Mayor Stephanie Rawlings-Blake stated that “[t]he behavior . . . is certainly something you never want to see. . . . Certainly not a school officer acting in this way, particularly with a young person.”²²
- A video from March 2015 captured a Louisville, KY SRO picking up a 13-year old by his neck and choking him until he went limp, after the youth playfully attempted to push the officer.²³ After the incident, the middle-schooler dropped to the ground, where he didn’t move for more than 20 seconds.²⁴ Another officer later testified that the officer’s actions were “consistent with strangulation.”²⁵
- In April 2016, a SRO in San Antonio, TX was fired after a video captured him body-slamming a sixth grade girl.²⁶ After he slammed the girl down, a loud crack was heard and the surrounding crowd grew silent.²⁷ After the incident, the officer attempted to justify his actions, but the video of the incident directly contradicted his report.²⁸
- In 2010, the Southern Poverty Law Center filed a lawsuit on behalf of eight high school students in Birmingham, Ala., all of whom had been pepper-sprayed by SROs.²⁹ In October 2015, a federal judge ruled that the officers had used excessive and unconstitutional force when they pepper-sprayed students for minor misbehavior at school.³⁰ The Court rejected the “eyebrow-raising position that

²¹ Ray Sanchez, *Baltimore School Officers on Leave Over Slapping Video*, CNN, Mar. 2, 2016, <http://www.cnn.com/2016/03/02/us/baltimore-slap-video/>.

²² *Id.*

²³ *LMPD Officer Chokes Teen Until His Body Goes ‘Limp’*, WDRB.com, Mar. 12, 2015, <http://www.wdrb.com/story/28405362/lmpd-officer-accused-of-assaulting-students-appears-in-court>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Lindsey Bever, *School Officer Fired After Video Showed Him Body-Slamming a 12-Year-Old Girl*, WASH. POST., April 12, 2016, <https://www.washingtonpost.com/news/education/wp/2016/04/11/school-officer-fired-after-video-showed-him-body-slammng-a-12-year-old-girl/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Emma Brown, *Judge: Police Can No Longer Pepper-Spray Students for Minor Misbehavior at School*, WASH. POST, Oct. 1, 2015, <https://www.washingtonpost.com/news/education/wp/2015/10/01/judge-police-can-no-longer-pepper-spray-students-for-minor-misbehavior-at-school/>.

³⁰ *Id.*

school children are less deserving of protection from harm at the hands of overzealous law enforcement officers than adults.”³¹

- Since 2011, there have been at least 84 incidents in which SROs tasered students, some of whom were as young as 12. Students were tasered for, among other things, “mouthing off to a police officer” and “trying to run from the principal’s office.”³²

Additionally, even when excessive force is not used, SROs have arrested and ticketed African-American and Latino students at disproportionate rates. For example, an analysis of police officers assigned to schools in McKinney, Texas found that officers ticketed African-American students at an extremely high and unequal rate.³³ Although African-American students account for only 13% of the population, they represent 39% of arrests by SROs in the district.³⁴ The disparities identified in McKinney have been documented in districts across the state.³⁵

Reliance on SROs compounds these disparities by ignoring the root causes of alleged student misconduct. Rather than identifying and developing the supports necessary to assist students with behavioral problems, SROs exacerbate these problems and significantly alter the role of education in students’ lives. SROs are more likely to interpret minor behavior such as interrupting class or being disrespectful to teachers as criminal behavior.³⁶ This results in unnecessary arrests that increase the likelihood that a child will end up in the juvenile-justice system, and later, prison.

II. Over-Reliance on School Resource Officers Has a Disproportionate Impact on Students with Disabilities.

Likewise, any guidance to SROs on their legal obligation to engage in nondiscriminatory law enforcement practices should include provisions regarding compliance with Title II of the Americans with Disabilities Act³⁷ (ADA) and Section 504 of the Rehabilitation Act.³⁸ The ADA

³¹ *Id.*

³² Rebecca Klein, *Set to Stun*, Huff. Post, Aug. 11, 2016, <http://data.huffingtonpost.com/2016/school-police/tasers>.

³³ Letter from Texas Appleseed and NAACP Legal Defense Fund, Inc. et al., to Dr. Rick Donald, Superintendent, McKinney Independent School District, Aug. 11, 2015, <http://www.naacpldf.org/press-release/school-police-mckinney-texas-arrest-and-ticket-african-american-students-excessive-and#McKinney-letter>.

³⁴ *Id.* at 2.

³⁵ See Texas Appleseed, TICKETING AND ARREST DATA UPDATE (2013), at 20, 22, 30, 67, 69, 106, 116, 118, 121, <https://www.texasappleseed.org/sites/default/files/156-STPP-TicketingandArrestDataUpdated-LOWRes.pdf>.

³⁶ Justice Policy Institute, EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS (2011), at 13-14, http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf.

³⁷ 42 U.S.C. § 12131 *et seq.*

³⁸ 29 U.S.C. § 701 *et seq.*

provides that no “individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”³⁹

Despite these protections, students with disabilities are more likely to be suspended, expelled, or arrested at school. Although they represent only 12% of the total student population nationwide, students with disabilities comprise a quarter of students arrested and referred to law enforcement; 75% of students who are physically restrained at school; and 58% of students placed in seclusion or involuntary confinement.⁴⁰ According to the Ed Department’s most recent data, students with disabilities served by the Individuals with Disabilities Education Act (IDEA)⁴¹ (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities. These disparities persist despite the fact that the IDEA requires positive behavioral supports and prohibits discipline for behavior that is a product of a student’s disability.⁴²

The presence of SROs significantly increases the chances that students with disabilities will suffer illegal and discriminatory treatment. As the Department of Justice recently noted in a statement of interest it filed in support of two students with disabilities who were assaulted by a SRO, children with disabilities “risk experiencing lasting and severe consequences if SROs unnecessarily criminalize school-related misbehavior by taking a disproportionate law enforcement response to minor disciplinary infractions.”⁴³

At issue in that case was the conduct of a SRO in Kenton County, Kentucky who handcuffed two students, an eight-year-old and a nine-year old, on three separate occasions for conduct that was the result of the students’ disabilities.⁴⁴ At the time of the first incident, the nine-year-old weighed merely 56 pounds⁴⁵ and had been diagnosed with attention deficit hyperactivity disorder, which is recognized as a disability under the ADA.⁴⁶ After the student, as a result of her disability, failed to comply with an order from the principal to remain in the room, the officer handcuffed her.⁴⁷ In response to the incident, the student suffered a severe mental health crisis.⁴⁸ Three weeks later, the same officer handcuffed the student again after she ran away from the officer upon seeing him.⁴⁹

III. Recommendations

³⁹ 28 C.F.R. § 35.130; (b)(3)(i), (ii).

⁴⁰ Keierleber, *supra* note 7.

⁴¹ 20 U.S.C. § 1400 *et seq.*

⁴² 20 U.S.C. § 1414(d)(3)(B)(i); 34 CFR § 300.530(f).

⁴³ Statement of Interest, *S.R., et al., v. Kenton County, et al.*, No. 2:15-CV-143, (E.D. Ky. 2015), *available at* <https://www.justice.gov/opa/file/780346/download>.

⁴⁴ *Id.* at 7-8.

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.* at 9-10.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.*

Sadly, the excessive use of force and discriminatory policing practices by SROs is not surprising given that only 12 states require school police to receive training before placement in schools.⁵⁰ Furthermore, the training that officers receive is frequently inconsistent or inadequate.⁵¹ Some states require SROs to receive training to deal with a situation in which there is an active shooter; fewer require training related to the special needs of children.⁵²

Compounding matters, publicly available data on the use of SROs and their effect on students is limited. Often, schools and districts fail to accurately report data on school based arrests and referrals to law enforcement to the public, as the Ed Department and the Every Student Succeeds Act (ESSA)⁵³ require.⁵⁴

While the SECURE Rubrics recently issued by the Ed Department and DOJ provide guidelines for implicit-bias and use-of-force training, these guidelines alone will not protect students from abusive police practices. School districts and SROs could benefit from legal guidance detailing their obligation to comply with civil rights laws and constitutional laws relating to stops, searches, arrests and the use of force in school settings.

For the reasons above, we strongly urge you to issue comprehensive legal guidance to state and local governments that utilize school police. Each of the recommendations below would significantly reduce the discriminatory impact of SROs on students of color and students with disabilities. The guidance should, at a minimum:

- 1. Prohibit the use of SROs to address non-violent student code of conduct violations and other non-law enforcement related matters, and prohibit the use of SROs to assist with classroom management, including, but not limited to, responding to disruptive students;**
- 2. Detail legal standards relating to stops, searches, arrests and the use of force by SROs;**
- 3. Require that school officials use alternative measures to resolve a situation before involving an SRO;**
- 4. Require local school districts use adequate hiring criteria for SROs, including prohibitions on the hiring or assignment of SROs that have a history of discriminatory conduct;**
- 5. Require adequate training for all SROs on de-escalation and on how to effectively engage with students, including those with disabilities and of color;**

⁵⁰ Keierleber, *supra* note 7.

⁵¹ *Id.*

⁵² *Id.*

⁵³ 20 U.S.C. § 6301 *et seq.*

⁵⁴ See e.g. Allison Ross and Matthew Glowicki, *JCPS' 117 Student Arrests Only Part of the Story*, LOUISVILLE COURIER-JOURNAL, Sept. 3, 2016 available at <http://www.courier-journal.com/story/news/education/2016/09/03/jcps-117-student-arrests-only-part-story/87998298/>.

- 6. Require local schools districts, their state partners, and law enforcement agencies to annually collect and publicly report use-of-force and other complaints regarding a SRO's treatment of a student;**
- 7. Require local school districts and their state partners to collect and annually report for public release the number of SROs in each district, including actual enforcement officers and private security personnel, disaggregated by school level; and**
- 8. Require local school districts and their state partners to annually evaluate whether the presence of SROs is necessary to a legitimate educational goal, and if so, whether the goal can be satisfied by a reasonable alternative means.**

Thank you for considering this request. We welcome the opportunity to meet with you to discuss our concerns further. Please do not hesitate to contact Ajmel Quereshi (aquereshi@naacpldf.org) and Deborah Gordon Klehr (dklehr@elc-pa.org) with any questions.

Sincerely,

NAACP Legal Defense and Educational Fund, Inc.

Center for Civil Rights Remedies
The Civil Rights Project at UCLA

JustChildren Program, Legal Aid Justice Center

American Civil Liberties Union

Texas Appleseed

Education Law Center

Advocates for Children of New York

Children's Law Center, Inc.

Southern Poverty Law Center

National Center for Youth Law

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