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June 23, 2015

San Francisco Office  
Office for Civil Rights  
United States Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105-1813

**Re: Complaint of Race Discrimination by Jalyn Broussard against  
Immaculate Heart of Mary School**

Dear Sir or Madam:

We represent Jalyn Broussard, a five-year old African-American kindergarten student that attended the Immaculate Heart of Mary School ("IHM") in Belmont, California, until January 2015. The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") advances, protects, and promotes the rights of low-income, minority, and immigrant students to an equal education.

As explained in more detail below, IHM violated Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. §§ 2000d, *et seq.*, by treating Jalyn differently than other students on the basis of his race. Jalyn was targeted and subjected to unequal enforcement of the school's disciplinary policies, particularly its hairstyle policy. The school then failed to engage in a constructive dialogue with Jalyn's parents about its selective enforcement of its disciplinary policies.

LCCR has reason to believe that IHM accepts federal financial assistance under Title 1 of the Elementary and Secondary Education Act. We therefore request that the United States Department of Education, Office for Civil Rights ("OCR"), accept jurisdiction over this timely complaint and investigate the discriminatory treatment of Jalyn Broussard by the Immaculate Heart of Mary School.

**FACTUAL SUMMARY**

In August 2014, Jalyn Broussard began kindergarten at IHM. His older brother, Noah Broussard, began second grade at IHM, where he had attended school since kindergarten. IHM is a Roman Catholic school that prides itself on "serving children from parish and surrounding neighborhood communities with a quality education that addresses the whole child based on Christian Catholic values." See <http://www.ihmschoolbelmont.org/about-us/>. Like many of the families at IHM, the Broussard family is a member of the parish.

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When Noah began kindergarten at IHM over three years ago, he frequently received “red cards” (written warnings) for minor misbehavior, such as looking away from his teacher. The White students in his class were not similarly disciplined. Noah’s mom, Marianna Broussard, became concerned about the frequency with which Noah was being disciplined for what seemed like trivial matters. In order to better understand what was going on in Noah’s class, Mrs. Broussard started volunteering in the classroom more. The disciplinary issues subsided significantly with Mrs. Broussard’s increased presence in the classroom. In subsequent school years, Noah experienced few, if any, disciplinary problems and had a great rapport with his teachers.

When Jalyn began kindergarten at IHM this year, he too frequently got in trouble for minor misbehavior that was not atypical for kindergarten students, such as stepping on a sandwich that had fallen on the ground and talking in the bathroom during recess. One week, Jalyn received three “red cards” for minor infractions. Concerned about the extent to which Jalyn was being targeted for discipline, Mrs. Broussard asked other kindergarten parents whether their children were receiving red cards for similar behavior and learned that they were not. For example, one of the White students in Jalyn’s class was not disciplined at all for putting buckets of sand in Jalyn’s hair, which took six washes to get out. When Mrs. Broussard voiced her concerns about unequal discipline to Jalyn’s teacher, his teacher said “maybe Jalyn was rolling around in the sand.”

On December 17, 2014, Jalyn and Noah got haircuts after school. Noah got a bald haircut, and Jalyn chose a popular hairstyle called a modern fade, in which his hair was longer in the middle and shorter on the sides. *See Ex. A, Photo of Jalyn’s Haircut.* The following day, when the boys arrived at school neatly dressed in their uniforms, Principal Teri Grosey yelled to them across the parking lot, “Nice haircuts, boys.” After Mrs. Broussard dropped the boys off at their classrooms, she passed Mrs. Grosey again. Mrs. Grosey asked Mrs. Broussard if she was going for her morning walk with other IHM moms, to which Mrs. Broussard replied that she was.

Approximately thirty minutes later, Mrs. Broussard’s cell phone rang while she was on her walk. She ignored the call because she was exercising. However, when the phone rang again within a minute, she answered the call concerned that someone needed her immediate attention. The call was from Jalyn’s teacher, Ms. O’Brien, who was calling to tell Mrs. Broussard that Jalyn’s haircut fell outside of IHM’s hairstyle policy, and that Principal Grosey was requiring that he be picked up from school immediately and not return until his hair was cut.

Mrs. Broussard immediately reviewed IHM’s hairstyle policy online, which states, in relevant part:

All hairstyles must be appropriate for a Catholic grade school:  
extreme hairstyles, hair dye, highlights or extensions are not allowed  
(this includes feathers, foils, tinsel, “bling strands”, hi-lites, faux hawks,  
tails, and spiking...).

Ex. B, Parent Student Extended Day Care Handbook 2014-2015, at 38. Not understanding how Jalyn’s haircut, which Principal Grosey had complimented less than one hour earlier, violated this policy, Mrs. Broussard called Principal Grosey to inquire.

Mrs. Broussard told Mrs. Grosey that she was surprised to hear there was a problem with Jalyn’s haircut given Mrs. Grosey had seen her twice that morning and said nothing about it. Mrs.

Broussard then explained to Principal Grosey that Jalyn's haircut was entirely consistent with the school's hairstyle policy because it was short, neat, and tapered – as opposed to spiked or extreme. Principal Grosey responded that it was not the style of Jalyn's hair that was the problem, but rather the fact that it was longer in the middle and shorter on the sides, which allegedly make it a "faux hawk" in contravention of the school's policy.

Mrs. Broussard said she disagreed with this characterization of Jalyn's haircut and requested that he be permitted to stay at school for the remainder of the day. Principal Grosey begrudgingly agreed, stating that, "in these situations, it is best that the child be removed from the school environment so that he does not unduly influence the student body."

When Mrs. Broussard picked Jalyn up from school at the end of the day, he was very self-conscious about his hair because all of the kids were talking about it. The Broussards reluctantly shaved Jalyn's head that night so that he could attend the Christmas concert that evening and go to school the following day for the class holiday party, which he was eagerly awaiting. Jalyn cried because he did not want to be bald for Christmas.

The following morning, December 19, 2014, Mrs. Broussard requested an in-person meeting with Principal Grosey, during which she asked for further clarification of the school's interpretation of its hairstyle policy. Mrs. Broussard shared definitions and photos of faux hawks from the Internet and explained how Jalyn's haircut differed (i.e., it was not spiked). Mrs. Broussard also shared photos of a prominent, conservative African-American professional, Michael Straham, who has a similar hairstyle. She additionally pointed out that there are White and Asian-American students at IHM with similar haircuts. Mrs. Broussard complained that Jalyn was being singled out, as one of only five African-American children in the school, and that IHM was selectively enforcing its hairstyle policy in a way that was both discriminatory and exclusionary of cultural differences in appearance. Principal Grosey said that she would consult with the Archdiocese of San Francisco and Father Howell and get back to Mrs. Broussard.

Later that morning, Mrs. Broussard wrote a follow-up email to Principal Grosey, reiterating her belief that Jalyn's "conservative ethnic haircut" falls within the school's hairstyle policy. She attached photos from Halloween of two White students in Jalyn's class with similar haircuts (long on the top and shorter on the sides) but a different texture than Jalyn's, *see Ex. C, Photo of Kindergarten Students*, and asked Principal Grosey to explain why those students were not similarly disciplined. Mrs. Broussard made it clear that she was not asking for an exception to the policy for Jalyn, but rather enforcement of the policy in a manner that is equitable and culturally inclusive. She concluded the email by stating that she looked forward to continuing the conversation with Principal Grosey after the holiday break. Mrs. Broussard never received a response to this email.

On Monday, January 5, 2015, the first day back at school after the Winter break, Mrs. Broussard noticed that an eighth grade Asian-American student, whose mother was a teacher at the school, had a haircut identical to Jalyn's. *See Ex. D., Photo of Eighth Grade Student*. Mrs. Broussard watched with anticipation to see whether this student would be forced to leave school like Jalyn. On the contrary, this student returned to school the following day with the same haircut and was permitted to read at mass before the entire school and church community. Mrs. Broussard called Principal Grosey on January 6, 2015, and asked her to review the eighth grader's haircut, as it seemed very similar to Jalyn's.

Rather than acknowledge that IHM's hairstyle policy was being unequally enforced, Principal Grosey dug her heels in and attempted to differentiate the non-African-American student's hairstyle, providing an illogical explanation. She wrote, "Through careful consideration and discussion with administration, Father Howell, and the Archdiocese, the statement in the IHM handbook is clear that hairstyles that are distracting to the learning process are not allowed . . . Hairstyles that go from the top of forehead to base of neck hair line in a strip cut that is longer is not a part of the IHM hair policy. The modern blunt cut style, which several students have, differs in that the hair is longer on the top, the crown only, and blended through the sides." IHM's hairstyle policy notably says nothing about how much hair has to be at the base of the neck. And Principal Grosey never indicated that Jalyn's hairstyle would be acceptable if he just removed the two inches of hair on the back of his neck.

Mr. and Mrs. Broussard then decided to appeal directly to Father Howell for assistance. They expressed their dismay at the blatant double standard in the school's enforcement of its policy, sharing with Father Howell all of the information and photos they had presented to Principal Grosey. Father Howell listened, but then said he could not get involved and that the Broussards should "have faith" in Principal Grosey and "gave it some more time," although it had already been over one month. He then applauded the Broussards for being advocates for their children and lamented that other children do not have anyone advocating for them.

Soon thereafter, the Broussards learned that a White girl in Noah's class had bows in her hair that were considered by the teacher to be too big. Rather than send the girl home in the middle of the school day, the teacher sent a communication home with all second grade girls about the acceptable size and style of hair bows and headbands. Of course, no such effort had been made to clarify the hairstyle policy for the Broussards prior to excluding Jalyn from school.

After continued efforts to engage in further discussion with IHM about its handling of this matter were unsuccessful, the Broussards decided to pull their two boys out of the school and to enroll them in their local public school. They were concerned that there could be other acts of discrimination occurring at the school of which they were unaware and felt that they could no longer trust the school to look out for their sons' well-being. Jalyn and Noah were extremely sad to leave their friends and the only school they have known, and still do not understand why their family was treated differently than others.

On January 24, 2015, Mrs. Broussard wrote an email to the Archdiocese and the school superintendent, summarizing the events that had transpired over the last month and explaining the Broussards' decision to withdraw their boys from the school due to IHS's failure to engage in a constructive dialogue about the issues of discrimination she had raised and its reluctance to reach any type of resolution. She informed the school that January 29, 2015, would be her sons' last day at IHM and closed the letter with one last invitation to the school to engage in further discussion.

On January 26, 2015, Mrs. Broussard received an email response from Principal Grosey, in which Mrs. Grosey again promised to consult with other Catholic schools about their hairstyle policies (which she first promised in December) and to meet with Mrs. Broussard after that to "clarify any misunderstandings" and "miscommunication." Mrs. Broussard responded on January 29, 2015, that she thought it would be unproductive to meet again unless Principal Grosey had some new or different information to share, noting that Principal Grosey had yet to deviate from her initial assessment of the matter or to share any details of her alleged investigation of other Catholic

schools. Mrs. Broussard never received a response to this email. She concluded from IHM's failure to respond that the school had no new information or analysis to share.

## LEGAL ANALYSIS

### **I. IHM Violated Title VI by Treating Jalyn Broussard Differently than Other Students Based on His Race.**

As you know, Title VI provides that “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(a) (implementing regulation). To prevail on a Title VI claim, a complainant must establish that the entity receives federal funding and engaged in discrimination prohibited by Title VI. *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled on other grounds by, Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1133 (9th Cir. 2001). The complainant may establish an entity's discriminatory motive and actions through either direct or indirect evidence. *Rashdan v. Geissberger*, 764 F.3d 1179, 1183 (9th Cir. 2014) (describing framework for analyzing Title VI disparate treatment claims); *Cabrera v. Alvarez*, 977 F. Supp. 2d 969 (N.D. Cal. 2013) (noting inferential evidence is appropriate in establishing liability under Title VI); *see also* U.S. Dep't of Justice, Title VI Legal Manual (Jan. 2001), available at <http://www.justice.gov/crt/about/cor/coord/vimanual.php> (“Evidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by decision-makers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure (e.g., failure to consider factors normally considered), . . ., [and] a past history of discriminatory or segregated conduct....”).

The Department has codified a non-exhaustive list of examples of discriminatory actions prohibited by Title VI, that includes “[d]eny[ing] an individual an opportunity to participate in the program through the provision of services or otherwise or afford[ing] him an opportunity to do so which is different from that afforded others under the program.” 34 C.F.R. § 100.3(b)(1)(v). Thus, under a standard intentional discrimination/disparate treatment analysis, a recipient violates Title VI “if one of its agents or employees, acting within the scope of his or her official duties, [treats] a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient.” Department of Education, Office for Civil Rights, *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*, 59 Fed. Reg. 11448, 11448 (Mar. 10, 1994).

Under the Civil Rights Restoration Act of 1987, 20 U.S.C. § 1987 (2006), OCR has institution-wide jurisdiction over a recipient of *any* federal funds. Although OCR's database apparently indicates that IMH does not receive federal funding from the United States Department of Education, we have reason to believe based on information provided by the Belmont-Redwood Shores School District that IMH does in fact receive some federal funding under Title 1 of the Elementary and Secondary Education Act, which is administered by the Department of Education. Thus, IHM is required to comply with Title VI and to ensure that its students are not denied educational benefits on the basis of their race.

At the start of Noah's and Jalyn's schooling at IHM, they—unlike their White peers—were singled out for excessive discipline. The unequal disciplinary treatment continued until Mrs. Broussard intervened, at which time it subsided for a while. Then, in December 2014, Jalyn's teacher (Ms. O'Brien) and Principal Grosey treated Jalyn differently on the basis of his race by excluding him from school because of his hairstyle, claiming that it violated the school's hairstyle policy. The policy provides, in relevant part, "Students who do not follow the school hairstyle policy will face consequences of such things as loss of school privileges or detention." Yet, Jalyn was not denied specific school privileges or placed in detention, but rather instructed to leave school immediately and told he could not return until he changed his hairstyle. Although Jalyn was ultimately permitted to stay at school until the end of the day, it was clear that he could not return to school the following day or participate in the school's holiday activities that evening, unless and until he changed his hairstyle.

The school contended that Jalyn's hairstyle was "extreme" and "distracting" to the learning environment, yet students with identical hairstyles were not considered to be similarly distracting. The Broussard family is aware of at least three other students, two of them white and one Asian-American, who were not similarly disciplined although they had the same hairstyle as Jalyn. On the contrary, these students were permitted to participate fully in school activities and one student, who had spiked hair on the top of his head and shaved sides, was even allowed to read at mass. While Principal Grosey expressed concern that Jalyn, who as a kindergartner attended class in a different building than the older students, would unduly influence other students by remaining at school with a non-compliant hairstyle, this Asian-American student was permitted to stand before the entire student body and church community as a representative of the school and was never forced to change his hairstyle.

When Mrs. Broussard brought this differential treatment to the attention of various school officials through multiple verbal and written complaints, the school was unable to provide any non-discriminatory reason for its selective enforcement of its hairstyle policy against Jalyn. Indeed, there is no reasonable basis upon which to distinguish the hairstyles of these other students from Jalyn's. In fact, the only difference in the students' hairstyles is the texture of their hair.

Jalyn's hair is curly and coarse, unlike that of White and Asian-American students, who tend to have more straight and fine hair. The difference in texture necessarily required Jalyn to style his hair differently than the other students with similar hairstyles. That is, his hair was blended through the sides. In fact, the particular style that Jalyn chose for his hair is a popular style among prominent and conservative African-American idols and was therefore a manifestation of his racial identity. Yet, rather than try to understand the cultural significance of different hairstyles, IHM's principal and administrators applied arbitrary, unclear, and subjective criteria to selectively enforce the school's hairstyle policy against Jalyn. To base differential enforcement of the school's hairstyle policy on the texture of a student's hair is both discriminatory and exclusionary of cultural differences in appearance and cannot be allowed under any reading of Title VI.

Moreover, this type of differential treatment on the basis of race does not create a safe space for students to learn. Jalyn is only five years old and is still forming his sense of self and his racial and cultural identity. By targeting and isolating him because of the different texture of his hair, IHM caused him severe emotional harm and distress. Thus, after one month of non-responsiveness and cultural insensitivity from the school administration regarding their complaint of disparate treatment,

the Broussards were left with no choice but to remove their children from this toxic school environment, which was having a detrimental effect on their sons' self-esteem and their ability to participate in school activities.

## II. Jalyn Broussard's Complaint of Race Discrimination is Timely.

OCR complaints must be filed within 180 calendar days of the "date of the last act of alleged discrimination" unless OCR grants the individual a waiver under CPM Section 107. U.S. Dep't of Educ., OCR Case Processing Manual § 106. The allegations presented by Jalyn Broussard are timely since the last discriminatory incident occurred on January 29, 2015, when the Broussards withdrew their children from the school and gave IHM one last opportunity to remedy their differential treatment of Jalyn, which the school declined.

An allegation is also timely if the complaint alleges that there is a "continuing discriminatory policy or practice." *Id.* While the initial act of discrimination related to Jalyn's hair occurred on December 18, 2014, Mrs. Broussard continued to raise instances of discriminatory enforcement of the school's hairstyle policy in early January 2015, and continued to make internal complaints of race discrimination until January 29, 2015. As described above, IHM's discriminatory actions were ongoing throughout the month of January because the school refused to acknowledge its unequal application of its hairstyle policy. Since IHM and the Archdiocese failed to resolve the Broussards' complaint of race discrimination by the time they withdrew their children from the school on January 29, 2015, the Broussards' OCR complaint is both appropriate and timely.

Even if OCR were to construe the filing deadline as June 15, 2015, which is 180 days from the initial act of discrimination -- namely, exclusion of Jalyn from school for violation of IHM's hairstyle policy -- this complaint should be deemed timely and a waiver should be granted to the Broussards because OCR improperly told the family *twice* that it had no jurisdiction over their complaint of race discrimination against IHM. Before contacting undersigned counsel in February 2015, Mrs. Broussard called OCR to ask whether she could file a discrimination complaint with the agency. The person she spoke to looked IHM up in a database of private schools and informed Mrs. Broussard that IHM does not take federal financial assistance and thus that OCR would have no jurisdiction over her case.

In April 2010, attorneys at Morgan Lewis & Bockius, who were evaluating Mrs. Broussard's case for representation, similarly called OCR to inquire about its jurisdiction and were given the same information about IHM's receipt of federal financial assistance based on a database of private schools. Relying on OCR's repeated representations that it would not have jurisdiction over the Broussards' complaint, undersigned counsel advised the Broussards that there was no substantial risk in letting the statute of limitations for an OCR complaint run while she continued to seek *pro bono* counsel.

On or about May 28, 2014, undersigned counsel had a telephone conversation with OCR attorney Yohance Edwards regarding a different matter. On that call, Ms. Bezoza asked Mr. Edwards about the source and accuracy of the information contained in the database that is used by OCR to counsel potential complainants about a school's receipt of federal financial assistance and accordingly OCR's jurisdiction. Mr. Edwards promised to talk to his colleagues and get back to Ms. Bezoza.

In mid-June 2015, Ms. Bezoza discovered that IHM received federal funding under the No Child Left Behind Act (“NCLB”) in 2004. An LCCR law clerk then spoke to someone in the Belmont-Redwood Shores School District office who stated her belief that IHM continues to receive Title I funding today. The district employee said she would confirm IHM’s current receipt of Title I funding with the appropriate program officer and get back to LCCR.

Then, on June 19, 2015, after 180 days had run since the initial act of discrimination in this matter, Mr. Edwards informed Ms. Bezoza that the database is supposed to capture all US DOE funding. Ms. Bezoza expressed concern that her client may have been given incorrect information about IHM’s federal funding and that she relied on that information when she decided not to file within 180 days of the initial act of discrimination. Thus, if OCR construes the filing deadline as June 15, 2015, instead of July 28, 2015 (which we believe is the correct deadline), a waiver should be granted because Mrs. Broussard appropriately relied on inaccurate information from OCR.

### **RELIEF SOUGHT**

The Broussards are seeking reimbursement of the tuition they paid IHM for both Jalyn and Noah for the 2014-15 school year, and to be absolved of their contractual responsibility to pay the balance of the tuition for this school year. They also seek injunctive relief, including but not limited to, cultural sensitivity training for the staff and administration of IHM, a more robust anti-discrimination policy and complaint process, and the development and implementation of more culturally inclusive school discipline policies.

If you require any additional information, please contact Jennifer Weiser Bezoza at (415) 543-9697, ext. 232, or [jbezoza@lccr.com](mailto:jbezoza@lccr.com). Thank you for your prompt investigation of this matter.

Sincerely,



Jennifer Weiser Bezoza, Esq.  
Racial Justice Attorney  
Director, Education Advocacy