

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

NYRON HARRISON *et al*

Plaintiffs,

v.

JEFFERSON PARISH SCHOOL BOARD
et al,

Defendants.

NO. 2:20-cv-2916

SECTION G/5

CHIEF JUDGE BROWN

MAGISTRATE JUDGE NORTH

MOTION TO INTERVENE BY THE STATE OF LOUISIANA

The State of Louisiana (“Louisiana”) hereby moves to intervene as of right in the above-captioned action. This motion is brought pursuant to 28 U.S.C. § 2403, Federal Rule of Civil Procedure 5.1, and Federal Rule of Civil Procedure 24. This motion is based on the attached memorandum and any further papers filed in support of this motion, the argument of counsel, and all pleadings and records on file in this matter. Louisiana’s proposed complaint in intervention is attached.

Dated February 5, 2021

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

/s/ Elizabeth B. Murrill
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Solicitor General
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Attorneys for the State of Louisiana

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2021, I am causing this document and its attachments to be filed via the ECF system, which will serve all counsel of record. I further certify that I will cause a copy of this document and its attachments to be deposited in the U.S. mail, postage prepaid, addressed as follows:

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/s/ Elizabeth B. Murrill

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY THE
STATE OF LOUISIANA**

The State of Louisiana (“Louisiana”), by and through Attorney General Jeff Landry, moves to intervene pursuant to and 28 U.S.C. § 2403(b) and Rules 5.1 and 24 of the Federal Rules of Civil Procedure. In support thereof, Louisiana states as follows:

1. The operative Second Amending and Supplemental Complaint was filed on December 14, 2020, and alleges La. R.S. 17:416 is unconstitutional facially, as interpreted by Jefferson Parish School Board, and as applied by Jefferson Parish School Board. SASC (Dkt. 30) at ECF pp.74-75. That statute relates to the discipline of school students and affects the public interest.

2. Where the constitutionality of a state statute affecting the public interest is drawn into question, the State may intervene:

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party

28 U.S.C. § 2403(b). Intervention pursuant to Section 2403(b) is an unconditional statutory right. *Finch*

v. Miss. State Med. Ass'n, Inc., 585 F.2d 765, 779 (5th Cir. 1978) (citing *Thatcher v. Tennessee Gas Trans. Co.*, 180 F.2d 644, 648 n. 7 (5th Cir. 1950)); *see also, e.g. Connecticut v. Doebr*, 501 U.S. 1, 7 n.3 (1991) (noting that state intervened in appeal); *Bridges v. Phillips Petrol. Co.*, 733 F.2d 1153, 1156 n.7 (5th Cir. 1984) (certifying constitutional question to state attorney general to provide State with opportunity to petition for rehearing after noting district court's failure to certify).

3. In a previous case, this Court indicated that intervention by the Attorney General is appropriate in a constitutional challenge to R.S. 17:416. *See DeCossas v. St. Tammany Parish Sch. Bd.*, No. 16-37862017 WL 3971248, at *26 (E.D. La. Sept. 8, 2017) (Brown, J.).

4. The docket in this case does not appear to include a separate notice of constitutional question or a certification pursuant to 28 U.S.C. § 2403(b).

5. This motion is made within 60 days of the filing of the operative complaint and before the Court's deadline for amendments to pleadings, third-party actions, cross claims, and counterclaims. *See* Scheduling Order (Dkt. 35) at 2. This motion is therefore timely. Fed. R. Civ. P. 5.1; *see also, e.g., Aubin v. Columbia Cas. Co.*, No. 16-290-BAJ-EWD, 2017 WL 1416814, at *3 (M.D. La. Apr. 19, 2017); *Guilbeau v. Parish of St. Landry*, No. 06-0185, 2008 WL 4948836, at *4 (W.D. La. Nov. 19, 2008).

6. In addition to the constitutionality of its statute, other claims and interests of Louisiana are so situated that disposing of the action may as a practical matter impair or impede Louisiana's ability to protect them. These interests include Louisiana's interests in having its statutes and constitution correctly construed, having JPSB comply with Louisiana law, having JPSB comply with its contractual obligations to the State, and avoiding exposure to the federal government for repayment of funds.

7. This litigation is at its earliest stages, with a motion to dismiss pending and the parties negotiating the terms of discovery. Accordingly, neither Plaintiffs nor Defendants will be prejudiced

by this intervention. In contrast, Louisiana would be irreparably harmed if its statute is held unconstitutional, especially if the Court did so without hearing from Louisiana. *See Maryland v. King*, 133 S. Ct. 1, 2-3 (2012) (Roberts, J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)).

8. Pursuant to Local Rule 7.6, counsel for the State of Louisiana emailed counsel for Plaintiffs and Defendants on February 1, 2021. Counsel for Plaintiffs promptly represented that they do not oppose this motion. On February 5, 2021, Counsel for Defendants represented that they oppose this motion.

WHEREFORE the State of Louisiana, by and through Attorney General Jeff Landry, prays that the Motion to Intervene in this case be granted. A proposed complaint in intervention is attached.

Dated: February 5, 2021

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

/s/ Elizabeth B. Murrill

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Solicitor General
Joseph S. St. John (LSB 36682)
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MAGISTRATE JUDGE NORTH

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE: Pursuant to Local Rule 7.2, the State of Louisiana's Motion to Intervene will be submitted on February 24, 2021, at 10:00 a.m., before the Hon. Nannette Jolivet Brown, Courtroom C227, 500 Poydras Street, New Orleans, Louisiana, or such other time as the Court may order.

Dated: February 5, 2021

Respectfully submitted,

**JEFF LANDRY
ATTORNEY GENERAL**

/s/ Elizabeth B. Murrill

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[PROPOSED] ORDER

The State of Louisiana's Motion to Intervene is GRANTED. The State of Louisiana's Complaint in Intervention is DEEMED FILED. Defendants shall answer or otherwise respond to the State of Louisiana's Complaint within 21 days of this order.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
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[PROPOSED] COMPLAINT IN INTERVENTION

The State of Louisiana brings this complaint in intervention for declaratory and injunctive relief against the Jefferson Parish School Board (“JPSB”) and its Superintendent for acting *ultra vires* and contrary to Louisiana law in ways that violate the constitutional rights of students and parents.

JURISDICTION AND VENUE

1. Plaintiffs Nyron Harrison and Thelma Williams, individually and on behalf of their minor child Ka’Mauri Harrison, assert claims arising under federal law. Defendants removed this action from state court pursuant to 28 U.S.C. §§ 1331, 1367, and 1441. This Court has jurisdiction over Intervenor State of Louisiana’s claims pursuant to 28 U.S.C. §§ 1331, 1367, 2201, and 2403.

2. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because at least Defendant JPSB is located within this district and a substantial part of the events giving rise to Plaintiffs’ claims occurred in this district.

PARTIES

3. Intervenor STATE OF LOUISIANA is a sovereign state of the United States. The Attorney General of Louisiana has authority to institute, prosecute, or intervene in any civil action or

proceeding as necessary for the assertion or protection of any right or interest of the State of Louisiana. LA. CONST. art. IV, § 8; *see also* La. R.S. 13:5036. He exercises that authority here.

4. Defendant JEFFERSON PARISH SCHOOL BOARD is a political subdivision of the State of Louisiana with the capacity to sue and be sued pursuant to La. R.S. 17:51. JPSB controls Woodmere Elementary School and Grand Isle School. JPSB may be served through its president, Tiffany Kuhn.

5. Defendant DR. JAMES GRAY is Superintendent of JPSB. He is sued in his official capacity only.

FACTUAL ALLEGATIONS

6. The Louisiana Constitution requires the legislature to “provide for the education of the people of the state and . . . establish and maintain a public education system.” LA. CONST. art. VIII. The legislature has done so through the creation of school boards, including the Jefferson Parish School Board. *See* LA. CONST. art. VIII, § 9 (“The legislature shall create parish school boards and provide for the election of their members.”); La. R.S. 17:60.1 (creating the Jefferson Parish School Board). School boards that were in existence at the time the 1974 Constitution was adopted — including JPSB — are “recognized, subject to the control and supervision by the State Board of Elementary and Secondary Education and the power of the legislature to enact laws affecting them.” LA. CONST. art. VIII, § 10.

7. Pursuant to its obligations under the Louisiana constitution, the legislature created a comprehensive set of laws governing elementary and secondary education, including teacher pay and retirement systems, curriculum requirements, public school accountability and assessment, student transportation, and school funding. Of particular significance in this comprehensive structure are laws requiring compulsory education for Louisiana children between the ages of seven and eighteen, laws

governing student discipline, laws governing searches of students, and criminal laws related to the possession of weapons in school. *See, e.g.*, La. R.S. 17:416(C), La. R.S. 14:95.2, 14:95.6

LAW GOVERNING STUDENT DISCIPLINE

8. The Due Process Clause of the Fourteenth Amendment requires that a government regulation not leave the public uncertain as to the conduct it prohibits or leave adjudicators free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. *See, e.g.*, *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966); *Baggett v. Bullitt*, 377 U.S. 360, 366-67 (1964). Indeed, fair notice of the government’s demands “is the first essential of due process.” *Conally v. Gen. Constr.*, 269 U.S. 385, 391 (1926). Thus, although “mathematical certainty” is not required, school regulations must not leave students with “difficulty in understanding what conduct the regulations allow and what conduct they prohibit.” *Shamloo v. Miss. State Bd. of Trustees of Inst. of Higher Learning*, 620 F.2d 516, 524 (5th Cir. 1980); *see also Burnside v. Byars*, 363 F.2d 744, 748-49 (5th Cir. 1966) (reversing denial of preliminary injunction of “arbitrary and unreasonable” public school regulation).

9. The legislature itself undertook to regulate certain student misconduct. Particularly relevant here, the legislature mandated certain disciplinary actions and procedures when a student is “is found guilty of being in possession of a firearm on school property, on a school bus, or in actual possession at a school sponsored event.” *See* La. R.S. 17:416(C)(2)(a)(i); (b)(i).

10. The legislature also provided parameters for teachers and other school employees to discipline students “for any disorderly conduct in school or on the playgrounds of the school, on the street or road while going to or returning from school, on any school bus, during intermission or recess, or at any school-sponsored activity or function.” La. R.S. 17:416(A)(1)(a). Although the statute does provide certain definitions of terms, it does not define “in school” nor does it define “any school sponsored activity or function.”

11. The legislature further directed in 17:416(A)(4) that “the governing authority of each public elementary and secondary school shall adopt such rules and regulations as it deems necessary to implement the provisions of *this subsection* and of R.S. 17:416.13,” which similarly provides:

The governing authority of each public elementary and secondary school shall adopt a student code of conduct for the students in the schools under its jurisdiction. The code of conduct shall be in compliance with all existing rules, regulations, and policies of the school board and of the State Board of Elementary and Secondary Education and all state laws relative to student discipline and shall include any necessary disciplinary action to be taken against any student who violates the code of conduct.

La. R.S. 17:416.13(A). Additionally, the legislature directed each parish and city school board to establish a disciplinary review committee, specified the composition of that committee, and directed that the committee must review all school board discipline policies and make recommendations to the school board for appropriate revisions to such policies. La. R.S. 17:416.8(A)(1). The legislature then directed:

Each school board shall review its discipline policies prior to the end of the 1994-1995 school year and shall review such policies at least annually thereafter. Following a public hearing on the recommendations of the discipline policy review committee, each school board's discipline policies shall delineate the specific consistent actions to be taken by teachers and other designated school employees to maintain order in the schools and on the school grounds. In addition, such policies shall contain specific consistent penalties which shall be imposed when pupils violate school discipline policies or state laws on school discipline. Copies of school board discipline policies shall be distributed to each school within its jurisdiction prior to the beginning of the 1995-1996 school session. In addition, copies of current school board discipline policies shall be distributed to each school within its jurisdiction prior to the beginning of the 1999-2000 school year and each school year thereafter. Each board shall provide each pupil and his parent, tutor, or legal guardian with a copy of the board's current discipline policy. In addition, each school shall plan and conduct meetings necessary to fully inform all employees and pupils of all such policies within the first week of each school year. Meetings also shall be held throughout the school year as may be necessary to inform new employees and new pupils of such policies.

La. R.S. 17:416.8(A)(2).

12. In *Goss v. Lopez*, 419 U.S. 565 (1975), the U.S. Supreme Court held that a student has a property interest in continued receipt of an education when – like Louisiana has done – the state

creates a public school system and requires children to attend. The U.S. Court of Appeals for the Fifth Circuit accordingly held that Louisiana’s education laws provide Louisiana children with a property interest that is protected by the Due Process Clause of the Fourteenth Amendment. *Swindle v. Livingston Parish Sch. Bd.*, 655 F.3d 386, 392-93 (5th Cir. 2011). And “it has been clear since *Goss* that when state law directs local authorities to provide public education, a student’s total exclusion from the educational process [by suspension or expulsion] must be accompanied by the procedural protections required by the Due Process Clause,” *i.e.*, “proper notice and a fair hearing.” *Id.* at 388, 401.

13. Consistent with *Goss* and its progeny, the legislature directed promulgated detailed statutory requirements for the suspension or expulsion of students. As relevant here:

(A)(3)(a) A school principal may suspend from school or suspend from riding on any school bus any student who: . . . (x) Is found carrying firearms, knives, or other implements which can be used as weapons, the careless use of which might inflict harm or injury.

* * * * *

(A)(3)(b)(i) Prior to any suspension, the school principal, or his designee, shall advise the pupil in question of the particular misconduct of which he is accused as well as the basis for such accusation, and the pupil shall be given an opportunity at that time to explain his version of the facts to the school principal or his designee. In each case of suspension or expulsion the school principal, or his designee, shall contact by telephone at the telephone number shown on the pupil's registration card or send a certified letter at the address shown on the pupil's registration card to the parent, tutor, or legal guardian of the pupil in question giving notice of the suspension or expulsion, the reasons therefor and establishing a date and time for a conference with the principal or his designee as a requirement for readmitting the pupil provided that in the case of expulsion, the contact with the parent or guardian shall include a certified letter. If the parent, tutor, or legal guardian fails to attend the required conference within five school days of mailing the certified letter or other contact with the parent, the truancy laws shall become effective. On not more than one occasion each school year when the parent, tutor, or legal guardian refuses to respond, the principal may determine whether readmitting the pupil is in the best interest of the student. On any subsequent occasions in the same year, the pupil shall not be readmitted unless the parent, tutor, legal guardian, court, or other appointed representative responds. A pupil whose presence in or about a school poses a continued danger to any person or property or an ongoing threat of disruption to the academic process shall be immediately removed from the school premises without the benefit of the procedure described hereinabove; however, the necessary procedure shall follow as soon as is practicable.

* * * * *

(A)(3)(c) Any parent, tutor or legal guardian of a pupil suspended shall have the right to appeal to the city or parish superintendent of schools or his designee, who shall conduct a hearing on the merits. The decision of the superintendent of schools on the merits of the case, as well as the term of suspension, shall be final, reserving to the superintendent of schools the right to remit any portion of the time of suspension.

* * * * *

(B)(1)(a) Any student after being suspended for committing any of the offenses enumerated in this Section may be expelled, upon recommendation by the principal of the public school in which said student is enrolled, which recommended expulsion shall be subject to the provisions of Subsection C.

* * * * *

(B)(1)(b)(i) Notwithstanding the provisions of Subsection A of this Section, the principal shall immediately suspend a student who is found carrying or possessing a firearm or another dangerous instrumentality other than a knife, or who possesses, distributes, sells, gives, or loans any controlled dangerous substance governed by the Uniform Controlled Dangerous Substances Law, in any form. He shall immediately recommend the student's expulsion in accordance with Subsection C of this Section.

* * * * *

(B)(1)(c) The provisions of this Section shall not apply to the following: (i) A student carrying or possessing a firearm or knife for purposes of involvement in a school class or course or school approved cocurricular or extracurricular activity or any other activity approved by the appropriate school officials.

* * * * *

(C)(1) Upon the recommendation by a principal for the expulsion of any student as authorized by Subsection B hereof, a hearing shall be conducted by the superintendent or by any other person designated so to do by the superintendent to determine the facts of the case and make a finding of whether or not the student is guilty of conduct warranting a recommendation of expulsion. Upon the conclusion of the hearing and upon a finding that the student is guilty of conduct warranting expulsion, the superintendent, or his designee, shall determine whether such student shall be expelled from the school system or if other corrective or disciplinary action shall be taken. At said hearing the principal or teacher concerned may be represented by any person appointed by the superintendent. The concerned teacher shall be permitted to attend such hearing and shall be permitted to present information the teacher believes relevant. Until such hearing takes place the student shall remain suspended from the school. At such hearing the student may be represented by any person of his choice.

* * * * *

(C)(2)(c)(i) Any case involving a student in kindergarten through grade five found guilty of being in possession of a firearm on school property, on a school bus, or in actual possession at a school sponsored event, pursuant to a hearing as provided for by Paragraph (1) of this Subsection, shall be expelled from school for a minimum period of two complete school semesters and shall be referred to the district attorney for appropriate action. However, the superintendent of a city, parish, or other local public school system may modify the length of such minimum expulsion requirement on a case-by-case basis, provided such modification is in writing.

* * * * *

(C)(4) The parent or tutor of the pupil may, within five days after the decision is rendered, request the city or parish school board to review the findings of the

superintendent or his designee at a time set by the school board; otherwise the decision of the superintendent shall be final. If requested, as herein provided, and after reviewing the findings of the superintendent or his designee, the school board may affirm, modify, or reverse the action previously taken

* * * * *

(C)(5) The parent or tutor of the pupil may, within ten days, appeal to the district court for the parish in which the student's school is located, an adverse ruling of the school board in upholding the action of the superintendent or his designee. The court may reverse or revise the ruling of the school board upon a finding that the ruling of the board was based on an absence of any relevant evidence in support thereof.

* * * * *

(F) Notwithstanding any provision of this Section to the contrary, school officials shall have total discretion and shall exercise such discretion in imposing on a pupil any disciplinary actions authorized by this Section for possession by a pupil of a firearm or knife on school property when such firearm or knife is stored in a motor vehicle and there is no evidence of the pupil's intent to use the firearm or knife in a criminal manner.

La. R.S. 17:416.

THE IMPACT OF COVID-19 ON SCHOOLS

14. In late-2019, a serious viral respiratory infection – subsequently identified as COVID-19 – emerged in Wuhan, China. COVID-19 infections soon spread worldwide. On January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency in response to the COVID-19 pandemic. On March 11, Governor Edwards likewise declared a statewide public health emergency. On March 13, Governor Edwards ordered all public schools in the State of Louisiana to close their physical facilities to students; he subsequently ordered those schools to remain physically closed through the end of the 2019-2020 school year. Public schools — including JPSB — accordingly began to use virtual platforms in order to meet their instructional goals and keep school children on track to advance academically.

15. In July 2020, JPSB published its plan for reopening schools — *Start Strong Jefferson* — which was purportedly “developed after months of collaboration and thoughtful planning with school and district leaders.” According to media reports 18,000 students elected to receive virtual instruction.

Nevertheless, upon information and belief, JPSB did not adopt or alter any discipline policy to account for the different disciplinary and privacy interests implicated by virtual learning.

KA'MAURI HARRISON

16. On September 11, 2020, Ka'Mauri Harrison ("Ka'Mauri") — a fourth grade student at Woodmere Elementary School — was enrolled as a "virtual" student and was taking a make-up test in his bedroom. His teacher could view him but not hear him, and he could view her but not hear her because he had been instructed to mute his computer. While Ka'Mauri was taking the test, his brother entered the bedroom and tripped over a Daisy BB gun in their shared bedroom. Ka'Mauri picked up the toy BB gun, crossed it over his body (passing the screen), and moved it out of his younger brother's way. Ka'Mauri then continued taking the test. Ka'Mauri never pointed the BB gun at the screen, and he did not say a word to the class or his teacher. Upon information and belief, Ka'Mauri believed he was doing the right thing by picking up the BB gun and moving it out of his brother's way, and he had no intent for his BB gun to appear on the screen.

17. A JPSB document titled "Louisiana Department of Education School Behavior Report" ("Behavior Report") states that Ka'Mauri:

Left his seat (at home) momentarily, out of view of the teacher. When the student returned, he had what appeared to be a full-sized rifle in his possession. He placed it on the side of his chair so that we could only see the barrel. I immediately called the student's name to ask him what he was doing with a rifle and to have him remove it from the view of the other students. I called his name a few times. He did not reply. The student had muted not just his voice but appeared to have [muted] the volume on his computer as well so that he would not be disturbed as he took the [test].

* * * * *

I called his name again, but shortly thereafter, the student was disconnected from the screen due to internet issues. At this time I contacted Principal White to inform her of what had just happened. Ms. White immediately sent the behavior interventionist to my room to investigate the matter. I gave a statement, then the behavior interventionist left my room.

* * * * *

At 12:39 pm, the student's mother called my cell phone to ask about what happened. [Apparently the parents could not be reached by the Interventionist, so the student's emergency contact (grandfather) was called. Once the parent received the message, the mother called my cell phone to determine what was going on]. I explained to her what

occurred. The mother said what I thought was a rifle was actually a BB gun. I told her I reported the Incident and that someone from the school is trying to contact her.

As I went to give the parent's phone number to Mrs. White, the mother called my cell phone again at 12:51 so that I could explain to the student's father what had occurred. The father had concerns about his son's action, as well as concerns about privacy within his home and virtual learning.

Upon information and belief, Ka'Mauri's father objected to the lack of fair notice and to the application of mandatory expulsion policies to his private home. Ka'Mauri's teacher and/or Principal subsequently submitted a disciplinary referral to the School District in which Ka'Mauri was accused of "14 BRINGING A FEDERALLY BANNED WEAPON TO SCHOOL."

18. During Ka'Mauri's September 22, 2020, Due Process hearing, Hearing Officer Joia asserted that "when you are involved in a lesson online . . . it really is an extension of the classroom," and "*look[ing] at the law it really indicates that it carries over from the physical building to any activity that is covered under the school grounds.*"

19. In a letter identified as "Hearing Officer Determination on Recommendation of Expulsion" dated September 22, 2020, Hearing Officer Joia stated that "based upon the evidence presented at the hearing . . . it has been determined that [Ka'Mauri] is guilty of displaying a facsimile weapon while receiving virtual instruction from Woodmere Elementary School," *i.e.*, a different purported offense under JPSB policies from the purported "possesses weapons prohibited under federal law" offense of which Ka'Mauri had been accused. *Cf. Labrosse v. St. Bernard Parish School Bd.*, No. CA-3800 (La. App. 4th Cir. 2/14/86), 483 So. 2d 1253, 1257-58 (holding that a school board violated due process by expelling a student on a charge that was never made against him).

20. Hearing Officer Joia was undoubtedly correct that Ka'Mauri could not be found guilty of "14 BRINGING A FEDERALLY BANNED WEAPON TO SCHOOL." A BB gun is not a federally banned weapon. Indeed, a BB gun does not even qualify as a firearm or dangerous instrumentality under State law. State law also does not recognize or define "facsimile" weapons nor

does it define a “virtual” classroom as “school property” or anywhere include a private home as school property. Indeed, to construe any law or policy as regulating the possession of a firearm in a private home would implicate serious constitutional concerns, and the law or policy would be subject to strict scrutiny. LA. CONST. art. I, § 11; *see also* U.S. CONST. amend. II, IV, XIV; *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

21. Upon receipt of the Hearing Officer Decision Letter, Ka’Mauri’s counsel timely requested an appeal. Patricia Adams, Chief Counsel for JPSB, responded “[t]here is no right of appeal for a suspension,” contradicting the plain text of La. R.S. 17:416(C), which provides for appeal to the parish school board in cases arising from “the *recommendation* by a principal for the expulsion of any student.” Indeed, when Ka’Mauri’s father emailed the president of the school board requesting an appeal, Patricia Adams responded by pointing to a JPSB policy that “[t]he decision of the superintendent of schools on the merits of the case, as well as the term of the suspension, shall be final,” and claiming that the Jefferson Parish School Board “is bound to act in accordance with its own policies.”

22. On September 29, 2020, the Attorney General issued a letter copied to, *inter alia*, JPSB regarding children “recommended for expulsion” based upon allegations of misconduct at their homes. The Attorney General explained that La. R.S. 17:416(C)(1) provides appeal rights for a child that vest upon a “recommendation for expulsion” by the child’s principal. The Attorney General noted as “troubling” the “misreading of the plain text of the law by the Chief Legal Counsel for the [JPSB] who has cited to Board policy as authority for superseding rights that are unambiguously provided in statute.” He went on to explain that “the systematic violation of student constitutional rights could also have implications for school systems’ eligibility for state and federal funds.” Despite having the Attorney General’s letter called to its attention by Ka’Mauri’s counsel, JPSB continued to deny Ka’Mauri an appeal.

THE KA'MAURI HARRISON ACT (ACT 48)

23. H.B. 83 was submitted to the legislature in response to Defendants' outrageous mistreatment of Ka'Mauri. The sponsor of H.B. 83, Rep. Romero, explained the bill was written in collaboration with the Attorney General's Office; would address cases in which students "have been expelled or suspended for doing what would be considered normal at home;" require "policies to be developed for students and teachers in a virtual environment;" "separate a school setting from a home setting;" and "provide a path for students and their families to appeal" certain disciplinary actions.¹ Both the Attorney General's Office and Rep. Romero explained the bill "clarifies the existing law" in response to JPSB's actions.²

24. Testifying before the Senate Education Committee, the Superintendent of West Baton Rouge Schools testified that – in contrast to JPSB – his district "did review our policies, did communicate with our parents." He went on to note that changes in policy could be implemented in about one month, depending on the schedule for school board meetings. And he implicitly rejected JPSB's actions vis-à-vis Ka'Mauri:

SEN. JACKSON: This is . . . somewhat strange that this even come before us. How did your school district get to restricting what was in people's homes? How did anyone think that was a plausible restriction?

SUPERINTENDENT WATTS: So for us, we didn't. I can only speak for my school district on that . . . Home is private.

25. JPSB sent two representatives to testify in opposition to H.B. 83. JPSB legislative liaison Jennifer Ansardi conceded that H.B. 83 would "clarify the law." But rather than concede JPSB had erred in its treatment of Ka'Mauri, she doubled down:

¹ House Education Committee (Oct. 7, 2020) at 1:21:10 - 1:22:02 (available https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2020/oct/1007_20_ED).

² Senate Education Committee (Oct.) at 1:07:00 – 1:10:30 (available http://senate.la.gov/video/videoarchive.asp?v=senate/2020/10/101920EDUC_0)

MS. ANSARDI: Whatever is not acceptable in a classroom, on the school bus, at a school dance, is not acceptable also in a virtual classroom. That is our position.

JPSB's outside counsel then noted the existence of racial overtones, stating "I know this is the elephant in the room This is not about race." He then conceded that Ka'Mauri's case involved "a toy gun, and it's not regulated." But, like Ms. Ansardi, he doubled down on JPSB's treatment of Ka'Mauri:

MR. PREIS: This has a lot to do, but not a lot to do with privacy Right now, the home is considered on camera as part of the school system.

26. JPSB's position was roundly and soundly rejected by the legislature. H.B. 83 passed without a single legislator voting in opposition. On November 6, 2020, Governor Edwards signed H.B. 83 into law as Act 48, which amended La. R.S. 17:416 as follows:

(C)(4) The parent or tutor of the pupil who has been recommended for expulsion pursuant to this Section may, within five days after the decision is rendered, request the city or parish school board to review the findings of the superintendent or his designee at a time set by the school board; otherwise the decision of the superintendent shall be final. If requested, as herein provided, and after reviewing the findings of the superintendent or his designee, the school board may affirm, modify, or reverse the action previously taken. The parent or tutor of the pupil shall have such right of review even if the recommendation for expulsion is reduced to a suspension.

(C)(5)(a) The parent or tutor of the pupil who has been recommended for expulsion pursuant to this Section may, within ten days, appeal to the district court for the parish in which the student's school is located, an adverse ruling of the school board in upholding the action of the superintendent or his designee. The court may reverse or revise the ruling of the school board upon a finding that the ruling of the board was based on an absence of any relevant evidence in support thereof. The parent or tutor of the pupil shall have such right to appeal to the district court even if the recommendation for expulsion is reduced to a suspension.

(C)(5)(b) If a judgment is rendered in favor of a student who sought judicial review of a decision of a school board pursuant to this Paragraph, the judgment may include an award for reasonable attorney fees if the court finds any school official acted in a grossly negligent manner; with deliberate disregard for the consequences of his actions to the student; with willful or malicious indifference; with intent to deprive the student, his parent, guardian, or tutor of due process; or initiated a charge that is knowingly false. The court may award any damages appropriate under the circumstances and render any other appropriate relief including but not limited to requiring the school board to issue an official apology letter, which shall be provided to the student, his parent, guardian, or tutor, and retained in the student's educational records.

* * * * *

K. For the purposes of this Section, "virtual instruction" means instruction provided to a student through an electronic delivery medium including but not limited to electronic learning platforms that connect to a student in a remote location to classroom instruction. A city or parish school board discipline policy shall clearly define the rules of conduct and expectations of students engaged in virtual instruction, shall provide for notice of such rules and expectations to the parents and guardians of students, shall include clearly defined consequences of conduct, shall be narrowly tailored to address compelling government interests, and shall take into consideration the students' and their families' rights to privacy and other constitutional rights while at home or in a location that is not school property.

2020 Second Extraordinary Session Act 48 § 1.

27. Act 48 further provided that:

Any student who has been recommended for expulsion, even if the recommendation for expulsion was reduced to a suspension, for behavior displayed while participating in virtual instruction, as defined in R.S. 17:416(K) as enacted by this Act, between March 13, 2020, and December 31, 2020, shall be entitled to [*inter alia*] the following:

(a) A hearing within thirty days conducted by the school board to determine whether charges should be dismissed and to provide the student with any other relief including but not limited to reinstating the student's enrollment status.

(b) Judicial review of any decision by the school board in the district court where the student's school is located.

(c) De novo judicial review of the school board's decision. After such review, the court may determine whether the student shall be cleared of the charge, whether any other conditions placed on the student shall be removed, or if the student is eligible for any other relevant relief.

* * * * *

The provisions of this Act shall be given prospective and retroactive application.

2020 Second Extraordinary Session Act 48 §§ 2-3.

THE INTERIM VIRTUAL DISCIPLINE POLICY

28. Just days before Governor Edwards signed the Ka'Mauri Harrison Act into law, the School Board amended its agenda for its regularly scheduled November 4, 2020, meeting to include an "Interim Virtual Discipline Policy" as part of the School Board's "consent agenda." The proposed policy candidly acknowledged that "[s]tudents may be required to attend school virtually when schools

are closed due to inclement weather or other unanticipated emergencies.” It then went on to proclaim, among other things:

Student conduct is governed, at all times, and regardless of the model of instruction, by La. R.S. 17:416 and the Student Code of Conduct, as set forth in the Procedures and Policies for Parents and Students. Conduct that is unacceptable in the physical classroom is, under most circumstances, equally unacceptable in the virtual classroom. ***While students and parents normally have an expectation of privacy in their home, conduct that occurs in front of a camera, and in view of peers and teachers in the virtual classroom, shall be governed by applicable law and District policy.***

* * * * *

Students and parents, typically, have a reasonable expectation of privacy with regard to what takes place in their home outside of the view of teachers and peers in the virtual classroom.

* * * * *

Parents and students must be aware that conduct that is unacceptable and disruptive in the regular classroom environment is, typically, unacceptable in the virtual classroom.

29. The Attorney General sent a representative to the JPSB’s meeting to convey Attorney General Landry’s concern with the proposed Interim Virtual Discipline Policy and inform the JPSB of serious legal deficiencies with that policy. The Attorney General’s representative explained that R.S. 17:416 never contemplated being applied in the home, and applying it there would render the statute unconstitutionally vague and overbroad. The Attorney General’s representative also explained that the Ka’Mauri Harrison Act makes clear that different rules apply to virtual instruction, and such rules must be “narrowly tailored to address compelling government interest, and take into considerations the constitutional rights of students and their families, including the right to privacy in their homes.” Finally, the representative explained in detail that the composition of JPSB’s Disciplinary Review Committee was contrary to the applicable statutory requirements.³

30. The JPSB ignored the Attorney General’s concerns and unanimously approved the Interim Virtual Discipline Policy. Contrary to the express command of the Ka’Mauri Harrison Act,

³ Jefferson Parish School Board Meeting (Nov. 4, 2020) at 1:43:26 – 1:48:30 (available <https://vimeo.com/475938914>)

the Interim Virtual Discipline Policy does not “include clearly defined consequences of conduct,” is not “narrowly tailored to address compelling government interests,” and does not “take into considerations the students’ and their families’ rights to privacy and other constitutional rights while at home or in a location that is not school property.”

31. JPSB has since sought to induce parents to sign documents agreeing that the Interim Virtual Discipline Policy applies in their homes and purporting to waive their constitutional and statutory rights.

MASSIVE RESISTANCE

32. On or about November 17, 2020, JPSB quietly announced that it would convene a special session to “challenge the constitutionality of Act 48 of the 2012 Special Session.” Of course, 2012 did not have a special session, and 2012 Act 48 authorized the Department of Health and Hospitals to transfer land to the City of Eunice.

33. On November 18, 2020, JPSB convened its special session. After nearly a one hour executive session, JPSB returned to open session and admitted its announcement was in error. JPSB then performed a “first reading” of a Motion to Authorize potential litigation to challenge the constitutionality of the Ka’Mauri Harrison Act. The motion was approved after a “second reading” on December 2.

34. JPSB finally notified Ka’Mauri that JPSB would hear his appeal. That hearing took place on December 4, 2020. JPSB member Mark Morgan presided. Rather than even attempt to maintain an appearance of impartiality, he used the hearings as a platform to attack the Attorney General, and he went so far as to coach JPSB Chief Legal Counsel Patricia Adams on when she needed to object. During the proceedings, Morgan opined that Ka’Mauri’s father had interfered with his Due Process rights by seeking to retain counsel.

35. Not surprisingly, JPSB upheld the weapons on campus violations against Ka'Mauri, despite the lack of a weapon and despite the lack of a school campus.

36. Morgan concluded the proceedings by stating he had a dinner reservation at Irene's, and his wife would "kill" him if he missed it.

JPSB'S OBLIGATIONS TO THE STATE

37. JPSB has more than 52,000 students, and it is the State's largest school district. As of FY 2019, 80.98% of those students come from low-income households, and 12% of those students are classified as special education students.⁴ In addition to its general obligation to comply with State and Federal law, JPSB has undertaken specific obligations to do so.

38. JPSB is heavily funded by the State and Federal governments. In 2019, JPSB ended the fiscal year with a combined ending governmental fund balance of \$297 million. These funds include State Minimum Foundation funds in excess of \$222 million (distributed pursuant to the MFP formula as approved by the Legislature annually), other state grants exceeding \$6.5 million; and federal grants exceeding \$56 million.⁵ Federal funds include, but are not be limited to: Title I funds (a federally funded program that directs resources to disadvantaged, low-achieving students); Title IIA funds (federally funded program to increase academic achievement of students by improving teacher quality); Title III funds (federally funded program supporting programs for low English proficiency students and adult learners), school lunch program funds, and FEMA Funds.

39. JPSB has over \$90 million in bond debt that is subject to significant disclosure obligations relative to JPS's financial risks. JPSB also has significant pension liability (exceeding \$500 million) to fund the Teacher's Retirement System (TRSL), and LASERS (approximating \$3 million),

⁴ See 2019 Legislative Audit (available [http://app.la.state.la.us/PublicReports.nsf/0/316F2E8E787337738625856E0070EDE8/\\$FILE/0001FF1A.pdf?OpenElement&.7773098](http://app.la.state.la.us/PublicReports.nsf/0/316F2E8E787337738625856E0070EDE8/$FILE/0001FF1A.pdf?OpenElement&.7773098))

⁵ *Id.* at 7, 11.

both of which are guaranteed by the State pursuant to La. Const. art. X, § 29. Defaulting on its contributory pension obligations would impose significant and direct costs on the State General Fund.

40. Upon information and belief, JPSB obtains and expends State funds appropriated to the Division of Administration, Office of Facility Planning and Control, for legislatively-approved projects. In connection with the reimbursement of costs for such projects, JPSB signs a Memorandum of Understanding with the Office of Facilities Planning and Control agreeing to comply with State and Federal laws (including both State and Federal Constitutions).

41. State agencies including the Department of Education, Department of Health, Governor's Office of Homeland Security, as designated agencies for the receipt and oversight of sub-grants of federal funds to local political subdivisions, including upon information and belief JPSB, have exposure to the federal government for repayment of funds if the terms and conditions of receipt and expenditure of those funds are violated. These terms and conditions include an assurance that both the State (as the grantee) and its sub-grantees will comply with all requirements of the federal constitution and any applicable federal laws. The State also requires recipients to assure they are and will remain compliant with State law and the State Constitution.

42. As a guarantor of pension obligations, the State general funds also faces significant loss if required to fund any deficit in the JPSB's capacity to pay those obligations. Ongoing and systemic violations of 52,000 school children and their parents' constitutional rights through the application and threat of enforcement of its unconstitutional policies and application of State disciplinary statutes creates financial risk to the State.

INJUNCTIVE RELIEF IS WARRANTED

43. For over forty years, JPSB was subject to a federal injunction as a result of its history of violating students' civil rights. *See Dandridge v. Jefferson Parish Sch. Bd.*, 332 F. Supp. 590 (E.D. La.

1971), *aff'd* 456 F.2d 552 (5th Cir. 1972), *cert. denied* 409 U.S. 978 (1972). Indeed, JPSB was not relieved of that supervision until it entered a Final Settlement Agreement in 2011.

44. In the years since JPSB was relieved of supervision, JPSB repeatedly entered agreements with the U.S. Department of Education to resolve findings that JPSB violated students' civil rights. *See* Resolution Agreement, USDOE-OCR Dkt. No. 6151579 (resolving finding of discrimination on the basis of student's disabilities); Resolution Agreement, USDOE-OCR Dkt. No. 6141623 (resolving finding of discrimination on the basis of student' national origin). In yet more cases, JPSB entered resolution agreements prior to receiving adverse findings of civil rights violations. *See* Commitment to Resolve, USDOE-OCR Dkt. Nos. 6121511, 6131496 (resolving complaints of national origin discrimination); Resolution Agreement, USDOE-OCR Dkt. No. 6121539 (resolving complaints of national origin discrimination); Resolution Agreement, USDOE-OCR Dkt. No. 6121244 (resolving complaint of discrimination on the basis of student's disabilities).

45. During the same period, Louisiana courts repeatedly found that JPSB violated unambiguous statutory law. *See, e.g., Jefferson Fed'n of Teachers v. Jefferson Par. Sch. Bd.*, 12-262 (La. App. 5 Cir. 11/13/12); 105 So. 3d 897; *Jefferson Fed'n of Teachers v. Jefferson Par. Sch. Bd.*, 11-836 (La. App. 5 Cir. 04/10/12); 92 So. 3d 962. Perhaps most notably, in *Barton v. Jefferson Par. Sch. Bd.*, 14-761 (La. App. 5 Cir. 05/28/15); 171 So. 3d 316, the Louisiana Fifth Circuit held not only that the JPSB abused its discretion in imposing discipline, but that the JPSB violated its own policies in doing so.

46. This lengthy history of disregarding civil rights and unambiguous statutory commands; JPSB's recent refusal to comply with unambiguous statutory law regarding disciplinary appeal rights despite the Attorney General's express written warning; JPSB's unanimous adoption of the Interim Virtual Discipline Policy after being warned by the Attorney General that the policy was unlawful, unconstitutional, and contrary to the Ka'Mauri Harrison Act; and JPSB's attempt to condition

provision of education on parents and students waiving their constitutional rights makes clear that JPSB will not voluntarily comply with unambiguous legal mandates if not compelled to do so.

47. JPSB's conduct is contrary to its obligations to the State of Louisiana and places the State Treasury at risk of irreparable harm.

CLAIMS FOR RELIEF

COUNT I – ULTRA VIRES ACTS

48. Paragraphs 1-47 are incorporated as if fully set forth herein.

49. “School boards possess only delegated powers defined by statutes and are not free to act as individuals and can do no act beyond the special powers delegated to them.” *Stokes v. Harrison*, 115 So. 2d 373, 377 (La. 1959) (quoting *Ellis v. Acadia Parish Sch. Bd.*, 29 So. 2d 461, 464 (La. 1946)). Accordingly, any act by a school board that is not authorized by statute or that does not comply with statutory processes is null and void. *Ellis*, 29 So. 2d at 464; *see also, e.g., Chevron U.S.A., Inc. v. Vermillion Parish Sch. Bd.*, 215 F.R.D. 511, 516-17 (W.D. La. 2003) (holding that Louisiana law did not authorize school board to serve as a class representative).

50. JPSB has acted ultra vires, including by purporting to regulate non-disruptive conduct in a student's private home; purporting to suspend or expel students without complying with statutory requirements; purporting to suspend or expel students for offenses that unequivocally don't apply to the facts alleged by JPSB employees; failing to provide meaningful appellate review in cases where students have been recommended for expulsion; purporting to adopt and apply an interim virtual discipline policy that does not comply with the Ka'Mauri Harrison Act; and purporting to condition the provision of education on waivers of rights under Louisiana statutes, the Louisiana Constitution, and the United States Constitution.

COUNT II – FAILURE TO COMPLY WITH R.S. 17:416.8

51. Paragraphs 1-47 are incorporated as if fully set forth herein.

52. La. R.S. 17:416.8(A) requires each school board to establish a disciplinary policy review committee with a specified composition. Upon information and belief, JPSB has failed to do so.

53. La. R.S. 17:416.8(A)(c)(2) requires each school board to at least annually review its discipline policies. Nevertheless, during the 2020-2021 school year, JPSB provided families with a “Procedures & Policies for Parents & Students” indicating on its face that it was applicable to the 2019-2021 school years. By necessary implication, JPSB failed to conduct the required review of its disciplinary policies. Moreover, the document provided by JPSB included no discipline policies applicable to virtual learning.

COUNT III – FAILURE TO COMPLY WITH THE KA’MAURI HARRISON ACT

54. Paragraphs 1-47 are incorporated as if fully set forth herein.

55. The Ka’Mauri Harrison Act requires that

A city or parish school board discipline policy shall clearly define the rules of conduct and expectations of students engaged in virtual instruction, shall provide for notice of such rules and expectations to the parents and guardians of students, shall include clearly defined consequences of conduct, shall be narrowly tailored to address compelling government interests, and shall take into consideration the students' and their families' rights to privacy and other constitutional rights while at home or in a location that is not school property.

56. JPSB’s Interim Virtual Disciplinary Policy does not comply with the Ka’Mauri Harrison Act, including by purporting to regulate student’s non-disruptive conduct in their private homes.

COUNT IV – FAILURE TO COMPLY WITH LA. R.S. 17:416

57. Paragraphs 1-47 are incorporated as if fully set forth herein.

58. Defendants repeatedly failed to comply with La. R.S. 17:416 by, *inter alia*, refusing or failing to adhere to procedures provided to students *and their counsel* prior to hearings; adjudicating students guilty of offenses other than the offenses for which they were provided notice; charging and adjudicating students guilty for conduct outside of JPSB’s authority to regulate, including non-

disruptive conduct in the student's private home; arbitrarily charging and adjudicating students guilty of offenses that facially and obviously do not apply to the conduct alleged by JPSB employees; and refusing appeals for students recommended for expulsion as required by Louisiana law.

COUNT V – VIOLATION OF DUE PROCESS

59. Paragraphs 1-47 are incorporated as if fully set forth herein.

60. JPSB has a policy, practice, or custom of violating the Due Process rights of its students (and their parents) under the Louisiana Constitution and the United States Constitution through its erroneous interpretation and application of La. R.S. 17:416 and its purporting to condition its educational services on waivers of constitutional and statutory rights.

PRAYER FOR RELIEF

WHEREFORE, the State of Louisiana prays that this Court:

1. Construe La. R.S. 17:416 and declare that La. R.S. 17:416 does not extend to nondisruptive conduct in the private home;
 2. declare that JPSB and its employees have acted ultra vires and in violation of Louisiana law, including La. R.S. 17:416 and 17:416.8;
 3. declare that JPSB has a policy or practice of violating the Due Process rights of its students and their parents;
 4. preliminarily and permanently enjoin JPSB and its employees from further ultra vires, unlawful, and unconstitutional acts;
 5. award the State of Louisiana its costs and attorney fees to the extent provided by law;
- and
6. grant such other relief as is just and proper.

JEFF LANDRY
ATTORNEY GENERAL

/s/ Elizabeth B. Murrill
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