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# NAACP

FLAGLER COUNTY BRANCH  
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CHARTERED FEBRUARY 15, 1986

2015 – 2016

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February 15, 2016

***Served via Electronic Email***

Jacob Oliva, Superintendent  
Flagler County Schools  
1769 East Moody Blvd. Bldg. #2  
Bunnell, FL 32110

**RE: NOTICE OF DISPUTE AND DEMAND FOR NEGOTIATION  
MEETING UNDER THE SPLC AGREEMENT**

Dear Superintendent Oliva:

You are herewith served with this Notice of Dispute and demand for a negotiation meeting pursuant to the general provisions, *page 8* of the Southern Poverty law Center (SPLC) Agreement. We will be seeking, *inter alia*, legal redress under the Family Educational Rights and Privacy Act, *hereafter* (FERPA), United States Code (U.S.C.) § 1232g, Title 34 of the Code of Federal Regulations (CFR) part 99.31(a)(7), Subpart D, the Freedom of Information Act, *hereafter* (FOIA) codified under 5 U.S.C. § 552, the State of Florida Constitution Article 1 and the State of Florida Statute §§ 119.07 and 119.071. Collectively, these statutory laws supercede any school district policy, school code of conduct, school board directive or administrative order.

We are concerned about the increasing number of recent out-of-school suspensions of black students from school campuses and school bus service. Your administration has willfully, intentionally and arbitrarily engaged in an unlawful pattern and practice to obstruct and prevent our organization and the parents of the students suspended from school, reasonable access to inspect or review the security video and related documents defined under educational records. These unlawful actions are against the weight of statutory law cited above.

Furthermore, we are concerned about the *Flagerlive* article posted January 14, 2016, regarding the Florida Department of Education's data showing the dismal and decreasing graduation rate of black students which is in direct contradiction to your own touted figures of success. We have also received information that conditions at BTMS have gotten increasingly worse under Principal Nathan Lovelette. We understand that teachers and staff are not feeling safe at the school, and that School Board member Andy Dance was present at their safety meeting. We understand that student behavior

has gotten worse and that students are increasingly more aggressive and disrespectful to the school staff. Students are in the hallways running, yelling, traveling in mob groups and that profane language is being directed at teachers. It was reported that one teacher had her hair pulled and another teacher was kicked in the knee. The lack of personnel, combined with the aforementioned issues, give rise to the issuance of this notice.

As a party to this agreement, we informed Dr. Amir Whitaker, Ed.D., Esq., of our concerns and intentions. The chief gravamen of our dispute is the numerous recent community complaints from concerned parents, and the school district's gratuitous and extra-judicial refusal to provide access to educational records relative to our investigations. We are providing you with adequate notice that we will be seeking resolution to the following points authorized by the statutory laws cited in this notice:

1. The Flagler County Branch NAACP President or her designee shall be permitted access, inspection, review or copies of educational records for the specific legitimate purpose of investigating community complaints. Our complaint form filed by a parent or legal guardian of a student who has been suspended or suffered any discipline, a student who has attained eighteen years of age, a student who is attending an institution of postsecondary education with permission, consent and rights transferred to the student shall constitute sufficient evidence of legitimate purpose.
2. A parent or legal guardian of a student who has been suspended or suffered any discipline, a student who has attained eighteen years of age, a student who is attending an institution of postsecondary education with permission, consent and rights are transferred to the student shall be permitted access to inspect, review or receive copies of educational records.
3. When a student is suspended from the school campus or school bus service, the Flagler County School District shall email or fax the **Student Referral Notice** or **Notice of Suspension** to the Flagler County Branch NAACP Office. The notice shall detail the cause for the suspension and specify the matrix that was considered prior to the suspension of the student.
4. If the school district should deny or limit our request for educational records including access to videos of incidents that occurred on the school campus or bus, the school district shall give a detailed explanation in writing citing applicable laws. The notice shall state their cause for denial and cite the section of law relied on to deny our access to records. The notice shall be emailed or faxed to the office of the FCB NAACP.
5. Pursuant to FERPA § 1232g sub. (b)(1)(G) and 34 CFR 99.31(7), Subpart D, we demand access to inspect and review the security video records in the suspension case of Hines, McGlocking and our most recent case of Anderson, w a student recently suspended from school bus service. The parents in these suspension cases are also entitled to inspect and review the video records pursuant to 34 CFR Part 99.10(a)(1), Subpart B.

6. If resolution is reached, our demands shall be attached to the existing SPLC Agreement as an addendum and shall be retroactive to our existing community complaints.
7. The General Provisions of the SPLC Agreement shall be amended to specify that "if a dispute should arise and can not be resolved between parties, the parties shall file their cause for action to the American Arbitration Association. The decision of the arbitrator shall be final and binding." The AAA tribunal is a reputable group of independent and neutral arbitrators randomly selected. Currently, an unspecified arbitrator is required by the SPLC agreement to resolve disputes.
8. Notwithstanding, separate and apart from our rights under the general provisions of the SPLC Agreement to negotiate our dispute under this agreement, the school district shall take notice that a parent, eligible student and FCB NAACP reserves the right to file a written complaint with the Family Policy Compliance Office or the U.S. Department of Education for violations alleged under FERPA § 1232g sub. (b)(1)(G), 34 CFR 99.31(7), Subpart D and 34 CFR Part 99.10(a)(1), Subpart B, all statutory laws governing federally funded educational institutions.

### ***Legal Discussion***

In sum and substance, our demands are consistent and codified under FERPA § 1232g (1)(A) and (B) which states:

(1)(A) "No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made."

(B) "No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance

at any school of an educational agency or institution that is subject to the provisions of this section.”

*In posit*, consistent under the unassailable authority of FERPA § 1232g and 34 CFR 99.31(a)(7), Subpart D, we are an accredited organization and a party to the SPLC Agreement in which we must occasionally access educational records and videos in accordance to this law, in order to carry out our accredited and legitimate investigations of complaints by parents or students. Therefore, we shall be considered an **exempt authority** pursuant to FERPA § 1232g sub. (b)(1)(G), which states relevant in part:

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping:

(1) “No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, **other than to the following** -

(G) accrediting organizations in order to carry out their accrediting functions;”

The FCB NAACP is also entitled access to educational records without prior consent pursuant to 34 CFR 99.31(a)(7), Subpart D, which states in relevant part:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by§ [99.30](#) if the disclosure meets one or more of the following conditions:

**(7)** The disclosure is to **accrediting organizations** to carry out their accrediting functions.

A parent or student is entitled access to educational records pursuant to 34 CFR Part 99.10, Subpart B, which states in relevant part:

§ 99.10 What rights exist for a **parent or eligible student** to inspect and review education records?

(a) Except as limited under§ [99.12](#), a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution;

It is therefore our position that these statutory laws upon which we rely on are without ambiguity.

### **CONCLUSION**

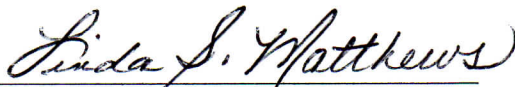
It is our understanding and interpretation of the aforementioned cited statutory laws that the parent, eligible student and the Flagler County Branch NAACP are entitled to access, inspection, review and copies of educational records and to review security video footage upon request in matters of student discipline which is *sine qua non* to our investigations.

Your practice and unwritten policy to obstruct and arbitrarily deny parents, eligible students and limit our access to educational records is unlawful, against the weight of the statutory laws cited herein and makes the school district liable for defunding by the United States Department of Education should a complaint be filed with the Family Policy Compliance Office of the U.S. Department of Education for non-compliance with statutory laws.

We request that your general counsel review this notice. If your counsel should disagree with our interpretation of the laws cited in this notice, please respond in writing detailing your objections prior to our meeting. Please be prepared to reciprocate each of our points listed in this notice. In accordance with general provisions of our SPLC Agreement, we demand that a negotiating meeting be set down and scheduled forthwith for a date and time to be settled. Please contact me directly for any questions regarding the content of this notice and scheduling this meeting.

Thank you very much in advance for your time in reviewing our legal dispute notice and moving expeditiously to redress our raised demands under statutory law.

Sincerely,

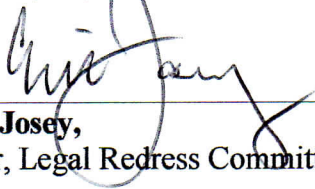


**Linda Sharpe Matthews,**

President

Email: [lhaywood@fcbnaacp.org](mailto:lhaywood@fcbnaacp.org)

Phone: (386) 446-7822



**Eric Josey,**

Chair, Legal Redress Committee

Cc: Flagler County School District Board Members, (By-Email)

Kristy Gavin, Flagler Schools General Counsel, (By-Email)

Lynette Shott, Flagler Schools Director of Student and Community Engagement  
Vernon Orndorff, Flagler Schools Executive Director of Leadership Development  
Timothy King, Student Behavior and Discipline Coordinator, (By-Email)  
Amir Whitaker, Ed.D., Esq., Southern Poverty Law Center, (By-Email)  
Martine Wallenberg, Chair, Education Committee, (By-Email)

### ***Legal Citations***

- Family Educational Rights and Privacy Act (FERPA)
- United States Code (U.S.C.) § 1232g and sub. (b)(1)(G)
- Title 34 of the Code of Federal Regulations (CFR) part 99.31(a)(7), Subpart D
- Title 34 CFR Part 99.10(a)(1), Subpart B
- Freedom of Information Act (FOIA) codified under 5 U.S.C. § 552
- State of Florida Constitution *Article 1*
- State of Florida Statute §§ 119.07 and 119.071
- Southern Poverty law Center (SPLC), agreement, general provisions, *page 8*