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October 18, 2021

VIA ELECTRONIC MAIL AND REGISTERED MAIL

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Re: False Imprisonment and Arrest of Tamara Taylor and her Daughter, N.B., at Honowai Elementary on Account of their Race and N.B.'s Disability.

Dear Interim Chief Vanic, Interim Superintendent Hayashi, Corporation Counsel Viola, and Deputy Attorney General Siu,

The ACLU of Hawai'i and Caballero Law LLLC represent Tamara Taylor and her daughter, N.B., both of whom were falsely arrested at Honowai Elementary by the Department of Education ("*DOE*") and the Honolulu Police Department ("*HPD*") on January 10, 2020, when N.B. was only ten years old. Ms. Taylor was detained for 40 to 60 minutes and prevented from seeing her daughter while N.B. was being interrogated by the police and school staff. Without probable cause, N.B. was handcuffed with excessive force and taken to the police station by HPD. Ms. Taylor and N.B. are both Black, and the outrageous and callous actions by school staff and HPD officers that day indicate that they were singled out and

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discriminated against on account of their race. N.B. is also disabled, which Honowai Elementary staff knew, yet failed to consider or inform others involved, when they called the police on a disabled child for a run-of-the-mill school dispute. The actions of HPD officers and DOE staff that day not only constituted false arrest and imprisonment in violation of Ms. Taylor's and N.B.'s right to be free from unreasonable seizures and excessive force, but they were also grossly negligent and violated Ms. Taylor's and N.B.'s equal protection and civil rights, their liberty interest to custody and companionship with each other, and N.B.'s rights as a disabled person.

Because HPD and DOE staff were acting within their scope of employment, the City and County of Honolulu (the "City") and the State of Hawai'i (the "State") are generally liable to Ms. Taylor and her daughter for the damages and pain and suffering caused by their employees' torts. After N.B.'s arrest, in addition to the trauma of being interrogated and arrested as a ten year old, she had to change schools before the end of the school year and eventually moved out of state without her mother, who remained in Hawai'i for a new job with the U.S. Department of Defense. To this day, both N.B. and Ms. Taylor remain traumatized by the actions of HPD officers and DOE staff.

To settle their claims against the City, the State, and their agents, Ms. Taylor and her daughter demand that (1) DOE adopt policies (a) forbidding staff to call the police on a student unless the student presents an imminent threat of significant harm to someone, (b) generally allowing parents or legal guardians access to their children while on school property, (c) requiring that a parent or legal guardian be present whenever a minor student is being interrogated or questioned about potentially criminal behavior, and (d) requiring consultation with a school counselor before calling the police, unless there is an emergency situation; (2) HPD adopt policies (a) requiring that a parent or legal guardian be present whenever a minor is interrogated by an officer, (b) forbidding officers to arrest students in school property unless the student is an imminent threat of significant harm to someone, (c) forbidding officers from entering school property absent an imminent threat of significant harm to someone, and (d) requiring that officers issue citations in lieu of arrest for misdemeanors allegedly committed by minors in school property; and finally (3) the City and State (a) expunge all records related to the arrest of N.B. and (b) pay \$500,000 in damages to Ms. Taylor and N.B. for the harm and suffering caused by DOE staff and HPD officers.

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At this pre-litigation stage, these demands are a good faith attempt to resolve this matter amicably in a case where our client's attorney's fees and costs would likely be quite significant. We ask that you please respond to the offer in this letter before its expiration by close of business on November 8, 2021.

I. Factual Background

A. Ms. Taylor's False Imprisonment and N.B.'s False Arrest

At the beginning of 2020, N.B. was student with a disability and a Section 504 plan attending Honowai Elementary. On January 10, 2020, Ms. Taylor received a phone call from Honowai Elementary Vice Principal, Ms. Terri Runge, at 8:42 am about N.B. being in a dispute with another student. N.B. had allegedly participated in drawing an offensive sketch of a student in response to that student bullying her. Ms. Runge asked Ms. Taylor to come to the school, because "they are thinking about calling the police." Ms. Taylor implored Ms. Runge to not do so and told her she would be shortly on her way.

A Honowai staff member and Honolulu Police Officer Ford greeted Ms. Taylor when she arrived at Honowai Elementary and took her to the school office. Officer Ford then began explaining his presence at school by saying that "some parents take things out of proportion and make things bigger than what they are," apparently referring to the parent who had insisted that the police be called that day. Ms. Runge then led everyone to a private office and left. Officer Ford then continued talking about parenting, child rearing, and some of the calls that he responded to in reference to youth misbehaving. He did not, however, explain to Ms. Taylor the situation involving her daughter or why the police had been called.

Eventually, Officer Ford mentioned that they were negotiating with a parent for some time regarding the matter involving N.B., but did not explain what was being negotiated. Ms. Taylor later learned that this parent was the person who had

¹ To the extent they are applicable, this letter also gives the City notice of Ms. Taylor and N.B.'s injuries and damages under HRS Section 46-72 and Section 13-111 of the Charter of the City and County of Honolulu. In the event of litigation, they will be asking the court to award them special and general damages as well as punitive damages to be determined at trial.

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asked the school to call 911 on N.B. During this conversation, Officer Ford mentioned that he tried to speak to the parent about children being children, how they bully each other, and how there are "other perspectives" on the situation.

A female officer then entered the room and stated that the parent was going to press charges. Ms. Taylor then asked what the charges were for, explained that she would also stand behind her daughter, and that she did not understand what was going on. Instead of answering these questions, Officer Ford stated that he is a father to an 11-year-old and he did not understand why the parent was acting the way she was acting about the situation. The female officer stated that she has a 7-year-old and did not understand either. Vice Principal Runge appeared and described the complainant parent as being "difficult" and that she had never seen a parent act in such way.

In an attempt to better understand and diffuse the situation, Ms. Taylor requested that the police mediate the dispute with the other parent. They informed Ms. Taylor that they already asked the parent to mediate, but she had declined as the parent did not want to meet with her. Ms. Taylor then expressed some concern about being African American in an encounter with the police. With that, she wanted to convey how deeply worried she was about N.B.'s and her safety in light of the police presence given the high rate of police violence against Black people,² and the discriminatory disciplining of Black girls in schools.³ Ms. Taylor still was not sure of the purpose of the police presence at the school. Her questions so far had been ignored and she was concerned about antagonizing the armed police officers. Ms. Taylor renewed her request for mediation, but the officers explained that the parent was "difficult" and they could not get her to budge.

A Honowai staff member appeared and stated to Ms. Runge: "we have to let [N.B.] out of the room soon. She says that she is cold and lonely." Ms. Taylor, who

² See Edwards et al., Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex, Proceedings of the National Academy of Sciences (Aug. 20, 2019), https://www.pnas.org/content/116/34/16793 ("Black women and men . . . are significantly more likely than white women and men to be killed by police.").

³ See Leah A. Hill, Disturbing Disparities: Black Girls and the School-to-Prison Pipeline, 87 Fordham L. Rev. 11, 58–59 (2018); Monique W. Morris, Pushout: The Criminalization of Black Girls in Schools (2016).

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up till then assumed her daughter was in class, immediately asked where her daughter was and Ms. Runge did not answer, instead explaining that N.B. was going to be moved to the nurse's office. Unbeknownst to Ms. Taylor, N.B. had been and was being interrogated by the police and DOE staff about the drawing incident.

At that point, there were three officers in the room and Ms. Runge was standing by the door. Ms. Taylor then asked about who called the police. Ms. Runge answered, "We did." When Ms. Taylor asked why they had called the police when she had specifically asked that they not do so, Ms. Runge responded: "Well, it's the parent's right if she wants us to call the police for her." When Ms. Taylor pushed back, arguing that the school had the discretion not to call the police, Ms. Runge simply reiterated that it was the parent's right to ask the school to do so.

Ms. Taylor then attempted to leave the room, but as she was exiting she was approached by a Honowai staff member with their hands up telling her that she could not leave. There was an armed police officer watching from a few feet away, so Ms. Taylor simply complied. She was then escorted to another room to "stay and wait." After she entered, the door was closed behind her. A few minutes passed and Ms. Runge opened the door and offered Ms. Taylor a bottle of water and then left again. Ms. Taylor was being detained.

Eventually, Officer Ford and Ms. Runge came into the room and Officer Ford then stated that N.B. was treating the situation as a "joke" based on comments made to the school nurse wondering what it would be like to spend a day in jail. Officer Ford and Ms. Runge claimed that N.B. was inappropriately joking around and not taking the matter seriously. Ms. Taylor, knowing her daughter, explained that N.B. was not taking the situation as a joke, but was simply scared. Ms. Taylor tried to exit the room again, standing in front of Officer Ford, but he did not move from the doorway. There was no way for Ms. Taylor to pass. Ms. Taylor then explained again that her daughter was scared and was using a defense and coping mechanism. Officer Ford continued to say that N.B. was taking the situation as a joke, so Ms. Taylor then demanded to see and talk to her daughter immediately. Her request to see and counsel her daughter was denied.

Officer Ford then left as Ms. Runge returned to the room. She said that N.B. had stated previously that she hated coming to school and she hated Hawai'i, and

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wondered if N.B. had done gotten in trouble on purpose to get thrown out of school. Ms. Runge then let Ms. Taylor know that N.B. would be suspended for two days.

After that, two officers asked Ms. Taylor to come outside and told her to follow them to the Pearl City Police Department. Alarmed, Ms. Taylor asked: "Why are we going to the police department? Where is N.B.?" Officer Ford responded that N.B. was being taken to the Pearl City Police Station. Shocked, Ms. Taylor pleaded with them: "No! Why? Bring her back here! What did you just do? No!" In disbelief, Ms. Taylor then saw a police car driving out with her daughter, to which she bellowed: "No! What did you just do? Bring her back here! You've just violated our rights!" Ms. Taylor then started crying, loudly and full of anguish as her daughter was being driven away in handcuffs.

Ms. Taylor, Ms. Runge, Officer Ford, other HPD officers, and other Honowai staff stood outside the front entry of Honowai Elementary for a few minutes, waiting for Ms. Taylor to stop crying. The remaining police and the Honowai staff members began to speak about their difficulty and dismay with the other parent, who insisted on pressing charges. During the conversation, Officer Ford confided to Ms. Taylor that they thought it was best for her not to see N.B. because they did not want Ms. Taylor to "beat [N.B.] at the school."

Once she was calm enough to drive, Ms. Taylor followed the remaining officers to Pearl City Precinct. After photocopying her ID, they released N.B. to Ms. Taylor. N.B. was very hungry and exhausted. The handcuffs had also left marks on her wrists. She had been in the school or HPD's custody for over four hours.

B. <u>Aftermath of the false imprisonment and arrest</u>

On January 13, 2020, Ms. Taylor delivered a grievance letter to Honowai Elementary and Leeward District Superintendent Keith Hui. In the letter, Ms. Taylor explained how on January 10, 2020, she and her daughter had been illegally detained, her daughter interrogated without her consent, and N.B.'s documented disability ignored. Ms. Taylor explained:

Although I was at Honowai Elementary, I was not properly informed or had knowledge that my daughter was removed from the premises, handcuffed in the Re: False Imprisonment and Arrest of Tamara Taylor and her Daughter, N.B., at Honowai Elementary on Account of their Race and N.B.'s Disability.

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presence of staff and her peers, placed into a squad car and taken away. I was stripped of my rights as a parent and my daughter was stripped of her right of protection and representation as a minor. There was no understanding of diversity, African American culture and the presence of police involvement with African-American youth. My daughter and I are traumatized from these events and sure that there is no future for us at Honowai Elementary. I'm disheartened to know that this day will live with [N.B.] as a memory forever.

The letter concluded by requesting N.B.'s immediate disenrollment from the school and a geographic exception to place N.B. in a different school.

That same day at 11 a.m., Ms. Taylor also met with Kent Matsumura, Honowai's Principal, and Ms. Runge. First, Ms. Taylor confronted the school administrators about not being allowed to meet with her daughter on the day of the incident. The administrators falsely claimed that this was "standard procedure." Ms. Taylor also expressed dismay about being forced to stay in the room, to which Ms. Runge explained that they had to stop Ms. Taylor because they saw "fire in her eyes." Ms. Taylor also asked about the investigation into the incident that led to N.B.'s arrest. They said the investigation had concluded. Ms. Taylor then told them that other children had been involved, but the administrators seemed uninterested. They then filled out the necessary paperwork to transfer N.B. from Honowai to her new elementary school.

Between January 14th and the 26th, Ms. Taylor had various conversations with her daughter about what had happened on January 10th and the drawing incident. Concerning the drawing, N.B. explained that while she drew the picture, several other students were involved in coloring and writing on it. N.B. also said that she did not want the drawing delivered but one of the other students snatched it from her hands and delivered it anyways. Concerning the arrest, N.B. explained that she was interviewed by the cops and school administrators about what had happened, including questions about hitting another student, which she denied.

⁴ On the contrary, Chapter 19 does not contain any provision requiring or allowing the school to keep a parent from her child, much less during an investigation.

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N.B. explained that she felt alone and scared, particularly when the police got mad saying she was taking the investigation as a joke. When she was arrested, one of the cops commented to the other "Oh, so she wanted to see what jail is like for a day." N.B. was never told that her mother was in the school and did not see her mom until she was in the police car leaving the school. During her ride to the station, N.B. cried. The handcuffs were on too tight and she remembered them leaving marks when they took them off. When N.B. got to the Pearl City Police Station, officers asked her to take off her shoelaces and earrings, but she explained that she did not know how to, because her mom normally did that for her. At the station, she was also asked if she knew why she was being arrested to which she responded "no."

On January 16, 2021, Ms. Taylor again met with Ms. Runge to pick up a school transfer packet for N.B. At the meeting, the Vice Principal again complained about how difficult the other parent was being and expressed surprise at how the officers had responded by arresting N.B. Ms. Runge also provided the names of two of the officers involved: Officers Ford and Nieves. Ms. Runge also explained that she had prevented Ms. Taylor from leaving the room that day because she was concerned that Ms. Taylor would get arrested for intervening and attacking the other parent or the police. Ms. Runge also agreed that the parent, not the school, should have called the police. Later, Principal Matsumura arrived and confirmed that the parent, not the school, is supposed to call the police, "so the school does not risk liability."

Ms. Taylor and the administrators then discussed the incident that led to the arrest, which concerned a drawing by N.B. and several other students. Ms. Taylor had not seen the drawing before and the school administrator showed it to her. As it turned out, Ms. Runge had actually received the drawing the evening of January 9th, the day before the incident. Ms. Taylor was also surprised to learn that it was the parent of a third student who had come to the school wanting to press charges, not the parent of the student who had received the drawing.

On May 7, 2020, Ms. Taylor filed a written complaint against the three police officers who responded to Honowai Elementary on January 10, 2020. She complained about not being informed of the charges, the lack of probable cause for the arrest, being denied access to her daughter, that the officers interrogated N.B. without her consent, HPD's failure to account for N.B.'s disability, and how Ms.

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Taylor was held in a room against her will. On September 21, 2020, HPD's Professional Standards Office responded by letter stating that they were not able to find sufficient evidence to sustain the complaint.

Following the arrest in January, N.B. attended a different elementary school for the rest of the 2019-2020 school year. In June 2020, N.B. moved with family members on the continent, in part because she was not doing well in the aftermath of the incident in Hawai'i. Ms. Taylor stayed in Hawai'i because of a new job with the Department of Defense, and later moved to the continent to be with N.B. in May of 2021. N.B. was never charged for any alleged crime related to the incident.

II. Constitutional and Civil Rights Violations

A. Ms. Taylor and N.B.'s False Imprisonment and Arrest

On January 10, 2020, Ms. Taylor was falsely imprisoned by HPD officers and DOE staff, who wrongfully prevented her from leaving the two rooms where she was confined while they interrogated and arrested N.B. without probable cause.

"For both false arrest and false imprisonment, the essential elements are (1) the detention or restraint of one against his or her will, and (2) the unlawfulness of such detention or restraint." Reed v. City & Cty. of Honolulu, 76 Haw. 219, 230, 873 P.2d 98, 109 (1994) (cleaned up). In turn, "[a] claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment, provided the arrest was without probable cause or other justification." Lacey v. Maricopa County, 693 F.3d 896, 918 (9th Cir. 2012) (citation omitted). "Probable cause exists if the arresting officers had knowledge and reasonably trustworthy information of facts and circumstances sufficient to lead a prudent person to believe that [the arrestee] had committed or was committing a crime." Gravelet-Blondin v. Shelton, 728 F.3d 1086, 1097-98 (9th Cir. 2013) (cleaned up).

Here, Ms. Taylor was held in two different rooms with police officers and Honowai staff guarding the door. When she first tried to leave the room, a Honowai staff member prevented her from doing so, raising her hands and telling her in front of HPD officers that she had to stay. After that, she was transferred to another room "to wait" and the door was closed. When she tried to exit that room, Officer Ford stood by the entrance and did not budge. She was also denied access to her

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daughter when she asked to see her. Office Ford later admitted that he was afraid Ms. Taylor would hit her daughter. When Ms. Taylor later confronted Ms. Runge about being held against her will, Ms. Runge confirmed on two separate occasions that they did so because they saw "fire" in Ms. Taylor's eyes and were worried about how she would react. As a result of these baseless assumptions, Ms. Taylor was detained against her will for 40 to 60 minutes.

Here, neither HPD nor DOE staff had any probable cause or reasonable suspicion to stop or detain Ms. Taylor. She was not accused of committing a crime and was not under investigation for anything. See HRS §§ 803-3—803-5 (requiring probable cause for warrantless arrest). As a Black woman in the presence of armed cops, Ms. Taylor's belief that she was not free to go was reasonable particularly when she had been instructed to stay by DOE staff and Officer Ford had blocked her exit. State v. Tominiko, 126 Haw. 68, 80, 266 P.3d 1122, 1134 (Haw. 2011) ("[A] person is seized if, given the totality of the circumstances, a reasonable person would have believed that he or she was not free to leave." (citations omitted)). Under such circumstances, holding Ms. Taylor against her will in a room without a warrant was unlawful. See HRS § 803-1. Thus, HPD and DOE falsely imprisoned and unconstitutionally seized Ms. Taylor in violation of her rights under the 4th Amendment and Article I, Section 7 of the Hawai'i Constitution.

N.B. was also held against her will both in school and by HPD officers after she was arrested. For several hours, N.B. was not free to go or see and talk to her mom. She was interrogated by both school staff and the police without her parent present, and without N.B. voluntarily, knowingly, or intelligently waiving her rights to have counsel present.⁵ Eventually, she was arrested because HPD officers believed she was not taking the matter and them seriously, not because she had committed a crime. Even assuming the complaining parent wanted to press charges—and assuming there were valid charges that could be brought against N.B.—N.B. could have easily been surrendered to her mother who was at the

⁵ N.B. was also not read her Miranda rights prior to the interrogation. Under the circumstances, a ten year old is unable to voluntarily, knowingly, or intelligently waive her rights. *In re Doe*, 77 Haw. 46, 50, 881 P.2d 533, 537 (1994) (holding that "the waiver of a minor's right to counsel should be reviewed with great care" based on totality of the circumstances). Thus, HPD also violated N.B.'s rights under the Fifth Amendment and Article I, Section 10 of the Hawai'i Constitution.

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school.⁶ No one else involved in the drawing incident was arrested or interrogated. No charges were ever brought against N.B., who as a ten year old did not intend to commit a crime with a drawing she did not draw alone and did not even want to deliver. N.B.'s detention and false arrest without probable cause violated her rights to be free from unreasonable seizures under the Hawai'i and U.S. Constitutions.

B. <u>HPD and DOE discriminated against Ms. Taylor and her daughter</u> because they are Black.

The series of prejudiced and outrageous actions by HPD officers and DOE staff on January 10, 2020, indicate that Ms. Taylor and her daughter were treated significantly worse than how other parents and students would have been treated because of their race.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race by recipients of federal funds such as HPD and DOE. See 42 U.S.C. § 2000d. Moreover, "private individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages." Alexander v. Sandoval, 532 U.S. 275, 279 (2001). Similarly, private individuals can sue for damages under Section 1983 for violations of the equal protection clause of the 14th Amendment. Cross v. City & Cty. of San Francisco, 386 F. Supp. 3d 1132, 1149 (N.D. Cal. 2019) ("Even if their conduct supported probable cause, Plaintiffs' equal protection rights were still violated if the police targeted Plaintiffs for the buy-walk transactions because of their race.").

Here, the outrageous actions and words of HPD and DOE indicate that Ms. Taylor and her daughter received significantly worse treatment than other parents and students because of their race. First, school administrators called the police on a ten year old when there was no danger to anyone's safety and for an incident involving several children, none of whom were interrogated and arrested.

⁶ HPD, Policy No. 4.33, Handling Juveniles, Procedure, Part V (granting reasonable discretion and providing for several alternatives to apprehension of minors, including "[r]eleasing the juvenile with no further action" and "referral to parents"); Part IV.E (stating that officers "shall be sensitive to the age of the youth and the circumstances surrounding the incident when faced with an apprehension situation on school grounds (or in the educational setting) during school hours" and that officers "shall consider any and all information" about "behavioral disabilities" before deciding to apprehend the youth).

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None of them were Black either. Contrary to Chapter 19, the school also never conducted a "thorough investigation" of the drawing incident and there was no danger or perceived behavior that could not be handled by the school staff. Haw. Admin. Rules §§ 8-19-7.1(a), 8-19-19. Second, school staff and HPD officers interrogated a child about alleged criminal activity without her parents present, in violation of Hawai'i Administrative Rules § 8-19-22(a). Third, when Ms. Taylor arrived the administrators and police kept her away from her child and falsely imprisoned her based on prejudiced assumptions about "angry Black women" that she would beat N.B., get into a fight with the other parent, or get arrested. Both HPD officers and school staff admitted to such prejudices, including Ms. Runge later telling Ms. Taylor that they saw "fire in her eyes." Contrary to Ms. Runge's assertions, separating parent and child are also not standard procedure under Chapter 19. Fourth, HPD handcuffed a 10-year-old in her school and took her to the station, not because she posed a danger to anyone or because she was not cooperating, but because they interpreted her nervous comment wondering what jail would be like as a sign that she was not taking the situation seriously.8 The comments of the officers involved as they were taking her away confirm as much. The real crime was a Black child disrespecting the police. This series of departures from normal procedure and basic common sense is strong evidence that that

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⁷ Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 Iowa L. Rev. 2017, 2049 (2017) ("This so-called 'Angry Black Woman' is the physical embodiment of some of the worst negative stereotypes of Black women—she is out of control, disagreeable, overly aggressive, physically threatening, loud (even when she speaks softly), and to be feared. She will not stay in her 'place."); Sinikka Elliott and Megan Reid, *The Superstrong Black Mother*, 15 Contexts 48-53 (2016),

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4845037/ ("Racial bias can infuse even teachers' perceptions of Black mothers. A 2012 study by Susan Dumais and her colleagues found that elementary school teachers viewed Black parents' involvement in their children's schooling negatively, while interpreting White parents' involvement positively. Similarly, the Black mothers we spoke with whose children were involved with state institutions—including public schools and the criminal justice system—discussed the ways their mothering was assumed to be inadequate by institutional practices.")

⁸ See S.R. v. Kenton County Sheriff's Office, 302 F.Supp.3d 821, 834 (E.D. Ky. 2017) (finding as a matter of law that school resource officer's handcuffing of an 8- and a 9-year-old student, both with special needs including ADHD, was an unconstitutional seizure and excessive force).

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Ms. Taylor and N.B. were singled out because of their race, both perceived and treated as "more dangerous," less rational, and less worthy of respect for their rights than the non-Black students and parents involved.

C. <u>HPD used excessive force by unnecessarily handcuffing a cooperative ten-year-old child who did not pose any danger.</u>

Regardless of whether N.B.'s arrest was lawful or not, the HPD officers involved used unconstitutionally excessive force in handcuffing N.B. to transport her to the station, when she was cooperative and did not pose any threat or danger to the police or anyone else.

The seizure of a person is unreasonable under the Fourth Amendment if a police officer uses excessive force in making a lawful arrest. Graham v. Connor, 490 U.S. 386, 397 (1989). Under the Fourth Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances. Scott v. Harris, 550U.S. 372, 381-85 (2007). The Ninth Circuit has repeatedly emphasized that the most important factor is "whether the suspect posed an immediate threat to the safety of the officers or others." S.B. v. Cty. of San Diego, 864 F.3d 1010, 1013 (9th Cir. 2017) (internal quotation marks omitted). Under this standard, the Ninth Circuit has held that officers who handcuffed an eleven-year-old child used excessive force when "[h]e was cooperative and unarmed and, most importantly, he was eleven years old." Tekle v. United States, 511 F.3d 839, 846 (9th Cir. 2007); see also E.W. by & through T.W. v. Dolgos, 884 F.3d 172, 180 (4th Cir. 2018) ("[W]e have a calm, compliant ten-year-old being handcuffed on school grounds because she hit another student during a fight several days prior. These considerations, evaluated under the Graham framework, demonstrate that Dolgos's decision to handcuff E.W. was unreasonable.").

Here, there was no need for HPD to handculf N.B. to effectuate her arrest, lawful or not. She had been cooperating, was calm, and complying with the school and HPD officers at the scene. She was unarmed, posed no risk, threat, or danger to anyone involved, and did not try to flee. She was a ten-year-old girl. Instead, it seems likely that she was handcuffed as a lesson because she wondered what jail was like. N.B. later complained that the handcuffs were too tight and had hurt her wrists. Under these circumstances, the handcuffing of N.B. constituted excessive force in violation of her rights under the Fourth Amendment. See Tekle, 511 F.3d at

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846 ("He was cooperative and unarmed and, most importantly, he was eleven years old. A reasonable agent confronted with these circumstances should have known that there was no need to use guns and handcuffs."); *C.B. v. City of Sonora*, 769 F.3d 1005, 1030 (9th Cir. 2014) (holding that officers' use of handcuffs on a calm, compliant, but nonresponsive 11–year–old child was unreasonable).

D. <u>Ms. Taylor and her daughter's liberty interests to custody and companionship with each other were arbitrarily violated.</u>

During the ordeal on January 10, 2020, Ms. Taylor and her daughter were denied the opportunity to consult, counsel, comfort, and be with each other without any adequate process or justification.

Parents and children have a constitutionally protected liberty interest in companionship and society with each other. *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc). The state's interference with such liberty interest without due process of law is cognizable under Section 1983. *Kelson v. City of Springfield*, 767 F.2d 651, 654 (9th Cir. 1985) (holding that parents of 14-year-old who committed suicide in school had stated claim of deprivation of parental rights).

A claim of interference with the parent/child relationship may raise both procedural due process and substantive due process claims. Procedural due process claims arise when a state official removes a child from or interferes with her parent's care. For such claims, "[t]he Fourteenth Amendment guarantees that parents will not be separated from their children without due process of law except in emergencies." Rogers v. County of San Joaquin, 487 F.3d 1288, 1294 (9th Cir. 2007). Substantive due process claims typically involve egregious conduct or the use of excessive force. "Where actual deliberation is practical, then an officer's 'deliberate indifference' may suffice to shock the conscience." Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010). Under the deliberate indifference standard, when "extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking." A.D. v. Cal. Highway Patrol, 712 F.3d 446, 453 (9th Cir. 2013).

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Here, Ms. Taylor was prevented from counseling and being with N.B. for an extended period of time, and without any adequate justification. There was no emergency or imminent danger justifying their separation and as such, DOE and HPD interfered with their parent/child relationship without adequate due process. See Keates v. Koile, 883 F.3d 1228, 1237-38 (9th Cir. 2018) ("[O]ur case law clearly establishes that the rights of parents and children to familial association . . . are violated if a state official removes children from their parents without their consent, and without a court order, unless information at the time of the seizure, after reasonable investigation, establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury, and the scope, degree, and duration of the intrusion are reasonably necessary to avert the specific injury at issue."). Similarly, both HPD officers and DOE staff had ample opportunity to evaluate the situation, yet they displayed no care for the well-being and rights of N.B., who they kept from her mother, interrogated, handcuffed, and eventually falsely arrested. See Lee v. City of Los Angeles, 250 F.3d 668, 684-86 (9th Cir. 2001) (holding plaintiff mother sufficiently pleaded deliberate indifference when son was falsely arrested). Under such circumstances, the actions of HPD and DOE shock the conscience and violate both the procedural and substantive due process rights of Ms. Taylor and N.B.

E. DOE and HPD discriminated against N.B. on account of her disability.

On January 10, 2020, both DOE staff and HPD officers failed to accommodate N.B.'s known disability and, in fact, they criminalized the manifestation of her disability in violation of her civil rights as a disabled person.

Title II of the American with Disabilities Act ("*ADA*"), which applies to state and local governments, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, Section 504 of the Rehabilitation Act of 1973 prohibits such discrimination in programs that receive federal funding. 29 U.S.C. § 794.

The broad language of the ADA and Section 504 covers "anything a public entity does." *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (citations omitted); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076-77 (9th Cir. 2002) (interpreting "service, program, or activity" under both the ADA and Section 504).

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The Ninth Circuit has agreed with "the majority of circuits to have addressed the question that Title II" applies to police activities, including arrests. *Sheehan v. City & Cnty. of S.F.*, 743 F.3d 1211, 1231-33 (9th Cir. 2014), *rev'd on other grounds*, 575 U.S. 600 (2015). The ADA also prohibits disability discrimination in public schools. *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013) ("There is also no question that public schools are among the public entities governed by Title II.").

N.B. has been diagnosed with Attention-Deficit/Hyperactivity Disorder ("ADHD"). As part of her treatment and in therapy, N.B. often draws pictures. In recognition of her diagnosis, DOE prepared a Section 504 plan with various accommodations, including the use of "positive behavior management strategies." On January 10, 2021, N.B. did not receive any instruction, behavioral intervention plan, or behavioral management strategies in regard to the drawing incident. N.B. did not receive any counseling on appropriate behavior concerning the situation. Hanawai's school counselor, Naomi Ikeda, was not called or involved to help N.B. throughout the incident. Instead, DOE staff and HPD officers ignored N.B.'s disability and isolated and kept N.B. from the counsel and comfort of her mother while she was interrogated with little regard to her mental and emotional state. Additionally, they did not consider whether the drawing at issue—a form of expression used during therapy—and her comments about going to jail were a manifestation of and a coping mechanism related to her disability.

Ultimately, DOE suspended and HPD arrested N.B. for the drawing incident without consulting her counselor, providing her with any of her Section 504 plan accommodations, or further investigating the other students involved. This is consistent with how DOE treats other disabled students, as such students are at least twice as likely to be suspended and referred to law enforcement by DOE than non-disabled students are. Thus, DOE and HPD failed to accommodate N.B.'s known disability and, in effect, criminalized her because of the manifestation of her disability. Such actions violate both Section 504 and the ADA. See Mark H. v. Lemahieu, 513 F.3d 922, 938 (9th Cir. 2008) (holding that a public school "can be liable for damages under § 504 if it intentionally or with deliberate indifference fails to provide meaningful access or reasonable accommodation to disabled persons.");

⁹ U.S. Dept. of Education, Civil Rights Data Collection for Hawai'i Department of Education (2017), https://ocrdata.ed.gov/profile/9/district/29005/disciplinereport.

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Vinson v. Thomas, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002) (noting that there is no significant difference in the analysis of rights under the ADA and Section 504).

III. DOE and HPD's Gross Negligence.

Both DOE and HPD were grossly negligent in how they escalated the drawing incident from a run-of-the-mill school dispute into the traumatizing arrest of a ten-year-old and false imprisonment of her mom.

Hawai'i courts recognize that public schools owe their students a "duty to reasonably supervise public school students during their required attendance and presence at school." *Doe Parents No. 1 v. State, Dep't of Educ.*, 100 Haw. 34, 72–73 (Haw. 2002), as amended (Dec. 5, 2002) (cleaned up). Because DOE stands in the position of a parent or *in loco parentis*, this creates a duty "to take such reasonable measures as would be taken by reasonable parents to avoid injury to students." *Id.* These duties "extend[] to the students' parents as well." *Id.* at 79. Similarly, HPD owed N.B. and her mother a duty to avoid any affirmative acts which would make their situation worse. *Fochtman v. Honolulu Police & Fire Departments*, 65 Haw. 180, 183 (1982) (citing Prosser, Handbook of the Law of Torts § 56 (4th Ed. 1971)).

Here, DOE did not take reasonable measures as would be taken by reasonable parents to avoid injury to N.B. First, Ms. Runge in her role as Vice Principal of Honowai Elementary School—and against Ms. Taylor's express wishes—called HPD, lending credibility to the unreasonable parent's complaint without considering whether it was necessary or in the students' best interest to call the police for a mere drawing. Ms. Runge had seen the drawing the day before and did not find it offensive enough to call the police then. There was also no evidence that N.B. posed an imminent danger to anyone. Indeed, Ms. Runge and Principal Matsumura later admitted that the school should not have called the police. Second, the school permitted both school staff and HPD to interrogate N.B. without Ms. Taylor present. Third, once Ms. Taylor went to the school, they kept her from talking with and counseling N.B. while holding Ms. Taylor against her will in an office without communication with her daughter. Fourth, the school isolated N.B. to the point she complained she was cold and lonely, and did not explain to HPD that N.B. was disabled. All of these actions increased the likelihood that N.B. would be falsely arrested. Thus, DOE was grossly negligent in not taking reasonable steps to

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prevent such absurd arrest, while also taking extraordinary and offensive steps to prevent Ms. Taylor from protecting—or even speaking with—her own child.

HPD officers did not act any more reasonably. Contrary to common sense, the three responding officers treated a mere drawing as a criminal act warranting an investigation requiring hours of their time. Even if the complaining parent, who was deemed unreasonable, wanted to press charges, they could have made a report and left it at that. Instead, they complied with the demands of the unreasonable parent and interviewed N.B., a ten year old, about an alleged crime without her mother (or legal guardian) present. Later, they assisted DOE staff to detain Ms. Taylor so that she was not able to talk to her own daughter. And finally, they arrested N.B. under the pretense that a drawing by a bunch of children constituted a credible threat requiring immediate police intervention, when, in fact, HPD actually arrested N.B. because they thought the scared child was not taking their unjustified investigation seriously enough. These affirmative acts by HPD also increased the likelihood that N.B. would be falsely arrested and traumatized. As a result, the HPD officers too were grossly negligent in how they handled the entire situation.

* * *

Ms. Taylor and her daughter are fully prepared to pursue their legal claims—only some of which are addressed in this letter—in court. If this matter required litigation, they would seek all legal remedies available to them, including declaratory relief and damages for their deprivation of liberty, emotional pain and suffering, decrease in their earning potential from changing schools and job, punitive damages, as well as attorney's fees. *See* 42 U.S.C. §§ 1981a, 1988(b), 29 U.S.C. §§ 794, 794a; Haw. Rev. Stat. § 368-17. Given the DOE's and HPD's outrageous actions—falsely arresting a disabled ten-year-old while falsely imprisoning her worried mother—such damages could very well be orders of magnitude higher than the demands made in this letter.

Ms. Taylor's and N.B.'s demands are more than reasonable in light of the strength of the claims and facts of this case. If accepted, they would release all her claims against HPD and DOE. Please let us know of your response by no later than

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November 8, 2021, when our offer will expire. For that purpose, we can be reached at (808) 600-4749 or mateo@caballero.law.

Sincerely,

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Principal Attorney

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