

OFFICE OF CIVIL RIGHTS

NATIONAL ASSOCIATION FOR THE)	
ADVANCEMENT OF COLORED PEOPLE,)	
A nonprofit corporation, NORTH CAROLINA)	COMPLAINT UNDER TITLE VI OF
STATE CONFERENCE OF BRANCHES OF)	THE CIVIL RIGHTS ACT OF 1964
THE NAACP, RALEIGH (APEX) BRANCH,)	
SOUTH CENTRAL WAKE CO. BRANCH,)	
WENDELL (WAKE CO.) BRANCH, and)	
N.C. H.E.A.T., unincorporated associations,)	
and QUINTON WHITE,)	
)	
Complainants,)	
)	
v.)	
)	
WAKE COUNTY BOARD OF EDUCATION)	
and the WAKE COUNTY PUBLIC SCHOOL)	
SYSTEM,)	
)	
Respondents.)	

The Complainants are organizations whose members include parents with children attending public school, an organization of youth attending public schools, and a public high school senior in Wake County, North Carolina. They bring this complaint under Title VI of the Civil Rights Act of 1964 against the Wake County Board of Education and the Wake County Public School System. Complainants seek remedies for intentionally discriminatory acts by the respondents which include making specific changes to the school system’s student assignment policies with the intent to assign students to schools on the basis of their race, color and national origin, and to establish and maintain single-race schools. In addition, Complainants seek remedies for specific ways in which the Wake County Public School System denies the benefits of its programs to students on the basis of their race, ethnicity and national origin; and thereby subjects students to discrimination on the basis of their race, color or national origin.

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I. INTRODUCTION

African-American, Hispanic and mixed-race students (hereinafter “non-White students”) in the Wake County Public School System (hereinafter “WCPSS”) and their families, have been injured by the intentionally racially discriminatory actions of a five-member majority of the Wake County Board of Education, (hereinafter “the Board”). Upon winning a majority of the Board in elections in November 2009, the new Board majority immediately took drastic steps to reassign non-White students to schools with a higher percentage of non-White students than their prior school, and to reassign White students to schools with a higher percentage of White students than their prior school. These racially-based reassignments for the 2010-2011 school year, impacting close to 700 students, were implemented in an expedited process that ignored the Board’s well-established procedures for changing student assignments.¹

Although carried out with the purported facially neutral justification of making student assignments based solely on the school’s proximity to the student’s home, the students chosen for reassignments and the schools to which they were reassigned were both based on the reassigned students’ race and on the racial composition of the student bodies at the impacted schools. The immediate history of the decision and the procedures the Board majority followed, moreover, further demonstrate that the Board was implementing the will of a well-organized and vocal set of parents who want to live in racially-isolated neighborhoods and send their children to racially-isolated schools. The Board refused to consider or implement less discriminatory, available alternatives to achieve their stated purpose of assigning students based on a school’s proximity. The Board’s intent to create predominantly White and predominantly non-White schools within the Wake County Public Schools is a discriminatory intent that violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d (hereinafter “TitleVI”).

In addition to their discriminatory intent, the impact of these student reassignments also is discriminatory and violates Title VI. Well-documented social science research demonstrates that the non-White students in unplanned reassignments this year may suffer harm in being transferred to schools with a higher rate of poverty and lower rates of academic achievement. With these specific reassignments, the district created a gap of about 11 percentage points between White students and non-White students in terms of their exposure to economically disadvantaged students. (*see, infra at p. 15*). Regarding student achievement, the Board placed White students in schools where 4.57 percent more of the students are achieving on grade level (based on composite scores) than in their previous school. Non-White students were moved into schools where 4.87 percent fewer students were achieving at grade level. In short, there is

¹ Pursuant to the three-year student assignment plan for 2009-2012 approved in February 2009, some students were scheduled for reassignment this school year to populate new schools, or in response to projections of growth and overcrowding at existing schools. Students and families that were scheduled for reassignment this school year were notified in advance and had an opportunity for public comment during the approval process for the three-year plan. The reassignments that are the subject of this complaint were unplanned and unscheduled, and families had no opportunity to comment on those reassignments in advance of them being decided by the Board.

a 10 percentage point achievement gap between the types of schools Whites and non-Whites were moved. (*see, infra at pp. 15*).

Not only are the Board's asserted justifications for these reassignments merely pretexts for intentional discrimination, but in addition, because the Board was well aware of less-discriminatory alternatives, such as controlled choice plans, to achieve their stated purpose, these student reassignments have an unjustified disproportionate impact on students because of their race, color and national origin. They are prohibited by Title VI and the regulations implementing it, including the non-discrimination mandate of 34 C.F.R. 100.3.

Finally, the organizational Complainants assert as a separate and independent claim, that the WCPSS denies Black students the opportunity to participate in its programs on terms that are non-discriminatory by maintaining and operating a disciplinary system that has a grossly disproportionate impact on Black students. In the 2008-2009 school year, Black students made up 26.1% of the total student population, but received 62.3% of short-term suspensions, 67.5% of long-term suspensions, and 100% of expulsions by the WCPSS. In addition, even when holding certain variables constant, Black students were often punished more severely than similarly situated White students during the 2008-2009 school year. As the data below illustrates, these patterns have persisted over time, even though there are less discriminatory alternative policies that WCPSS could implement to improve school discipline that have been demonstrated to be effective. A wealth of local and national research² documents that suspensions and expulsions have devastating consequences for a student's ability to learn, particularly because the WCPSS offers virtually no alternative education for suspended and excluded students. The WCPSS's disciplinary policies and their implementation of those policies are having a disparate impact on Black students, both male and female, in violation of Title VI.

Complainants ask the Department of Education to fully investigate these claims, to require the Board and the WCPSS to cease its discriminatory student reassignments, implement less discriminatory alternatives to its student assignment plan, and adopt disciplinary policies that are administered in a way that does not disproportionately deny equal educational opportunities to Black students.

II. JURISDICTIONAL and ADMINISTRATIVE FACTS

a. Complainants

The National Association for the Advancement of Colored People (NAACP) is a non-profit civil rights organization. Members of the NAACP include parents of color whose children attend the Wake County Public Schools; and members of the NAACP's South Central Wake County Youth Council are students in the Wake County schools. The principle objectives of the NAACP are to ensure the political, educational, social and economic equality of rights and eliminate race prejudice among citizens of the United States; to remove barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local

² See *infra* at pp. 37-38.

laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to education persons as to their constitutional rights and to take all lawful action to secure the exercise thereof, and to take other lawful action in furtherance of these objectives. Equal educational opportunity for African Americans has been a fundamental goal of the NAACP since its founding. As epitomized by *Brown v. Board of Education*,³ and, more recently, cases such as *Alexander v. Underhill*,⁴ and *Connecticut v. Spellings*,⁵, the NAACP has been a national leader in litigating and advocating for school desegregation and quality education issues in public education. The NAACP has an interest in student assignment and student disciplinary policies and/or practices of public school districts that may unconstitutionally deny African American and other students of color an equal opportunity to participate in public education programs.

The North Carolina State Conference of Branches of the NAACP (NC Conference) is an unincorporated association composed of over 100 NAACP branches and 20,000 individual members throughout the state of North Carolina. The NC Conference has members who are citizens, residents and registered voters in each of the state's 100 counties, including three branches in Wake County. Members of the NC Conference include parents of color whose children attend the Wake County Public Schools. As with the national organization, the fundamental mission of the NC Conference is the advancement and improvement of the political, educational, social and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. In furtherance of this mission, the NC Conference informs its members on issues relating to public education, monitors the policies and practices of state and local boards of education, and participates in litigation and policy advocacy designed to secure equal opportunity to benefit from public education programs for all students regardless of race, color or national origin. The NC Conference recently participated as an amicus party in *King v. Beaufort Co. Bd. of Educ.*⁶ The NC Conference has a strong interest in guaranteeing that public school systems are operated without intentional racial discrimination and that the policies of procedures used for student assignment and for student discipline do not have a disproportionately negative impact on students of color.

The Raleigh (Apex) Branch, South Central Wake County Branch and the Wendell (Wake Co.) Branch are all unincorporated branches of the national NAACP, whose members include parents and guardians of color whose children attend the Wake County Public Schools. Members of these branches share the missions and objectives of the NAACP and the NC Conference. They have an immediate interest in seeing that the Wake County School Board

³ 347 U.S. 483 (1954).

⁴ 2008 U.S. Dist. LEXIS 24568 (E.D. Nev. 2008) (NAACP filed amicus brief successfully arguing that the school district's suspension policies violated due process).

⁵ No. 3:05-cv-01330 (D. Ct. filed August 22, 2005) (permissive intervention granted to NAACP in dispute involving No Child Left Behind issues).

⁶ 683 S.E.2d 767 (N.C. App. 2009) (arguing that disciplinary long-term suspensions without provision of alternative educational opportunity violates the state constitutional guarantee to a sound, basic education).

cease its discriminatory actions and implement policies that provide equal educational opportunities for all students regardless of race, color or national origin.

N.C. H.E.A.T. (Heroes Emerge Among Teens) is an unincorporated student-run organization of Wake County students and youth formed this summer in response to the actions of the new Board majority. Their mission is to organize and advocate for civil rights and justice in their community for themselves and for future generations in the Wake County Public School System. N.C. H.E.A.T. members include students who attend Wake County schools.

Quinton White is an eighteen year old African-American young man residing in southeast Raleigh. In the 2009-2010 school year, Quinton attended his assigned school, Garner High School. On April 6, 2010 the Board reassigned him from Garner High School to Southeast Raleigh High School. A senior this year, Quinton attends Southeast Raleigh High School. Quinton has been active in the N.C. H.E.A.T. organization.

b. Federal Financial Assistance

The Wake County Board of Education has been a recipient of federal financial assistance for many years. In November, 2009, the Board filed a Form SF-SAC for the fiscal period ending June 30, 2009 showing total federal awards expended of \$77,882,240. By far the majority of funding is received from the Department of Education, through programs such as I.A.S.A. Title I: Low Income; Special Education Cluster Grants to States; Vocational Education: Program Improvement; Improving Teacher Quality; Language Acquisition; ARRA-IDEA VI-B and Magnet School Assistance Program, among many others.

c. Timeliness

This complaint is being filed within 180 days of the Board's vote to approve certain student reassignments at its meeting on April 6, 2010.⁷ Complainants contend that the selection of particular students to reassign to various schools which occurred at that meeting, as detailed below, is the action on the part of the five Board members who voted in favor of the reassignments that was motivated by a discriminatory intent and that has a racially disparate impact on children of color.

Administration of the WCPSS's disciplinary process is ongoing. This complaint is based on the most recently available system-wide data regarding the racial and ethnic demographics of students who are suspended or expelled by the WCPSS.

d. Exhaustion of Administrative Remedies

Complainants have repeatedly appeared before the Board over the past six to eight months to voice their concerns, and sought other opportunities to meet with Board members to present data and research showing that the reassignments were racially discriminatory, would result in impermissible racial segregation, and harm non-White students. Complainants have prepared extensive written submissions outlining the harms to students from reassignments

⁷ See Wake County Board of Education, Board Meeting Minutes, April 6, 2010, attached hereto as Exhibit 1; copy available online at: <http://www.wcpss.net/Board/minutes/04-06-2010--minutes.pdf>

that increase the racial segregation of the schools. For example, as early as November, 2009, the NC Conference publicly voiced its concern that a return to “neighborhood schools” was merely a pretext for intentional segregation of students by race.⁸ The NC Conference requested three times, in November 2009, in January 2010, and in March 2010, for time to present to the full Board the NAACP’s comprehensive analysis of the benefits to all children of the nationally-acclaimed SES-based diversity policy that was in place. Three times, the Board rejected the NAACP request.

N.C. H.E.A.T. members have attended Board meetings and urged the Board to reverse its course. They have demanded that the Board stop making student reassignment decisions based on race that increase the racial segregation of public schools.

Similarly, other civic organizations, such as the Great Schools in Wake Coalition (hereinafter “GSW”), have repeatedly asked the Board to reconsider its proposed reassignments, and has made available to the Board extensive resources documenting the likely negative impact of their decisions on all students as well as the existence of very feasible, low-cost alternatives that will achieve the Board’s stated goal of keeping students in schools close to their homes while also having a less discriminatory impact on students of color. For example, GSW convened a public forum to which all Board members were invited on March 20, 2010. At the forum scholars such as Dr. Gerald Grant, Dr. Helen Ladd and Dr. Richard Kahlenberg presented the results of their research and discussed its implications for the WCPSS.⁹ Dr. Helen Ladd also spoke three days later at the Board’s public hearing, highlighting in particular the difficulty the Board will have in ensuring that all students have equal access to high quality teachers if the Board implements its “neighborhood school” assignment policies. At the March 23rd Board meeting, GSW presented to the Board a bibliography of academic research from top educational scholars at leading academic institutions across the country, demonstrating the educational value of diversity.¹⁰

Following the Board’s decision in April 2010 to go ahead with student reassignments, the Complainants have continued to advocate with the Board for a reversal of this new policy. Complainants have also supported presentations made to the Board regarding the implications of the student disciplinary policies and the impact of those policies on Black students.¹¹ Recently Advocates for Children’s Services, a project of Legal Aid of North Carolina, Inc., prepared and delivered to the Board a detailed analysis of WCPSS’s student disciplinary practices, including extensive recommendations.¹²

8¹ See “Our Position on Diversity in Public Education in Wake County,” available online at: <http://jimbuie.blogs.com/barber/2009/11/our-position-on-diversity-in-public-education-in-wake-county.html>

9¹ Video and written materials from the March 20, 2010 forum are available at: <http://www.wakeupwakecounty.com/cms/gsiw320neighborhoodforumpresentations>

10¹ Great Schools in Wake Coalition, “The Need to Know More About What the Academic Research Says”, Copy attached as Exhibit 2. Available at: <http://www.wakeupwakecounty.com/cms/files/pdf/gsiwneedtoknowmore.pdf>

11¹ See, e.g., Great Schools In Wake Coalition, “Fact Sheet: Safe and Fair Schools”, July 15, 2010, available at: http://www.wakeupwakecounty.com/cms/sites/default/files/pdf/GSIW_Fact_Sheet_suspensions_FINAL.pdf

12¹ Advocates for Children’s Services, “Research-Based Recommendations for Improving School Discipline in Wake County Public Schools” July 2010, available at: <http://www.legalaidnc.org/public/ACS/Report.pdf>.

Quinton White was notified of his reassignment to Southeast Raleigh High School by letter after the Board's vote on April 6, 2010. WCPSS informed him that his assignment to Garner would be grandfathered at his request subject to Board Policy 6203-Transfer of School Assignment.¹³ That policy would require him to provide his own transportation to the school. Lacking the means to provide his own transportation, Quinton had no option but to attend the school he had been reassigned to, Southeast Raleigh High School. Thus, "appealing" his reassignment by requesting permission to stay at Garner would have been futile. In these circumstances, he has exhausted his administrative remedy because that remedy imposed conditions that made it completely ineffective for him.

Despite all efforts to convince the Board to stop its discriminatory policies and practices, the Board 1) refuses to abandon the reassignments made intentionally to move students on the basis of their race; 2) continues to move forward with even more student reassignments that will exacerbate the disparate discriminatory impact on students of color by denying them equal opportunities to learn; and 3) fails to enact significant policies to address the disparate racial impact of student disciplinary policies and procedures. The Complainants have taken all reasonable steps possible to obtain relief directly from the Board, but have been met with clear and continued opposition from the five-member majority.

e. No Other Pending Proceedings

Complainants have not filed a lawsuit raising these claims in state or federal court. A state court action asserting rights under the North Carolina Open Meetings statute, N. C. Gen. Stat. § 143-318, was filed by a group of individual parents, students, and concerned citizens in Wake County who had been effectively excluded from attending the Board meeting and voicing their opinions on March 23rd, 2010 when key decisions were being made concerning the Wake County school assignment policy. That action, *Garlock v. Wake County Bd. of Educ.*, No. COA 10-1123, is now pending in the North Carolina Court of Appeals. The trial court denied injunctive relief to the plaintiffs but held that certain of the Board's policies and practices in limiting access to public meetings were unreasonable. As a result, both the plaintiffs and the defendants have appealed the trial court's order. However, nothing in that case raises the issues of intentional discriminatory conduct and the continued use of policies and practices that have a disparate impact on students of color that Complaints here contend are a violation of Title VI.

Thus, there are no other pending actions concerning this matter. This complaint has not been investigated by another Federal, state, or local civil rights agency nor through the WCPSS internal grievance procedures, including due process proceedings. There are no other means for Complainants to pursue to resolve these issues under comparable legal standards.

¹³ A copy of this policy is attached as Exhibit 3. The policy is available at: <http://www.wcpss.net/policy-files/series/policies/6203-bp.html>

III. INTENTIONAL DISCRIMINATION

The Board's decision to reassign certain students on April 6, 2010 was made with the discriminatory intent to satisfy a small and vocal set of parents who, prior to the election of the new board majority in the fall of 2009, made clear their desire to accomplish two goals that were explicitly race based: first, to remove students of color who live in Southeast Raleigh from Garner High School, and second, to allow White students to be reassigned from Stough Elementary School to a more affluent and White school, Lacy Elementary School.¹⁴

With regard to both of these reassignments, the parents and local leaders involved were very explicit about their goals before the fall 2009 elections. Controversy over the assignment of Southeast Raleigh students to schools in Garner erupted in November, 2007 when the Town of Garner Aldermen voted to require the WCPSS to reduce the number of poor children attending Aversboro and Smith elementary schools in exchange for permits allowing construction work to be done at those schools.¹⁵ This concern was explicitly tied to the fact that students from Southeast Raleigh, who are predominantly Black and Latino children, were assigned to Garner schools. It was widely observed that "Garner leaders have long complained that schools in town have too high a percentage of low-income students due to kids being bused in from Southeast Raleigh."¹⁶ Despite prior complaints from leaders in the Black community that such sentiments had a racial motivation, in April, 2008 the Mayor of Garner publicly stated that "We as a community don't want more Southeast Raleigh students coming to Garner, with all due respect to them."¹⁷ This time, leaders in Southeast Raleigh's Black community responded that such comments were clearly insulting to the integrity of Black children in Southeast Raleigh.¹⁸

Thus, following the election of John Tedesco from Garner, his supporters were pleased that he could make good on his campaign pledge to "make sure there is room in Garner schools for Garner students."¹⁹ Garner Mayor Ronnie Williams hailed the school board's decision to reassign Southeast Raleigh students away from Garner High as a step in the right direction.²⁰

The evidence appropriate to an analysis of intentional discrimination by a public body such as a school board was established by the Supreme Court in *Arlington Heights v. Metro. Hous. Dev. Corp.*²¹ These factors are:

14 See Ray Martin and Sarah Nagem, "Wake School Board to Decide Reassignments Today" News and Observer, April 6, 2010.

15 See "Garner Wants Say on School Diversity", News and Observer, November 27, 2007.

16 "Garner Keeping Demands for School", News and Observer, January 8, 2008.

17 "Garner Draws Line of Students", News and Observer, April 9, 2008.

18 "Black Leaders Irritated by Mayor's Words", News and Observer, April 12, 2008.

19 "Q&A with School Board Candidate John Tedesco", Garner Citizen, September 14, 2009.

20 "Wake School Board to Decide Reassignments Today", News and Observer, April 6, 2010.

21 429 U.S. 252 (1977).

- a) Whether the challenged action bears more heavily on one race than another;
- b) The historical background of the decision, “particularly if it reveals a series of official actions taken for invidious purposes.”
- c) The specific sequence of events leading up to the challenged decision
- d) Whether there were procedural or substantive departures from those normally followed by the decision maker which also might afford evidence that improper purposes are playing a role; and
- e) Whether there were contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports that indicate their purpose.²²

In this case, each of these factors is present and all demonstrate that the Board was acting on improper motives. First, the evidence of the disparate impact of the reassignments made on April 6, 2010 is overwhelming, as further detailed infra at pp. 11-30. Second, the historical background of the WCPSS has ample evidence of official actions made for invidious purposes. Despite the decision of the United States Supreme Court in *Brown v. Board of Education*,²³ African American children and their parents still struggled to force integration.²⁴ Under the Pearsall Plan, a “Freedom of Choice” plan that promoted voluntary segregation, transfer requests for black students were met with lengthy processes, forms, and personal interviews, while transfers for white students were routinely granted.²⁵ Likewise, the merger of the Raleigh City Schools and the Wake County Schools in the mid-1970s was plagued with intense struggle and racial tension.

The specific sequence of events demonstrates that the Board majority was acting on explicit promises made during their campaigns for office in 2009, pursuing their constituents’ desires for racially isolated schools. The Supreme Court observed in *Palmore v. Sidoti*,²⁶ that “[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect. ‘Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held.’”²⁷ Similarly, here the Board majority cannot make private racial biases of their constituents the basis for an official decision.

The “customer preference” issue frequently arises in cases under Title VII. In July of this year, the Seventh Circuit decided a case that dealt with that issue.²⁸ There the court explained

²² 429 U.S. at 265-268.

²³ 347 U.S. 483 (1954).

²⁴ *Holt v. Raleigh City Board of Education*, 265 F.2d 95 (4th Cir. 1959).

²⁵ Wilma Peebles-Wilkins, *Reactions of Segments of the Black Community to the North Carolina Pearsall Plan, 1954-1966*, *Phylon* 48 no. 2, 1987: 112-121.

²⁶ 466 U.S. 429 (1984).

²⁷ *Id.* at 433 (internal citation omitted).

²⁸ *Chaney v. Plainfield Healthcare Ctr.*, 612 F.3d 908 (7th Cir. 2010).

that: “[i]t is now widely accepted that a company's desire to cater to the perceived racial preferences of its customers is not a defense under Title VII for treating employees differently based on race.”²⁹ The same principle applies here. Board members cannot constitutionally give effect to the racial preferences of their constituents, even if their own motive is simply to fulfill what they perceive to be their mandate from the voters.

Additionally, there is strong evidence that the Board’s stated justifications for the student reassignments are not based in fact and are merely pretexts for a racial motivation. The argument that school assignments based on proximity to a student’s home will save significant transportation costs is not accurate. WCPSS’s own data shows that in the 2009-2010 school year, fewer than 1-3% of students are bused for diversity--less than 2000 of the 75,000 or so children who ride a bus to school each day. Even if they are not bused for diversity, these students would still ride the bus to their assigned school. The cost of “busing for diversity” is only 1/2 of 1% of total busing, so the savings by eliminating diversity busing would be \$280,000. Such cost savings would in any event revert to the state, where it could be used in other counties for their busing needs.³⁰ Similarly, the perception that students are being bused long distances because of the prior Board’s SES-based assignment plan is not accurate. In the 2008-2009 school year, most students were assigned to a school within five miles or less of their residence.³¹

There were significant procedural and substantive departures from those normally followed by the Board in making this decision. Perhaps most significantly, the Board implemented these reassignments prior to putting in place a new plan for the school system as a whole, contrary to what overcrowding considerations would have dictated, and simultaneously turned down other requests for reassignments for the coming school year because they came too late in the year. Additionally, the board did not give parents an opportunity to comment on the changes, contrary to their usual practice. Finally, the Board altered the policies and procedures for public attendance at Board meetings numerous times in the Spring of this year, at one point requiring members of the public who wanted to attend Board meetings to pick up a “ticket” in the morning and remain at the Board office throughout the day until the meeting was scheduled to begin or else forfeit their right to attend the meeting. The Superior Court Judge in *Garlock v. Wake County Bd. of Educ.*, No. COA10-1123, ruled that this procedure was unreasonable.

29 *Id.*, 612 F.3d at 913. (citing *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 744 (7th Cir. 1999) (evidence of segregated sales force supported Title VII claim); *Ferrill v. The Parker Group, Inc.*, 168 F.3d 468, 477 (11th Cir. 1999) (employer's practice of assigning "get-out-the-vote" phone calls based on race violated Title VII); see also *Fernandez v. Wynn Co.*, 653 F.2d 1273, 1276-77 (9th Cir. 1981) (rejecting customer preference defense in sex discrimination context and relying on EEOC holding that Title VII does not permit the accommodation of the racially discriminatory policies of foreign nations)).

30¹ Great Schools in Wake Coalition, “The Need to Know More About What the Academic Research Says”, at pg. 14. Copy attached as Exhibit 2. Available at: <http://www.wakeupwakecounty.com/cms/files/pdf/gsiwneedtoknowmore.pdf>

31¹ Great Schools in Wake Coalition, “Fact Sheet: Student Transportation”, April 4, 2010. Copy attached as Exhibit 4. Available at: <http://wakeupwakecounty.com/cms/files/pdf/gsiwstudenttransportation.pdf>.

There was also a contemporaneous statement at a Board meeting by the Board Chairman indicating racial animus. Mr. Margiotta openly referred to the many stakeholders of color at a public meeting as “animals” into his microphone, so that all could hear: “Here come the animals out of their cages.”³² While he later apologized for the comment, it is a relevant and contemporaneous statement by a key decision maker at the time these matters were being discussed by the public.

In determining whether the evidence in this matter establishes a discriminatory purpose on the part of the Board, it is worth heeding the admonition of the Supreme Court in *Arlington Heights* that to establish unconstitutional discriminatory intent, all that is required is proof that a discriminatory purpose has been “a motivating factor in the decision.”³³ Indeed, a plaintiff is not required “to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the “dominant” or “primary” one.”³⁴ Here, there is ample evidence that a racially discriminatory purpose was a motivating factor in the Board’s decision to make certain student reassignments on April 6, 2010, and that purpose violates Title VI of the Civil Rights Act of 1964.

IV. DISPARATE IMPACT

B. Summary of Prima Facie Case of Disparate Impact

As a North Carolina local education agency (LEA) receiving state and federal education funding, Wake County Public School System (WCPSS) is subject to Title VI of the Civil Rights Act of 1964 (Title VI). Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. The Department of Education’s Title VI regulations, mirroring the Title VI statute in relevant part, state:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.³⁵

The non-discrimination requirements of Title VI ensure equal access to educational opportunity for all students. In *Alexander v. Sandoval*, the Supreme Court held that no private

³² <http://pulse.ncpolicywatch.org:80/2010/03/04/margiotta-calls-parents-animals/>

³³ 429 U.S. at 265-66.

³⁴ *Id.*

³⁵ 34 C.F.R. § 100.3(a).

cause of action exists to prohibit disparate impact under Title VI, but various agencies continue to maintain disparate impact regulations that are presumptively valid.³⁶ Consequently, this prohibition against disparate impact and the resulting discriminatory effect of a facially neutral policy still binds school districts and is still enforceable by the Department of Education's Office of Civil Rights.³⁷

Under a disparate impact theory, an individual filing a Title VI administrative complaint with the Office of Civil Rights bears the initial burden of establishing a *prima facie* case that a facially neutral practice has a racially disproportionate effect.³⁸ Following the complainant showing statistical evidence to illustrate how a policy has disproportionately harmed or excluded minorities, the burden shifts to the defendant to establish that the policy is justified by an educational necessity.³⁹ A complainant may counter and eventually prevail over the defendant's argument by demonstrating that an equally effective alternative practice would result in less racial disproportionality or proving that the legitimate practices are a pretext for discrimination.⁴⁰

a. The 2010 Student Reassignment Increased Racial Segregation in Wake County Schools

The Wake County Board of Education recently dismantled the system's ten year old racially neutral student assignment policy that prioritized socioeconomic diversity in schools and has begun the process of implementing a neighborhood schools student assignment policy based on proximity to schools. The Board selected close to 700 students for an unplanned school reassignment for the 2010-11 school year. These reassignments were intended to preview the Board's neighborhood schools plan that, although facially neutral as to race, will disproportionately impact minority students.⁴¹ Many of the neighborhoods that the Board targeted for reassignment in the first phase of implementing the codified neighborhood schools plan were both racially identifiable and homogenous, and these students were moved into schools with greater percentages of students that reflect their racial identity.

The Board targeted 296 students for elementary school reassignment this school year. Table 1 shows the nodes and the corresponding racial diversity of the elementary school students targeted for reassignment this school year.⁴²

³⁶ Alexander v. Sandoval, 532 U.S. 275, 289-90 (2001).

³⁷ See 34 C.F.R. § 100.3(b)(2).

³⁸ See, e.g., Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).

³⁹ See, e.g., id.; Debra P. v. Turlington, 644 F.2d 397, 407 (5th Cir.1981).

⁴⁰ See, e.g., Georgia State Conference of Branches of NAACP v. State of Ga., 775 F.2d 1403 (11th Cir. 1985).

⁴¹ The reassignment data regarding changes in base school assignment outlined in this complaint was taken from WCPSS press releases dated March 24, 2010 and April 7, 2010, following the Board's March 23, 2010 and April 6, 2010 Board meeting finalizing student assignment changes.

⁴² A student is assigned and/or reassigned to schools in Wake County based on his or her "node", a small, contiguous geographic area that form the building block of Wake County's growth and planning model. Wake

Table 1. Elementary School Reassignments by Node, 2010-11 School Year.

Node	% White	% non-White
001.0	51.61%	48.39%
002.0	19.69%	80.31%
114.0	80.00%	20.00%
117.0	93.88%	6.12%
158.0	100.00%	0.00%
444.4	12.90%	87.10%

Source: Wake County Public School System, July 26, 2010

During the 2009-10 school year, Wake County schools were approximately 51 percent White and 49 percent non-White minority. The nodes that were targeted for elementary school reassignment do not reflect that racial diversity; rather these nodes were racially identifiable and had either very high or very low percentages of non-White students. Of the six nodes targeted for a change in base elementary school assignment, three were overwhelmingly White, while two were overwhelmingly non-White. Only node 001.0 is relatively diverse, and it was one of the smaller nodes reassigned.

The Board targeted 110 middle school students for reassignment this school year. Table 2 shows the nodes and the corresponding number of middle school students targeted for reassignment this school year.

County's nodes contain between 0 and 450 students divided into 1321 nodes. All node data discussed in this complaint is pursuant to Wake County Public School System node membership data, dated July 26, 2010, and attached as Exhibit 5.

Table 2. Middle School Reassignments by Node, 2010-11 School Year.

Node	% White	% non-White
258.0	90.91%	9.09%
339.1	100.00%	0.00%
339.2	95.65%	4.35%
339.3	92.86%	7.14%
706.0	82.61%	17.39%

Source: Wake County Public School System, July 26, 2010

Again, there is evidence that the nodes targeted for middle school reassignment do not reflect the racial diversity of the overall school district; these nodes also were racially identifiable and had either very high or very low percentages of non-White students. Of the six nodes targeted for a change in base middle school assignment, none were racially diverse and all moved large numbers of White students into middle schools with higher percentages of White students than their previous schools.

Lastly, Table 3 shows the nodes and the corresponding number of high school students targeted for reassignment this school year.

Table 3. High School Reassignments by Node, 2010-11 School Year.

Node	% White	% non-White
506.3	2.38%	97.62%
506.4	0.00%	100.00%
506.5	2.99%	97.01%
743.0	0.00%	100.00%
369.3	0.00%	100.00%
384.8	8.70%	91.30%
444.4	2.94%	97.06%

Source: Wake County Public School System, July 26, 2010

The high school reassignments are the only group in which significantly more non-White students were reassigned than White students. This striking imbalance is due to the larger number of Black and Hispanic students in nodes 506.3, 506.4, 506.5 and 743.0 that were reassigned from Garner High School to Southeast Raleigh High School; more details about this reassignment are discussed below. Like in the elementary and middle school reassignments, the high school reassignments also show that the targeted nodes do not reflect racial diversity; these nodes also were racially identifiable and all had very high percentages of non-White students. The Board targeted seven nodes for a change in base high school assignment, none of which reflect the racial diversity of the school system.

Not only did the Board target racially identifiable nodes for reassignment this school year at all grade levels, these nodes were moved in a way that increased the racially identifiable nature of both the sending and receiving schools. As previously discussed, a number of the reassignments for the 2010-11 school year have a strong correlation with race; however, what is particularly troubling about these assignments is the trend that children in racially identifiable neighborhoods were moved into schools with higher concentrations of students of the same racial background. Data shows that the groups of reassigned White students were moved into schools with higher percentages of White students than their previous schools and, conversely, the higher the percentage of non-White students in the reassigned group, the more likely the receiving school is to have a higher concentration of non-White students.

Within the nodes where the Board transferred elementary school students, all four of the predominantly White nodes were transferred into receiving schools with a higher percentage of White students than the sending school, and one of the two predominantly non-White nodes was moved into a receiving school with a high concentration of non-White students than the sending school. Similarly, within the middle school transfer nodes (in which the Board transferred predominantly White students), all of these students were moved into schools with either equivalent or greater concentrations of White students.

The high school reassignments, which included the largest number of minority students, again showed a trend of moving these students into schools with higher concentrations of non-White students. All of the high school students that were reassigned this year were moved into schools with higher concentrations of non-White students. Of the four nodes that were transferred to Southeast Raleigh High School, two were 100 percent non-White and two were 97 percent non-White, representing a total of 165 non-White students and only three White students. Moving this group of students into Southeast Raleigh High School greatly increased the minority student concentration and racial segregation of this school, a school that was already one of a small number of Wake County Schools with over a 75 percent minority student population. In addition to targeting minority students in this reassignment, the reassignment of non-White Garner High students to Southeast Raleigh High sparked concern from parents who did not have the opportunity to provide comments to the Board about this move. Parents also complained that these students had fewer opportunities for summer employment because of this shorter summer break as a result of the reassignment.⁴³

⁴³ Nagem. "Wake Reassigns Garner High Students." *News and Observer*, April 19, 2010.

Within the remaining three nodes that were targeted for high school reassignment, the Board moved non-White students out of schools with a higher percentage of White students and into schools with higher concentrations of non-White and Free and Reduced-Price Lunch (FRL) students.⁴⁴ The overall impact of the high school reassignments for this school year, as seen in the elementary and middle school reassignments, is to further the segregation and racially identifiable nature of certain schools in Wake County. Figures 1- 3 in Appendix A, attached show detailed information about the composition of reassigned nodes, and the minority and FRL student concentration of sending and receiving schools. Figures 4 and 5 in Appendix A, show the strong correlation between the percentage of non-White students in a reassigned node and the percentage of non-White students in the new school assignment, particularly at the elementary and high school levels.

There is also evidence that the non-White students in unplanned reassignments this year may suffer harm in being transferred to schools with a higher rate of poverty and lower rates of academic achievement. On average, White students were transferred to schools with an FRL percentage that was 8.57 points lower than their previous school while minorities on average were transferred to schools with 2.7 percentage points more FRL students. In short, the district increased the gap by about 11 percentage points in terms of the FRL student exposure. Regarding student achievement, the Board placed White students in schools where 4.57 percent more of the students are achieving on grade level (based on composite scores) than in their previous school. Non-White students were moved into schools where 4.87 percent fewer students were achieving at grade level. In short, there is a 10 percentage point achievement gap between the schools to which Whites and non-Whites were moved.

The Board conducted the 2010 reassignments pursuant to a purportedly facially neutral neighborhood school assignment plan that considers proximity to home as the key factor in student assignment. However, regardless of the nature of the Board's motivations for moving groups of minority students into racially isolated neighborhood schools, the mere appearance that the Board conducted student reassignments based on race meets the standard for a showing of discriminatory outcomes and disparate impact. The obvious disparate impact of these proximity based student assignments, the first phase in the long-term reassignment strategy for the district, should have alerted the Board that their facially neutral policy has and will continue to have a largely racialized impact on non-White students and families.

b. The Wake County Board of Education Student Assignment Policies and Practices Have Had a Racially Discriminatory Impact on Minority Students Who are Disproportionately Assigned to Racially Segregated Schools

Although the newly-enacted neighborhood schools plan may be racially neutral on its face, its application will be far from neutral. It will further segregate Wake County's public schools by race and, consequently, deny minority students equal access to educational resources on the basis of their race, a clear violation of Title VI.

⁴⁴ WCPSS uses eligibility for Free or Reduced-Price Lunch to classify a student as Economically Disadvantaged.

i. Wake's Previous Socioeconomic Student Assignment Plan

WCPSS's previous commitment to maintaining a diverse learning environment stemmed not only from the social benefits to students but also from a large body of research indicating that students learn better in schools with an economically heterogeneous student body rather than in high poverty schools.⁴⁵ In 2000, the Wake County Board of Education shifted from a race-conscious student assignment diversity policy to a socioeconomic diversity plan to promote an effective, safe learning environment for every child.⁴⁶ Supported by local and national research showing integrated student environments as one characteristic of healthy schools, this plan set a target that no more than 40 percent of students at a given school should be economically disadvantaged, as measured by a student's eligibility for free or reduced-price lunch, and that no more than 25 percent of students should have scored below grade level on statewide reading tests.⁴⁷

Although racially neutral, the socioeconomic assignment plan recognized the correlation between race and income in Wake County and attempted to avoid any racially disparate impacts upon minorities in Wake's schools by monitoring the concentration of poverty in each individual school. This policy, in conjunction with the system's existing magnet school policy, was designed to improve academic achievement by ensuring that all Wake County students have the opportunity to attend socioeconomically diverse public schools and benefit from the factors and characteristics associated with diverse learning environments. Wake education leaders intentionally designed this student assignment policy as a necessary measure to ensure equal education opportunities for all children, regardless of racial or socioeconomic background. Today, more than 70 school districts around the country have adopted a similar socioeconomic-integration policy.⁴⁸

ii. Reassignment Patterns under Wake's Socioeconomic Diversity Policy

During the life of the socioeconomic diversity student assignment policy, few student reassignments were made as a result of socioeconomic diversity during the life of the plan. Rather, to the extent reassignments were made between 2000 and 2009, they were primarily necessary because of the overall growth in Wake County's population. On average, less than five percent of Wake County students are reassigned each year, and these reassignments

⁴⁵ Wake 1999.

⁴⁶ From the early 1980s until 2000, Wake County pursued the complimentary goals of voluntary desegregation, school excellence and an efficient use of school facilities through the use a magnet schools, year-rounds schools and a commitment in student assignment to maintain student populations with no less than 15 percent and no more than 45 percent Black students (roughly 15 percent above and below the percentage of Black students enrolled in WCPSS).

⁴⁷ Wake Board of Education Policy 6200, January 10, 2000.

⁴⁸ "More Students Factoring Poverty Into Student Assignment Plans," Education Week. May 12, 2010.

occurred for a number of reasons, including the need to ease over-crowding, fill new schools, allow children to attend programs not available at their base school, address transportation issues, and, lastly, to maintain diversity within the schools.⁴⁹ During the 2002-2003 school year, approximately 4% of students district-wide were reassigned; however, relatively few of these students were actually reassigned for the purpose of decreasing the percentage of students receiving FRL at any given school.⁵⁰ Only 5% of those students who were reassigned, or .2% of students district-wide, were identified as being reassigned solely for diversity purposes that year.⁵¹ This is generally the reassignment trend for each school year, illustrating that the Board has been willing to reassign for capacity purposes.

The rapidly increasing student population in Wake County was the primary cause for student reassignment within the past several years, *not* compliance with the socioeconomic diversity plan. WCPSS is the largest school district in the state and the 18th largest in the nation.⁵² Next year's student enrollment is likely to surpass WCPSS's own projections merely five years ago. Based on previous growth, WCPSS projected an enrollment of 138,687 students by the 2010-11 school year; in reality, 139, 599 students were enrolled in WCPSS during the 2009-10 school year, and WCPSS projects at least 143,432 student enrollment for the 2010-11 school year.⁵³ As of September 8, 2010, the tenth day of school in the 2010-11 school year, school system staff reported a student enrollment of 143,235 students, up 3,636 from last school year's official enrollment.⁵⁴

The number and percentage of students qualifying for free or reduced-price lunch has also increased throughout the last decade. When Wake's socioeconomic diversity policy was initially developed and implemented, the system had slightly over 21 percent student enrollment qualifying for free or reduced price lunches; in 2004-05, Wake's percentage of FRL student was over 26 percent and in 2009, over 31 percent.⁵⁵

iii. Elimination of the Commitment to Diversity in Wake County

On May 18, 2010 the school board affirmatively rescinded the socioeconomic diversity policy and in its place codified a neighborhood schools plan.⁵⁶ This new student assignment

49 Wake 2005.

50 *id.*

51 *id.*

52 Wake 2010.

53 Wake 2010.

54 WakeED blog, NewsandObserver.com, September 9, 2010.

55 Wake 2010.

56 Wake County Board of Education Meeting Minutes, May 18, 2010.

policy specifically eliminated all references to diversity and elevated proximity as the primary consideration in student assignment.⁵⁷ (see attached Student Assignment Policy, with deletions). This policy change was adopted without any prior analysis of educational research and policy, demographics, or the growing negative impacts on minority students.

iv. Evidence of Student Assignment Policies Resulting in Resegregated Schools

Despite the diversity of Wake County’s residents and public school students, the actions of the Board have produced racially segregated public schools.⁵⁸ The Board’s actions to resegregate Wake’s public schools have harmed minority students attending schools with a high-minority student concentration.

The resegregation of the predominantly-minority middle schools from the 2003-2004 school year to the 2008-2009 school year, is illustrated in Table 4. During this period, these schools became significantly poorer and even more predominantly minority.

Table 4. Resegregation of Wake County Public Schools, 2003-2004 to 2008-2009

⁵⁷ See Exhibit 6: WCPSS Student Assignment Policy with Deletions.

⁵⁸ During the 2009-10 school year, WCPSS student population was 51.1% White and 48.9% Nonwhite (25.9% Black; 11.8% Latino; 6.1% Asian; 4.8% Multi-Racial and .3% American Indian). Wake 2009.

While three of these middle schools were already at the 40 percent threshold in 2003-2004, the percent of FRL students actually increased in those three schools, and three more schools eventually exceeded the 40 percent threshold. The percent increase ranged from five percent (to 53.9 percent eligible) to 39.5 percent. The percent minority also increased in these schools, as schools which were the most racially and economically identifiable became even more segregated. At a time when the percent of non-White students in WCPSS increased by 5.8 percentage points, the percent minority in at least one of the most segregated schools increased by as much as three times that amount.

c. An Increase in Racially Identifiable Schools Makes Wake County Vulnerable to the Documented Harms of Racial and Socioeconomic Isolation in Public Schools

Maintaining or creating racially isolated minority and high poverty schools results in significant educational harms to the students who attend them. The educational harms are largely attributable to the fact that predominantly minority schools are also overwhelmingly high poverty schools,⁵⁹ and high poverty schools depress the academic achievement of students who attend those schools.⁶⁰ Moreover, it is not just that a student’s individual demographic characteristics make him or her less likely to succeed; rather, high poverty schools have a negative impact on a student’s educational outcomes regardless of the student’s individual socio-economic status or wealth.⁶¹

There already exists a correlation between the racial segregation of Wake’s schools and the quality of those schools, as indicated in school rankings based upon composite performance scores. In December 2009, twenty Wake County public schools (non-charters) had student bodies which were at least 75 percent minority, as showing Table 5 below.

Table 5. Academic Performance in Wake County Public Schools ≥75 Percent Minority, 2008-2009

School	2008-2009 Composite Achievement Score
River Bend Elementary	70.5%

⁵⁹ ANURIMA BHARGAVA ET AL., NAACP LEGAL DEF. AND EDUC. FUND, INC. & THE CIVIL RIGHTS PROJECT, STILL LOOKING TO THE FUTURE: VOLUNTARY K-12 SCHOOL INTEGRATION 14 (2008).

⁶⁰ JAMES S. COLEMAN, ET AL, EQUALITY OF EDUCATIONAL OPPORTUNITY 21-22 (1966); RICHARD KAHLENBERG, ALL TOGETHER NOW (2001).

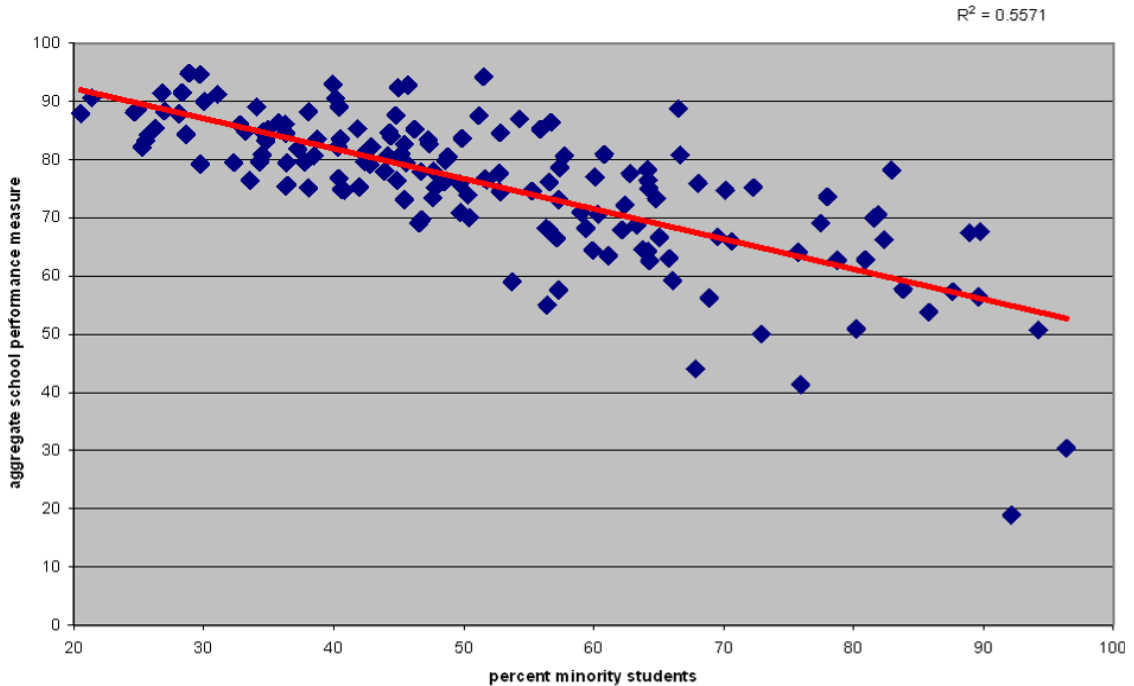
⁶¹ UNC Center for Civil Rights, *supra* note , at 1-4; Kahlenberg, *supra* note , at 6; COLEMAN, *supra* note , at 302-310, Molly McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1355-56 (2004).

Longview	18.9%
Barwell Road Elementary	50.7%
Brentwood Elementary	56.4%
Bugg Elementary	67.6%
Carnage Middle	73.6%
Creech Road Elementary	50.9%
East Garner Elem	67.4%
East Garner Middle	87.6%
East Millbrook Middle	62.7%
Fox Road Elementary	57.7%
Fuller Elementary	78.2%
Hodge Road Elementary	57.3%
Knightdale Elementary	69.1%
Millbrook Elementary	70.0%
Mount Vernon	41.3%
Phillips High	30.4%
Smith Elementary	53.8%
Southeast Raleigh High	66.2%
Wilburn Elementary	62.80%
Average	59.66%

The average composite performance score for this group of predominantly minority schools is 59.6, well below the district score of 78.4. In addition, of the twenty schools that had a greater than 75 percent minority student population, only two met Adequate Yearly Progress requirements under federal No Child Left Behind legislation, while over 60 percent of schools made AYP district-wide.

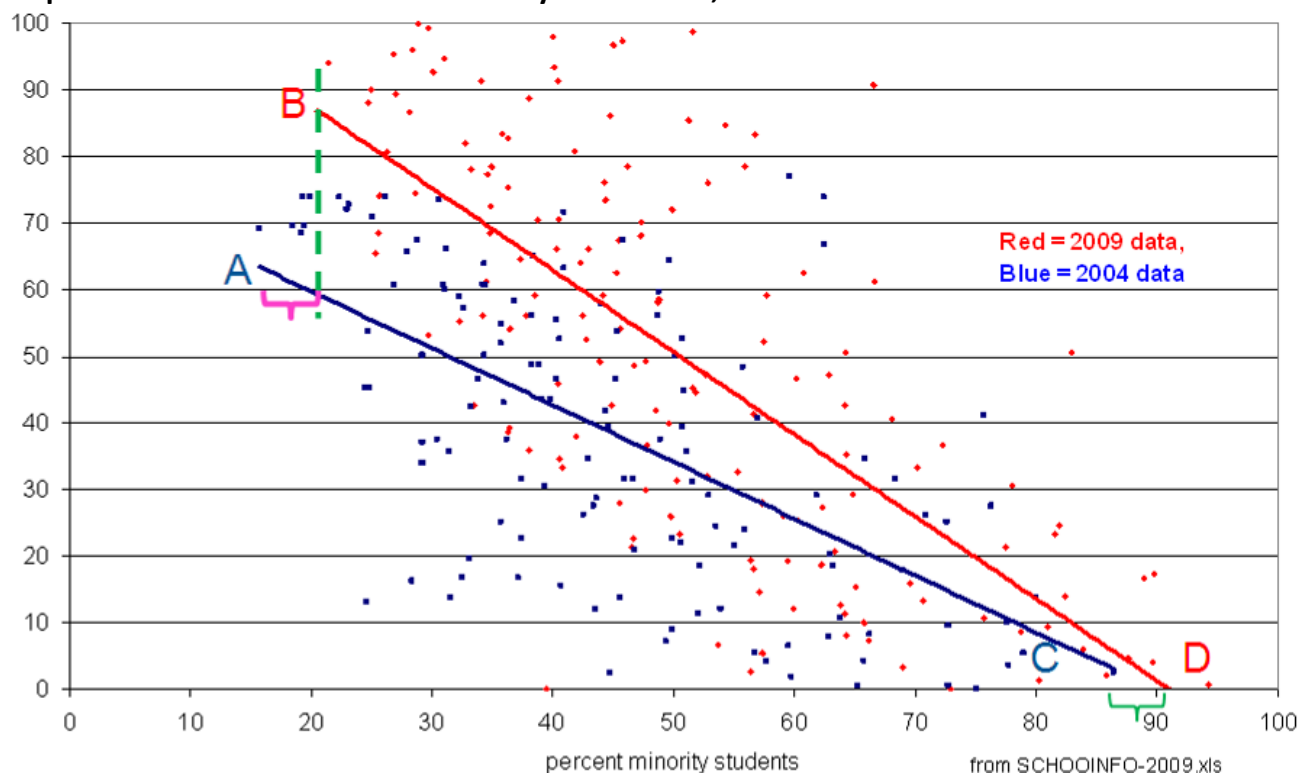
An analysis of the system in its entirety indicates that the quality of Wake's schools decreases as the percent minority increases. Throughout Wake's system, ethnicity and school performance are closely aligned, as illustrated in Graph 1 below.

Graph 1. Correlation Between WCPSS School Performance and Minority Student Concentration.



The next graph, Graph 2, shows that as Wake’s schools become increasingly resegregated, there is a greater risk of harm to minority students. Between 2004 and 2009, quality increased in Wake’s best-performing schools (the differences between Points A and B). However, during a time when the minority population in the county increased, the minority percentage in these highest-performing schools increased at a lesser rate. Although the school system saw improvements in performance overall (the shift up from the blue line representing 2004 to the red line representing 2009), aggregate performance in the worst-performing schools (points C and D) **decreased** (the vertical difference between Point C and Point D). In addition, the degree of minority student segregation increased in the most segregated schools (i.e. schools with highest percentages of minority students), as shown by the horizontal shift of line AC to line BD.

Graph 2. School Performance vs. Minority Attendance, 2004-2009



Under a neighborhood schools/proximity assignment model that does not acknowledge the benefits of diversity in public schools and the impacts of student assignment on student achievement, the trends previously discussed will likely exacerbate as Wake’s schools become even more racially isolated, resulting in inferior educational opportunities to minority students. Minority student achievement will be depressed even further and the achievement gap will only widen as the schools become more racially and socioeconomically isolated.

Social science research includes well-documented evidence of the harms to minority students who attend public schools with high concentrations of low-income and minority students. Students in predominantly minority schools tend to receive a generally low quality curriculum and have unequal access to high level curricular offerings.⁶² Second, even though research shows teacher quality is closely linked to student achievement,⁶³ students in predominantly minority schools tend to have limited access to highly qualified teachers.⁶⁴ As a

62¹ Ruth B. Ekstrom, Margaret E. Goertz, and Donald Rock, *Education and American Youth* (Philadelphia: The Falmer Press, 1988); Gamoran, “The Stratification of High School Learning Opportunities,” 135-55; Jeannie Oakes, Adam Gamoran, and Reba N. Page, “Curriculum Differentiation: Opportunities, Outcomes, and Meanings,” in *Handbook of Research on Curriculum*, ed. Philip W. Jackson (New York: MacMillan, 1992): 570-608

63¹ See Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, Education Policy Analysis Archives (Jan. 2000).

64¹ Susanna Loeb and Michelle Reininger, *Public Policy and Teacher Labor Markets: What We Know and Why it Matters* (East Lansing, Mich.: The Education Policy Center at Michigan State Univ., 2004); Stephen J. Carroll et al., *The Distribution of Teachers among California’s School Districts and Schools* (Santa Monica, Calif.: Rand Corporation, 2000). U.S. Department of Education, *Monitoring School Quality*; Clotfelter, Ladd, and Vigdor, “Who

general matter, these schools find it extremely difficult to attract high quality teachers. Yet, even when they do secure quality teachers, predominantly minority schools find it difficult to retain them.⁶⁵ The best teachers often leave high poverty, high minority schools as soon as they obtain sufficient experience.⁶⁶ Predominantly minority schools are then forced to replace the departing teachers with inexperienced and less qualified teachers.⁶⁷ Consequently, predominantly minority schools experience exceptionally high teacher turnover.⁶⁸ The lack of continuity in their teaching staff itself likewise negatively impacts the school.

Unfortunately, money alone cannot easily fix this problem, because the problem is not simply one of money.⁶⁹ Rather, the racial and socio-economic characteristics of schools significantly influence where teachers decide to teach.⁷⁰ Those teachers with options, which are high quality teachers, generally will not voluntarily choose to teach in high minority, high poverty schools.⁷¹ Of course, money is not entirely irrelevant, but absent huge salary increases,

Teaches Whom?" 377-92; Rivkin, Hanushek, and Kain, "Teachers, Schools, and Academic Achievement," 417-58; Catherine E. Freeman, et. al., *Racial Segregation in Georgia Public Schools, 1994- 2001* in SCHOOL RESEGREGATION, MUST THE SOUTH TURN BACK?, 157-59 (2005); Christopher Jencks & Meredith Phillips, *The Black-White Test Score Gap: Why It Persists and What Can Be Done*, The Brookings Institution, Mar. 13, 2008, available at http://www.brookings.edu/articles/1998/spring_education_jencks.aspx ("Predominantly white schools seem to attract more skilled teachers than black schools . . ."); Jay Mathews, *Top Teachers Rare in Poor Schools*, WASH. POST, Sept. 10, 2002, at A5 (discussing the dearth of high quality teachers in low income schools).

65 Eric A. Hanushek et al., *Why Public Schools Lose Teachers*, 39 J. HUMAN RESOURCES 326, 337 (2004).

66 Id.; see also Barnett Berry and Eric Hirsch, Center for Teaching Quality, *Recruiting and Retaining Teachers for Hard-to-Staff Schools* (2005) (identifying recruiting and retention problems in high poverty, low performing schools); Johnson, S.M., Berg, J. H., and Donaldson, M. L., *Who Stays in Teaching and Why: a Review of the Literature on Teacher Retention* (2005).

67 Hanushek, *supra* note.

68 EDUC. TRUST, *THEIR FAIR SHARE, HOW TEXAS-SIZED GAPS IN TEACHER QUALITY SHORTCHANGE LOW-INCOME AND MINORITY STUDENTS* 6 (2008), <http://www.theirfairshare.org/resources/TheirFairShareFeb08.pdf>; UNC CTR. FOR CIVIL RIGHTS, *THE SOCIOECONOMIC COMPOSITION OF THE PUBLIC SCHOOLS: A CRUCIAL CONSIDERATION IN STUDENT ASSIGNMENT POLICY* 4-6 (2005), available at <http://www.law.unc.edu/documents/civilrights/briefs/charlottereport.pdf>.

69 Jane L. David, "Teacher Recruitment Incentives", *Poverty and Learning*, Volume 65, Number 7, April 2008.

70 Wendy Parker. Benjamin Scafidi, David L. Sjoquist, and Todd Stinebrickner, "Race, Poverty, and Teacher Mobility," Working paper, Andrew Young School of Policy Studies Research Paper Series, Atlanta, Ga., August 2005; Susanna Loeb, Linda Darling-Hammond, and John Luczak, "How Teaching Conditions Predict Teacher Turnover in California Schools," *Peabody Journal of Education* 80, no. 3 (2005): 44-70.

71 ALLIANCE FOR EXCELLENT EDUC., *IMPROVING THE DISTRIBUTION OF TEACHERS IN LOW-PERFORMING HIGH SCHOOLS* 7 (2008), http://www.all4ed.org/files/TeachDist_PolicyBrief.pdf (indicating that several states already have incentive pay for low-performing schools, but pay increase alone is insufficient to attract teachers); Hanushek, *supra* at 350-51 (finding that a ten percent salary increase would be necessary for each increase of ten percent in minority student enrollment to induce white females to teach in the school).

teachers will still prefer schools with smaller concentrations of minorities.⁷² And, in any event, very few predominantly minority schools and school systems have the resources to offer such huge salary increases. In fact, it is not unusual for predominantly minority school districts to have less money to attract teachers than surrounding school districts.⁷³ In short, predominantly minority schools are seriously disadvantaged in securing one of the most important resources: highly qualified teachers.⁷⁴

Furthermore, the unequal access to teachers and curriculum has the natural result of negatively impacting student achievement. Student achievement in predominantly poor minority schools is routinely much lower than in predominantly White schools.⁷⁵ For instance, a study of Charlotte-Mecklenburg schools showed that, even controlling for factors such as a student's family background, prior achievement, peer effects, and self-reported academic effort, the more time students spent in predominantly minority elementary schools the worse their academic achievement would be in middle and high school in terms of standardized tests and grade point averages.⁷⁶ Likewise, as discussed above, WCPSS's study of its own schools revealed similar achievement failures in regard to those schools with the highest levels of poor students,⁷⁷ which strongly correlates with race in Wake County. Nor do these examples appear to be outliers. Rather, of the lowest performing school districts in North Carolina, more than 80 percent are predominantly minority.⁷⁸

The depressed achievement of students in predominantly minority schools has compounding long term effects as well. The graduation rates in predominantly minority schools are alarmingly low. Nationally, only four out of ten students graduate on time in predominantly minority high schools.⁷⁹ For instance, in 2004-05 in Baltimore City Schools, a high poverty and

72 *Id.*

73 See, e.g., Education Trust, *California's Hidden Teacher Spending Gap: How State and District Budgeting Practices Shortchange Poor and Minority Students and Their Schools* (2005).

74 See Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, Education Policy Analysis Archives (Jan. 2000) (finding that teacher quality and student achievement are closely linked).

75 See, e.g., Russell W. Rumberger & Gregory J. Palardy, *Does Resegregation Matter? The Impact of Social Composition on Academic Achievement in Southern High Schools*, in *School Resegregation: Must the South Turn Back* (Boger & Orfield, eds.)

76 Roslyn A. Mickelson, *Segregation and the SAT*, 67 *Ohio St. L. J.* 157 (2006); Mickelson, "Subverting Swarm," 215-52.

77 Karen Banks, E&R Report No. 01.21, *The Effect of School Poverty Concentration in WCPSS* p. 4, Fig. 1 (March 2001).

78 Howard E. Manning, "Letter Re: The High School Problem - Consequences," Public School Forum of North Carolina, 3 March 2006 at <http://www.ncforum.org/resources/collateral/030306-MANNING%20OPINION%20re%20High%20Schools%20with%20charts%arts3-3-06.pdf> (accessed 29 September 2006).

79 *LOOKING TO THE FUTURE*, *supra* note , at 21.

high minority school system, only one-third of the students graduated on time.⁸⁰ Moreover, lower graduation rates hold true regardless of a student's individual race or wealth.⁸¹ These low graduation rates are partly attributable to students in predominantly minority schools having lower success on graduation exams,⁸² but many students do not even make it to the graduation exam in predominantly minority schools and instead drop out. Simply attending a predominantly minority schools makes a student significantly more likely to drop out of high school.⁸³

If a student does graduate, attending a predominantly minority school tends to limit students' access to later opportunities in higher education and employment. Students from predominantly minority schools are less likely to matriculate to college and four year universities.⁸⁴ Likewise, those who do not pursue higher education also have less access to social networks that are crucial to securing jobs. Integrated schools have effects converse to many of the above described educational harms.⁸⁵

Overall, operating predominantly minority schools is also economically inefficient. Due the various problems discussed above, predominantly minority schools are simply more expensive to run than other schools.⁸⁶ In North Carolina in particular, research strongly suggests that more resources and more effective use of existing resources will be needed to offset the

80 *Id.* at 21 Table 3.

81 Christopher B. Swanson, *Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation, Class of 2001* (Washington, D.C.: The Urban Institute, 2004); Christopher B. Swanson, *Who Graduates in the South?* (Washington, D.C.: The Urban Institute, 2005).

82 Chungmei Lee, *Educational Outcomes in Metropolitan Boston* (Cambridge, Mass.: The Civil Rights Project, April 2004 (in metropolitan Boston, only 61 percent of tenth-grade students in high-poverty, high-minority schools passed the English/Language Arts graduation test in the 2002-03 school year compared to 96 percent of students attending low-minority, low-poverty schools.) Borman et al., "The Continuing Significance of Racial Segregation in Florida's Schools," 605-31. (examining achievement differences on Florida's graduation exam).

83 Robert Balfanz and Thomas C. West, "Racial Isolation and High School Promoting Power," in *Graduation Gap Policy Brief* (Baltimore: Center for Social Organization of Schools, Johns Hopkins University, 2006); Robert Balfanz and Nettle Legters, "Locating the Dropout Crisis: Which High Schools Produce the Nation's Dropouts?" in *Dropouts in America: Confronting the Graduation Rate Crisis*, ed. Gary Orfield (Cambridge, Mass.: Harvard Education Press, 2004): 85-106.

84 Robert Teranishi, Walter R. Allen & Daniel G. Solórzano, *Opportunity at the Crossroads: Racial Inequality, School Segregation, and Higher Education in California*, *Teachers College Record* Volume 106 Number 11, 2004, p. 2224-2245. Berger, Joseph B.; Smith, Suzanne M.; Coelen, Stephen P., *Race and the Metropolitan Origins of Postsecondary Access to Four Year Colleges: The Case of Greater Boston* (ED489181)

85 See generally BHARGAVA, SUPRA ; Eric M. Camburn, "College Completion among Students from High Schools Located in Large Metropolitan Areas," *American Journal of Education* 98, no. 4 (August 1990): 551-69.

86 James E. Ryan, *Schools, Race and Money*, 109 *YALE L.J.* 249 (1999); See also Christopher E. Adams, *Is Economic Integration the Fourth Wave in School Finance Litigation?*, 56 *EMORY L.J.* 1613, 1627-31 (2007) (questioning whether money alone can deliver adequacy in concentrated poverty).

effects of schools with higher levels of segregation among minority students.⁸⁷ For a school district such as WCPSS that will likely lack the resources and the will to devote the necessary resources to deliver a quality education to students in predominantly minority schools, the natural consequence will be racially separate and unequal schools.⁸⁸

d. Any Student Assignment Plan that Does Not Account for the Residential Demographics of Wake County Will Fail to Remedy and Will Further Exacerbate Racial Segregation and Disparate Educational Impacts on Minority Students

As a preliminary matter in evaluating the potential impacts of any proposed student assignment plan, it is necessary to assess the demographics of Wake County and the scope and extent of residential racial and socioeconomic isolation and segregation. Analysis of these factors shows that a purely neighborhood schools student assignment plan will inevitably result in racially isolated schools in Wake County and further exacerbate the disparate education impacts on minority students.

While Wake County (outside of the city limits of Raleigh) is relatively White (shown as blue in Map 1 in Appendix A), Raleigh has a relatively large minority population – approximately 35.2 percent in 2008 that is comparatively concentrated⁸⁹.

There is also a demographic correlation between race and ethnicity and socio-economic status in Wake County. Lower-income minority families in Wake County are more likely to live in neighborhoods with high concentrations of poverty than their White counterparts. According to the most recent census data available, approximately 49 percent of low-income Blacks and 39 percent of low-income Latinos live in neighborhoods of high poverty.⁹⁰ However, only 30 percent of low-income Whites live in high poverty neighborhoods.⁹¹

African Americans are the largest minority in Wake County, representing 20.5 percent of the population.⁹² Map 2 represents the geographic concentrations of African American school-age children by the node of their assigned attendance area. While the number of students in WCPSS has continued to grow rapidly (114,068 in 2004; 139,599 in 2009) overall racial and ethnic diversity has also increased (43 percent non-White in 2004; 48.9 percent non-White in 2009).

Demographers and researchers have devised statistical methods to compare degrees of segregation in communities, particularly when the issue is the distribution of a minority group

⁸⁷ See Charles Thompson and Gary Henry, *North Carolina High School Resource Allocation Study*, 2008 (discussing chronically low-performing high schools, which also tend to be predominantly minority schools).

⁸⁸ See, e.g., UNC CTR. FOR CIVIL RIGHTS, *supra*, at 6-7.

⁸⁹ American Community Survey, 2005-2008.

⁹⁰ Census 2000.

⁹¹ Census 2000.

⁹² ACS 2005-2008.

in an area. The most common of these is the dissimilarity index. The racial dissimilarity index gives the percent of a group in an area that would have to move for all areas to have an equal proportion of the area's Black population. For instance, in Raleigh and for Wake County as a whole, as shown in Figure 6, 62 percent of the Black population (and 57% of all minorities) would have to move to create a city that was integrated at the census block level. In general, a dissimilarity index above 60% is considered high.

Similarly, the economic dissimilarity index calculates the percentage of the population in an area with family incomes less than \$15,000 per year that would have to relocate for all area zip codes to have an equal proportion of the population with family incomes less than \$15,000 per year. In Raleigh, 30 percent of those making less than \$15,000 would have to move, versus 28 percent in the county as a whole, and less than 17 percent in the state as a whole. As shown in Figures 6, 7 and 8, Wake County has higher racial and socioeconomic dissimilarity indices—and is more segregated—than surrounding counties.⁹³ This reality makes inevitable the racially discriminatory impact of the Board's proximity-only or so-called "neighborhood schools" student assignment plan. Put another way, a student assignment plan which does not prioritize either racial or socioeconomic diversity will worsen racial segregation in WCPSS and intensify the adverse educational impacts on non-White students discussed above.

Despite growing statistical evidence of the disparate impact of the Board's implementation of its student assignment policy, the Wake County Board of Education has failed to take any measures to remedy the harms that result from the systemic limitations on minority students' ability to access school resources, and in some cases have actually caused this harm. Although the Board has not formally developed a system-wide reassignment proposal, preliminary Board discussions, the initial reassignments discussed in section II above, and the demographic residential patterns in Wake County demonstrate that pending reassignments will not only fail to address existing racial disparities, but cause them to grow wider and deeper. In developing student assignment plans, school districts often face a challenge of taking socioeconomic diversity and other factors into account and making trends in residential segregation irrelevant, or they can make proximity of primary importance and, by doing so, make residential segregation the most important aspect of what will determine school quality. The Wake County Board of Education has chosen the latter path.

b. Proximity-Only Assignments

⁹³ These ratios were calculated at the zip code level, so are extremely coarse. They are provided here to provide geographic context and comparison. Therefore, we calculated a dissimilarity index (D) at the block level (the smallest census unit, used for reapportionment). To calculate D, the following equation is used: Where w_i is the number of white in each of i sub-areas, W is the total white population, b_i is the number of blacks (or African Americans) in each of i sub-areas, and B is the total blacks (or African American) population. This calculation shows that Wake County's racial (Black vs. White) dissimilarity index is .621, which signifies a high degree of segregation (Massey and Denton 1993). This level of residential segregation is higher than for the City of Charlotte, than for the mean for the nation, for the South and for other metropolitan areas in its population category (Frey and Myers 2005).

The Board has committed to adopting an assignment plan that prioritizes proximity to schools over any other assignment factor or consideration. Demographic analysis of residential housing patterns demonstrates that a plan that focuses exclusively on proximity will increase racial segregation and isolation in Wake County schools. Using GIS modeling and WCPSS data (and for purposes of this analysis, without consideration of capacity), if Wake’s high school students were all assigned to the high school closest to their residence, two schools will be 80-100 percent minority, four will be 60-80 percent minority, five will be 40-60 percent minority, and nine will be 0-40 percent minority (see Map 3).

A model that assigns students solely based on proximity shows increased racial segregation over current school assignment. Under a proximity-only model, racial segregation and isolation significantly increases in at least five high schools:

Wakefield: 55.8% White in 2009-10, would become approximately 70% White.
Middle Creek: 57.1% White in 09-10 would become nearly 80% White.
Millbrook: 57.3% non-White in 09-10 would become 70% non-White
Athens Drive: 45.2% non-White in 09-10 would become 60% non-White
Southeast: 82.4% non-White in 09-10 would become 95% non-White.

In addition, a proximity only plan also fails to address disparities in high schools with already existing predominantly White student populations (> 65 percent, including Apex, Green Hope, Wake-Forest-Rolesville, Fuquay-Varina, Holly Springs).

The racial disparities in any proximity only plan are reflected in similar impacts on socioeconomic isolation. Whereas the current school assignment model has only three high schools with less than 20 percent FRL students, and fourteen schools between 20-40 percent FRL, a proximity-only model would create six high schools with less than 20 percent FRL students; leave nine high schools between 20-40 percent FRL; create four schools with 40-60 percent FRL; and one with 60-80 percent FRL (see Map 4).

i. The Board’s Potential “Neighborhood School” Plan Will Result in Increased Racial Segregation

In summer 2010, the Wake County Board of Education’s Student Assignment Committee offered several existing WCPSS maps showing various contiguous attendance zones that would control student school assignment as opposed to the existing model in which each node is individually assigned to particular schools. This attendance zone plan creates a number of larger attendance zones within which parents would be able to choose their child’s school. While called a “controlled choice” assignment model, it is far from that.⁹⁴ Controlled choice

⁹⁴ On September 16, 2010, the Greater Raleigh Chamber of Commerce and the Wake Education Partnership announced they are hiring Massachusetts educational consultant Michael Alves to develop a true “controlled choice” plan for presentation to the Wake County Board of Education later this year. These organizations have hired Alves and will present these maps through the Student Assignment Committee’s public comment system. Alves has not been hired by the Wake County Board of Education, and it is unclear how the Board will respond to these suggestions. See Goldsmith, T. and Keung Hui. “Wake leaders strike back on schools.” *News and Observer*.

plans, as used in several districts across the country, include the critical elements of community equity and school excellence. The Board's plan includes none of these important factors. Instead, it draws choice zones that are relatively small and primarily correspond with residential segregation. Thus, the plan is essentially a neighborhood school plan that, while including some modicum of choice, is still only a choice among racially isolated schools generally within one's immediate neighborhood. As such, rather than preventing and minimizing racial segregation (as do most controlled choice plans) the Board's failure to meet several critical elements of a legitimate controlled choice plan will further allow and increase racial segregation.

Under an authentic controlled choice plan, "every child and every child's group [has] access to all educational opportunities that a community offers, and... no child and no child's group [is] educationally disadvantaged because of personal or situational circumstances."⁹⁵ Because of the reality of racial and socioeconomic residential segregation in Wake County, and the accompanying reality that schools whose student bodies are poorest and majority non-White tend to suffer in terms of achievement, quality teacher retention and other educational resources, to devise a student assignment plan based solely on geographic proximity is to block African American and poor students' access to the quality educational opportunities available to their White peers, simply because of where they live. That is antithetical to the "controlled choice" model, which holds that "[r]isks for good public school experiences and against bad public school experiences should be shared in an equitable way among all children in a community."⁹⁶

In sum, a true controlled choice plan would prioritize equal access to quality schools, and would seek to remedy polarities in performance such as those that currently exist within and among Wake County's schools.⁹⁷ The Board's current majority, while shying away from the idea that student assignment is a strategy for student achievement, insists that the previous socioeconomic diversity policy failed low-income students and must be abandoned.⁹⁸ However, the theory espoused by the Board that Wake County's low-performing students (the vast majority of whom are poor and non-White) would benefit from assignment to a neighborhood school with a majority of low-performing students so that particular resources can be directed at them not only flies in the face of the controlled choice model, but also contradicts social science research. From a racial vantage point, half a century of scientific research supports the proposition that racial isolation damages African American students by adversely affecting their

September 17, 2010.

⁹⁵ Charles V. Willie, Ralph Edwards and Michael J. Alves, *Student Diversity, Choice, and School Improvement*, 22 (Conn.: Bergin & Garvey, 2002).

⁹⁶ Willie, Edwards and Alves, *supra*, at 22.

⁹⁷ *Id.* at 102, discussing studies conducted of "equitable" versus "unequitable" controlled choice plans in Cambridge, MA and Charleston, SC, respectively. The Cambridge plan included "racial fairness guidelines" requiring that no racial group in Cambridge exceed two-thirds of the student body in any school, which diminished the association between race and achievement scores found in Charleston.

⁹⁸ Hui, "School zone concept sees first light." *News and Observer*. April 24, 2010. Hui. "Tedesco feels RWCA's wrath." *News and Observer*. September 17, 2010.

achievement, while integrated schools have a positive effect on the achievement of Black pupils.⁹⁹ James Coleman, senior author of the study *Equality of Educational Opportunity* (1966), offered an interesting insight on this phenomenon when he said that “[Black] children in integrated schools come to gain a greater sense of their efficacy to control their destiny due to the fact that they...see that they can do some things better than [W]hites...a knowledge which they never had so long as they were isolated in all [B]lack schools.”¹⁰⁰

A legitimate controlled choice model recognizes that a high quality education equips children with the necessary social skills to succeed in the real world, working with and relating to people of different races, cultures and socioeconomic backgrounds. Thus the benefits of racially integrated schools accrue not only to students of color, but also to White students, and to society as a whole.¹⁰¹ While these benefits might not be measurable by End of Course or End of Grade standardized tests, their value cannot be overlooked.

ii. Analysis of Proposed Zone and Region Maps

A proximity-only plan produces segregated assignment patterns similar to the Proposed Attendance Zone assignment map currently under consideration by the Board (see Map 5). Both reflect the Board’s refusal to consider the educational value of diversity as a factor in student assignment and both will increase racial segregation and isolation in Wake County Schools. The Board’s “Proposed Zones” map is based on a slightly modified version of the current high school attendance zones (for consideration as an attendance zone assignment model, three existing high school attendance zones were collapsed into one). A true controlled choice model is equity-driven and requires district officials to consider local demographics prior to developing attendance zone maps, with the intention of designing zones to include a demographic population that roughly reflects that of the entire district. One need only overlay the Proposed Zones map with the related demographic data on school-aged children (6-19) living in those zones to see that this proposal will create a number of racially segregated attendance zones, including one (Southeast Raleigh/Enloe) that will be 96 percent minority (see Map 6). Currently, no WCPSS schools have an enrollment that hyper-segregated. A proposed assignment plan that limits students who reside in this zone to schools within this zone means that every school in this zone will become hyper-segregated.

⁹⁹ See, e.g., Russell W. Rumberger & Gregory J. Palardy, *Does Resegregation Matter? The Impact of Social Composition on Academic Achievement in Southern High Schools*, in *School Resegregation: Must the South Turn Back* (Boger & Orfield, eds.), and Willie, Edwards and Alves, *supra*, at

¹⁰⁰ *Id.*, at 101 (citing James Coleman, *Equality of Educational Opportunity* (1966): 25).

¹⁰¹ Students who have been educated in a diverse environment place a high value on integration; a survey of high school juniors and seniors in seven major school districts across the nation shows that White students value their interracial experiences as preparation for public life in multiracial settings. Marguerite L. Spencer, Rebecca Reno, John A. Powell. *The Benefits of Racial and Economic Integration in Our Education System: Why This Matters for Our Democracy*. Kirwan Institute for the Study of Race and Ethnicity, February 2009: 14 (citing John T. Yun & Michael Kurlander. *School Racial Composition and Student Educational Aspirations: A Question of Equity in a Multiracial Society*. *Journal of Education for Students Placed at Risk*, 9 no. 2, 2004:143-68).

In addition, several zones will have very predominant White majorities, including Apex (72 percent), Holly Springs (68 percent), Leesville (67 percent) and Middle Creek (75 percent). The change in the Middle Creek attendance zone particularly noteworthy, since it represents a significant change from the high school's current enrollment, which is 57 percent White. Under the Proposed Zone plan, there will be a significant reduction in the high schools that are most equitably balanced (40-60 percent non-White), from eight schools to three (see Map 7).

The Proposed Zone, or so-called "Neighborhood Schools" plan has similarly segregative impacts on students by socioeconomic status, creating six zones (containing eight high schools) that are greater than 40 percent economically disadvantaged (including one, Enloe/Southeast, with 68 percent FRL), and six zones (containing seven high schools) that are less than 20 percent economically disadvantaged (including Green Hope/Panther Creek 8 percent FRL, Apex 10 percent FRL, and Leesville 15 percent FRL) (see Map 8).

The Proposed Zones map also clusters a number of the district's already low performing schools into five of the new attendance zones, including the Southeast Raleigh/Enloe zone. (see Map 9). Moreover, the plan would lock students into assignment areas and schools that are already racially segregated. These include Bugg Elementary (90 percent non-White), Barwell Road Elementary (94 percent non-White), Fuller Elementary (83 percent non-White), Powell Elementary (70 percent non-White) and Carnage Middle (78 percent non-White). It should be noted that all four of these schools are currently magnet schools, suggesting that the current Board's exclusive reliance on the magnet program to "voluntarily" desegregate school is unrealistic and will not, on its own, prevent resegregation.

Recently, in reaction to the public outcry over the substantial racial disparities the proposed attendance zones will create, the Board has proposed creating an overlay of five large regions. According to the Board's initial statements, middle and high school students may be assigned across these broader regions, rather than being restricted to the Proposed Zones as initially suggested. However, elementary school students will be limited to attending schools within the Proposed Zone in which they reside, thereby subjecting those students to the segregation and related disparate impacts described above. Moreover, the Board has given no indication of how students will be assigned among the schools within each region or how magnet school seats will be made available to students in magnet programs, absent its express refusal to consider diversity in any assignment. As such, and given the Board's stated commitment to "neighborhood" schools, it is foreseeable that attendance patterns within these regions will more closely reflect a proximity-only based assignment model, as discussed below. In addition, current and historical "feeder patterns" (from elementary, to middle, to high) will further narrow the likelihood of desegregation at the middle and high school levels, which will reflect the segregated modeling of the elementary attendance zones.

iii. Modified Proximity Assignment ("Model B")

If the Board chose to accommodate both its so-called "neighborhood schools" concept and the value of optimizing racial and socio-economic diversity, it could develop an alternative assignment model that would produce a less discriminatory result. Several alternatives are available, but just one example is to modify proximity with a commitment to decreasing racial isolation, as described in Model B below.

Model B represents a preliminary attempt to create attendance zones that are both contiguous around a base high school (proximity) and decrease the most extreme racial isolation among the high schools (see Map 10). Although some students may not attend the school closest to their home, this model creates an assignment plan that substantially resembles the Proposed Attendance Zone Plan, but eliminates the most extreme racial segregation, including eliminating the creation of any high school with a non-White student population greater than 80 percent or less than 24 percent. Under this model, nine high schools would be between 24.7- 40 percent non-White, five are between 40.1 – 60 percent non-White, and six high schools would be between 60.1-80 percent non-White.

Incorporating some consideration of diversity into a proximity focused plan has a similar mitigating effect on the extreme socioeconomic isolation of the Proposed Attendance Zone plan, or a Proximity Only assignment scenario. Model B would create six high schools with less than 20 percent FRL students, leave 10 between 20-40 percent, and 4 between 40-60 percent. (See Map 11).

Model B thus demonstrates that even limited consideration of equity and diversity in a plan that establishes proximity as the primary focus for student assignment can effectively mitigate the worst impacts inherent in any plan. However, even this alternative leaves intact or increases racial isolation in a number of schools as compared to the prior socioeconomic diversity plan, even as currently administered. If the Board adopts an assignment plan based solely or primarily on residential proximity, racial and socioeconomic segregation and isolation in WCPSS will increase, along with the related disparate educational impacts for students consigned to those resegregated schools.

V. DISCRIMINATORY IMPACT OF DISCIPLINARY POLICIES

The Wake County Board of Education, by Administering Policies and Practices through which Black Students are Disproportionately Excluded from School for Conduct, Referred to Juvenile Court, and Transferred to Alternative Schools, Discriminates Against Black Students in Violation of Title VI of the Civil Rights Act of 1964

Students who get in trouble in Wake County face some of the harshest consequences in the country. In a state that already has the fourth highest number and the third highest rate of suspensions overall,¹⁰² the Wake County Public School System ("the WCPSS") meted out, by far, the most long-term suspensions in the state: 1,015 long-term suspensions occurred in the WCPSS in 2008-2009, the most recent year for which data is publicly available.¹⁰³ This number is twenty-two times higher than the number of suspensions in the Charlotte-Mecklenburg, NC school district the same year, though the school districts are approximately the same size.¹⁰⁴ The WCPSS also had the second highest number of short-term suspensions - 20,651 - in North Carolina.¹⁰⁵ This is not a new phenomenon in Wake County; the WCPSS has given out over 20,000 short-term suspensions and over 1,000 long-term suspensions during each of the past five school years for which data is available (106,333 short-term suspensions and 5,187 long-term suspensions total).¹⁰⁶

Students long-term suspended in Wake County are not assigned to alternative schools during their suspensions, and, as discussed below, any alternative education they may receive is limited and inadequate.¹⁰⁷ Unlike the rest of the state, the WCPSS excluded all long-term

102 National Center for Education Statistics, *Digest of Education Statistics* (2006), http://nces.ed.gov/programs/digest/d08/tables/dt08_161.asp and http://nces.ed.gov/programs/digest/d08/tables/dt08_160.asp.

103 NC DPI Consolidated Report of School Crime and Violence, Suspensions and Expulsions, and Drop Out Events and Rate, available at <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2008-09/consolidated-report.pdf>.

104 *Id.*

105 *Id.*

106 See NC DPI, Annual Reports on Suspension and Expulsions, available at <http://www.ncpublicschools.org/research/discipline/reports/>.

107 NC DPI Consolidated Report of School Crime and Violence, Suspensions and Expulsions, and Drop Out Events and Rate, p. 23, available at <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2008-09/consolidated-report.pdf>.

suspended students for the remainder of the year, even if the suspension occurred immediately after the school year began, a policy that resulted in tens of thousands of school days missed.¹⁰⁸ Nearly a third of all delinquency complaints filed in the juvenile justice system in Wake County come directly from the public school system. The consequences of school-based criminal complaints become even more devastating for students who are sixteen- and seventeen-year-olds because North Carolina law dictates that these minors be automatically prosecuted and sentenced as adults, regardless of their offense, a policy implemented in only one other state.¹⁰⁹

In Wake County, the combination of these and other policies leads to dire results for students, and particularly for Black students. In the WCPSS, Black students are drastically overrepresented in the school-to-prison pipeline. They are disproportionately represented when it comes to alternative school placements, short-term suspensions, long-term suspensions, expulsions, and school-based court referrals. In fact, the harsher the disciplinary measure, the greater the disparate impact on Black students.¹¹⁰

C. School Exclusion

The WCPSS Disproportionately Suspends and Expels Black Students.

In the WCPSS, as in all North Carolina school districts, the local board of education is responsible for creating policies that govern student conduct, that set out potential consequences for rule violations, and that regulate the processes for student hearings, appeals, and punishments.¹¹¹ The Board has promulgated a Code of Student Conduct and school rules (policies 6400-6450) that authorize administrators to exclude students from school through the use of short-term suspensions (“removal from school for a period of ten (10) school days or less”¹¹²), long-term suspensions (“removal from the school system for the remainder of the

09/consolidated-report.pdf. ("For reporting purposes, students are not considered suspended while attending an ALP or alternative school.").

108 See WCPSS Board Policy 6530.3(A).

109 See N.C. Gen. Stat. § 7B-1501(7); see also Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. Rev. 1443 (2008).

110 When it comes to percentage of suspended students versus percentage of total population Latino students are slightly underrepresented in suspensions and Asian and White students are dramatically underrepresented in suspensions.

111 N.C. Gen. Stat. § 115c-391.

112 WCPSS Board Policy 6530(B)(1).

school year”¹¹³), and expulsions (“permanent removal from the school system”¹¹⁴) for offending conduct. The processes for student hearings and appeals are dictated by the Board's Discipline and Due Process policies (policies 6500 and 6530). Combined, these policies result in the disproportionate exclusion from school of Black students, who make up 26.1% of the total student population, but who received 62.3% of short-term suspensions, 67.5% of long-term suspensions, and 100% of expulsions in the 2008-2009 school year, the last year for which data is publicly available.¹¹⁵

The racial disparities during the 2008-2009 school year were not an anomaly. During the three previous school years, Black students received 64.1% of short-term suspensions and 69.7% of long-term suspensions, compared to 21.6% and 18.3% for White students, respectively.¹¹⁶ Over the past five school years, 94.4% (34 of the 36) of the expelled students in Wake County were Black.¹¹⁷ During 2005-2006 school year, 17 students were permanently excluded from Wake County public schools: all of them were Black males.¹¹⁸

**Rate of Short-Term Suspension (per 1,000 of students within race)
During School Year 2008-2009**

**Rate of Long-Term Suspension (per 1,000 of students within race)
During School Year 2008-2009**

Even when holding certain variables constant, Black students were often punished more severely than similarly situated White students during the 2008-2009 school year. For example, the following chart shows the percentage of similarly situated Black and White students -- all

113 WCPSS Board Policy 6530(C)(1).

114 WCPSS Board Policy 6530(C)(3).

115 NC DPI Consolidated Report of School Crime and Violence, Suspensions and Expulsions, and Drop Out Events and Rate, p. 79, available at <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2008-09/consolidated-report.pdf>.

116 See North Carolina Department of Public Instruction, Annual Reports, available at <http://www.ncpublicschools.org/research/discipline/reports/>.

117 See North Carolina Department of Public Instruction, Annual Reports, available at <http://www.ncpublicschools.org/research/discipline/reports/>.

118 See NC DPI, *Annual Study of Suspensions and Expulsions, 2005-2006*, p. 84, available at <http://www.ncpublicschools.org/docs/research/discipline/reports/suspensions/2005-06suspensions.pdf>.

first-time policy violators, who committed only one offense -- who received long-term suspensions:

Policy Violation	% of Accused Black Students Who Received a Long-Term Suspension	% of Accused White Students Who Received a Long-Term Suspension
Assault on School Personnel	51.4%	13.3%
Gang	12.1%	9.1%
Minor Assault	73.9%	21.4%
Possession of a Weapon	23.7%	8.9%
Possession of Alcohol	15.0%	10.5%
Possession of an Illegal Substance	42.6%	34.0%
Sexual Harassment	2.5%	0.0%

Such disparities also hold true when it comes to short-term suspensions for many policy violations. For example:

Policy Violation	% of Accused Black Students Who Received a Short-Term Suspension	% of Accused White Students Who Received a Short-Term Suspension
Aggressive Behavior	74.4%	41.5%
Cell Phone Use	94.2%	91.2%
Falsification of Information	75.6%	64.0%
Fighting	93.2%	89.4%
Inappropriate Language	70.9%	63.1%

The statistical differences between long-term suspensions received by Black students and White students, overall in the WCPSS, as well as the many instances in which Black students are punished more harshly than similarly situated White students, for the same conduct, show that Black students are discriminated against in the WCPSS, in violation of Title VI of the Civil Rights Act of 1964 and its accompanying regulations.

Black Students in the WCPSS are Disproportionately Subjected to Unfair Discipline Procedures, Lengthy Suspension Terms, and Inadequate Alternative Education.

Suspension Procedure

Black students in the WCPSS are recommended for long-term suspension and suspended long-term more and at higher rates than White students. Thus, they are disproportionately subjected to hearing and appeals procedures that are unfair and arguably unconstitutional, as they largely render meaningless students' opportunity to be heard.¹¹⁹ These procedures of the WCPSS virtually ensure that students either do not appeal, or, if they do appeal, that they will lose. Because Black students participate in these hearings and appeals more often, they are

¹¹⁹ See *Goss v. Lopez*, 419 U.S. 565 (1975).

more likely to be subjected to the WCPSS' unjust procedures, which can result in wrongful suspensions and in students' and parents' demoralization, frustration and alienation from a system that is intended to assist them, but that is instead stacked against them.

In the WCPSS, students are not automatically afforded the chance to appeal their long-term suspensions. Rather the burden is on the family, which must request a school-based hearing in writing within four school days of receiving the notice of suspension.¹²⁰

All North Carolina students have a right to be represented by an attorney or advocate; however, families that cannot afford to hire an attorney are not appointed one at public expense.¹²¹ Therefore, in practice, wealthier families can have lawyers, while low-income families have to know where to find free lawyers and hope one is available. Moreover, there are parents who do not make enough to hire a private attorney but because of having just enough income and assets, they are not eligible for a free lawyer. The WCPSS also does not provide students facing long-term suspension with a list of free legal resources.

For a student accused in the WCPSS, it is extremely difficult, and often impossible, to obtain the evidence (e.g., witness statements, video tapes, personnel or educational files, investigation reports, etc.) that is necessary for families to effectively exercise their rights to present evidence and cross-examine witnesses. There is little discovery. Unreliable, unchallengeable hearsay evidence is regularly used by school administrators and their witnesses. Also, principals are not required to tell the student facing suspension the names of the witnesses they plan to call. Finally, students do not have subpoena power (i.e., they cannot ask the school to make the witnesses come to the hearing) and often the names of witnesses are withheld by school officials. Should a parent or student find witnesses on their own, the school system requires parental permission before allowing another student to testify. If the school wants to use that witness' statement, anyway, they do, but a family does not have the same access to witnesses for or against their student.

Then, the school-based hearing is heard by a panel of three staff members from the school the student attends and a decision is made by a majority vote.¹²² Not only does the prosecuting principal supervise all three staff members, but also the principal gets to select two of the staff members to serve on the panel, whereas the student is only allowed to choose one.¹²³

Therefore, it is no wonder that suspension appeals are relatively rare and largely unsuccessful. During the 2008-2009 school year, only 22.1% of principals' recommendations for long-term suspensions had a school-based hearing—in other words, less than one quarter of students appealed their principals' recommendations for long-term suspension. However, most of the recommendations for long-term suspension that were appealed to a school-based panel

120 Board Policy 6530.4(A).

121 Board Policy 6530.4(A).

122 Board Policy 6530.4(A).

123 Board Policy 6530.4(A).

were unsuccessful anyway: 88.5% were upheld; 10.9% were reduced to short-term suspension; and 0.6% were found not guilty. Only 119 long-term suspensions were appealed to the Superintendent. The Superintendent upheld 89.9% of the long-term suspensions. Only forty-four of the long-term suspension recommendations made their way up to the Board of Education. The Board upheld the majority of the suspensions (65.9%). It modified 34.1%, which presumably means one of two things: 1) the long-term suspension stood (and stayed on the student's record), but was shortened from the rest of the year and the student was allowed to return to school; or 2) the long-term suspension stood (and stayed on the student's record), but the student was placed in an alternative learning program. Finally, according to public records, the Wake County Board of Education did not overturn any long-term suspensions or reduce any to short-term suspensions during 2008-2009.¹²⁴

Alternative Education

Only three options exist for long-term suspended students in the WCPSS. The Assistant Superintendent for Student Support Services recently commented that "in this district, we have not expanded our alternative school options in many years....So, we don't have a very comprehensive array of services for alternative placements."¹²⁵

One option for long-term suspended students in the WCPSS is a program called Second Chance Online Resource for Education (SCORE), which provides online classes for suspended students. However, it only addresses two classes: math and English and is not a full-blown curriculum for the students. Furthermore, online classes present many other concerns, such as: a student who does not have access to a computer with the internet at home or the transportation necessary to access free internet at a public library or instructional center; a student missing out on the benefits of attending a real school, such as free and reduced lunch, exercise in gym class, extracurricular activities, socialization, and supervision; and a student who is not computer literate.

The second option is for long-term suspended students with disabilities. The WCPSS has a custom and practice of providing such students between one and six hours per week of instruction (called "homebound" or "home/hospital") outside of regular school hours.

The third possibility for long-term suspended students in the WCPSS is that they get no education at all, often more many months. These students generally sit at home or hang out on the streets unsupervised. They also receive failing grades or "incompletes" for the work and/or classes they miss during the period of suspension.

The impact of school exclusion is devastating for students

The destructive consequences associated with school exclusion are well-documented, including:

¹²⁴ Data obtained through a public records request.

¹²⁵ Marvin Connelly, Wake County Board of Education, Committee of the Whole, August 10, 2010.

- Accelerating the course of possible delinquency by leaving youth with little parental supervision and more opportunities to socialize with deviant peers;
- Increasing the likelihood of dangerous conduct, such as engaging in physical fights, possessing weapons, and using alcohol, tobacco, and drugs;
- Generating feelings of alienation and failure that lead excluded students to unemployment, gangs, and crime;
- Leading to isolation, suicidal ideation, and substance abuse;
- Intensifying conflicts with adults;
- Creating a self-fulfilling belief that a student is incapable of abiding by schools' social and behavioral codes;
- Decreasing motivation to learn;
- Worsening academic performance (including failing grades and retention); and
- Increasing the likelihood of dropping out and not graduating.¹²⁶

At the August 10, 2010 Board meeting, the Assistant Superintendent for Student Support Services, testified that “research shows that students who are absent from school for ten or more days have a greater likelihood of lower academic performance and an increase in the risk of dropping out of school.” The North Carolina Department of Juvenile Justice and Delinquency Prevention has reported: “Anecdotal and empirical research shows that when youth are

¹²⁶ See New York Civil Liberties Union, Annenberg Institute For School Reform & Make The Road New York, *Safety With Dignity: Alternatives To The Over-Policing Of Schools 9-11* (July 2009), available at http://www.annenberginstitute.org/pdf/Safety_Report.pdf;

Simone Marie Freeman, *Upholding Students' Due Process Rights: Why Students Are in Need of Better Representation at, and Alternatives to, School Suspension Hearings*, 45 Fam. Ct. Rev. 638, 640 (2007);

Jane Conoley, et. al, American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations* (2006);

Action for Children North Carolina (formerly the North Carolina Child Advocacy Institute) *One Out of Ten: The Growing Suspension Crisis in North Carolina 5* (2005); Advancement Project and Harvard Civil Rights Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline, 9-11* (2000);

Eric Blumenson & Eva S. Nilsen, *One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education*, 81 Wash. U. L. Q. 65, 82-83 (2003);

Advancement Project, *Out-of-School Suspension and Expulsion—Derailed: The Schoolhouse to Jailhouse Track 7* (2003); Building Blocks for Youth, *Unintended Consequences: The Impact of Zero Tolerance and Other Exclusionary Policies on Kentucky Youth, 8-9* (2003);

NAACP Legal Defense And Education Fund, Inc., *Dismantling The School-To-Prison Pipeline 2-3*, available at http://www.naacpldf.org/content/pdf/pipeline/Dismantling_the_School_to_Prison_Pipeline.pdf;

American Academy of Pediatrics, Committee on School Health, *Out-of-School Suspension and Expulsion*, 112(5) Pediatrics 1206-07 (2003);

Alicia C. Insley, *Suspending and Expelling Children from Educational Opportunity: Time to Reevaluate Zero Tolerance Policies*, 50 Am. U. L. Rev. 1039, 1069-70 (2001); Southern Poverty Law Center, *Alternatives to Out-of-School Suspension*.

removed from the school setting, they may seek out gangs as a replacement for structure and missing relationships.”¹²⁷ “The Department has seen through research one of the greatest factors that can contribute to a child’s poor academic performance is out-of-school time.”¹²⁸ The North Carolina Department of Public Instruction also highlights the well-established research about negative impacts of school exclusion:

If the student is not admitted to an [alternative learning program], the student is out of school for the duration of the suspension, often unsupervised. The student may then become more at-risk of academic failure; involvement in high-risk behaviors such as sex, drugs/alcohol/tobacco; delinquent behaviors; and/or serious trouble with the law. Those who are suspended or expelled out of school often go unsupervised, resulting in negative academic consequences and all too frequently, increases in crime and delinquency problems.¹²⁹

Thus, Black students in the WCPSS suffer immediate and tangible harms from being disproportionately suspended and from being disciplined more harshly than their White peers.

a. School-Based Juvenile Delinquency Complaints

In addition to high numbers of suspensions, the WCPSS also sends too many children into the juvenile court system. During the 2008-2009 state fiscal year there were 802 school-based delinquency complaints filed against students in Wake County, which accounted for 32.9% of all delinquency complaints filed in Wake County. Almost all, 91%, of the school-based delinquency complaints were for misdemeanors.¹³⁰

Again, these practices of the WCPSS result in enormous racial disparities. During the 2008-2009 state fiscal year, Black students, who comprise 26.1% of the WCPSS student population received 73.4% of all school-based delinquency complaints in Wake County.¹³¹

127 N.C. Dept. of Juvenile Justice and Delinquency Prevention, 2008 Annual Report 6, *available at* http://www.juvjus.state.nc.us/resources/pdf_documents/annual_report_2008.pdf.

128 N.C. Dept. of Juvenile Justice and Delinquency Prevention, 2007 Annual Report 7, *available at* http://www.juvjus.state.nc.us/resources/pdf_documents/annual_report_2007.pdf#pagemode=bookmarks&page=1.

129 N.C. Dept. of Public Instruction, Annual Study of Suspensions and Expulsions: 2000-2001, 2-3, 7, *available at* <http://www.ncpublicschools.org/docs/research/discipline/reports/suspensions/200203suspensions.pdf>.

130 Email from North Carolina Department of Juvenile Justice and Delinquency Prevention (October 19, 2009) (on file).

131 Email from North Carolina Department of Juvenile Justice and Delinquency Prevention (October 19, 2009) (on file).

**Rate of School-Based Delinquency Complaints (per 1,000 of students within race)
During State Fiscal Year 2008-2009**

As mentioned above, 16- and 17-year-olds are referred by schools not to the juvenile system, but instead are charged, prosecuted, and sentenced as adults. Data concerning these school-based adult referrals and charges are not collected, but we estimate that well over 1,000 students in Wake County, a disproportionate number of whom are Black, are sent directly from school to the delinquency and criminal systems each year.

b. The Racial Achievement Gap

There is a relationship between the disproportionate discipline of African American children and the racial achievement gaps. A natural outcome of high rates of suspensions and court referrals for African American students, given the consequences of school exclusion

outlined above, are lower levels of proficiency on standardized tests, higher drop outs, and lower graduation rates.

In the WCPSS during the 2008-2009 school year, only 45.2% of African American students in grades three thru eight were proficient in reading and math on their end-of-grade exams, compared to 86.4% of Caucasian students (a 41.2 percentage point gap).¹³² Only 58.5% of high school African American students were proficient on all of their end-of-course exams, compared to 91.0% of Caucasian students (a 32.5 percentage point gap).¹³³ During that same year, 47.9% of high school dropouts in the WCPSS were African American, whereas only 27.8% were Caucasian (a 20.1 percentage point gap).¹³⁴ Finally, in the 2008-2009 school year, the four-year cohort graduation for African American students in the WCPSS was 63.4%, while the rate for Caucasian students was 89.4% (a 26.0 percentage point gap).¹³⁵

It is similarly unsurprising that racial disparities in both discipline (as demonstrated in above) and in academic achievement have existed for years.¹³⁶ Achievement gaps between African American and Caucasian students have been large for at least the last five years: 39.0 to 45.3 percentage point gaps for proficiency in reading and math on end-of-grade exams; 26.2 to 37.2 percentage point gaps for proficiency in all end-of-course exams; 8.9 to 20.3 percentage point gaps for drop out rates; and 19.7 to 26.0 percentage point gaps for four-year graduation rates.

132 These results include students who took their end-of-grade tests multiple times. NC DPI, Reports of Disaggregated State, School System (LEA) and School Performance Data, available at <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

133 NC DPI, Reports of Disaggregated State, School System (LEA) and School Performance Data, available at <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

134 NC DPI, Consolidated Report of School Crime and Violence, Suspensions and Expulsions, and Drop Out Events and Rate, p. 133, available at <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2008-09/consolidated-report.pdf>.

135 NC DPI, AYP Subgroups Results, available at <http://accrpt.ncpublicschools.org/docs/>.

136 NC DPI, Reports of Disaggregated State, School System (LEA) and School Performance Data, available at <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

Achievement Measure	Percentage Point Gaps Between Caucasian and African American Students ¹³⁷				
	2005-06	2006-07	2007-08	2008-09	2009-10
Proficiency in reading and math on end-of-grade exams (grades 3-8)	40.9	39.4	45.3	41.2	39.0
Proficiency in all end-of-course tests (grades 9-12)	30.0	37.2	35.8	32.5	26.2
Dropout rate	8.9	15.9	20.3	20.1	*
Four-year cohort graduation rate	19.7	22.9	23.2	26.0	25.3

* Data not yet publicly available.

c. The Wake County Board of Education has Failed to Implement Less Discriminatory Alternatives

A detailed analysis of research-based recommendations to improve school discipline policies in procedures in the WCPSS was presented to the Board earlier this year.¹³⁸ The report included numerous recommendations, grouped into four main categories and with five key reforms highlighted. To date, the Board has agreed to make one of the policy changes that was recommended in the report, changing the definition of long-term suspension so that school officials have more discretion to suspend students for a period less than the rest of the current school year, beginning in January, 2011. However, for the most part, the serious concerns about the lack of due process in the appeals procedures, the lack of alternative educational opportunities, and the severe disparate impact of the WCPSS's practices, with devastating consequences for Black students, are not being addressed.

137 NC DPI, Reports of Disaggregated State, School System (LEA) and School Performance Data, available at <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>;
 NC DPI, Annual Dropout Reports, available at <http://www.ncpublicschools.org/research/dropout/reports/>;
 NC DPI, AYP Subgroups Results, available at <http://accrpt.ncpublicschools.org/docs/>.

138 Advocates for Children's Services, "Research-Based Recommendations for Improving School Discipline in Wake County Public Schools" July 2010, available at: <http://www.legalaidnc.org/public/ACS/Report.pdf>.

VI. CONCLUSION

In conclusion, the Board's decision to reassign certain students was made with the discriminatory intent to satisfy a small and vocal set of parents and those student reassignments have an unjustified disparate impact on students because of their race, color, and national origin. Both are prohibited by Title VI and the regulations implementing it. Complainants respectfully request that the Department of Education fully investigate these claims, require the Wake County Public School System and the Wake County Board of Education cease its discriminatory student reassignments, implement less discriminatory alternatives to its student assignment plan, and adopt disciplinary policies that are administered in a manner that does not disproportionately deny equal educational opportunities to Black students.

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VII. Index of Exhibits

Exhibit 1: 04-06-2010 Board Meeting Minutes

Exhibit 2: Great Schools in Wake “Need to Know More About What Academic Research Says”

Exhibit 3: WCPSS Board Policy 6203 Transfer of School Assignment

Exhibit 4: Great Schools in Wake “Student Transportation Fact Sheet”

Exhibit 5: Updated Node Membership Data

Exhibit 6: WCPSS Student Assignment Policy with Deletions