

January 5, 2017

Via email (catherine.lhamon@ed.gov) and U.S. mail

Catherine Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Re: Racially Discriminatory Discipline in the Wake County Public School System (Complaint #11-10-1311 and #11-10-1313)

Dear Assistant Secretary Lhamon:

It has now been 2,295 days since a coalition of community organizations filed a civil rights complaint with your office alleging that the Wake County Public School System (WCPSS) was engaging in discriminatory school discipline practices.¹ We write now to urge your office to take immediate action to resolve this complaint and end the ongoing discrimination against Black students in Wake County public schools.

Since the filing of the complaint in September 2010, groups from our coalition have provided your office with regular updates regarding the persistent nature of the discriminatory discipline practices in Wake County. Specifically, those formal updates were provided on:

- December 17, 2010
- October 17, 2011
- February 27, 2012
- November 18, 2013
- October 6, 2014
- May 7, 2015
- February 25, 2016

In addition, groups from our coalition filed a separate complaint with the Department of Justice (DOJ) on January 22, 2014, regarding the discriminatory use of school policing in Wake County. Since the filing of the 2014 complaint, we have been informed that your office has been considering discriminatory school policing practices as part of its ongoing investigation of the 2010 complaint. Thus, we have continued to update your office with information related to discriminatory policing in Wake County Schools.

As has been repeatedly demonstrated over the course of the last six years, and is reiterated in greater depth below, Black students in Wake County are consistently suspended and sent into the court system from school at far higher rates than their White peers. The data establishes a clear pattern of

¹ In addition to the allegations regarding racial discrimination in student discipline, the 2010 complaint also alleged that WCPSS student assignment policies had a discriminatory impact on Black and Latino students in the district, segregating them into racially isolated and low-performing schools. Between 2008-2009 and 2014-2015, the racial isolation of non-white students across WCPSS increased significantly. The continued segregation of WCPSS into white and non-white schools has contributed to severe and persistent achievement disparities, which WCPSS has failed to address. While not the focus of this letter, federal action is also needed to remedy the discriminatory racial segregation of students in WCPSS.

discrimination. Despite a preponderance of evidence that WCPSS' policies and practices have a disproportionately negative impact on Black students and students with disabilities, your office has still taken no actions to create and enforce a plan to end the discriminatory treatment of these students at school.

While we acknowledge that WCPSS has independently begun to take important steps to address the significant disparities in the district, major issues persist in the district and any existing efforts by the district do not preclude the need for the Office for Civil Rights (OCR) to address the complaint filed over six years ago. Input and monitoring by your office is needed to ensure that the efforts made by WCPSS to end discrimination in the district are comprehensive, effective, and enduring. Further, as the largest school district in North Carolina, WCPSS has the ability to serve as a model for other districts across the state. Accordingly, OCR findings or a resolution agreement between OCR and Wake County would help set a precedent throughout the state of North Carolina and give other districts needed guidance in addressing discriminatory discipline in their own schools. Finally, given the upcoming shift in administration, it is all the more pressing for your office to address this longstanding complaint and make a clear statement that discriminatory discipline and policing practices are prohibited in our nation's schools.

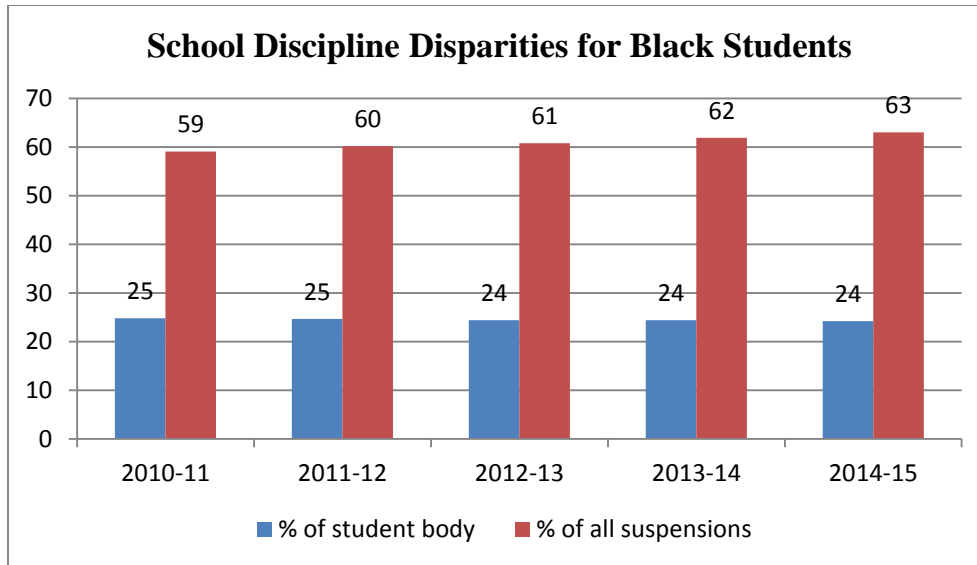
Importantly, please note that the information contained herein is not intended to be a new complaint, and it is certainly not meant to prolong arriving at a just outcome. The WCPSS' pattern and practice of discriminating on the basis of race in school discipline has already been well-established beyond a preponderance of the evidence. The enclosed data is simply reminder of the scope and nature of the crisis for African American students, and the urgent need for a definitive and robust resolution from OCR.

1. Clear Documentation of Persistent Disparities in School Discipline

In the six years since the complaint was filed, Black students have continued to receive a disproportionate share of the out-of-school suspensions in the district. Between the 2010-11 school year and the 2014-15 school year (the most recent data available), Black students in WCPSS received an astounding 43,388 out-of-school suspensions. The negative impacts of these suspensions on students, both individually and collectively, have been significant. Students and parents of color in the district are acutely aware of the discriminatory treatment of Black students. Their experiences and what they have seen their peers experience leaves them traumatized and fearful for their immediate safety in school and lacking in confidence for their futures.

While the raw numbers of suspensions in WCPSS have gone down over the past six years, there has been **no meaningful reduction in disparities**. Specifically, even though Black students consistently represented approximately a quarter of the student body during the 2010-11 to 2014-15 school years, they received upwards of 63% of all out-of-school suspensions given to students in the district during that same time period.²

² N.C. Dep't. of Pub. Instruction, *Annual Reports*, DPI.STATE.NC.US, <http://www.dpi.state.nc.us/research/discipline/reports/> (last visited Jan. 3, 2017).



We recognize the steps the district has begun to take to address disparities in school discipline – including but not limited to hiring an Equity Director and piloting seven intensive equity programs at middle schools with high rates of suspensions - and are hopeful that we will finally begin to see a reduction in disparities in the coming years. However, the data reveals clear and persistent disparate treatment of Black students that warrants official action and monitoring by OCR to ensure that the existing efforts are continued with fidelity and are effective in addressing the institutionalized discrimination in the district.

Monitoring by OCR is particularly important at this stage in light of the district’s recent school discipline policy change that automatically converts long-term suspension recommendations into disciplinary transfers. On Tuesday, May 17, 2016, just a month after the OCR investigative team visited Wake County for a second site visit, the Wake County Board of Education heard a first reading of proposed policy changes to Policy 6410 (Student Code of Conduct) and Policy 6500 (Due Process). While the changes seemed minor on the surface, community advocates had questions and concerns about the potential impact of the new policies. Specifically, advocates were concerned that the proposed changes to the Due Process policy had the potential to strip students of important due process rights during disciplinary proceedings and to mask the overall number of long-term suspensions reported by the district.

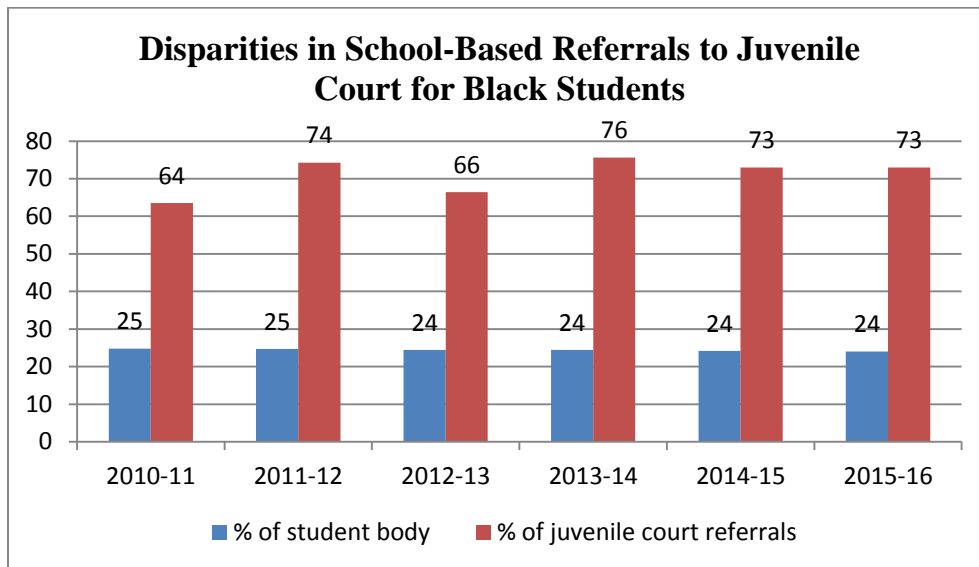
In recent years, other large districts in North Carolina such as Charlotte-Mecklenburg Schools and Winston-Salem Forsyth County Schools have reported large decreases in long-term suspensions. However, these districts are simply re-assigning students to alternative schools instead of suspending them, which denies the student meaningful due process to challenge the decision and ultimately results in the same outcome for the student since districts must already offer alternative education to students serving long-term suspensions in most circumstances.

In an effort to understand the changes and their potential impact, a coalition of community advocates sent a list of questions to the Board on Tuesday, May 31, 2016. The community advocates asked the Board to delay the vote on the policy changes until the questions could be answered. Despite this good faith request by advocates, the Board proceeded with the vote at its meeting on Tuesday, June 7, 2016. The Board unanimously accepted the proposed policy changes without responding to the community’s concerns. The questions about how due process and suspension reporting will be impacted by the changes remain unanswered.

Ultimately, advocates are concerned that this shift in practice will distort the district’s discipline data. Under the new policy, it is likely that the number of long-term suspension reported by the district will plummet. However, in reality, the same number of students would still be disciplinarily excluded from their base schools, but those students would no longer be captured in the data that the district is required to report for public accountability purposes. Given the irrefutable data that Black students are disproportionately given long-term suspensions, it is all the more important that your office take steps to ensure that the district is required to be transparent and accountable to those students.

2. Clear Documentation of Persistent Disparities in School Policing

As with school discipline, disparities in school-based referrals to court have also remained stark in the district since the initial complaint was filed in 2010. During that time period, Black students have received between 64% and 76% of school-based referrals to juvenile delinquency court, despite representing only about a quarter of the total student body.³



Notably, North Carolina is the only state that automatically treats all 16 and 17 year olds as adults in the criminal system with no opportunity to return to the juvenile system. Thus, the disparities outlined in the graph above do not capture students age 16 and older and, historically, data regarding school-based complaints to criminal court for these students has not been collected or reported. However, pursuant to its updated memorandum of understanding with local law enforcement agencies, WCPSS collected and released data on school-based complaints to adult criminal court for the 2014-15 school year. Unsurprisingly, the data revealed the same stark disparities that exist for juvenile referrals. Specifically, Black students were:

- 72% of the 387 high school students referred to adult criminal court;
- 75% of the 4 middle school students referred to adult criminal court; and
- 77% of the 13 alternative school (Longview) students referred to adult criminal court.⁴

³ Records Requests from the Department of Public Safety (Aug. 17, 2016) (Aug. 6, 2015) (Oct. 13, 2014) (Nov. 4, 2013) (May 23, 2013) (July 16, 2012) (Jan. 31, 2012).

⁴ Records Request from WCPSS (December 2, 2015).

Further, the data demonstrated that significant disparities existed for Black students for the specific offenses of fighting and theft. For those offenses, an analysis of incidences referred to School Resource Officers (SROs) indicated that, once an incident of fighting or theft was referred to an SRO, the SRO was far more likely to arrest a Black student than any other student for committing the very same offense. Specifically, the data showed that:

- the odds of being arrested for fighting are 1.67 times higher for Black students as compared to other students ($p < 0.01$); and
- the odds of being arrested for theft are 1.7 times higher for Black students as compared to other students ($p < 0.05$).

Notably, this analysis looked narrowly at incidences that had already been referred to SROs. An even more compelling analysis to understand to full nature of the disparities would look at the total number of incidences of theft and fighting in the district by race, and then compare that number to how many students were referred to SROs and, of those, how many were arrested.

3. Significant Ongoing Harm to Individual Students

In the 2,295 days since your office was first put on notice of the discriminatory treatment being faced by students in WCPSS, countless students of color have continued to experience life-altering trauma at the hands of school administrators and SROs. Students have been arrested and attacked as a result of throwing water balloons as part of a school-wide student prank tradition.⁵ Students have been handcuffed and treated like common criminals for infractions as minor as cutting in a school lunch line.⁶ Students have been left shackled in handcuffs for long periods of time without being permitted to call their parents.⁷ Students have been TASED and pepper-sprayed for minor incidents that could have been readily resolved without such violent intervention.⁸ Just this week in WCPSS, a young female high school student was violently picked up and slammed to the ground by an SRO as the student tried to break up a fight at school.⁹

Unsurprisingly, the young woman who was attacked this week and the vast majority of students who have endured the harms of Wake's discriminatory suspension and policing practices have been students of color. These students must deal not only with the physically and emotionally traumatic impacts of their mistreatment, but are also forced to live with the long-term direct and indirect consequences that accompany court involvement and out-of-school suspension. Those students and their peers are in dire need of the support and protection of the Office for Civil Rights to ensure that the school-to-prison pipeline in Wake County is fully dismantled. We have been heartened to see your office taking a

⁵ Raleigh News and Observer, *Seven Enloe students arrested in balloon-tossing prank*, NEWSOBSERVER (May 17, 2013), <http://www.newsobserver.com/2013/05/17/2897565/enloe-students-arrested-after.html>; T. Keung Hui, *Enloe Students Say Water-Balloon Charges Should be Dropped*, NEWSOBSERVER (May 30, 2013), <http://www.newsobserver.com/2013/05/30/2928310/enloe-students-say-water-balloon.html>; Barry Saunders, *Saunders: In Enloe water-balloon case, does punishment fit the crime?*, NEWSOBSERVER (May 20, 2013), <http://www.newsobserver.com/2013/05/20/2905804/saunders-in-enloe-water-balloon.html>.

⁶ See Saki Knafo, *Teen Handcuffed for Cutting In Line in School Cafeteria: Complaint*, HUFFPOST (January 24, 2014), <http://m.huffpost.com/us/entry/4654351>.

⁷ Interview with a Legal Aid of North Carolina client (October 27, 2014).

⁸ See Rebecca Klein, *Set to Stun: Children are being Tasered by school-based police officers. No one knows how often it's happening or what impact it's having on students*, HUFFPOST (AUGUST 11, 2016), <http://data.huffingtonpost.com/2016/school-police/tasers>.

⁹ WRAL News, *Rolesville Student Slammed to Ground by Officer: 'I was in shock'*, WRAL (January 3, 2017), <http://www.wral.com/rolesville-student-slammed-to-ground-by-officer-i-was-in-shock-/16396466/>.

stand to enforce the rights of similarly situated students in districts across the country¹⁰, and are hopeful that the same steps will be taken to protect students in Wake County, North Carolina. The enforcement of civil rights should not be dependent on where a child lives.

In sum, while we are encouraged by the steps the district is beginning to take to address disparities – including launching a pre-arrest diversion program for school-based offenses via a partnership with the local court system and mental health system - the data reveals a clear and longstanding pattern of disparate treatment of Black students in disciplinary matters. The fact that no previous independent attempts by the district to address these disparities have been effective demonstrates that action and monitoring by OCR is necessary to ensure that Black students in WCPSS are not subjected to continued, unlawful discrimination. The persistent and insidious discrimination – as revealed by the data and individual stories of students harmed by WCPSS discipline - cannot continue to be ignored by your office. As the time winds down for the current administration, we hope that you will take the necessary steps to address these issues without further delay.

Thank you for your prompt attention to this matter. We look forward to hearing from you.

Sincerely,

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¹⁰ See, e.g. U.S. Dep't of Educ., *U.S. Education Department Reaches Settlement with Lodi Unified School District in California*, (August 24, 2016). ED.GOV, <https://www.ed.gov/news/press-releases/us-education-department-reaches-settlement-lodi-unified-school-district-california>.

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