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Re: Complaint against the Wake County Sheriff's Department, Apex Police Department, Cary Police Department, Fuquay-Varina Police Department, Garner Police Department, Holly Springs Police Department, Knightdale Police Department, Raleigh Police Department, Wake Forest Police Department, and Wake County Public School System alleging violations of rights guaranteed by the United States Constitution, Titles IV and VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990

Dear Mr. Smith and Ms. Bhargava:

The Wake County Public School System's over-reliance on unregulated school policing practices, often in response to minor infractions of school rules, results in the routine violation of students' educational and constitutional rights. Specifically, evidence suggests that the rights of students with disabilities and African-American students in the Wake County Public School System are routinely violated. Further, the harms caused by these unconstitutional and discriminatory policies and practices are particularly profound because North Carolina is the only state that treats all 16- and 17-year-olds, in *every* circumstance, as adults when charged with criminal offenses, and then denies them the possibility of returning to the juvenile system regardless of the nature of the offense.[1]

[1] N.C. Gen. Stat § 7B-1501(7)(2011); Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1445 (2008).

This Complaint is filed on behalf of eight individual students and all other similarly-situated students who are subjected to ongoing school policing policies and practices in the Wake County Public School System ("WCPSS" or "the district") that unnecessarily and unlawfully punish and criminalize minor misbehaviors and disproportionately harm African-American students and students with disabilities in violation of the U.S. Constitution, Titles IV and VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. This Complaint is submitted by Advocates for Children's Services of Legal Aid of North Carolina, the University of North Carolina School of Law's Juvenile Justice Clinic, Duke University School of Law's Children's Law Clinic, North Carolina Justice Center, North Carolina Central University's Juvenile Law Clinic, Center for Civil Rights Remedies of the Civil Rights Project at UCLA, Coalition of Concerned Citizens for African-American Children, Education Justice Alliance, Justice Served NC, North Carolina Heroes Emerging Among Teens, Advancement Project, American Civil Liberties Union Foundation, American Civil Liberties Union of North Carolina Legal Foundation, Dignity in Schools Campaign, North Carolina State Conference of the NAACP, Raleigh-Apex Branch of the NAACP, University of North Carolina's Center for Civil Rights, and Wendell-Wake County Branch of the NAACP.

The Complaint is structured as follows:

I. Section I provides an introduction to and overview of the issues related to school policing in Wake County.
II. Section II describes the individual experiences of eight WCPSS students whose rights have been violated by the pattern and practice of unlawful policing in Wake County, and whose experiences are representative of what similarly-situated students across the district routinely experience.
III. Section III provides an overview of the school policing and security infrastructure in the WCPSS, including the district's Security Department's staff, contract security guards, school-based law enforcement officers, and non-school-based law enforcement officers.
IV. Section IV describes the inadequate policies and regulations that enable law enforcement officers and WCPSS staff to collaborate in a pattern of using of law enforcement officers to address minor student misbehavior, resulting in inappropriate referrals to court, unreasonable and excessive use of force against students, and unlawful interrogations and searches of students.
V. Section V outlines evidence of the unlawful discriminatory impact on African-American students and students with disabilities that results from the unregulated use of law enforcement officers to address minor student misbehavior.
VI. Section VI establishes that the current school policing policies and practices are not educationally necessary, and then outlines less discriminatory, more effective alternatives to current policies and practices that could be implemented in order to remedy the ongoing violations and discrimination.
VII. Finally, section VII describes previous unsuccessful attempts over the course of the past four years to work collaboratively and proactively with law enforcement officers and the district to remedy the rampant and ongoing discrimination and violations of students' rights.

I. Introduction

All Complainants value the importance of a safe and productive learning environment for all children. However, as set forth below, this complaint alleges that the WCPSS and local law enforcement agencies that deploy school resource officers ("SROs") and dispatch non-SRO officers to schools are operating in a manner that harms countless WCPSS students, rather than ensuring their safety. Specifically, employees of the WCPSS and law enforcement agencies are collaborating in a harmful pattern and practice of utilizing largely unregulated law enforcement officers to address minor student misbehavior that is often non-criminal in nature. This results in students being subjected to unconstitutional and unlawful treatment, including unreasonable and excessive uses of force, unlawful searches, interrogations, arrests, and harassment. All of these patterns and practices have a disproportionately adverse impact on African-American students and students with disabilities ("SWD").

The WCPSS has, by written agreement, contracted with the Wake County Sheriff's Department and the Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Raleigh, and Wake Forest police departments (collectively "law enforcement agencies" or "the agencies") to provide law enforcement officers – known as "school resource officers" or "SROs" – to patrol schools on a full-time basis.[2] SROs have the same powers as sworn, patrol officers, including the ability to arrest students and file criminal or delinquency complaints against them for misbehavior that occurs at school. In addition, WCPSS staff members often call local patrol officers from municipal law enforcement agencies (i.e., non-SROs) to school campuses and request or permit them to search, interrogate, and arrest students, often for minor and non-criminal behavior. Further, the WCPSS Security Department (an entity of the district) oversees the SRO program and contracts with a private company, AlliedBarton, for the provision of security guards to patrol schools and work closely with law enforcement officers and security guards in matters involving student misbehavior. As a result, too much of the responsibility for disciplining students in a lawful and educationally sound manner is delegated from the WCPSS to law enforcement and private security officials.

Even though SROs patrol schools on a daily basis and can have significant, life-changing impacts on the lives of students they police, there are no comprehensive regulations in place that clearly define the roles and limitation of law enforcement officers in addressing student behavior. Instead, existing agreements speak primarily to financial and organizational arrangements, and fail to adequately define what constitutes developmentally-normative adolescent behavior that should be regarded as "normal" rather than "criminal," and dealt with by educators who provide educationally sound disciplinary responses rather than police intervention and criminal charges. The broad discretion given to SROs in criminalizing student behavior is even more concerning in light of the fact that current agreements fail to ensure even minimum training requirements in important areas such as adolescent development, mental health issues, or positive behavior

[2] In May 2013, the district and law enforcement agencies proposed adding an officer from the Rolesville Police Department to the SRO program. Complainants have not been able to confirm whether or not that agency is now operating in Wake County schools under the same common Memorandum of Understanding that governs the SRO program in the WCPSS, and requests that DOJ investigate that agency's participation further. JOINT MEETING AGENDA BOARD OF COMMISSIONERS & BOARD OF EDUCATION 25 (May 16, 2013), *available at* http://www.wakegov.com/budget/bonds/2013/Joint%20Meeting%20Materials/May%2016%202013%20Combined%20Packet.pdf.

management, or to establish the supervision and accountability mechanisms necessary to ensure that all WCPSS students are protected from discrimination, criminalization, and mistreatment by law enforcement officers.

As a result of these inadequate and inappropriate policies, the line between school discipline matters and criminal matters is often blurred in Wake County, with WCPSS staff and law enforcement officers routinely collaborating in the perpetuation of a school-to-prison pipeline, whereby students are pushed out of school and into the juvenile and criminal systems at alarming rates. Over the course of the past five years, the unregulated use of law enforcement officers to address school discipline matters has resulted in thousands of WCPSS students, predominately African-American students and SWD, being deprived of their educational rights and sent to juvenile or criminal court as a result of minor misbehavior that occurs at school. While schools may be justified in permitting law enforcement involvement in response to the most serious and unlawful student misbehaviors, the overwhelming majority of the referrals to court for school-based behavior in Wake County have been triggered by minor student misbehavior. In state fiscal year 2011-12, the most recent year for which this data is available, *90%* of the 763 school-based delinquency complaints, all of which were filed against students age 15 and younger, were for allegations of misdemeanor activity.[3] Within this subset of misdemeanor offenses, it has been the experience of the Complainants that the alleged "crimes" for which WCPSS students are routinely being pushed into the juvenile and criminal systems are exceedingly minor and include offenses such as throwing water balloons,[4] stealing paper from a recycling bin,[5] and play-fighting with a friend.[6]

An educational environment that treats water-balloon-throwing as seriously as a crime does not teach discipline or self-discipline; rather, it engenders distrust and hopelessness. Once referred to court, young students face a prosecution process that is demeaning, demoralizing, and destructive. Court referrals often derail students' education, triggering school exclusion and leading to academic failure.[7] In North Carolina, the repercussions of being sent into the court system for minor misbehavior at school are uniquely sinister for high school students because North Carolina is the only state that automatically treats *all* 16- and 17-year olds as adults with no option for return to the juvenile justice system.[8] Instead, North Carolina teens are prosecuted

[3] Public Records from DJJ (May 23, 2013)(*see* Appendix). School-based delinquency complaint data is currently maintained in the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, formerly the Division of Juvenile Justice, and before that, the Department of Juvenile Justice and Delinquency Prevention. For purposes of the Complaint, we will hereinafter use the acronym "DJJ" to encompass all iterations of past and current divisions of juvenile justice that have supplied school-based delinquency complaint data.

[4] Raleigh News and Observer, *Seven Enloe students arrested in balloon-tossing prank*, NEWSOBSERVER.COM (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.COM (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.COM (May 20, 2013), http://www.newsobserver.com/2013/05/20/2905804/saunders-in-enloe-water-balloon.html.

[5] Interview with ACS client (2011).

[6] *See infra* J.H.

[7] JASON LANGBERG, BARBARA FEDDERS, & DREW KUKOROWSKI, LAW ENFORCEMENT OFFICERS IN WAKE COUNTY SCHOOLS: THE HUMAN, EDUCATIONAL, AND FINANCIAL COSTS 5-6 (2011), *available at* http://www.dignityinschools.org/sites/default/files/SRO%20Report.pdf.

[8] N.C. Gen. Stat. § 7B-1501 (2011) ("Delinquent juvenile. – Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government.").

and incarcerated alongside hardened adult criminals. Youth prosecuted in the adult system must often bear lifelong, crippling consequences of criminal convictions.[9] Referrals to court and subsequent adjudication or conviction can make a young person ineligible for higher education loans, cause a reduction in future employment opportunities, and lead to a family's eviction from public housing.[10] Even in the event that a frivolous, school-based criminal charge is later dismissed for a lack of merit, students age 16 and older must still bear permanent, negative repercussions as the result of having an adult criminal arrest record that will resurface anytime a criminal background check is run.[11]

Despite the grave consequences that result for 16- or 17-year-olds from receiving criminal charges for minor school-based behavior, neither the district nor the law enforcement agencies maintain or publish any data regarding how many WCPSS students are pushed directly into the adult criminal court system from school each year. This lack of data collection makes it impossible to track the full extent of the harm being perpetrated against students as a result of the conduct of the WCPSS and law enforcement agencies. Further, when compounded with the dearth of policy and regulatory guidance governing law enforcement's interaction with students, the failure to collect data exacerbates the already glaring lack of accountability for the actions of district and law enforcement officials with respect to school policing.

The impacts of school policing for students extend beyond just court referrals. As a result of the inadequate policies that fail to limit the scope of law enforcement authority or ensure supervision and accountability for misconduct, WCPSS students routinely face excessive and unreasonable uses of force, unlawful searches and interrogations, and harassment at the hands of law enforcement officials. Student mistreatment by law enforcement officers has been well-documented by student and media accounts that depict an alarming pattern of law enforcement officers being used to address minor misbehavior at school via unlawful policing practices that include: students being handcuffed in crowded cafeterias and hallways; students being pepper-sprayed in the eyes or TASERed in the chest; students being violently tackled to the ground or pushed into walls, windows, or tables; students suffering persistent and damaging verbal harassment; and students' rights regarding searches and custodial interrogations routinely being violated. Finally, not only are schools delegating minor school disciplinary matters to police officers, but law enforcement agencies also use schools, and students' trust of school administrators, as a setting to interrogate students about off-campus conduct that has no direct or immediate effect on school safety.

Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1445 (2008) (noting that North Carolina "is the only state in the United States that treats all sixteen-and seventeen-year-olds as adults when they are charged with criminal offenses and then denies them the ability to appeal for return to the juvenile system").

[9] Emily Buss, *Rethinking the Connection Between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 514 (2009) (reviewing Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice (2008).

[10] JASON LANGBERG, BARBARA FEDDERS, & DREW KUKOROWSKI, LAW ENFORCEMENT OFFICERS IN WAKE COUNTY SCHOOLS: THE HUMAN, EDUCATIONAL, AND FINANCIAL COSTS 5-6 (2011), *available at* http://www.dignityinschools.org/sites/default/files/SRO%20Report.pdf.

[11] N.C. Gen Stat. § 15A-146 (2012). *See also* Emery P. Dalesio, *N.C. Expanding rules for erasing criminal records*, CHARLOTTEOBSERVER.COM (Aug. 13, 2013), *available at* http://www.charlotteobserver.com/2013/08/25/4263657/nc-expanding-rules-for-erasing.html#.Us2D3tGA3IV.

While the rampant criminalization of minor, normative child and adolescent behavior in the WCPSS is disturbing and unlawful in and of itself, particularly alarming disparities exist in the impact that these policies and practices have on African-American students as compared to their White peers.[12] For at least the last five state fiscal years, African-American students have been disproportionately subjected to school-based delinquency complaints in the WCPSS. African-American students have represented approximately a quarter of the total student population over the past five years,[13] but have received as high as 74% of the school-based delinquency complaints.[14] By comparison, White students have made up about half of the total student population,[15] but have only received between 17% and 23% of the school-based delinquency complaints in the WCPSS.[16]

The WCPSS and law enforcement agencies also routinely violate the rights of SWD through the unregulated use of law enforcement officers to address behavior that is often a manifestation of a student's disability. Specifically, WCPSS officials routinely request and permit law enforcement officers, who are not trained to recognize and appropriately deescalate disability-related conduct, to manage the behaviors of SWD through the use of excessive and unreasonable force (including physical force, handcuffs, pepper spray, and TASERs) and to arrest and file charges against SWD. These harmful policing practices inflict more serious damage on students with emotional and cognitive disabilities than their non-disabled peers, yet law enforcement officers and school staff often make no efforts to accommodate those students' disabilities. Finally, the Complainants allege that SWD are harmed by the ongoing pattern of unlawful policing practices at disproportionate rates as compared to their non-disabled peers.

These unlawful practices and resulting disparities persist in the WCPSS, despite the fact that the unregulated use of law enforcement officers to address minor student behavior is not educationally necessary, and that there are less discriminatory alternatives to current policies and practices available that could be readily implemented by the WCPSS and law enforcement agencies to better ensure the safety of all WCPSS students. Over the course of the past four years, attorneys for the Complainants and local advocacy organizations, including Coalition of

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[12] Though this Complaint deals primarily with the school policing component of the school-to-prison pipeline, the discriminatory use of excessive out-of-school suspensions in the WCPSS is an equally alarming factor contributing to the unnecessary criminalization of students. *See e.g.* JASON LANGBERG & JENNIFER STORY, THE STATE OF THE SCHOOL-TO-PRISON PIPELINE IN WAKE COUNTY (2013), *available at* http://www.legalaidnc.org/stateofpipeline.pdf (detailing disparities in out-of-school suspensions, including the fact that, in 2011-12, African-American students were 6.4 times more likely than White students to receive a suspension and, though they were only 24.7% of the total student population, African-American students received 60.2% of suspensions and were 55.9% of students who received at least one suspension). Suspension disparities remain alarmingly high in the district: In 2012-13, African-American students were 24.4% of the total student population but received 60.9% of short-term suspensions and 57.3% of long-term suspensions. The suspension rate among African-American middle and high school students was 6.7 times greater than the rate among White middle and high school students. *See* Public Records from the North Carolina Department of Public Instruction (Oct. 31, 2013)(on file with ACS).

[13] Wake Cnty. Pub. Sch. Sys., *Demographic Reports*, WCPSS.NET http://www.wcpss.net/about-us/our-students/demographics/reports.html (last visited January 5, 2013).

[14] Public Records from DJJ (Nov. 4, 2013)(May 23, 2013)(July 16, 2012)(Jan. 31, 2012)(Sep. 22, 2010)(*see* Appendix).

[15] Wake Cnty. Pub. Sch. Sys., *Demographic Reports*, WCPSS.NET http://www.wcpss.net/about-us/our-students/demographics/reports.html (last visited January 5, 2013).

[16] Public Records from DJJ (Nov. 4, 2013)(May 23, 2013)(July 16, 2012)(Jan. 31, 2012)(Sep. 22, 2010)(*see* Appendix).

Concerned Citizens for African-American Children ('CCCAAC"), Education Justice Alliance ("EJA"), Justice Served NC, and North Carolina Heroes Emerging Among Teens ("NC HEAT"), have repeatedly raised concerns with district leaders and law enforcement agencies regarding the unnecessary and discriminatory criminalization of WCPSS students, and have advocated for the use of alternative, less-discriminatory policies and practices. However, no meaningful steps have been taken to stem the tide of students being pushed out of school and into juvenile and criminal court systems. To the contrary, students are being increasingly criminalized in WCPSS schools. While there are undoubtedly individual SROs and WCPSS staff members who are deeply committed to embracing alternatives and keeping students in school and out of the juvenile and criminal court systems, the larger system of school policing in the district unfortunately enables the ongoing, harmful practice of routinely criminalizing and pushing out the most vulnerable WCPSS students. Accordingly, comprehensive reform of school policing policies and practices in the WCPSS is desperately needed in order to prevent further discrimination and unnecessary criminalization of students.

Based on the facts described herein, Complainants allege that existing school discipline and policing policies and practices in the WCPSS are in violation of provisions of the United States Constitution, Title IV of the Civil Rights Act of 1964 ("Title IV"), Title VI of the Civil Rights Act of 1964 ("Title VI"), Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and Title II of the Americans with Disabilities Act of 1990 ("ADA"),[17] and respectfully request that the Educational Opportunities Section of the Civil Rights Division of the United States Department of Justice ("DOJ") investigate the actions of the WCPSS and its contractors, and that the Special Litigation Section, pursuant to its authority under the Violent Crime and Control Law Enforcement Act of 1994, investigate all local law enforcement agencies that deploy officers to patrol schools or otherwise conduct official police business in schools. In order to remedy these ongoing violations, Complainants request that the district, its contract security guards, and law enforcement agencies be ordered to adopt new, non-discriminatory policies and practices related to students and schools, including, but not limited to: a new memorandum of understanding that includes detailed guidelines regarding law enforcement officers' and school staff's scope of authority; school board policies that set forth clear guidelines for staff regarding school discipline and policing; uniform law enforcement agency policies that set forth appropriate guidelines and expectations for officers working with youth; positive and productive alternatives to school-based referrals to court; more targeted qualifications for SROs and security guards; comprehensive, ongoing training for WCPSS staff, security guards, and SROs; comprehensive, annual data collection and publication; community involvement and oversight; and well-publicized complaint procedures whereby law enforcement officers, private security guards, WCPSS Security Department staff, and school staff are held accountable for misconduct related to school policing.

II. Student Complainants

This Complaint is filed on behalf of eight individual students, all of whom are African-American and seven of whom are SWD. The experiences of the eight students described below

[17] 20 U.S.C. § 1400, *et. seq* (2004); N.C. Gen. Stat. § 115C-106 (2012); Wake Cnty. Bd. of Educ., *Board Policy 6220: Assurance of Appropriate Services for Students with Disabilities*, WCPSS.NET (April 8, 2008), http://www.wcpss.net/policy-files/series/policies/6220-bp.html.

are presented as being representative of the violations that similarly-situated students across the district routinely face in the WCPSS. Advocates for Children's Services ("ACS") represents two current WCPSS students, J.K. and L.H., and the parent of one former WCPSS student, T.W., and, with consent from J.K.'s and L.H.'s parents and T.W.'s mother, submits this Complaint on their behalves. The North Carolina Justice Center and ACS jointly represent one WCPSS student, T.S., and, with consent from his parent, submit this Complaint on his behalf. The North Carolina Central University ("NCCU") Juvenile Law Clinic represents one WCPSS student, K.H., and, with consent from his parent, submits this Complaint on his behalf. The Duke Children's Law Clinic submits this Complaint on behalf of two WCPSS students, J.H. and S.P., with consent from their parents. The University of North Carolina ("UNC") School of Law Juvenile Justice Clinic represents one WCPSS student, P.D., and, with consent from his parent, submits this Complaint on his behalf. The Center for Civil Rights Remedies of the Civil Rights Project at UCLA ("CCRR"), CCCAAC, EJA, NC HEAT, Justice Served NC, Advancement Project, American Civil Liberties Union Foundation ("ACLU"), ACLU of North Carolina Legal Foundation ("ACLU-NC"), Dignity in Schools Campaign, UNC Center for Civil Rights, North Carolina State Conference of the NAACP, Raleigh-Apex Branch of the NAACP, and Wendell-Wake County Branch of the NAACP join as co-Complainants to allege systemic violations of the rights of other similarly-situated WCPSS students.

The experiences of the eight student Complainants described below provide examples of the scope of violations that WCPSS students routinely face as law enforcement officers and school officials collaborate in a poorly regulated system of school policing. All eight of the students were arrested at a WCPSS school. Seven of the students were arrested and sent to court as the result minor misbehavior that occurred on school campus, and could have been more appropriately addressed using school-based consequences. In addition to facing arrests, all eight of the students experienced unlawful interrogation practices, many of which were jointly orchestrated by school and law enforcement officials. Finally, six of the eight students experienced excessive and unreasonable force, as well as unlawful searches, at the hands of law enforcement officers. In addition to demonstrating the legal violations apparent in current policing practices, these students' stories further shed light on the depth of the educational, psychological, and emotional collateral harms that students suffer as a direct result of the unregulated and discriminatory policing practices in the WCPSS.

A. T.S.

T.S. is a 16-year old, African-American SWD in the WCPSS. He is a soft-spoken, mild-mannered young man who mostly keeps to himself. His teachers describe him as sweet, polite, and introverted. He is charming and well-liked. His mother describes him as independent and self-sufficient – someone who does not readily follow the crowd. T.S. has a diagnosis of Oppositional Defiant Disorder ("ODD"), and has an Individualized Education Program ("IEP"). He has worked with counselors to achieve great success in improving his social skills.

T.S.' first incident involving an SRO occurred during the fall of 2011. T.S. was in the school cafeteria when his friend in the lunch line invited him to get in line with him. As T.S accepted the offer, he got in front of about 10 to 15 other students who were already in line. An administrator told T.S. to go to the back of the line. T.S. complied by stepping aside, letting 10

to 15 people pass him, and then got back in line where he would have been had he not stepped in line with his friend. The administrator told him again to go to the end of the line, but this time, T.S. ignored him, proceeding in his current place in line and getting his lunch.

As soon as T.S. got his food and started to walk away, the SRO grabbed his arm. Afraid, T.S. attempted to pull his arm free of the SRO's harsh grasp, at which point the SRO pulled T.S.' arm behind his back, pushed him over a four-foot dividing wall in the cafeteria, and handcuffed him. T.S.' tray crashed to the ground. A cafeteria full of students looked on as T.S. was restrained and then led out of the cafeteria in handcuffs. The administrator did nothing to stop the SRO. Instead, he merely watched as T.S. was handcuffed for cutting in the lunch line.

T.S. was led to the main office and forced to sit in handcuffs for 15 to 20 minutes. Deeply frustrated about being handcuffed for being accused of cutting the lunch line, T.S. repeatedly asked the administrator why this was happening. T.S. was suspended out-of-school for three days under the offense of "class/activity disturbance." T.S. was released from handcuffs just before his mom arrived. Neither the administrator nor the SRO notified her that T.S. had been handcuffed in a crowded cafeteria, and the suspension write-up indicated only that he had been "restrained."

Just a few days later, when T.S. returned to school, he was walking to the bus at dismissal with another friend when a group of students assaulted them. A student struck T.S., he fell to the ground, and at least two other students jumped on top of him. Then, the SRO reached down and began spraying pepper spray directly into T.S.' face. The SRO handcuffed T.S. and forced him to sit on the curb. Meanwhile, T.S.' eyes and nose were running profusely and his whole face was burning, yet he was incapacitated by the handcuffs and could not wipe his face. Other students and staff looked on as T.S. was suffering. After asking for assistance repeatedly, T.S. was finally brought tissues by an administrator. However, he was still forced to remain in handcuffs and no one assisted him in washing his face or eyes. The spray caused him to have limited vision and severe pain all over his face for several hours.

By the time his mother arrived to pick him up, T.S. had been sitting in handcuffs with a burning face for over an hour. When he was released to her, school officials failed to tell her that the SRO had discharged pepper spray directly onto T.S.' face. It was not until she realized that he could not see and he told her what happened that she learned about the pepper spray. T.S. maintains, and the scope of his injuries support, that the officer sprayed him directly in the face at very close range while he was already incapacitated on the ground with two other students attacking him.

As a result of this incident, T.S. had to appear in juvenile court and was put on probation for nine months. He also went through counseling after the incident and being subjected to a delinquency complaint. Though the current academic year has been better for T.S., his experiences have put him on the defensive and, whenever possible, he tries to avoid any and all contact with the SRO at his school.

B. P.D.

P.D. is a 20-year-old African-American SWD in the WCPSS. He works at a part-time job and loves to draw. He is determined to graduate high school so he can pursue higher education and become a mechanical engineer. P.D. was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") in third grade. P.D.'s IEP includes a Behavioral Intervention Plan ("BIP") that recognizes that when he is angry or upset, he may need time and space to refocus. His BIP states that he is to have access to Behavioral Support Staff at any time he feels he needs it. Despite difficulties due to his disability, P.D. started off this school year optimistic that he would be able to graduate. However, his recent experience with school policing has threatened his hopes for the future.

In September 2013, during a transition between classes, P.D. had a verbal disagreement with another male student. After the bell rang, the two students remained in the hallway where the argument continued. P.D. displayed no physical aggression. Two coaches were standing across the hall, and one told P.D., "Don't threaten him." This unfair accusation upset P.D., who was then told by the coach that P.D. had to go to the office.

As the coaches walked with P.D. to the office, P.D. impulsively decided that he wanted to attend class instead. He turned to go through a door that would take him to English class. One of the coaches grabbed him from behind. In fear, P.D. tried to get away from the situation so that things wouldn't escalate, but the coach held him in a bear-hug before slamming him against a wall; the second coach slammed into them both to pin him further. P.D. did not fight back. Rather than calling in support from administrators or from members of P.D.'s IEP Team, who would have been familiar with his disabilities and equipped to properly implement the required supports under his IEP, the coaches called for the SRO. The SRO, who was not present when the incident occurred and who knew nothing about P.D.'s disability or BIP, arrived and handcuffed P.D.

P.D. was then escorted through the hallways in handcuffs. After witnessing this, one of P.D.'s teachers contacted P.D.'s mother on her own initiative, something the school administration failed to do until after the officers had removed him from the school grounds. The officer took him to the school's SRO office where a second SRO was waiting. P.D. describes how he felt: "I was in a police officer's office. I had a feeling I was going to jail from the beginning based on how they handled me. It was like they had made up in their minds what they were going to do." In fact, the SROs accused P.D. of elbowing and assaulting a gym teacher without informing him of his *Miranda* rights or involving his IEP Team. P.D. knew that he did not assault the gym teacher. So, he asked that they view the surveillance tape to see that he was innocent. The SROs watched the video and, according to P.D., agreed aloud that it did not show P.D. assaulting the coach. Still, the officers told him, "It's the teacher's word against yours." He was arrested but never told about his *Miranda* rights. No one from the school administration contacted his mother until after P.D. had been taken to the Wake County detention center.

P.D.'s mother went to the jail to bring him home. P.D. was not a flight risk; his whole life had been spent in Wake County, where he has a part-time job, a loving family, friends, and a sincere desire to graduate from high school. [Nevertheless, his bond was set at $5,000, well beyond what his mother would be able to scrape together to free him.] Accordingly, he spent

three nights in jail for an alleged assault that could have been avoided had his IEP supports been implemented.

P.D. was eventually allowed to go home under house arrest, an arrangement that cost his family an initial fee of $175, and continues to cost $150 per month. Because he has consistently maintained his innocence and has no interest in pleading guilty to the charge, his family must continue to accrue this expense while his public defender prepares the case for trial. Although the principal of P.D.'s school recommended that P.D. be long-term suspended for the remainder of the school year, approximately four months, P.D. was able to get the principal's recommendation overturned because of the school's recognition that the incident occurred because of his disability. He has also obtained placement in an evening alternative education program. However, his criminal case is still pending.

This experience has crushed P.D.'s confidence – he feels unwanted by the school and is afraid to be around the SROs who handcuffed him and sent him to jail, despite exculpatory video evidence.

C. J.H.

J.H. is a 15-year-old, African-American student in the WCPSS. He exudes a friendly and warm energy. People in his community hold J.H. in high regard and use him as a positive example for their kids. He is a good student, achieving mostly A's and B's and securing placement in ninth grade honors classes. He is also athletically gifted and a member of the Garner Road Junior Achievers, an academic and community service program for youth designed to prepare them for college. J.H. has big dreams and incredible potential, which are now in jeopardy due to the actions of WCPSS officials and SROs.

Last spring, J.H. was pulled out of class by the principal and taken to the main office without explanation. His phone was confiscated and he waited 45 minutes in one room until someone came to take him to another room where he waited another 15 minutes. During this time he asked to call his mom but his request was denied.

Eventually, J.H. was taken to the assistant principal's office where he met with the assistant principal, a school security guard, an SRO, and a WCPSS Security Department security administrator. Again he asked to call his mom, and again he was told he could not – at least not until he answered their questions. The school administrator and security personnel intensely interrogated J.H. about an incident that had occurred three months earlier. Specifically, a cell phone had been found in the boys' locker room by the school. Instead of putting the phone in the lost and found, the SRO took the SIM card out of the phone, put it in his own cell phone, and perused its contents. The SRO eventually came across a three-month old video in which J.H. was "slap boxing" with his childhood friend. During J.H.'s interrogation, the SRO threatened him with charges related to the video. J.H. explained that he and his friend were just horse playing for the camera, and that they had never actually fought. J.H.'s childhood friend confirmed J.H.'s account, making a statement in which the friend used the phrase "play fight" to describe the incident.

The team also accused J.H. of being in a gang – a baseless allegation. The SRO taunted J.H., saying, for example, "Ain't nothing funny now, right?", and "If you were 16, I'd take you to jail." J.H. was not informed of his *Miranda* rights, even though he was prohibited from leaving the room. His bag was searched and nothing was found. He was again denied his request to call his mom and told that after they were done questioning him "the school will call her for you." He was only able to speak to his parents over *three hours after* he had been pulled out of class.

J.H. was suspended out-of-school for 10 days with a recommendation for a long-term suspension for alleged "gang affiliation." J.H. appealed this suspension and won before a hearing panel. By the time he received the decision overturning his suspension, J.H. had already been suspended out-of-school for 10 school days. This resulted in him missing a substantial amount of classwork.[18]

On J.H.'s first day back in school after his suspension was overturned, a group of football players approached J.H. asking him questions aggressively. A crowd gathered and the star football player put his hands up ready to fight J.H. The school security guard and SRO approached the crowd of students. The security guard grabbed J.H. and the SRO grabbed the football player. J.H. immediately told the security guard that he did not want to fight and that the football player had instigated the incident that caused the crowd to gather. J.H. recalls the SRO saying to him, "J.H., back again I see. You couldn't even last one day. I swear if you were 16, I'd take you down."

J.H. was taken to the office, where he called his father as he had been instructed to do by his parents. While talking to his dad, the SRO entered the room aggressively demanding that J.H. get off the phone. J.H. said, "I'm talking to my dad." The officer lunged at J.H., yelling, "Get off the phone!". The SRO grabbed J.H.'s arm, twisted it behind his back, and pushed J.H. into a table. Nothing like this had ever happened to J.H. before and J.H. was terrified of what the SRO might do to him in a closed room; so, he tried to get out of the room. He got to the hallway when the SRO grabbed him again, twisted his arms behind his back, slammed him against a wall, and handcuffed him. J.H. told the SRO that his hands hurt because the handcuffs were too tight, but the SRO ignored him. Both the football coach and the athletic director witnessed this excessive force but neither intervened.

J.H. and his family thought the matter was resolved until they received a notice in the mail a couple of weeks later. The SRO had filed a delinquency complaint alleging two counts of simple affray and one count of resisting a public officer. J.H. was compelled to go through a delinquency intake and meet with a juvenile court counselor (i.e., juvenile probation officer) who, after meeting him, declined to go forward with the charges (i.e., file a petition), and instead placed J.H. in an alternative program.[19]

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[18] J.H.'s high school is on a modified calendar. What this means is that J.H. missed more school than he would have at an average school where class periods last for 45 minutes. At his high school, J.H. has four, 90-minute class periods. As a result, J.H. missed more instruction time than would be indicated by a 10-day suspension.

[19] CHOICES is a decision-making workshop that empowers teens to achieve academic success in pursuit of their career and life aspirations.

Combined, these incidents made it impossible for J.H. to continue at his school, despite his dream to graduate high school along with his friends. The violence, intimidation, and taunting exhibited by the SRO caused J.H. to fear for his safety at that school. J.H. became extremely cautious and fearful at school. He felt like he was constantly being watched and would be singled out and found at fault, no matter what happened. The SRO's conduct breached the trust that J.H. previously had for law enforcement officers. Further, the school official's acquiescence to the SRO's treatment of him led J.H. to believe that he was no longer safe at school. J.H. left the school for another high school. Being uprooted from his community and his school due to the extreme actions of the SRO has been difficult on J.H. and his family. J.H.'s new school is a 30-minute drive away; much further away than his previous school. His mother must drive two hours transporting J.H. to and from school each day. Unfortunately, when faced with the reality of an education filled with fear and harassment, this was a sacrifice that J.H. ultimately had no choice but to make.

D. J.K.

J.K. is a 15-year-old, African-American SWD in the WCPSS. He has had a very difficult life and has risen above many challenges. Evaluations in his education records describe J.K. as "a friendly enthusiastic child", "a cute, active little boy", "a friendly little boy who enjoys a variety of activities," "a loving, affectionate child," "such a sweet, well-motivated child," and "a very funny, likeably young man." J.K. is currently repeating ninth grade. He had an IEP from May 2002 until November 2012, with a diagnosis of ADHD. Despite documented evidence of his need for mental health services, J.K. never received any school-based mental health services. J.K. was improperly exited from special education in November 2012, despite the fact that he was doing worse than ever before in school.

Earlier this year, J.K. punched another student after the student called him a "Nigger" and hit him. J.K. then left school property to avoid further conflict. The next school day, the assistant principal took J.K. to the front office where he was forced to empty his pockets and interrogated by the SRO in a room with the door closed. *Miranda* warnings were never given. J.K. asked to call his grandmother, his guardian, but was denied the opportunity to do so. The assistant principal sat silently in the room while the law enforcement officer questioned J.K.

J.K., who had not been suspended out-of-school in over five and a half school years, was recommended for long-term suspension. The school did not consider any mitigating factors, such as the facts that the other student used a racial slur and threw the first punch, his disability, or history of trauma. Additionally, a delinquency complaint was filed against J.K.

Ultimately, J.K. was placed in Second Chance Online Resource for Education (SCORE), an alternative education program that does not provide in-person teachers or support staff, free and reduced price lunch, extracurricular activities, elective classes, or group work. As a struggling student with ADHD and failing grades, J.K. did the computer-based program at home for approximately four months. J.K. also had to go to juvenile court in October. He agreed to a plea "deal" that resulted in six months of probation, 24 hours of community service, and a juvenile delinquency record.

E. L.H.

L.H. is a 16-year-old, African-American SWD in the WCPSS. He is playful and close with his family. L.H. has severe emotional and cognitive disabilities, with an IQ that places him at an elementary school level even though he is currently in high school. Accordingly, school has always been a difficult place for L.H., both academically and due to bullying from peers and, at times, school staff.

School officials have consistently noted that redirecting L.H. by using positive, non-aggressive measures is crucial to keeping him on track and deescalating potential crises. Likewise, his IEP Team determined that the "crisis plan" for staff to use if L.H. walked out of his classroom and through the hallways would be simply to walk with him, talk calmly to him, and try to get him re-focused and returned to class. Coping with bullying and what he perceives to be unfair treatment has been a significant struggle for L.H. Accordingly, preventing and/or deescalating such situations has been a central component of his educational and behavioral plans.

Unfortunately, the SRO at L.H's school has consistently ignored all of the interventions from L.H.'s IEP Team. Earlier this year, rather than letting administrators or other staff implement behavior plan interventions when L.H. became agitated, the SRO approached L.H. and told him to calm down. When L.H. did not immediately calm down, the SRO handcuffed him to make him calm down. The SRO then made L.H. sit on the ground, with his hands shackled behind him, as other students walked through the hallway. No one from the school contacted L.H.'s parents, who only learned of this incident weeks later when it was referenced at an IEP Team meeting by a Team member. When pressed for details, no one from the school admitted knowledge that L.H. had been handcuffed at school. When asked whether there would be a record of such an incident had it occurred, an administrator replied "not necessarily."

A few weeks later, while other students were boarding a bus to go on a field trip, L.H. and another student playfully ran up to the bus and pretended they were going to board it as well. The SRO yelled at them to come back. L.H. and the other student immediately turned around and walked toward the SRO. Then, the officer grabbed L.H. by the back of his neck, squeezed firmly, scratched his neck, and pushed him to his knees. His mother reports that when L.H. called her, he was crying hysterically and really angry, telling her over and over that the police officer scratched him. His mother then tried to speak to someone at the school to find out what had happened, but no one would give her any information.

At dismissal a few hours later, L.H. was still agitated about what had happened earlier that day with the police officer. He had a brief altercation with a student who was taunting him. Although the SRO had not seen the alleged incident, upon a report from a teacher that L.H. had been in a minor altercation with another student, and without asking L.H. any questions, the SRO put him in handcuffs. He did not permit L.H. to call his parents. Instead, he placed L.H. in his patrol car and made him sit in the back of the car for about 10 to 15 minutes, in plain view of other students, before transporting him to jail.

No one at the school ever contacted L.H.'s parents to let them know L.H. had been arrested. Prior to being handcuffed, L.H. managed to call his sister and tell her he was being arrested. His parents then repeatedly called the school, terrified of what was going on and trying to get information. However, no one at the school would tell them what was going on. Hours later, around 6:00 p.m., the SRO called L.H.'s parents to tell them that he had arrested L.H., that L.H. was in jail, and that they needed to track down money to bail him out.

Because L.H. was 16-years-old, he was processed as an adult offender and forced to stay in a holding cell with about 10 other people, mostly adults who were significantly older than him, until after 11:00 pm. He was held on a $1,000 bond, and his low-income parents had to find someone who could loan them money to get him out. Meanwhile, L.H. kept calling home, begging his parents to come pick him up.

L.H. is just a 16-year-old boy, yet he faces a criminal charges and the serious, life-long repercussions that come with a criminal record.

F. K.H.

K.H. is a 16-year-old African-American SWD in the WCPSS. K.H. has been a passionate football player since the age of six and was on the varsity football team at his high school. He also ran track for the school, in addition to working at Wendy's at least 20 hours per week to help with his family's finances. He is one of five children in a single-parent household, and helps his mother care for his three younger siblings, one of whom was born in the fall of 2013 and required extensive hospitalization.

K.H. has been diagnosed with ADHD and struggles academically. He has a 504 plan through which he receives accommodations for his disability, and is undergoing the evaluation process to receive an IEP. When he finally received a 504 plan last school year, K.H.'s grades improved immediately, and he made the honor roll.

Earlier this year, K.H. was asked to leave class by an administrator at his school. The previous evening, a Raleigh Police Department officer went to the school to tell school administrators that K.H. allegedly fought with another student off campus after school hours. The police officer who reported to the scene of the alleged assault obtained an arrest warrant sometime on Thursday. At the school Thursday evening, the police officer told the administrators that a police report detailing the incident would soon be released.

On Friday morning, before he got K.H. out of class, an assistant principal received and read parts of the police report, which he asked the SRO to send him via email. The assistant principal did not mention to K.H. why he was pulling him out of class, and as they walked down the hall he talked to K.H. about his academics and some grades that he needed to improve. The assistant principal did not call K.H.'s mother.

When the assistant principal brought K.H. into an office an SRO was there. The assistant principal questioned K.H. about the alleged assault with the door closed and in the SRO's presence. K.H. tried to talk about his academics instead. K.H felt "nervous and scared about

getting in trouble." The assistant principal continued to question K.H. about the incident and asked K.H. to make a written statement. In his written statement, and in his answers to the principal, K.H. never referred to the alleged assault. Neither the principal nor anyone else at the school called K.H.'s mother at this time. K.H. was not read his *Miranda* rights.

After K.H. wrote his statement, the SRO handcuffed K.H., told him he was under arrest, and led him to a police car. According to K.H., many students saw him being put into the car. He was embarrassed. Following his arrest, K.H. was brought to the police station, where he was fingerprinted, searched, and made to change clothes. He does not want to talk about what else happened at the police station. At around this time, his mother was finally informed about K.H.'s detainment and went to get him out.

K.H. has been suspended from school since his arrest. Despite the fact that K.H. was led immediately from the assistant principal's questioning into the back of a police car, the assistant principal maintained that his questioning of K.H. was not related to the police investigation, but instead was related to K.H.'s suspension from school.

K.H. now faces criminal charges in adult court and is still suspended from school. He will not play football again this season and is taking his classes through an online program, SCORE, that he is currently attending via his cell phone, as the family does not have internet access and as he does not have reliable transportation to a SCORE computer lab site.

G. S.P.

S.P. is a 17-year-old, African-American SWD in the WCPSS. Since childhood, S.P. has been passionate about music. He sang in the boys' choir at his church, traveling to concerts across the country. He also learned to play the keyboard and the drums. S.P. plays the keyboard at his church and has earned a position on the varsity drum line. He has also pursued his passion academically: as a junior, he completed AP Music Theory. When S.P. describes these experiences and his interest in music, his eyes smile. He hoped to attend music school on scholarship after graduating from high school. But S.P.'s dream now seems farfetched due to unwarranted treatment by district and law enforcement officials.

S.P. has received special education services since middle school. He has been diagnosed with ADHD, Impulse Control Disorder, and a learning disability. Among other challenges, S.P. has difficulty following directions and often becomes distracted. Yelling at him or berating him with additional directions, however, is ineffective. His IEP notes that S.P. responds poorly when teachers or administrators shout at him. The school has created a BIP that specifically directs teachers and administrators to allow S.P. to leave the room when he is upset and to seek out a member of the school's behavioral support team to help him to decompress and return to the classroom without escalation.

Toward the end of last school year, S.P. attended his first-period class. After class, there was an announcement that the atrium between the two main buildings of the high school would be closed. Administrators had heard about a planned water-balloon fight; so, they closed down the area where most likely would occur. As a result, hundreds of students were forced through a

narrow breezeway that ran between the buildings. S.P. and a few other students decided to wait for crowd to disperse. They stepped out onto the grass between the school and the main parking lot. Once the crammed breezeway opened up, S.P. began to walk back toward the building.

Before he reached the breezeway, S.P. turned toward the towering, uniformed figure approaching and calling his name. S.P. recognized the SRO, who had been an officer at S.P.'s school for several years. S.P. reached out to shake his hand and asked how he was doing. The SRO struck S.P. in the chest and demanded to know where he had been. S.P. explained he had been waiting in the grassy area until the crowds subsided. Thinking that was a sufficient explanation, S.P. began to walk away. The SRO then jerked S.P. around to face him and grabbed his neck. Afraid, S.P. impulsively struck back at the SRO in an attempt to break free from his painful grip. The SRO then further restrained S.P. and threw him over a nearby railing. S.P.'s glasses flew off when he made impact with the railing. The SRO then put him in handcuffs.

Throughout the altercation, at least five administrators passively stood nearby. Some of them – including the principal and assistant principal – had signed off on S.P.'s most recent IEP and knew what interventions were required per his BIP. Instead of following his BIP, these school officials turned their backs as S.P. was restrained, thrown over a railing, and handcuffed.

The SRO then led S.P. to his office and closed the door. No one else was present. The SRO removed the handcuffs and shoved him down into a chair. S.P. felt helpless, and in frustration elbowed the wall and kicked, leading the SRO to reapply the handcuffs. He then searched S.P.'s backpack. He neither asked for S.P.'s consent nor did he have reasonable suspicion for the search. After finding nothing suspicious, he asked S.P. if he had anything else on him. S.P. answered "yes," realizing that he still had in the pocket of his cargo pants a small, three-inch pocketknife that his mother had given him over the weekend. He had put the knife in his pocket after he finished carving his name in a tree in his yard, and had forgotten all about it until he was already at school that morning. S.P. willingly gave the SRO the pocketknife.

Instead of contacting school administrators to handle a violation of school policy, the SRO called in other non-SRO police officers who were on campus that day. The officers arrested S.P. and took him to jail in a squad car, along with other students, all of whom were arrested for throwing water balloons.[20] They did not read S.P. his *Miranda* rights and refused to contact his mother. By the time the school notified his mother and she arrived at the jail, S.P. was hysterical. She had never seen him so upset. She had to take him to his psychologist before he would calm down.

S.P. was criminally charged with possessing a weapon on educational property. In addition, the school suspended S.P. for 10 school days with a recommendation for a long-term suspension for carrying the pocketknife. The suspension notice stated that the SRO stopped S.P. because he was returning to school after being off campus. S.P.'s first-period teacher has since confirmed, however, that he was in class all morning.

[20] *See generally*, T. Keung Hui, *Enloe Students Say Water-Balloon Charges Should Be Dropped*, RALEIGH NEWS & OBSERVER (May 30, 2013), *available at* http://www.newsobserver.com/2013/05/30/2928310/enloe-students-say-water-balloon.html.

School officials suspended S.P. until January 2014, despite a letter from S.P.'s psychologist confirming that outbursts like what he experienced with the SRO are manifestations of his ADHD and Impulsivity Control Disorder. His mother retained counsel for an appeal, at which point the school offered to allow S.P. to return to school if his mother dropped her appeal, but she declined. She said she had seen enough of the way S.P. and other African-American students at S.P.'s school were being treated. The school then offered to transfer S.P. to the school of his choice. Hoping to put S.P. in a better environment, his mother agreed. S.P. is now a senior at another high school.

S.P. has continued to work toward graduating on time and following his passion for music. He is in the marching band at his school and involved with the music program at his church. But the incident at his previous school has left its mark. S.P. now has a disciplinary record and is facing criminal charges for inadvertently possessing a small pocket knife on school property. A scholarship to a music school is likely out of reach due to his arrest record that will permanently follow him. S.P. has also become deeply skeptical of law enforcement and school administrators. He avoids them whenever possible. He says they are unpredictable. He is afraid something similar will happen again.

H. T.W.

At the time of the incidents described below, T.W. was an African-American SWD in the WCPSS. T.W. had a serious emotional disability ("SED") and a learning disability ("LD"). Accordingly, he began receiving special education services via an IEP as early as 2008. T.W. also took medication for depression.

T.W.'s incident involving SROs occurred in the fall of 2011. T.W. arrived at school on the very first day of his eleventh grade year, eager to have a positive and productive school year. He introduced himself to the new principal and then went straight to the office to pick up his schedule. T.W. took his place in the line of 10 to 15 students who were also waiting to receive their schedules. He was where he was supposed to be, doing what he was supposed to be doing.

While T.W. was in line, an SRO asked T.W. if he attended that high school. T.W. told the SRO that he did in fact attend the school. The SRO then demanded that T.W. accompany him to the office to verify his status as a student. T.W. was stunned and did not understand why he was being singled out, and so remained in line. A female student who was passing by confirmed that T.W. was a student at the school.

The SRO demanded that T.W. tell him his name. T.W. responded, yet the SRO became outraged at T.W. Clearly, he did not know T.W. well enough to know that, according to T.W.'s IEP, "when faced with stressful situations, T.W. often responds by avoidance." The SRO said something to the effect of, "Are you trying to play me in front of your boys?" At no point was T.W. a threat to the order and safety of the school environment. Yet, the SRO grabbed T.W.'s arm violently, and eventually put his arm behind his back.

Then, a second law enforcement officer approached him and grabbed T.W.'s other arm. The law enforcement officers teamed up to throw T.W. up against a window and slap handcuffs on him, even though T.W. was not resisting. A teacher approached the officers and confirmed that T.W. was in fact a student at that high school. Other students and staff were looking on in shock and amazement.

T.W. was then taken to the principal's office where the SRO searched T.W. and said something to the effect of, "I love to find drugs." Other than that flippant comment, the SRO offered no information regarding how he had reasonable suspicion to suspect T.W. had drugs in his possession. Nonetheless, the SRO continued the search, making T.W. take off his shoes and hand over his wallet, and then patted him down. The SRO then interrogated T.W. At no point was T.W. read his *Miranda* rights. Instead, the SRO continuously made statements to T.W., such as: "If you help me, I can help you;" "If you give a tip that leads to arrest, you can get paid;" "When you come to school your rights are forfeited." During the course of the illegal search, the SRO found a lighter in T.W.'s pocket. The principal suspended T.W. out-of-school for two school days and the SRO finished his attack against T.W. with a citation to adult criminal court for interfering with a police investigation.

T.W.'s mother filed a grievance with the school regarding the SRO's mistreatment of her son. However, she realized that her efforts to convince the principal to remedy the situation were futile as he asserted that he had no control over SROs. So, that afternoon she went to the Raleigh Police Department and filed an Internal Affairs complaint against the SRO. Months later she received a form letter with no individualized findings, stating only that the department viewed the SROs actions to be "proper conduct" consistent with Department policies and training.

After the grievances were filed, the SRO continued to harass T.W. A few weeks after the incident, T.W. missed the school bus. While T.W. was walking to school the SRO pulled up beside him in his patrol car. He pointed a video camera at T.W. and asked T.W. why he was late for school. T.W. explained that he had missed the bus. The SRO said something to the effect of, "You better not have cigarettes or you'll get in trouble, and you get rid of that lighter." T.W. said about the incident:

> I proceeded on, and actually did not want to go to school after that. I stopped; talked to myself for a little while, but I proceeded on and went about the day and even stayed after school that day. At this point I am feeling uncomfortable going to my own school that I have been attending for four years. I wish the SRO would leave me alone.

Ultimately, T.W. and his mother had to appear in court at least four times as a result of the initial incident at school. Each time, his mother had to take time off of work and T.W. had to miss school. At one of the court appearances, the SRO testified that the reason he approached T.W. while he was in line to get his schedule was because he looked older than the other kids. The judge responded, "That's just like walking on the sidewalk while being black." All charges were subsequently dropped, and the case was dismissed. However, unfortunately, T.W. never finished high school, in part due to the trauma caused by school policing policies and practices in Wake County.

III. School Security Personnel in the WCPSS

All aspects of campus security and policing in the district are overseen by the WCPSS Security Department. Within the purview of the Security Department are: contract security officers employed by AlliedBarton, a private security company; SROs employed by local law enforcement agencies; part-time, off-duty law enforcement officers who patrol board meetings and other events after regular school hours; and other law enforcement officers who are dispatched to schools to conduct official police business.[21]

The WCPSS Security Department itself is comprised of nine employees: a senior director, a senior administrator, a secretary, five security administrators ("SAs"), and one emergency management coordinator ("EMC").[22] Key functions of the WCPSS Security Department include:

- Assisting school administrators with student investigations;
- Conducting preliminary investigations for all crimes committed on school property;
- Determining whether threats of violence are spontaneous utterances by angry students or are substantive; and
- Coordinating with law enforcement when students commit criminal acts.[23]

Security Department SAs are stationed at individual schools and assigned to cover geographic regions of elementary, middle, and high schools. SAs are required to have five or more years of experience in law enforcement, investigations, or other security services, as well as a bachelor's degree or equivalent vocational/technical training in criminal justice or law enforcement.[24] Their primary duties include investigating incidents, providing presentations on school security-related topics, providing written security risk assessments of school system sites, and assisting schools with coordinating and executing emergency action drills.[25] Their other duties, which closely resemble traditional law enforcement officer activities, also include:

- Maintaining "internal intelligence;"
- Developing "suspect pools;"
- Interrogating students and taking written statements;
- Searching students, vehicles, lockers, and facilities;
- Planning, coordinating, and participating in periodic canine searches;
- Photographing seized evidence and turning it over to law enforcement;
- Inspecting surveillance equipment;
- Testing students for drugs and alcohol;

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[21] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[22] The total cost for salary and benefits for the five SAs and one EMC was $386,433.11 during 2011-12 – an average of $64,405.52 per person. Public Records from WCPSS (Sept. 21, 2012) (*see* Appendix).
[23] Public Records from WCPSS (Sept. 21, 2012) (*see* Appendix).
[24] Public Records from WCPSS (Sept. 21, 2012) (*see* Appendix).
[25] Russ Smith, Senior Dir. WCPSS Sec. Dep't, Address to the WCPSS Task Force for Creating Safer Schools (Mar. 13, 2013).

- Preparing reports for and testifying at juvenile court proceedings and suspension hearings;
- Coordinating activities that involve both sworn law enforcement and private security personnel; and
- Issuing trespass letters.[26]

Once hired, SAs are required to undergo training relevant to the WCPSS infrastructure and the student code of conduct. However, SAs are not required to receive training specific to working with students with disabilities, conflict de-escalation strategies, students' rights, or any other topic related to child well-being. SAs report directly to the Senior Director of Security. No data is made publicly available regarding SA investigations that involve SROs and subsequent interrogations, searches, uses of force, arrests, or court referrals for WCPSS students.[27] To the knowledge of the Complainants, the Security Department has never been formally evaluated.

In addition to overseeing Security Department staff, the Senior Director also oversees a contract with a private company, AlliedBarton, that deploys security guards to WCPSS schools. AlliedBarton security guards in the WCPSS are charged with, among other duties, issuing parking citations, performing sweeps of buildings and grounds, and assisting with lunch, carpool, and behavior management. The requirements to become a security officer are minimal and do not specify any previous experience or training in security, or any experience working with youth or in schools. Instead, applicants to AlliedBarton are required only to manifest such generalized characteristics as "good moral character," as evidenced, in part, by "areas of residence/neighborhood."[28] The district does not require subsequent training for security guards on important topics such as working with students with disabilities, conflict de-escalation, or students' rights.[29] During the 2012-13 school year, AlliedBarton deployed 61 security officers to 24 high schools, three middle schools, seven elementary schools, and three administrative sites.[30] Notably, most of the elementary schools with security guards were located in predominantly lower-income, African-American communities in Raleigh.

During the 2011-12 school year, the WCPSS paid AlliedBarton $1,334,642 to provide security and bike patrol officers to elementary, middle, and high schools throughout the district.[31] Despite this massive financial investment, the district does not maintain data regarding activities undertaken by the security guards. Accordingly, the full extent to which these guards contribute

[26] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Russ Smith, Senior Dir. WCPSS Sec. Dep't, Address to the WCPSS Task Force for Creating Safer Schools (Mar. 13, 2013). Following the tragedy in Sandy Hook, the Board of Education made a rash proposal to hire 105 new security guards to patrol WCPSS elementary schools. The proposal met significant opposition from community members. Parents and student advocates argued that using school funds for security guards rather than for academic and intervention supports for students would be detrimental to students and would create an unnecessary police-state atmosphere. On the other side of the spectrum, conservative board members and county commissioners opposed the proposal because they believed any new guards should be armed. T. Keung Hui, *Criticism greets unarmed security-guard proposal*, NEWSOBSERVER.COM (Jan. 24, 2013), http://www.newsobserver.com/2013/01/24/2625089/wake-to-delay-school-security.html.
[31] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

to the school-to-prison pipeline in the WCPSS is currently unknown.[32] Students report that security guards work in tandem with WCPSS staff and SROs in police-related matters, often calling SROs to become involved in student behavior incidents.[33] Students also report that most security guards carry and are empowered to use handcuffs, TASERs, and pepper-spray against students.[34] However, the WCPSS does not publish, nor presumably maintain, data regarding how often security guards use force against students or are otherwise involved in policing-related matters. Instead, though the WCPSS pays the full salaries of all security guards and permits them to patrol WCPSS campuses on a daily basis, all supervision and data-collection duties are delegated to AlliedBarton.[35]

The WCPSS Security Department is also responsible for facilitating the WCPSS SRO Program.[36] The SRO program is a "joint cooperative effort" between the WCPSS and the Wake County Sheriff's Department and the Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Raleigh, and Wake Forest police departments for the provision of law enforcement officers – known as SROs – to patrol schools on a full-time basis.[37] These SROs have the same authority and powers as sworn patrol officers, including the ability to arrest students and file delinquency or criminal complaints against students for behavior that occurs at school.

Over the course of the past five years, the number of full-time SROs patrolling WCPSS schools has steadily increased from 54 SROs in the 2009-10 school year to 64 SROs in the 2012-13 school year. During the 2011-12 school year, 60 SROs were assigned to 29 middle schools and 23 high schools in the WCPSS. During the 2012-13 school year, 64 SROs were assigned across 23 high schools, 32 middle schools, and one elementary school.[38]

The relationship between the WCPSS and law enforcement agencies is formalized by contracts with each of the law enforcement agencies, as well as a memorandum of understanding ("MOU") that exists among the WCPSS and all of the law enforcement agencies. Under the contracts, the costs for the SROs are shared by the WCPSS and law enforcement agencies. During 2011-12, the WCPSS paid a portion of 26 SROs' salaries, for a total of $893,355. The district also paid $2,077 toward cell phone charges for SROs employed by the Raleigh Police

[32] *See* U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, (January 2014) (highlighting school security guards' role in perpetuating the school-to-prison pipeline), *available at* www.ed.gov/school-discipline.
[33] Interview with Justice Served NC students (December 16, 2013)
[34] *Id.*
[35] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[36] Russ Smith, Senior Dir. WCPSS Sec. Dep't, Address to the WCPSS Task Force for Creating Safer Schools (Mar. 13, 2013).
[37] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009). It has also been proposed that the Rolesville Police Department provide SROs to WCPSS schools. *See* JOINT MEETING AGENDA BOARD OF COMMISSIONERS & BOARD OF EDUCATION, *supra* note 3. However, Complainants have not been able to confirm whether this has occurred and, if so, whether Rolesville PD is likewise bound by the same MOU.
[38] Russ Smith, Senior Dir. WCPSS Sec. Dep't, Address to the WCPSS Task Force for Creating Safer Schools (Mar. 13, 2013). Complainants do not have complete information regarding the staffing patterns of SROs in the WCPSS for the 2013-14 school year.

Department.[39] For 2013-14, the WCPSS' investment in the SRO Program increased to over $940,000.[40]

Though the WCPSS invests heavily in the SRO program and SROs are housed at district schools, day-to-day supervision of SROs is delegated to officials at an SRO's respective law enforcement agency.[41] All training requirements are likewise delegated to the individual law enforcement agencies, with no minimum standards set by the WCPSS.[42] No data is made publicly available regarding SRO interactions with students, and there has never been a formal, comprehensive evaluation of the WCPSS SRO program.[43]

In practice, the SROs and WCPSS Security Department staff collaboratively carry out the central duties related to school policing. Training materials for SAs describe the relationship as follows: "The WCPSS Area Security Administrator is only part of the overall investigative and security staff of a school. . . . In many instances the school administrator, Area Security Administrator and the SRO function as the 'investigative team' for school based incidents."[44] Accordingly, in addition to paying a large portion of the SRO salaries, the WCPSS utilizes its own security staff to jointly carry out policing duties with SROs.

Finally, in addition to facilitating the presence of SROs on campus, the district regularly permits and often calls off-campus law enforcement officers (i.e., non-SROs) to school campuses in order to conduct "official business," such as searching, interrogating, and arresting students. The roles and limitations of these officers are not dictated by the existing MOU, and there is no available data regarding how frequently, in what manner, and to what effect these officers interact with WCPSS students.[45]

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[39] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

[40] JOINT MEETING AGENDA BOARD OF COMMISSIONERS & BOARD OF EDUCATION (May 16, 2013), *available at* http://www.wakegov.com/budget/bonds/2013/Joint%20Meeting%20Materials/May%2016%202013%20Combined%20Packet.pdf. According to this budget document, a request was pending for the hiring of an additional SRO, the full cost of which would be borne by the WCPSS. This addition would push the district's investment in the SRO program well over $1 M.

[41] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

[42] *Id*.

[43] Following a June 2011 directive from the WCPSS Board of Education to conduct a comprehensive evaluation of the SRO program, the head of the WCPSS Security Department conducted a wholly inadequate "study" comprised of five leading, "agree" or "disagree" questions that were sent to Middle and High School Principals. No actual data was gathered or analyzed, and no students, parents, teachers, or other school staff were included. *See* SCHOOL RESOURCE OFFICERS WHITE PAPER (December 2011), *available at* http://www.newsobserver.com/content/media/2012/4/30/SRO%20White%20Paper.pdf.

[44] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix)

[45] In December 2013, the WCPSS school board approved a new policy that purports to dictate the responsibilities of principals in the event that a non-SRO officer is called to a school campus for the purpose of interrogating, searching, or arresting a student. Though preferable to the previous absence of any guidance whatsoever, the new policy is alarmingly deferential to law enforcement officers, instructing school administrators to essentially disregard the guidelines and permit law enforcement officers to take whatever actions against students they deem "necessary, in the discretion of the officers, for the success of a law enforcement investigation." Wake Cnty. Bd. of Educ., *Board Policy 6605: Investigations and Arrests by Law Enforcement*, WCPSS.NET (December 3, 2013), http://www.wcpss.net/policy-files/series/policies/6605-bp.html. Even these minimal guidelines were met with great resistance by law enforcement. *See e.g.* T. Keung Hui, *Wake County Schools have busy agenda Tuesday*, NEWSOBSERVER.COM (Dec. 1, 2013), *available at* http://www.newsobserver.com/2013/12/01/3424894/wake-county-schools-have-busy.html.

IV. Insufficient Policies, Unregulated Practices, Inadequate Accountability, and Harmful Impacts[46]

Despite the seriousness of having armed law enforcement officers patrolling school campuses on a daily basis, there are no comprehensive policies in place that clearly define the respective roles, expectations, or limitations of WCPSS staff and police officers in addressing student behavior. The WCPSS has hundreds of Board Policies;[47] yet *none* of them address the relationship between WCPSS staff and SROs. Nor are there uniform policies setting forth standards for contact between law enforcement officials and WCPSS students, who are children and adolescents and thus need age-appropriate interactions. Instead, the only official joint policies that attempt to define the unique relationship between and respective roles of the WCPSS and law enforcement agencies that deploy SROs to schools are employment contracts between the WCPSS and each of the law enforcement agencies and an MOU that exists among the WCPSS and the agencies.[48]

Unfortunately, the existing contracts and MOU speak primarily to financial and supervisory arrangements, and do not outline the specific SRO qualifications, training, scope of authority, or oversight mechanisms necessary to ensure that all WCPSS students are protected from discrimination, criminalization, and mistreatment by law enforcement officers.[49] Instead, these important measures are left to the individual law enforcement agencies.[50] This broad deference results in inconsistent and inappropriate practices related to the disciplining, arresting, charging, searching, interrogating, and using of force against students across the district as each law enforcement agency has its own set of general operating policies and, in many of the agencies, those policies are intended to govern interactions with adult criminal offenders, not children. Finally, the WCPSS further exacerbates the ongoing violations of students' rights as it empowers and often *directs* its security staff and administration to collaborate with SROs and law enforcement officers in a manner that circumvents constitutional protections for students.

Regardless of how well-intentioned the school policing program in the WCPSS purports to be, opportunities for SRO abuse of discretion and subsequent mistreatment of students nonetheless are prevalent in the WCPSS due to the limited and vague policies that give unreasonable deference to law enforcement officers. The following sections examine the

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[46] This section will primarily address policies and patterns of behavior specific to WCPSS staff members and SROs because those are the policies most accessible to the Complainants and because SROs arguably have the most direct and profound impact on violating students' rights. Nonetheless, Complainants urge DOJ to thoroughly investigate the policies, patterns, and practices of AlliedBarton security guards and of non-SRO officers who conduct police business at WCPSS schools.

[47] Wake Cnty. Pub. Sch. Sys. *Board Policy Table of Contents*, WCPSS.NET, http://www.wcpss.net/policy-files/ (last visited Jan. 5, 2014).

[48] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

[49] In 2011, Wake County school board members agreed a review of the current MOU was necessary in order to ensure topics such as use of force and referrals to the criminal system were fully appropriately addressed. However, the board ultimately agreed to continue contracts with the Raleigh and Cary police departments for school resource officers as is and put off review of the SRO program until a later date. T. Keung Hui, *School board agrees to SRO contracts with Raleigh and Cary*, NEWSOBSERVER.COM (June 7, 2011), http://blogs.newsobserver.com/wakeed/school-board-agrees-to-sro-contracts-with-raleigh-and-cary.

[50] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009).

inadequacies of existing policies and the pattern of unconstitutional practices that result and cause lasting educational, emotional, and economic collateral harms for students. Section A describes some of the foundational issues with existing policies, including: inadequate minimum qualification and training requirements for SROs, as well as insufficient supervision and accountability mechanisms to correct and prevent misconduct. Subsequent sections outline in greater detail specific policies and provisions that enable SROs and school officials to routinely collaborate in violating students' constitutional rights in schools. Section B discusses how existing policies lead to increased and often unlawful school-based arrests and court referrals for minor misbehavior. Section C discusses the role of current policies in enabling the routine practice of using excessive and unreasonable force against students. Section D discusses the policies and practices of school officials and SROs in jointly orchestrating custodial interrogations that violate students' constitutional rights. Finally, section E discusses the policies and practices that result in the conduct of unlawful searches and seizures of students.

A. Insufficient Policies Regarding Qualifications, Training, Supervision, and Accountability for SROs

The existing MOU leaves the door wide open for improper law enforcement conduct in schools as it fails to set adequate qualifications and training standards for SROs, and provides insufficient standards for supervision and oversight. First, the current MOU gives sole authority to the law enforcement agencies in the selection of SROs. Remarkably, even though SROs patrol schools on a daily basis and have significant, life-changing impacts on the lives of the students that they police, a WCPSS school has no ability to assist in the selection of the officer(s) who will become a part of its educational environment. Furthermore, there is no minimum requirement that officers have relevant prior experience or training in working with children and youth.[51] Instead, the only requirement for selection as an SRO is that the candidate meet all certification requirements for being a police officer or deputy sheriff.[52] Even in the law enforcement agencies whose policies purport to delineate between SRO qualifications and general officer qualifications, the only unique qualification required for an SRO is that the officer "[s]et a good example for students, possess even temperament and possess good oral and written communication skills."[53] However, there is no indication of how an officer's example-setting ability or temperament are established or evaluated.

Moreover, the agreements fail to set even minimum standards regarding the type of ongoing training that must be completed by SROs so as to ensure they are equipped to effectively operate in the school environment. A study of SRO programs across the country found that "without proper training, SROs can make serious mistakes related to their relationships with students, school administrators, and parents," and that, in many cases;

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[51] T. Keung Hui, *Wake schools review resource officers*, NEWSOBSERVER.COM (July 5, 2011), http://www.newsobserver.com/2011/07/05/v-print/1321137/schools-review/resource/officers.html. School Board member Keith Sutton acknowledged that "we're not sure how much training [of school resource officers] there is working with school-age children, particularly in a school setting."

[52] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009)(*see* Appendix).

[53] Wake County Sheriff's Office Policy Manual, School Resource Officer Program, Regulation 418 (Sep. 1, 2008) (*See* Appendix)(Hereinafter referred to as "Wake Cnty. Sheriff's Office Pol'y Manual").

> "SROs may need help to 'unlearn' some of the techniques they learned to use on patrol duty that are inappropriate in dealing with students (for example, resorting too quickly to using handcuffs or treating misconduct as part of a person's criminal make-up when in a student the behavior may be an example of youthful indiscretion)."[54]

An SRO training curriculum should include training in child and adolescent development, mental health issues, positive behavior management, working with school staff, cultural competency and bias-free policing, use of force and restraints with children and adolescents, juvenile law for law enforcement, school law, and special education law, among other topics.[55] However, there are no provisions in the current MOU that require SROs in Wake County to be trained in these areas. Instead, all training decisions are left to the discretion of the individual law enforcement agencies. Though the district and agencies refuse to publicly reveal the specific content of SRO and security staff training, public records request results have revealed that the WCPSS is a repeat customer of John E. Reid & Associates, a private firm whose training sessions on interviewing and interrogation techniques have been roundly criticized by juvenile and child advocacy experts as inappropriate for and harmful to youth.[56] Furthermore, during the 2007-08 school year, the WCPSS paid for security personnel to attend training programs conducted by Laboratory for Scientific Interrogation, Inc., a private business firm led by a former Israeli Police Department polygraph examiner.[57]

Given the broad latitude the MOU affords SROs (discussed in greater detail in subsequent sections), close supervision and strict accountability measures would be crucial to ensuring that students are not unnecessarily criminalized and mistreated. Unfortunately, the existing MOU and law enforcement agency policies fail to ensure either of these safeguards. First, the MOU vaguely delegates all day-to-day supervision duties and administrative control over SROs to the respective law enforcement agencies.[58] This is the case even though SROs are housed at the schools. Thus, there is no meaningful way for the day-to-day performance of an SRO to be monitored. The Sheriff Department's School Resource Officer Policy delegates some supervisory duties, including the direction and coordination of operational and program activities, to the Director of Security for the WCPSS, who is required to be a liaison to the SRO supervisor and to assist in evaluating an SRO's work performance with input from the school principals.[59] However, there is no indication of how often this supervision and evaluation takes place, nor is there meaningful criteria regarding the terms of the evaluation. Furthermore, the evaluation results, if actually generated, have never been made publicly available.

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[54] PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 50, 48 (2005).

[55] See U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 10 (January 2014)(outlining topics in which SROs should receive rigorous initial and ongoing training), *available at* www.ed.gov/school-discipline.

[56] Legal scholars have sharply criticized the use of the techniques taught by Reid in interrogating children. *See, e.g.*, Tamar Birckhead, *The Age of the Child: Interrogating Juveniles after Roper v. Simmons*, 65 WASH. & J.H. L. REV. 385, 408-11 (2008).

[57] This information was acquired after petitioning WCPSS and local police departments with a Public Records Request pursuant to N.C. Gen. Stat. §132-1 and § 160A-168 (on file with ACS).

[58] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009)(*see* Appendix).

[59] Wake Cnty. Sheriff's Office Pol'y Manual, Reg. 418 (*see* Appendix).

Moreover existing agreements do not set forth mechanisms through which parents and students can request SROs be held accountable for misconduct or violations of the law. There is no meaningful complaint or investigative process for allegations of misconduct by security personnel. Instead, the law enforcement agencies' current internal affairs policies and processes are not publicized to students and, in the experience of the complainants, are an ineffective means of seeking relief. While the WCPSS has a formal grievance policy and process, it is only applicable to school district employees, and SROs are considered to be law enforcement agency employees who cannot be held accountable through the WCPSS grievance process.[60]

These inadequate policies leave the door wide open for law enforcement officers to abuse their authority, and otherwise violate the rights of students and parents with virtually no recourse. It has been the experience of the Complainants that, in the absence of adequate oversight and accountability safeguards, SROs and outside law enforcement routinely inflict psychological and emotional trauma on students through verbal harassment. Both J.H. and T.W experienced significant harassment at the hands of SROs. In J.H.'s case, the SRO taunted him on multiple occasions, telling J.H. that he wished he was 16-years-old so that he could "take him downtown." This harrassment happened in the hallways in front of peers, as well as in a small room while J.H. was being interrogated. The harrassment was so pervasive that J.H.'s mother eventually requested and was allowed to transfer him to another school.

T.W. likewise experienced extreme and undue harrassment from an SRO. In his case, the SRO approached and began harrassing him for "looking old" as he was waiting in line at the beginning of the school year to get his schedule. T.W. was then aggressively thrown against a window and handcuffed by that SRO and an additional officer. During the subsequent search and interrogation, the SRO continuously taunted T.W. with the following comments: "If you help, I can help you;" "If you give a tip that leads to arrest, you can get paid;"[61] and "When you come to school your rights are forfeited." After the incident, the SRO continued to harass T.W., both in school and in the community. All charges against T.W. were ultimately dropped, but the harassment was so pervasive that T.W. required intensive counseling following the incidents. All attempts to hold the SRO accountable for his extreme actions proved fruitless. When T.W.'s mother tried to file a grievance at the school regarding the SRO's handling of T.W., she was simply told that the school had no control over the law enforcement officer and that she should direct her concerns to the law enforcement agency. When she attempted to file an internal affairs complaint with the law enforcement agency, she waited *10 months* for a response, only to receive a form letter with no individualized information or findings, and stating that the officer's actions constituted "Proper Conduct" that was "not inconsistent with Departmental policy or training."

Other parents have faced great, and sometimes shocking, obstacles in trying to report misconduct by SROs. After witnessing a police officer violently attacking a student at his daughter's high school, a parent of a WCPSS student was intercepted by that same police officer and subsequently harassed, threatened with a stun gun, and ultimately arrested for second-degree

[60] Wake Cnty. Pub. Sch. Sys., *Board Policy: Student Grievances*, WCPSS.NET http://www.wcpss.net/policy-files/series/policies/6520-bp.html (last visited Jan. 8, 2014).

[61] Justice Served NC students report that SROs offering students money to provide "tips" that will lead to the arrest of other students is a common practice in the district, with at least one local high school SRO posting pay scales for tips on his office door.

trespassing as he attempted to report his concerns to the principal at the school.[62] These experiences have made parents fearful of challenging SRO actions due to fear of retaliation against their children or themselves. Parents of the student Complainants in this action expressed great concern about being retaliated against by the school and by law enforcement officers as a result of speaking out about the mistreatment their students have experienced.

Finally, in addition to a lack of accountability on the part of individual officers, there is also a disturbing lack of accountability on the part of the WCPSS and law enforcement agencies due to the fact that no existing policies set forth any requirements regarding what data must be collected and made publicly available by the WCPSS or law enforcement agencies regarding school-based arrests, complaints, searches, interrogations, and uses of force and restraints. This practice is in direct contradiction with recent guidance from the Department of Education, which directs schools to undertake "comprehensive data collection on officer activity" in order to "ensure that the program is meeting school safety goals and does not create any negative unintended consequences."[63] Limited information regarding school-based delinquency complaints (for students age 15 and under) is available via public records requests to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety (formerly the Division of Juvenile Justice, and before that, the Department of Juvenile Justice and Delinquency Prevention). However, there is *no* available data regarding school-based complaints filed against students age 16 and older – students who are pushed directly into the adult criminal system. Additionally, there is no data whatsoever regarding arrests, searches, interrogations, or uses of force or restraint.

B. Inappropriate and Unlawful School-Based Arrests and Court Referrals

By failing to adequately define appropriate roles and limitations of SROs and WCPSS staff, the existing MOU and contractual agreements enable law enforcement officers to arrest and refer students to court for what should be purely student discipline matters, including instances in which the underlying behavior is non-criminal, normative youth behavior that is the obligation of school officials to address. A study commissioned by the National Institute of Justice and the U.S. Department of Justice stressed that "[o]ne of the most frequent and destructive mistakes many SRO programs make is to fail to define in detail the SROs' roles and responsibilities before the officers take up their posts in the schools."[64] Further clarifying that "the SROs'

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[62] "The parent who was arrested, Kevin Hines, told WBT News 13 he saw officers acting aggressively as he drove up to the school. Hines said he tried to enter the school to talk to the principle [sic] about the situation occurring outside, but police stopped him and threatened him with a stun gun. He was charged with second-degree trespassing." Eric W. Dolan, *High school students arrested for throwing water balloons at school*, THERAWSTORY.COM (May 19, 2013) http://www.rawstory.com/rs/2013/05/19/high-school-students-arrested-for-throwing-water-balloons-at-school/; *see also* WNCN-TV News, *NC high school students charged in water balloon prank, parents outraged*, WBTWNEWS13 (May 17, 2013) http://www.wbtw.com/story/22286425/nc-high-school-students-charged-in-water-balloon-prank-near-graduation.

[63] *See* U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 11 (January 2014), *available at* www.ed.gov/school-discipline.

[64] PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 24 (2005), https://www.ncjrs.gov/pdffiles1/nij/grants/209272.pdf.

specific responsibilities may change over time and may vary from school to school," the study noted that "it is still essential to define them at the outset."[65]

In Wake County, existing agreements are inadequate, failing to set any meaningful guidelines regarding when SROs must treat an incident as a school discipline matter and when they can arrest or file charges against students. The minimal language that exists in the MOU about the proper role of SROs is too vague and contradictory to be meaningful. The MOU, which is not made readily available to students, parents or WCPSS staff, states:

> SRO's are first and foremost law enforcement officers. . . . School officials should ensure that non-criminal student disciplinary matters remain the responsibility of school staff and not the SRO. Enforcement of the code of student conduct is the responsibility of teachers and administrators. The SRO shall refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of law, except to support staff in maintaining a safe school environment. . . . The SRO shall intervene when it is necessary to prevent any criminal act or maintain a safe school environment.[66]

In practice, "disciplinary rules," are routinely re-defined as "violations of law," especially when African-American students or SWD are involved. Moreover, the provisions stating that SROs can be deployed "to support staff" or may intervene to "prevent any criminal act or maintain a safe school environment" are open to excessively broad interpretations and have resulted in schools essentially using SROs for classroom management.[67] For example, T.S. was handcuffed in a crowded cafeteria after arguing with an administrator over whether or not he had cut in line, J.H. was charged with simple affray as a result of play-fighting with a friend, and seven students at a local high school were arrested and criminally charged with disorderly conduct and assault based on allegations that they participated in a water balloon fight at school.[68]

Furthermore, the MOU fails to define *how* an SRO may "intervene" or become "involved" in situations involving student behavior. There are no bright line rules regarding when an intervention can or cannot involve an arrest or referral to court. Instead, full discretion is given to the SROs to characterize even the most minor student behavior as "criminal" and to respond by arresting and sending a student to court.[69] Moreover, no guidelines are put into place

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[65] PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 24 (2005), https://www.ncjrs.gov/pdffiles1/nij/grants/209272.pdf.

[66] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009).

[67] In fact, some agency policies explicitly encourage school personnel to seek out SROs for minor incidents on campus. The Garner Police Department Policy Manual states that a central responsibility of an SRO is "[r]eporting and investigating criminal acts and responding [to] calls for service occurring on campus. School personnel should be encouraged to use this resource." Garner Police Department Policy Manual, Juvenile Operations, Directive 840.5.18 (Apr. 12, 2007)(*See* Appendix).

[68] *See* WNCN-TV News, *NC high school students charged in water balloon prank, parents outraged*, WBTWNEWS13 (May 17, 2013) http://www.wbtw.com/story/22286425/nc-high-school-students-charged-in-water-balloon-prank-near-graduation.

[69] In a March 2010 study of SROs in Massachusetts, experts found that, even for the most qualified and well-intentioned SROs, major issues of unnecessary and unlawful criminalization of students arose due to the fact that SROs did not have meaningful oversight for their actions. Specifically, the study found that "too much discretion

regarding when WCPSS staff can call upon SROs to address student behavior. These policies and practices are in direct contradiction with recent federal guidance recommending that schools "specify that law enforcement approaches (such as arrest, citations, ticketing, or court referrals) should be used only as a last resort, and never to address instances of non-violent misbehavior that do not pose a serious and immediate threat to school safety."[70]

One result of the current unguided, unsupervised, and unaccountable approach to permitting law enforcement officers to address student behavior in the WCPSS is that students are being pushed out of school and into the juvenile and criminal court systems for minor misbehavior – a phenomenon known as the school-to-prison pipeline – at alarming rates. Not coincidentally, the number of complaints being filed against students age 15 and younger has remained alarmingly high as law enforcement officers have become increasingly entrenched in WCPSS schools.[71] (See Chart 1) Further, delinquency complaints filed in Wake County are increasingly school-based. During the 2012-13 state fiscal year (FY), 42% of all delinquency complaints in Wake County were school-based.[72] This represented a 15 percentage point increase from 2009-10.[73] (See Chart 2)

Chart 1

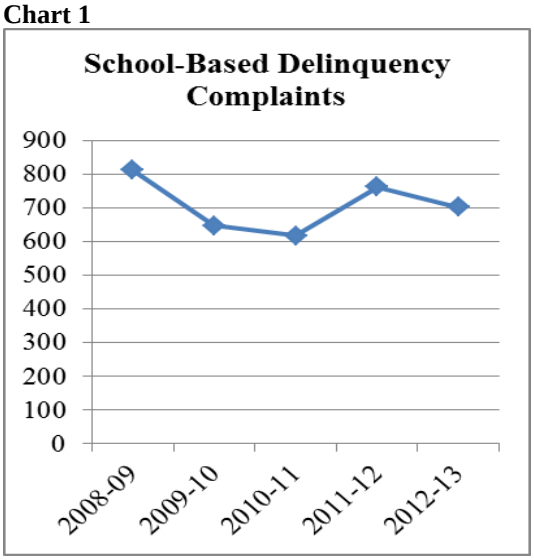
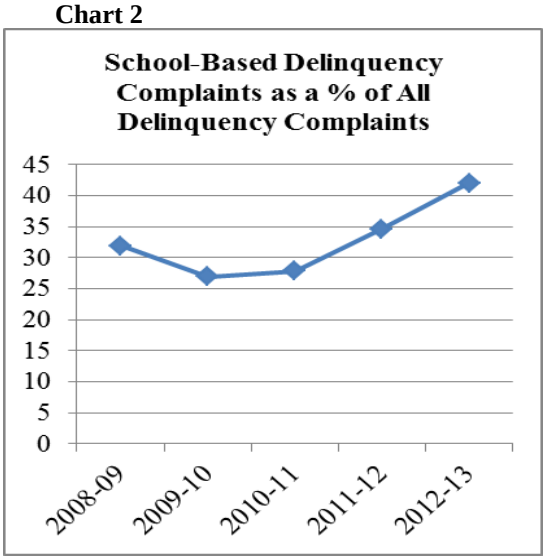


Chart 2



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ha[d] been built into [the SRO's] jobs, which raise[d] the very real risk that some SROs w[ould] target certain students for harsher punishments than others, and w[ould] insist upon a law enforcement solution to what should be a therapeutic response." The study further found that similar concerns existed for school officials who, without proper oversight, could "choose to use SROs inappropriately, to call officers to respond to what should be school disciplinary issues, and to use law enforcement intervention to 'push out' certain students." In Wake County, existing policies leave the door wide open for students to be unlawfully targeted for criminalization by both school staff and law enforcement officers. JOHANNA WALD AND LISA THURAU, FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO KEEP SCHOOLS SAFE AND PROTECT VULNERABLE STUDENTS, (March 2010)
available at http://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/do-no-harm.pdf.

[70] *See* U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 10 (January 2014), *available at* www.ed.gov/school-discipline.

[71] Public Records from DJJ (Nov. 4, 2013)(May 23, 2013)(July 16, 2012)(Jan. 31, 2012)(Sep. 22, 2010)(*see* Appendix).

[72] Public Records from DJJ (Nov. 4, 2013) (*see* Appendix).

[73] Public Records from DJJ *supra* Note 71

Of additional concern is the fact that an overwhelming number of these school-based complaints are triggered by law enforcement involvement in minor student misbehavior. In 2011-12, the most recent year for which this information is available, *90%* of the 763 delinquency complaints were for misdemeanors.[74] Within those complaints for misdemeanor offenses, there were:

- 16 for "communicating threats";
- 89 for "disorderly conduct";
- 108 for "larceny-misdemeanor";
- 78 for "simple affray;" and
- 71 for "simple assault."[75]

Very young students were also subjected to school-based delinquency complaints for these minor offenses. In 2011-12, 154 complaints were filed against students age 12 and younger.[76] A complaint was even filed against a seven-year-old student for "simple assault."[77]

Despite the weighty, life-long consequences that accompany referrals to the adult criminal system, neither the WCPSS, nor local law enforcement agencies, nor any other agency maintains or publishes any data regarding the number and rates of students age 16 and older who are referred directly into the adult criminal system from school. Thus, Complainants are unable to provide such data as part of this complaint. Further, the lack of data impedes efforts to ensure accountability and to ensure law enforcement officers' interactions with students are appropriate. This also means that the WCPSS is unaware of the extent to which their students are being criminalized and subjected to the criminal justice system. Upon information and belief, however, Complainants allege that the number of school-based criminal court referrals is substantial. This allegation is based, in part, on trends in out-of-school suspensions across the WCPSS. For example, in 2011-12, high school students, most of whom are over the age of 16, received nearly half (48.1%) of all out-of-school suspensions in the district.[78] This allegation is also based on the experiences of the student Complainants, five out of eight of whom were sent into the criminal court system as a result of school-based misbehavior.

The use of criminal labels for conduct that typifies normative child and adolescent behavior further demonstrates some of the consequences of providing no guidance, training, supervision, or accountability for officer and school administrator actions related to school policing. One especially disturbing example of this abuse of authority was experienced by a WCPSS middle school student with severe cognitive and emotional disabilities, who was charged with "larceny-misdemeanor" for "stealing" and hoarding school supplies, such as paper, pencils, and notebook paper, and for "stealing paper from the recycling bin."[79] Likewise, last spring, a group of WCPSS students received charges of "disorderly conduct" and "assault" as a

[74] Public Records from DJJ (May 23, 2013)(*see* Appendix).
[75] *Id.*
[76] *Id.*
[77] Public Records from DJJ (July 16, 2012)(*see* Appendix).
[78] Public Records from WCPSS (Nov. 16, 2012)(*see* Appendix).
[79] Interview with ACS client (2011).

result of throwing water balloons as part of a school-wide student prank tradition.[80] Complainant J.H. was arrested and received juvenile delinquency charges of "simple affray" as the result of play-fighting with a close friend.

Furthermore, the lack of clear guidelines regarding when and how SROs are allowed to become involved in addressing student behavior empowers SROs to interact in unnecessarily aggressive manners with students, often escalating what would have been minor student misbehavior into "criminal" or "delinquent" behavior. The individual student Complainants describe provocative and physically threatening, inappropriate interactions with school police where it was the police who stimulated an escalation of non-violent behavior into more serious, chargeable misbehavior. For example, J.H. was charged with "resisting an officer" after trying to break away from the SRO when he feared for his safety and attempted to escape the room where the SRO had just slammed him into a table. Prior to the SRO's violent intervention, J.H. had been standing calmly in the room alone, trying to contact his parents. Current WCPSS students who are involved in NC HEAT and Justice Served NC (two of the Complainants) likewise confirm the existence of a pervasive pattern of SROs aggressively approaching students, often triggering explosive situations and inciting subsequent charges in situations where no violence was previously evident.

Moreover, Complainants allege that the MOU's failure to limit the ability of school personnel to refer students to SROs only for situations involving genuine threats to safety results in unnecessary arrests. School personnel regularly refer to law enforcement students whose misbehavior they could as easily handle on their own. For example, P.D. was arrested and jailed for three nights after staff members requested SRO involvement based on an allegation that P.D. had elbowed a teacher. Despite the fact that the SRO did not witness the incident, had reviewed video footage that clearly showed the incident did not occur as school staff had alleged, and, according to P.D., even affirmed aloud that the assault didn't occur, the SRO nonetheless arrested P.D., noting, "It's the teacher's word against yours."

Once referred to court, students face a prosecution process that is demeaning and demoralizing, with judges pronouncing youth to be "juvenile delinquents" if they are adjudicated or "criminals" if they are convicted.[81] Being branded in this way can lead to lasting harm at a time of crucial identity development.[82] In addition to the emotional trauma of this stigmatization, prosecution and adjudication have many serious collateral consequences, including: triggering school exclusion, reducing students' connection to school, leading to academic failure, making a young person ineligible for higher education loans, causing a

[80] 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.

[81] Paul R. Kfoury, *Confidentiality and the Juvenile Offender*, 17 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 55, 56 (1991).

[82] ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW "ZERO TOLERANCE" AND HIGH STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 12 (2010), *available at* http://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

reduction in future employment opportunities, leading to a family's eviction from public housing, and imperiling a young person's chances at naturalization.[83]

Forcing a student to go to court as a result of minor misbehavior at school also has serious financial and employment-related consequences for parents and guardians. If a student is not appointed a public defender in criminal court, parents are forced to spend considerable money paying attorneys. Additionally, because there can be numerous court dates associated with a delinquency or criminal case, parents are put in the position of missing substantial amounts of work, forfeiting income, and potentially jeopardizing their employment. These harmful consequences are particularly troubling in instances where the underlying charges are ultimately found to be without merit. S.P.'s parent was forced to sell her car and miss multiple mortgage payments in order to come up with the funds necessary to pay an attorney to defend her son against charges that were ultimately dropped. T.W.'s charges were likewise dismissed, but he and his mother had to attend multiple court dates and she had to miss significant amounts of work before the judge ultimately found no basis for the arrest and dismissed the case.

Criminalizing student behavior has even more serious, long-term direct and collateral consequences for older students because North Carolina is the only state that treats all 16- and 17-year-olds, in *every* circumstance, as adults when charged with criminal offenses, and then denies them the possibility of returning to the juvenile system, regardless of the nature of the offense.[84] Youth prosecuted in the adult system must bear lifelong consequences of criminal charges and convictions.[85] In many cases, the stigma attached to adult criminal records can seriously hinder their ability to obtain gainful employment or pursue higher education.[86] This is the case even if the criminal charges are later dismissed, because documentation of the arrest will remain on a young person's record. If students age 16 and older wish to have frivolous and unfounded school-based arrests expunged, they must go through additional court proceedings and pay additional court and attorney's fees.[87] Complainant S.P., whose charges were ultimately dismissed, is still dealing with the repercussions of his arrest record. He will be required to report his arrests on his applications for admission to college and financial aid, and has learned that this record may jeopardize his admission to college and eligibility for scholarships. Notably, even if he does ultimately decide to pay the fees necessary to expunge the arrest from his record, the mug shots and charges may still be searchable online if previously published by a private magazine or website.[88]

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[83] JASON LANGBERG, BARBARA FEDDERS, & DREW KUKOROWSKI, LAW ENFORCEMENT OFFICERS IN WAKE COUNTY SCHOOLS: THE HUMAN, EDUCATIONAL, AND FINANCIAL COSTS 5-6 (2011), *available at* http://www.dignityinschools.org/sites/default/files/SRO%20Report.pdf.

[84] N.C. Gen. Stat § 7B-1501(7); Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1445 (2008) (noting that North Carolina "is the only state in the United States that treats all sixteen-and seventeen-year-olds as adults when they are charged with criminal offenses and then denies them the ability to appeal for return to the juvenile system").

[85] Emily Buss, *Rethinking the Connection Between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 514 (2009) (reviewing Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice (2008).

[86] ACTION FOR CHILDREN NORTH CAROLINA, FROM PUSH OUT TO LOCK UP: NORTH CAROLINA'S ACCELERATED SCHOOL-TO-PRISON PIPELINE (2013), *available at* http://www.ncchild.org/content/push-out-lock-north-carolinas-accelerated-school-prison-pipeline.

[87] N.C. Gen. Stat. § 15A-146.

[88] David Segal, *Mugged by a Mug Shot Online*, NYTIMES.COM (Oct. 5, 2013), http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=0.

Finally, 16- and 17-year-olds arrested for minor school-based offenses are prosecuted, detained, and incarcerated alongside adult criminals charged with serious violent crimes. When 16-year-old L.H. and 17-year-old S.P were arrested for minor misbehavior at school, they were immediately taken to jail and held in cells with adults twice their age. Research shows that, in addition to facing the trauma of being confined alongside adult criminals, young people bear a heightened risk of sexual assault in adult jails and prisons.[89] Research further shows that young people prosecuted and incarcerated in the adult system are much more likely to reoffend than are young people processed in the juvenile system, making the reasonableness of using law enforcement officers to police typical adolescent behavior even more suspect.[90]

C. Unreasonable and Excessive Use of Force and Restraints

Existing school policing agreements are also silent regarding when and how SROs may use force (e.g., physical force, guns, TASERs, and pepper spray) and restraints (e.g. handcuffs and zip ties) on students. Instead, the individual law enforcement agencies are permitted to set their own standards regarding force and restraint. Notably, for many of the agencies, the policies make no delineation between appropriate force and restraints for adults versus appropriate force and restraints for children.[91] Of even greater concern is the fact that the Sheriff's Department, which has created separate policies governing the conduct of SROs, gives officers even broader latitude in using force and restraints against students than it does against adults. For example, under the use of force and weapons policy applicable to the general population, sheriff deputies may use varying degrees of non-deadly force against adults only in the following situations:

- In defense of themselves or others from the use or imminent use of physical force;
- In order to effect an arrest of a person or prevent the escape of a person from custody where the person is reasonably believed to have committed a criminal offense; or
- In order to effect the relocation of an individual, when necessary, to or within some law enforcement or detention facility.[92]

By comparison, SROs employed by the Sheriff's Department are given a far greater scope of authority to use physical restraints, handcuffs, or other measures on young students. Under the Sheriff Department's SRO policy, officers may use physical or mechanical force to restrain a student anytime the following situations arise:

- The student is posing a danger to himself or other individuals in the classroom, including students, faculty, staff, or the SRO;
- The student is causing damage to school and/or another individual's property; or

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[89] JUSTICE POLICY INSTITUTE, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), *available at* http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf.
[90] LONN LANZA-KADUCE, ET. AL., JUVENILE TRANSFER TO CRIMINAL COURT STUDY: FINAL REPORT (2002), *available at* http://www.prisonpolicy.org/scans/juveniletransfers.pdf (analyzing Florida experience with juvenile transfer to adult court).
[91] *See e.g.* Raleigh Police Department, Use of Force and Weapons, Regulation 1108-1(Feb. 7, 2008)(*see* Appendix); Garner Police Department Policy Manual, Use of Force, Directive 710.1 (June 1, 2010)(*See* Appendix).
[92] Wake Cnty. Sheriff's Office Pol'y Manual, Reg. 404 (*see* Appendix).

- The student is causing a disturbance or otherwise engaging in conduct constituting a violation of law.[93]

In a school setting, virtually any minor student misbehavior could be subjectively construed by an officer as "causing a disturbance."

As a result of the WCPSS's and law enforcement agencies' failure to set strict limits on when SROs can use force on school campuses, students regularly face unreasonable and excessive force by SROs, even in non-arrest situations. Despite the serious harms caused by these weapons and their routine and harmful use on WCPSS students, neither the law enforcement agencies nor the WCPSS publishes, nor presumably maintains, *any* data or information about the use of TASERs, pepper spray, handcuffs, zip ties, or other unreasonable and excessive force by law enforcement officers against students. However, the impact of school policing can be collected from individual students and media reports. A non-exhaustive sampling of some of the many student experiences of being subjected to unreasonable and excessive force is included below.

Many SROs in the WCPSS carry a TASER (or "stun gun") and/or pepper spray. The TASER is shaped like a gun and is loaded with cartridges that shoot two small hooked metal electrodes. When fired, the electrodes hook into the skin or clothing to prevent removal and distribute a charge of about 1,200 volts in electrical pulses at a rate of 19 pulses per second.[94] TASERs have caused hundreds of deaths across the country,[95] and more than a dozen in North Carolina.[96] In April 2013, Raleigh police officers killed a man with a TASER.[97] In November

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[93] Wake Cnty. Sheriff's Office Pol'y Manual, Reg. 418 (*see* Appendix).

[94] THE NC TASER SAFETY PROJECT, NOT THERE YET THE NEED FOR SAFER TASER POLICIES IN NORTH CAROLINA (2008), *available at* http://www.acluofnorthcarolina.org/files/NotThereYet.pdf.

[95] Suzanne Trimel, *Amnesty International Urges Stricter Limits on Police Taser Use as U.S. Death Toll Reaches 500*, AMNESTYUSA.ORG (February 15, 2012), *available at* http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-stricter-limits-on-police-taser-use-as-us-death-toll-reaches-500.

[96] THE NC TASER SAFETY PROJECT, NOT THERE YET: THE NEED FOR SAFER TASER POLICIES IN NORTH CAROLINA (2008), *available at* http://www.acluofnorthcarolina.org/files/NotThereYet.pdf; Gary L. Wright & Cleve R. Wootson Jr., *Family Sues over 2011 Taser Death*, CHARLOTTE OBSERVER (July 9, 2013), http://www.charlotteobserver.com/2012/12/19/3734575/family-sues-over-taser-death.html; Ian Mance, *TASER death puts spotlight on use-of-force policies*, THE PROGRESSIVE PULSE (July 30, 2008), http://pulse.ncpolicywatch.org/2008/07/30/taser-death-marks-a-grim-milestone; Renee Chou, *Coalition Calls for Stricter Taser Regulations*, WRAL.COM (Apr. 10, 2008), http://www.wral.com/news/local/story/2716926/; Renee Chou, *Halifax County Man Dies After Being Shot with Stun Gun*, WRAL.COM (Nov. 22, 2011), http://www.wral.com/news/local/story/10415249/; Gary L. Wright & Cleve R. Wootson Jr., *Police shelve Tasers for now after another suspect dies*, CHARLOTTE OBSERVER (July 22, 2011), http://www.charlotteobserver.com/2011/07/22/v-print/2472244/police-shelve-tasers-for-now-after.html; Meghan Cooke, *Second review keeps Tasers out of Charlotte police officers' hands*, CHARLOTTEOBSERVER.COM, (Aug. 26, 2011), http://www.charlotteobserver.com/2011/08/26/v-print/2555944/2nd-review-keeps-tasers-out-of.html; *Fayetteville police suspend Tasers after man's death*, CHARLOTTEOBSERVER.COM, (Aug. 30, 2011), http://www.charlotteobserver.com/2011/08/30/v-print/2565985/fayetteville-police-suspend-tasers.html; Rick Martinez, *Time to ban the Tasers*, NEWSOBSERVER.COM, (Nov. 30, 2011), http://www.newsobserver.com/2011/11/30/1679170/time-to-ban-the-tasers.html.

[97] *Report: Taser used several times on Raleigh man who died*, WRAL.COM (April 17, 2013), http://www.wral.com/report-taser-used-several-times-on-raleigh-man-who-died/12352632/; Amanda Lamb, *Man Dies After Raleigh Police Use Stun Gun on Him*, WRAL.COM (April 10, 2013), http://www.wral.com/man-dies-after-raleigh-police-use-stun-gun-on-him/12324803/; Thomasi McDonald, *Raleigh Police Say Man Died After they*

2011, the North Carolina Court of Appeals ruled that a stun gun can be considered a deadly weapon, only months after a federal jury ordered Taser International, Inc. to pay $10 million to the family of a 17-year–old Charlotte teenager who died after a police officer struck him with a TASER.[98] Advocates have raised concerns about the use of TASERs in WCPSS schools for nearly a decade.[99] However, no steps have been taken to regulate their use in schools. Below is a non-exhaustive list of incidents in which TASERs were used against WCPSS students:

- In 2005, a Cary SRO threatened to use a TASER on a student and then arrested the student for profanity.[100]
- In 2007, a Garner SRO used a TASER on a 16-year-old high school student who was involved in a minor fight with another student.[101]
- In 2008, a Cary SRO used a TASER on a 15-year-old high school student (who had Post-Traumatic Stress Disorder) three times after the student did not respond to questioning and reacted to being interrogated by the officer. The TASER prongs punctured the student's lungs resulting in hospitalization for an extended period of time. The Town of Cary and WCPSS agreed to pay the student's family $12,000 in a lawsuit settlement.[102]
- In October 2008, a Cary police officer used a TASER on a 16-year-old ninth grade student, who was then taken to the hospital for treatment of injuries.[103]
- In August 2010, a Cary SRO used a TASER on an eighth grade female middle school student in order to break up a fight. Paramedics were called to the school to take the student to the hospital.[104]

Used Taser to Subdue Him, NEWSOBSERVER.COM (April 10, 2013), http://www.newsobserver.com/2013/04/10/2816738/raleigh-police-say-man-died-after.html; Thomasi McDonald, Raleigh police: Man hit with Taser several times before he died, NEWSOBSERVER.COM (April 17, 2013), http://www.newsobserver.com/2013/04/17/2832115/raleigh-police-man-hit-with-taser.html; *Raleigh police: Man died after officers tasered him*, ABC LOCAL NEWS (April 10, 2013), http://abclocal.go.com/wtvd/story?section=news/local&id=9059715.

[98] Associated Press, *N.C. appeals court rules on use of stun guns*, NEWSOBSERVER.COM (November 2, 2011), http://www.newsobserver.com/2011/11/02/1612673/appeals-court-rules-on-use-of.html; *Court of Appeals rules stun guns are deadly weapons*, BEAUFORT OBSERVER (November 2, 2011), http://www.beaufortobserver.net/Articles-NEWS-and-COMMENTARY-c-2011-11-02-256782.112112-Court-of-Appeals-rules-stun-guns-are-deadly-weapons.html; Doug Miller, *Teen's family wins $10 million Taser verdict*, CHARLOTTEOBSERVER.COM (July 20, 2011), http://www.charlotteobserver.com/2011/07/20/v-print/2468659/teens-family-wins-10-million-taser.html.

[99] T. Keung Hui, *Tasers use in schools worries some*, NEWSOBSERVER.COM (October 19, 2005), http://www.newsobserver.com/2005/10/19/96121/tasers-use-in-schools-worries.html; THE NC TASER SAFETY PROJECT, NOT THERE YET THE NEED FOR SAFER TASER POLICIES IN NORTH CAROLINA (2008), *available at* http://www.acluofnorthcarolina.org/files/NotThereYet.pdf.

[100] Gloria Lopez, *Police Stand Behind Use of Tasers In Wake Public Schools*, WRAL.COM (Sept. 28, 2005), http://www.wral.com/news/local/story/120194/.

[101] News & Observer Staff, *Use of Taser proper, Garner police say*, NEWSOBSERVER.COM (Sept. 20, 2007), http://www.newsobserver.com/2007/09/20/50015/use-of-taser-proper-garner-police.html.

[102] Andrew Kenney, *Cary settles Taser, cell-tower lawsuits*, CARYNEWS.COM (May 26, 2012), http://www.carynews.com/2012/05/26/2089942/cary-settles-taser-cell-tower.html.

[103] *School officer assaulted, uses Taser on student*, WRAL.COM (Oct. 2, 2008), http://www.wral.com/news/news_briefs/story/3652583/.

[104] News & Observer Staff, *Officer stops school fight with taser*, NEWSOBSERVER.COM (Aug. 31, 2010), http://www.newsobserver.com/2010/08/31/656262/officer-stops-school-fight-with.html; Barry Saunders, *Saunders: Stun gun used; do we care?*, NEWSOBSERVER.COM (Sept. 2, 2010), http://www.newsobserver.com/2010/09/02/659962/taser-hits-teen-at-school.html.

- In December 2010, an SRO at a WCPSS high school used a TASER on a ninth grade female student. Emergency medical services were called to inspect the burns left on her skin.[105]
- During 2011-12, SROs used TASERs on at least two high school students.[106]

WCPSS student members of Complainant NC HEAT affirm that the TASER uses described above are not isolated incidences, and that SROs demonstrate a pattern of utilizing TASERs to deescalate minor situations in WCPSS schools. In a recent incident from the fall of 2013, a young high school girl was reportedly TASERed while standing on the stairs, and then fell down the flight of stairs after being electrocuted.[107] Notably, in November 2013, a student in Texas fell into a coma as a result of being TASERed by an SRO and then hitting his head on the ground.[108]

Pepper spray is similarly dangerous, yet it is carried by many SROs, and its use against students is largely unregulated. Pepper spray is made from the same chemical that makes chili peppers hot, but at much higher concentrations, combined with water, glycol, and a propellant, such as nitrogen.[109] Pepper spray may cause sudden death; cardiac, respiratory, and neurological problems; burning pain; inflammation; blistering; and nausea.[110] Pepper spray can be particularly lethal for students with asthma or other respiratory disorders.[111] Pepper spray is dangerous, not just for the student being assailed, but also for any bystanders. Because the spray

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[105] Interview with ACS Client (2012).
[106] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[107] Interview with NC HEAT student (Nov. 18, 2013).
[108] RT, *Texas boy tasered by officer after breaking up school fight, remains in a coma*, RT.COM (Nov. 29, 2013) http://rt.com/usa/texas-boy-taser-coma-502/; Rebecca Klein, Civil Rights Groups Ask Texas Police To Stop Using Tasers On Students, HUFFINGTONPOST.COM (Dec. 6, 2013) http://www.huffingtonpost.com/2013/12/06/texas-taser-students_n_4399674.html. *See also* Melanie Michael, *FHP Trooper Daniel Cole sued by family of Danielle Maudsley*, NEWS10.COM (Nov. 6, 2013) http://www.wtsp.com/news/topstories/article/343397/250/Controversial-FHP-trooper-faces-another-lawsuit (A 20-year-old woman in Florida was sent into a coma as a direct result of being TASERed and then hitting her head on the ground. She remained in a vegetative state for almost two years prior to passing away in September of 2013).
[109] Christian Nordqvist, *What Is Pepper Spray? Is Pepper Spray Dangerous?*, MEDICAL NEWS TODAY (Nov. 25, 2011), http://www.medicalnewstoday.com/articles/238262.php; *What Is Pepper Spray?*, DISCOVERY NEWS (Nov. 21, 2011), http://news.discovery.com/human/pepper-spray-111121.htm.
[110] Meredith Melnick, *How Painful Is Pepper Spray?* HEALTHLAND.TIME.COM (Nov. 22, 2011), http://healthland.time.com/2011/11/22/how-painful-is-pepper-spray/; C. Gregory Smith, MD, MPH &Woodhall Stopford, MD, MSPH, *Health Hazards of Pepper Spray*, NCMEDICALJOURNAL.COM, http://web.archive.org/web/20000817004624/http:/www.ncmedicaljournal.com/Smith-OK.htm (last visited July 9, 2013); Briana Rognlin, *Is Pepper Spray Dangerous To Health?*, HUFFINGTONPOST.COM (Nov. 23, 2011), http://www.huffingtonpost.com/2011/11/22/pepper-spray-health-dangerous_n_1108637.html; Kate Shepard, *How Bad Is Pepper Spray?*, MOTHERJONES.COM (Nov. 21, 2011), http://www.motherjones.com/blue-marble/2011/11/how-bad-pepper-spray; Brianna J.H., *5 Things You Need to Know About: Pepper spray*, PBS.ORG (Dec. 1, 2011), http://www.pbs.org/wnet/need-to-know/five-things/pepper-spray/12472/; Tom Hayden, *Why the Pepper Spray Spree Should End*, THENATION.COM (Nov. 23, 2011), http://www.thenation.com/article/164794/why-pepper-spray-spree-should-end#.
[111] C. Gregory Smith, MD, MPH & Woodhall Stopford, MD, MSPH, *Health Hazards of Pepper Spray*, NCMEDICALJOURNAL.COM, http://web.archive.org/web/20000817004624/http:/www.ncmedicaljournal.com/Smith-OK.htm (last visited Jan. 5, 2014). Notably, African-Americans are 20% more likely to have asthma than the general population. Office of Minority Health, *Asthma and African* Americans, US DEPARTMENT OF HEALTH AND HUMAN SERVICES (last visited Jan. 5, 2014) http://minorityhealth.hhs.gov/templates/content.aspx?ID=6170.

is a mist and disperses through the air, student bystanders are likewise injured when this chemical weapon is used against one of their peers. Despite its pronounced dangers to students, there are no clear policies restricting its use in WCPSS schools. Below are a few examples of incidents of pepper spray use against WCPSS students and the resulting impacts:

- In June 2009, an SRO used pepper spray on multiple students at a WCPSS middle school. An ambulance was called to treat affected students.[112]
- In April 2010, between 15 and 20 WCPSS middle school students had to receive medical treatment after pepper spray was used to break up a fight involving three individuals at a bus stop across the street from the school.[113]
- In September 2010, a Raleigh police officer used pepper spray in a crowded high school cafeteria. Sixteen students were treated for exposure; four of them were taken to the hospital for respiratory distress.[114]
- In October 2011, T.S. was pepper sprayed in the face as an SRO attempted to break up a fight at school. At the time pepper spray was used on him, T.S. was already incapacitated as two other students held him on the ground and punched him. T.S. experienced near blindness and burning pain for several hours after an SRO pepper-sprayed him directly in his face. At no point after the incident did a school or law enforcement official assist T.S. in washing his eyes or otherwise administer first aid. Other students in proximity of the incident also reported injuries related to the pepper spray being discharged in a crowded area.

Moreover, because there are no bright line policies restricting the use of force against students, law enforcement officers routinely utilize excessive and unreasonable physical force in their interactions with WCPSS students. Below are some examples of the physically aggressive manner in which students are regularly treated by SROs and law enforcement officers in the district:

- In 2003, a police officer at a Wake County high school lifted a student off of the ground during a cafeteria scuffle and slammed him down, causing his head to hit the floor and causing the student to have a seizure.[115]
- In May 2013, a Raleigh police officer used excessive and unreasonable physical force against a 15-year-old student on the campus of a WCPSS high school. At the time, the student was fleeing from a water balloon fight. The officer responded by grabbing the

[112] ABC News 11, *Pepper spray used on middle schoolers*, ABCLOCAL.GO.COM (June 3, 2009), http://abclocal.go.com/wtvd/story?section=news/local&id=6846220; WRAL Staff, *Pepper spray used to break up fight at Raleigh middle school*, WRAL.COM (June 3, 2009), http://www.wral.com/news/news_briefs/story/5271221/; *Pepper spray used to stop school fight*, NEWSOBSERVER.COM (June 4, 2009), http://www.newsobserver.com/2009/06/04/73542/pepper-spray-used-to-stop-school.html.

[113] *Fight near Ligon Middle School nets 3 arrests*, NEWSOBSERVER.COM (April 29, 2010), http://www.newsobserver.com/2010/04/29/459830/fight-near-ligon-middle-school.html.

[114] T. Keung Hui, *Pepper spray used to quell Wake school fight*, NEWSOBSERVER.COM (Sept. 28, 2010); News 14 Carolina, *Three Students Charged After School Fight*, TRIANGLE.NEWS14.COM, http://triangle.news14.com/content/video_stories/630905/three-students-charged-after-school-fight?ap=1&MP4 (last visited July 9, 2013).

[115] Cindy George, *Lawsuit claims officer injured teen at school*, NEWSOBSERVER.COM (Aug. 10, 2006), http://newsobserver.com/2006/08/10/v-print/57761/lawsuit-claims-officer-injured.html.

student, knocking him down, and pushing his head into the concrete at least twice.[116] The student was treated at a hospital for a cut above his eyebrow, a bruised shoulder, a scraped knee, and a sore neck and back. There was no allegation that the student was engaging in any form of unlawful behavior at the time he was attacked.[117]

- S.P. experienced extreme and unreasonable physical force at all stages of his interaction with the SRO: first when the SRO pushed him violently in the chest as he began questioning him; then again when the SRO jerked him around and grabbed him by his neck as he attempted to walk away when he thought the questioning was over; yet again when the SRO threw him over a nearby railing, causing his glasses to fly off from the impact; and finally, when the SRO shoved him down into a chair prior to interrogating him.
- When an SRO walked in on J.H. attempting to call his father, the SRO responded by grabbing J.H.'s arm and twisting it behind J.H.'s back and then pushing his face and upper body into a nearby table.
- In a situation where no criminal activity was remotely implicated, an SRO used unreasonable and excessive force on L.H. when he grabbed him by the back of his neck, squeezed it hard, and then pushed L.H. to his knees, scratching his neck in the process. This force was initiated after L.H. and a friend jokingly tried to get onto an activity bus that was leaving for a field trip and then, after being called by the SRO to stop and come back, walked directly back over to him.
- Two SROs attacked T.W., throwing him against a window and handcuffing him.

The level of force described in the incidents above is inappropriate under any reasonable standard, and causes children and youth to experience physical and emotional trauma. In none of the cases did the adult officer need to utilize force in self-defense or defense of others, nor was the force incident to a lawful arrest or search, nor was it necessary to prevent a student from fleeing from lawful custody. Notably, however, in T.W.'s case, an Internal Affairs panel reviewed the facts of his case and determined that the SROs' actions in throwing a young student against a window and handcuffing him for appearing to be too old to attend that school and pulling his arm away from an officer's aggressive grasp was "proper conduct" under agency policy. Accordingly, law enforcement officers in the WCPSS appear to have a virtual carte blanche to physically abuse students at will.

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[116] Bruce Mildwurf, *Parents question police response to Enloe High prank*, WRAL.COM (May 17, 2013), http://www.wral.com/parents-question-police-response-to-enloe-high-prank/12459772/; Ken Smith, *Group mulls federal complaint after Enloe High prank arrests*, WRAL.COM (May 31, 2013), http://www.wral.com/parents-question-police-response-to-enloe-high-prank/12500690/.

[117] WNCN Staff, *Enloe students, parents, speak to board about arrests*, WNCN.COM (June 18, 2013), http://www.wncn.com/story/22504079/enloe-student-and-parents-speak-out-about-arrests; T. Keung Hui, *Enloe High School students asking for dismissal of charges in water-balloon incident*, NEWSOBSERVER.COM (May 31, 2013), http://blogs.newsobserver.com/wakeed/enloe-high-school-students-asking-for-dismissal-of-charges-in-water-balloon-incident; T. Keung Hui, *Enloe students say water-balloon charges should be dropped*, NEWSOBSERVER.COM (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.COM (May 20, 2013), http://www.newsobserver.com/2013/05/20/2905804/saunders-in-enloe-water-balloon.html; Bruce Mildwurf, *Parents question police response to Enloe High prank*, WRAL.COM (May 17, 2013), http://www.wral.com/parents-question-police-response-to-enloe-high-prank/12459772/; ABC News 11, *Parents push to get students back in school after arrests*, ABCLOCAL.GO.COM (May 22, 2013), http://abclocal.go.com/wtvd/story?section=news/local&id=9111361.

Law enforcement officers also regularly utilize handcuffs and other mechanical restraint devices against WCPSS students as intervention techniques for minor behavioral incidents. The improper overreliance on these restraint devices is sadly predictive given the fact that the MOU is completely silent as to proper limits on the use of mechanical restraints, and individual law enforcement agency policies give alarmingly broad deference to SROs, granting them authority to use handcuffs anytime a student causes "a disturbance."[118] No data is made publicly available, nor presumably maintained, regarding the use of handcuffs or zip ties to restrain students in non-arrest situations. This is of great concern in light of increasing reports of SROs utilizing mechanical restraints to address student behavior.

- J.H. was handcuffed in response to his attempt to call his father to let him know that he had been called to the office by a security guard and SRO.
- T.S. was handcuffed in a crowded cafeteria after he cut in line and ignored the administrator's request to move to the back of the line.
- L.H., a student with severe cognitive and emotional disabilities, was placed in handcuffs and forced to sit in the hallway while his peers passed by because he had walked out of his class and refused to return.

In none of those cases were the parents ever informed by school administrators or law enforcement officials that their child had been handcuffed. Instead, they were informed after the fact by their children. Student members of Complainant NC HEAT confirm that the experiences of J.H., T.S., and L.H. are not isolated incidents and that law enforcement officers routinely use handcuffs and zip ties to detain students in non-arrest situations.

D. Denial of Rights in Custodial Interrogations

Existing agreements are also completely silent regarding the appropriate roles of WCPSS staff and SROs in interviewing students. Instead, the MOU indicates only that "the SRO shall abide by all applicable legal requirements."[119] This practice of including generic statements in the MOU about following "applicable legal requirements" fails to provide students and parents with notice about their rights. Moreover, by failing to set forth explicit requirements regarding WCPSS staff and SROs' respective duties to protect a student against coercive and unlawful questioning, the current MOU has left the door wide open for unlawful collaborations between WCPSS staff and SROs in violating students' constitutional rights.

In fact, WCPSS school board policies and training practices actively enable law enforcement misconduct related to improper interrogations and the denial of student rights. For example, training materials for SAs explicitly note that students have the right to not be questioned by SROs, but then immediately provide a means for SROs to use SAs in order to gather information for SROs that can be used against students in juvenile and criminal cases. In this manner, SROs can gather information without triggering legal protections students would

[118] Wake Cnty. Sheriff's Office Pol'y Manual, Reg. 418 (*see* Appendix).
[119] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

otherwise have, including warnings that their statements could be used against them and that they have the right not to be questioned if they want an attorney present:[120]

> The Area Security Administrator must be cognizant of the allegation against the student and the presence of the SRO when questioning a suspect. The student has the right to not be questioned in the presence of a law enforcement official when circumstances may lead to his/her arrest. . . . If the Area Security Administrator is able to question the student in a serious allegation, the SRO may be advised of the information obtained once the interview is complete.[121]

This policy directly contravenes guidance issued by the International Association of Chiefs of Police's National Law Enforcement Policy Center:

> In no case should officers enlist school teachers, officials, or other employees to conduct interviews of students for purposes of gathering information for a police investigation. Nor should officers ask school employees or suggest to teachers, administrators, or others that they make inquiries or conduct any fact-finding activities regarding students if officers intend to use or reasonably believe that the information may be used as part of a criminal investigation. School officials who are enlisted by the police to act in these or similar capacities constructively become agents of the police, and information they obtain is subject to due-process limitations that may affect its admissibility in a criminal or juvenile court proceeding.[122]

Notably, even in cases where a law enforcement officer is present during student questioning, WCPSS training materials teach SAs that "[t]he rights of a student to due process as it relates to being questioned in the presence of law enforcement should be made by a school administrator."[123] Accordingly, WCPSS policies purport to delegate to school administrators the legal determination of whether a student is in custody and has the due process right to be informed of his constitutional rights to remain silent and/or to have his parent or attorney present.

Unsurprisingly, it has been the longstanding experience of Complainants that law enforcement officers in schools commonly ignore students' constitutional rights to receive *Miranda* warnings prior to custodial interrogations. In cases in which students are clearly in custodial situations, SROs rarely administer *Miranda* rights to students and even flagrantly refuse to grant students' explicit requests to speak with or have their parents present during questioning. For example, after being held in a room for over an hour and told he could not leave even to get lunch or use the restroom, J.H. was confronted by an administrator, a school security guard, an SRO, and an SA. As the SRO began to interrogate him, J.H. promptly asked to call his mother, at which point he was explicitly told that he could not call her until he answered their questions. For most students, this blatant refusal to permit them to have their parents present during questioning is also in direct violation of state law which requires that

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[120] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[121] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[122] IACP National Law Enforcement Policy Center, *School Liaison*, Concepts and Issues Paper (2010).
[123] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).

students under the age of 18 be advised that they have the right to have a parent present, and forbids interrogations of students under the age of 14 from occurring without the presence of a parent.[124]

Moreover, whether the offending behavior occurred on campus or not, WCPSS staff and law enforcement officers increasingly collaborate to circumvent students' rights by having SROs or law enforcement officers wait nearby as administrators or SAs question students without the student having the benefit of *Miranda* warnings or the opportunity to have his or her parent or guardian present. This was precisely the situation in K.H.'s case, where the administrator questioned K.H. about an incident for which the SRO had a warrant for K.H.'s arrest, while the SRO sat in the closed room with them. At no point during that questioning was K.H. given *Miranda* warnings. This practice of using administrators to question students with SROs nearby preys on students' vulnerabilities and lack of understanding of the law. Many students who understand the consequences of talking to a police officer often do not understand that statements they make to a principal or other school employee can also be used against them in criminal proceedings and so will not assert their rights even if they know that they have them. Police officers arguably take advantage of these more trusting relationships between students and school administrators to elicit student confessions.

These collaborations are further concerning in light of the fact that existing WCPSS school board policies place unlawful pressure on students to relinquish their due process rights during interrogations by threatening retaliation against students who refuse to submit to questioning involving a law enforcement officer. Under the WCPSS Code of Student Conduct, students can be disciplined for withholding consent to a search or exercising their right to remain silent.[125] Because the MOU is completely silent regarding the specific requirements and expectations applicable to WCPSS staff with regard to student interrogations, students' due process rights will continue to be violated unless deliberate steps are taken to train both school and law enforcement officials on students' rights and the responsibilities of the adults to protect those rights.

E. Unlawful Searches and Seizures

MOU provisions and WCPSS policies regarding student searches provide additional insight into ways in which current policies contribute to the pattern and practice of criminalizing students for very minor, normative behaviors at school. For example, the MOU permits an SRO to take part in searching a student anytime "school personnel require the assistance of the SRO because of exigent circumstances, such as the need for safety."[126] This provision does not require that SROs first determine that a reasonable suspicion standard has been met prior to becoming involved in a search initiated by a school staff member. By failing to clearly outline the reasonableness requirement to which school administrators and SROs must adhere in conducting school-based searches, the current MOU leaves the door open for SROs to search students at the behest of school staff in any situation where a vaguely defined "need for safety" is

[124] N.C. Gen. Stat. § 7B-2101.
[125] Wake Cnty. Bd. of Educ., *Board Policy 6410: Noncompliance*, WCPSS.NET (December. 12, 2011), http://www.wcpss.net/policy-files/series/policies/6410-bp.html.
[126] SCHOOL RESOURCE OFFICER PROGRAM MEMORANDUM OF UNDERSTANDING (MOU) (July 1, 2009).

alleged.[127] Further, since no data or written reports are required to be compiled or made publicly available, there is little ability to review whether searches that are conducted are justified under the circumstances.

Training materials for SAs further state that "if the Area Security Administrator has reasonable suspicion that a student is in the possession of a weapon, he/she should contact the school SRO or local law enforcement for assistance during the search."[128] Notably, Wake WCPSS board policies define "weapon" broadly enough to include even a slingshot, as well as "any sharp-pointed or edged instrument."[129] Furthermore, the training materials do not provide SAs with the legal standard of what constitutes "reasonable suspicion," instead leaving interpretation of the standard to the complete discretion of SAs and school administrators.

In practice, these vague and incomplete policies have created a school culture in which school personnel and law enforcement officers routinely search students without regard to established legal standards. The following testimony of a WCPSS SRO, who charged a student based on evidence taken from his unlawful search of the student, is illustrative of the alarming and erroneous perceptions held by SROs and WCPSS staff regarding the law and their responsibilities to respect students' right to be free from unreasonable searches and seizures:

> That's standard procedure for any event such as this. The administration has a right to search a student at any time, for any reason whatsoever. But certainly during events such as this, it's standard procedure that everyone is searched…Uh, it doesn't matter whether there's a suspicion of being a, uh, of having something or not. It's just, uh, the administration's right, uh, for anyone coming on to campus. Um, but it's standard procedure for any time that a violent act, or near violent act, um, on campus, uh, it's standard procedure that when those suspects or individuals are spoken to that they are searched because it is found that, um, individuals that are involved in this type of behavior, uh, it's very possible that they may have something associated with this same type of behavior. So, again, it's the administration's right to go ahead and search, um, at any point.[130]

Of further concern is the fact that existing WCPSS school board policies place unlawful pressure on students to submit to illegal searches by threatening retaliation via discipline for "noncompliance" against students who refuse to submit to searches.[131] WCPSS Board Policy 6600 further states that "a student's failure to permit searches and seizures as provided in this

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[127] *In re D.L.D.*, 203 N.C.App. 434, 437 (2010).
[128] Public Records from WCPSS (Sept. 21, 2012)(*see* Appendix).
[129] Wake Cnty. Bd. of Educ., *Board Policy 6410: Weapons/Dangerous Instruments/Substances*, WCPSS.NET (December. 12, 2011), http://www.wcpss.net/policy-files/series/policies/6410-bp.html.
[130] Raleigh Police Dept. SRO in a long-term suspension appeal hearing, responding to questions about an illegal search (Oct. 2009). Throughout the testimony, the officer referred to himself and the school administration interchangeably as "the administration."
[131] Wake Cnty. Bd. of Educ., *Board Policy 6410: Noncompliance*, WCPSS.NET (Dec. 12, 2011), http://www.wcpss.net/policy-files/series/policies/6410-bp.html.

policy will be considered grounds for disciplinary action."[132] The policy then describes searches of the student's person, personal effects, locker, or automobile.[133]

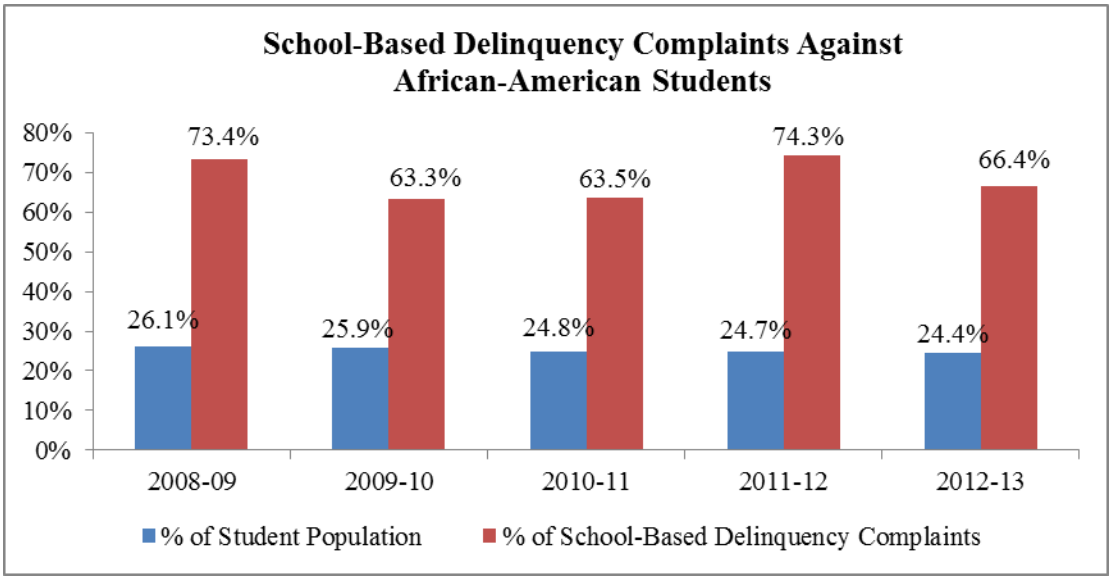
V. Discriminatory Impact on African-American Students and SWD

As the policing culture in the WCPSS grows, all students in Wake County are increasingly subjected to the harmful impact of the unsound policies and practices that give security staff, private security guards, SROs, and other law enforcement officers virtually unregulated authority to address minor student misbehavior. While the rampant criminalization of minor, developmentally normative adolescent behavior in the WCPSS is disturbing in and of itself, existing policing policies and practices have disproportionately harmful and discriminatory impacts on African-American students and SWD, in violation of Title IV, Title VI, Section 504, and the ADA. Section A discusses evidence of a discriminatory disparate impact on African-American students as a result of current policing policies and practices. Section B discusses evidence of the discrimination that SWD face in the context of school policing.

A. Evidence of Racial Discrimination

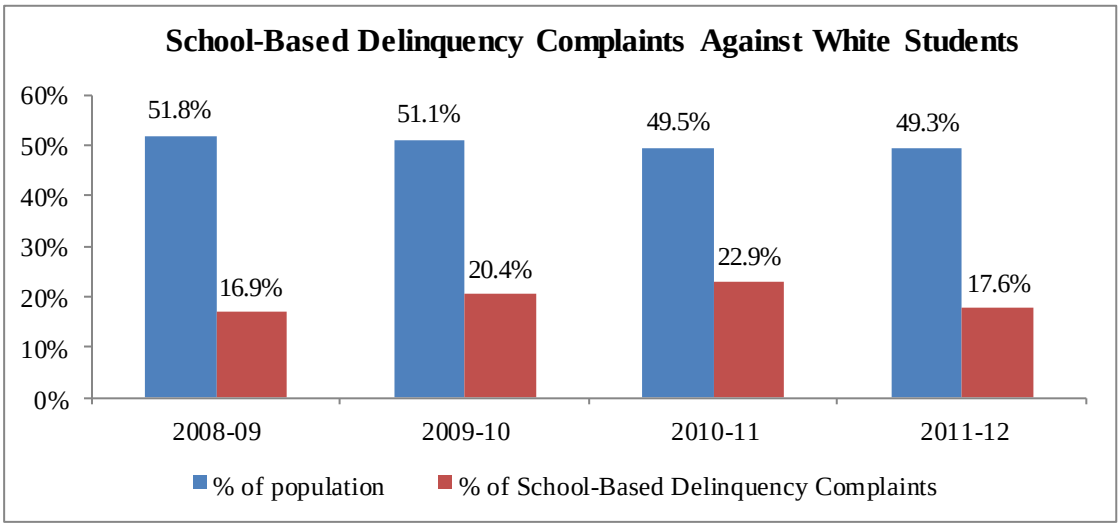
Evidence of racial discrimination in the administration of school policing in the WCPSS is readily found in data regarding school-based delinquency complaints. For at least the last five state fiscal years, which approximately mirror school years, African-American students have been disproportionately subjected to school-based delinquency complaints as compared to their White peers. (*See* Charts 3 and 4).[134]

Chart 3



[132] Wake Cnty. Bd. of Educ., *Board Policy 6600: Search and Seizure*, WCPSS.NET (Mar. 19, 2013), http://www.wcpss.net/policy-files/series/policies/6600-bp.html.
[133] Wake Cnty. Bd. of Educ., *Board Policy 6600: Search and Seizure*, WCPSS.NET (Mar. 19, 2013), http://www.wcpss.net/policy-files/series/policies/6600-bp.html.
[134] Public Records from DJJ (Nov. 4, 2013)(May 23, 2013)(July 16, 2012)(Jan. 31, 2012)(Sep. 22, 2010)(*see* Appendix).

Chart 4



* The Division of Juvenile Justice did not provide disaggregated data regarding White students for 2012-13.

A review of disaggregated data regarding school-based delinquency complaints in the WCPSS from the past five years (above) shows dramatic disparities between African-American and White students in the meting out of complaints. On average, African-American students have represented only 25.2% of the total student population in the WCPSS over the past five school years.[135] However, they have received, on average, 68.2% of the delinquency complaints filed in the WCPSS over the past five state fiscal years.[136] This amounts to a discrepancy that is 170% higher than the expected proportionate distribution. We believe that if DOJ runs tests of significance or other measures of statistical reliability they will agree that this disparity is large enough to warrant further investigation.

Of course, if African-American students had engaged in very dangerous misconduct at much higher rates than White students, that disproportionate misconduct could justify the observed patterns. We therefore urge DOJ to investigate whether this is the case. However, we have numerous reasons to believe that further analysis of the data from the WCPSS and law enforcement agencies will suggest an unlawful disparate impact.

Further, while schools are arguably justified in filing delinquency complaints in response to the most serious and unlawful misbehaviors, we do not believe that frequently filing delinquency complaints against students for misdemeanor behavior committed in school is a necessary or justifiable policy or practice. As the available data demonstrate, an overwhelming percentage of school-based delinquency complaints stem from minor school misconduct. In state fiscal year 2011-12, 90% of the 763 school-based delinquency complaints were for misdemeanors.[137] We urge DOJ to collect and analyze these data further for disparities by race and disability and by severity of alleged offense.

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[135] Wake Cnty. Pub. Sch. Sys., *Demographic Reports*, WCPSS.NET http://www.wcpss.net/about-us/our-students/demographics/reports.html (last visited January 5, 2013).
[136] Public Records from DJJ (Nov. 4, 2013)(May 23, 2013)(July 16, 2012)(Jan. 31, 2012)(Sep. 22, 2010)(*see* Appendix).
[137] Public Records from DJJ (May 23, 2013)(on file with Author).

Complainants do not have access to these disaggregated data. However, based on patterns of punishment documented in other states and districts, clearly showing that racial disparities tend to be the largest in less serious offense categories, we believe that, for delinquency complaints involving African-American students, the percentage of misdemeanors is likely even higher than the 90% district-wide percentage in WCPSS, and higher than it is for White students. For example, a longitudinal study of middle schools and discipline in Texas tracked nearly one million students throughout the state for six years and found that African-American students were more likely to be disciplined for "discretionary" offenses.[138] By contrast, when poverty and other factors were controlled for, higher percentages of White students were disciplined on more serious nondiscretionary grounds, such as possessing drugs or carrying a weapon.[139] Analysis of data from the State of California by the Center for Civil Rights Remedies at the Civil Rights Project at UCLA similarly demonstrates large racial disparities in the rates of out of school suspensions when the most serious offenses are compared to the most subjective.[140] Moreover, a 2010 study of 21 schools led by a Johns Hopkins researcher found that, even when controlling for teacher ratings of student misbehavior, African-American students were more likely than others to be sent to the office for disciplinary reasons.[141] These and numerous other empirical studies raise significant concerns that African-American students in the WCPSS are likewise receiving harsher punishments, including referrals to court, when it comes to non-violent misbehavior that requires a more subjective evaluation.

Unfortunately, neither the WCPSS, nor the law enforcement agencies, nor any other entity maintains data regarding school-based adult criminal court complaints for students ages 16 and older. By refusing to collect this data, the WCPSS and local law enforcement agencies have made it impossible for Complainants to provide statistical data specific to racial disparities in school-based criminal complaints. However, Complainants allege that the same massive racial disparities reflected in delinquency complaints are likewise present in the subset of students who receive school-based adult criminal court complaints and urge DOJ to collect and analyze this data for disparities by race. This allegation is based primarily on the fact that the underlying policing policies and practices are the same for all WCPSS students, regardless of student age. Neither the MOU nor the local law enforcement policies make any distinction regarding expectations or limitations for an SRO as applied to a 15-year-old student compared to a 16- or 17-year-old student. Because the underlying policies and practices are the same, it logically follows that the impact of those policies and practices on African-American students age 16 and older would reflect the same egregious disparities evidenced by the treatment of African-American students age 15 and younger.

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[138] TONY FABELO ET AL, BREAKING SCHOOL RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT (2011), *available at* http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

[139] *Id.*

[140] Letter from Jesse L. Jackson, Sr., et al., Founder and President, Rainbow PUSH Coalition, to Edmund G. Brown, Jr., Governor, State of California (Aug. 15, 2013), *available at* http://civilrightsproject.ucla.edu/news/news-and-announcements/2013-site-news/civil-rights-leaders-urge-ca-governor-to-address-inequities-in-school-discipline/AB-420-Civil-Rights-Letter-to-Gov-Brown-FINAL.pdf

[141] Bradshaw et al., *Multilevel exploration of factors contributing to the overrepresentation of Black students in office disciplinary referrals.* JOURNAL OF EDUCATIONAL PSYCHOLOGY, 102, 508-520 (2010).

This Complaint likewise alleges that African-American students experience discriminatorily adverse impacts of school policing insofar as they are disproportionately subjected to excessive and unreasonable force, unlawful searches and interrogations, and harassment at the hands of law enforcement officers in schools. By refusing to collect data on these impacts, the WCPSS and local law enforcement agencies have made it impossible for Complainants to provide statistical data in support of this allegation. Instead, this allegation is based, in part, on the collective experiences of the attorneys and local organizational Complainants in their longstanding work with WCPSS students, and is further supported by the expertise of the state and national organizational Complainants in their work studying and fighting against racial disparities in the school-to-prison pipeline.

Finally, these allegations are rooted in the individual experiences of the student Complainants, all of whom are African-American and all of whom experienced these negative impacts. This complaint alleges that the experiences of these individual students are representative of what other African-American students in the district experience on a regular basis. For example, Complainants J.H., L.H., T.W., P.D., T.S and S.P. were all subject to extreme and unreasonably violent force at the hands of law enforcement officers as they were slammed into walls, tables and windows; thrown over handrails and divider walls; pushed to the ground and onto chairs; pepper-sprayed; and handcuffed. Similarly, all of the student Complainants experienced unlawful searches and/or interrogations that were, in many cases, jointly executed by law enforcement officers and school officials.

Notably, all of the student Complainants likewise experienced harassment by the SROs and school officials involved in school policing matters, either via direct verbal taunting or through the creation of an exceedingly hostile school environment. J.H. and S.P. both had to transfer schools because the harassment had become so pervasive. T.W. experienced significant mental health repercussions directly related to the harassment he faced from the SRO, necessitating ongoing therapy and contributing to his dropping out. Notably, in the case of T.W., the criminal court judge who presided over the case stemming from his school-based charge explicitly commented on the racially discriminatory nature of the SRO's treatment of T.W., likening the SRO's actions to accosting someone simply because they were "walking on the sidewalk while being Black."

The observed systemic disparities in the use of law enforcement and subsequent arrests and prosecutions, even for minor and mundane school misbehaviors, combined with the expressed perceptions of discrimination on the part of the Complainants, further raise serious questions as to whether African-American students may be specifically targeted, either purposefully, or as an outgrowth of unconscious bias. Whether a result of disparate impact, or other forms of unlawful discrimination, there is no doubt that these students are most likely to be criminalized by the unlawful practices and inappropriate policies that characterize the relationship between the school district and the cooperating law enforcement agencies.

In light of the information discussed above, we urge DOJ to investigate these and all other related violations pursuant to federal anti-discrimination law on the basis of race that may be implicated by the policies and practices of the WCPSS and the local law enforcement agencies described herein.

B. Evidence of Disability Discrimination

Complainants likewise allege that the WCPSS's and law enforcement agencies' policing policies and practices have the impact of unlawfully discriminating against SWD.[142] Specifically, WCPSS and law enforcement agencies routinely discriminate against SWD by utilizing harmful law enforcement practices, including the use of unreasonable and excessive force and subsequent arrest and filing of charges, to address behavior that is consistent with a student's disability, rather than making reasonable accommodations to the student's disability. Furthermore, this complaint alleges that SWD are harmed at disproportionate rates by these harmful school policing practices as compared to their non-disabled peers.

In WCPSS schools, law enforcement officers are routinely used to address SWD's behavior through the administration of excessive and unreasonable force (including physical force, handcuffs, and pepper spray) and the subsequent arresting or filing of charges against SWD in response to actions that are not criminal in nature, are related to the disabilities of the children involved, and would be more appropriately addressed through reasonable accommodations, such as behavior intervention plans. Often these harmful and discriminatory policing actions take place because WCPSS staff explicitly *request* police involvement in addressing SWD's behavior. For example:

- In L.H.'s case, a teacher contacted an SRO to ask him to become involved after alleging that L.H., a student with severe cognitive and emotional disabilities, was seen striking a student. L.H. was subsequently arrested and criminally charged. On previous occasions, the same SRO utilized the following "behavioral interventions:" forcing L.H. to sit handcuffed in the hallway while his peers walked by; and pushing him to the ground by his neck.
- After pinning P.D., a student with severe ADHD, to the wall following a minor verbal incident with a peer, two teachers contacted the SRO and requested that he arrest P.D. P.D. was subsequently arrested and charged in criminal court.

In other situations, law enforcement officers initiate the use of force against SWD while WCPSS staff members simply look on, completely failing to take any steps to minimize the unnecessary harm. For example:

- As an SRO physically assaulted S.P., a student with severe ADHD, at least five administrators stood passively nearby, at least two of whom had recently signed off on S.P.'s IEP and, accordingly, were well aware of his impulsivity, how he reacts to yelling, and the required and appropriate interventions for him. Instead of intervening so as to allow S.P. to step away and decompress without harm, they turned their backs as S.P. was thrown over a railing.
- When T.W., a student with depression and serious emotional disabilities, was attacked by two SROs who threw him into a window because they did not believe that he was a student at the school, no staff members stepped in to stop what was happening. Later, as T.W.'s mother sought assistance from the principal in requesting that the charges against T.W. be dropped in light of the fact that T.W. was the one who was attacked, the

[142] 34 C.F.R. §104.4(b)(4) ("A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration . . .that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.").

> principal simply replied via his formal grievance response: "It is not within my jurisdiction to request criminal charges brought by a police officer be dropped or dismissed. This issue should be addressed with the Raleigh Police Department."[143]

- When T.S., a student with ODD, was thrown over a retaining wall and handcuffed in a crowded cafeteria after it was alleged that he cut in line in front of other students, an administrator simply stood by and watched as T.S. was hauled to the office in handcuffs. A few weeks later, the same SRO and other administrators let T.S. sit handcuffed with no medical assistance for over 40 minutes after pepper spray has been discharged directly into his eyes.

In all of these cases, the students' disabilities *should* have been reasonably accommodated by qualified special education staff in accordance with the students' IEPs and BIPs. Instead, WCPSS staff ignored their important legal responsibilities by allowing, and in some instances orchestrating, the harmful intervention of a law enforcement officer to address non-criminal behavior that was related to a student's disability.

The failure to accommodate students' disabilities in the context of school policing practices is all the more concerning in light of the fact that these practices inflict more serious damage on SWD due to their different emotional and cognitive development, as well as their lacking in cognitive and emotional coping skills. Research has specifically shown that, in the absence of appropriate training and limits, SWD are particularly at risk of being mistreated by SROs:

> SROs may actually do more harm than good with students who receive special education services. Without the proper knowledge of special education, coupled with skills and attitudes appropriate for working with special education populations, SROs may find themselves ill-equipped for the challenges that can arise, and the frustrations that can ensue, in dealing with such students. Additionally, if SROs witness teachers and/or staff negatively stereotyping these students, they may, in turn, form similar perceptions and treat these students in the same manner. Negative views of students receiving special education services could lead SROs to ignore, reject, or treat these students more harshly than other students, possibly resulting in higher numbers of students receiving special education services receiving suspensions or being arrested.[144]

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[143] Letter from Principal John Wall, Jr. (Sep. 15, 2011) (on file with ACS).

[144] David May, Corrie Rice & Kevin Minor, *An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues among Students Receiving Special Education Services*, CURRENT ISSUES IN EDUCATION Vol. 15, Iss. 3, p. 1, (October 2012) *available at* http://connection.ebscohost.com/c/articles/88843607/examination-school-resource-officers-attitudes-regarding-behavioral-issues-among-students-receiving-special-education-services. The study specifically found that "SROs that spent more time in law enforcement activities and less time in law-related education at school were significantly more likely to feel that including students receiving special education services in the regular classroom was detrimental because of their problem behaviors. Male SROs were significantly more likely to feel that students receiving special education services use their special education status as an excuse for their problem behaviors. Finally, those SROs who spent more time in law-related education as part of their role as an SRO were less likely to feel that students receiving special education services were responsible for a disproportionate amount of problem behavior at school."

Due to the heightened vulnerability of SWD to the negative impacts of school policing, the WCPSS and law enforcement agencies should make all necessary changes to the SRO program so as to ensure that SWD are accommodated, rather than disproportionately harmed by policing policies and practices. By refusing to develop adequate training and create strict policies targeted at minimizing the harmful use of law enforcement officers to deal with the disability-related behaviors of SWD, the WCPSS and law enforcement agencies have actively engaged in a pattern and practice of discriminating against SWD.[145]

In addition to alleging that the existing policing policies and practices inflict more serious damage on SWD, Complainants also allege that SWD are harmed in disproportionate rates as compared to their non-disabled peers. As previously noted, neither the WCPSS, nor law enforcement agencies, nor any other entity maintains data regarding SWD who are subject to school-based delinquency and criminal complaints, excessive and unreasonable force, unlawful searches and interrogations, or harassment as a result of existing school policing policies and practices in Wake County. Accordingly, the WCPSS and law enforcement agencies have made it impossible to provide statistical evidence of the disability discrimination that results from school policing policies and practices in Wake County. However, Complainants allege that the experiences of the Complainants, seven out of eight of whom are SWD, are representative of the experiences of the SWD population in the WCPSS at large. This allegation is supported by the longstanding experiences of the attorneys and multiple organizational Complainants in working with SWD in Wake County, and is further underscored by national research consistently showing SWD to be at a far higher risk of facing school-based referrals to court than their non-disabled peers.[146]

Through the Department of Education's Civil Rights Data Collection (CRDC), certain school districts are required to report, among other information, data regarding referrals to law enforcement and school-related arrests disaggregated by race/ethnicity, sex, limited English proficiency, and disability.[147] Because the WCPSS serves more than 3,000 students, it is required, under law, to provide the requested CRDC data, yet appears not to have done so. From data reported by the Division of Juvenile Justice, we know that there were school-based

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[145] *Wingard v. Pa. State Police*, 2013 U.S. Dist. LEXIS 97800 (W.D. **Pa**. July 11, 2013) ("It is recognized that both the ADA and the RA apply to require reasonable accommodation of a disability where first responders are both aware of the disability and can safely modify police practices to accommodate the disability. Thus, it has been held that if an individual suffers from mental illness, but is not presenting a danger to himself or anyone else, this duty might encompass a requirement on the part of defendants to 'better train its police officers to recognize disturbances that are likely to involve persons with mental disabilities, and to investigate and arrest such persons in a manner reasonably accommodating their disability. One potential accommodation is to have the police refrain from taking aggressive action until the plaintiff presented an immediate threat to human life.") (citations omitted).

[146] *See e.g.* Robin Dahlberg, *Arrested Futures: The Criminalization of School Discipline in Massachusetts' Three Largest School Districts* (Spring 2012), *available at* http://www.aclu.org/files/assets/maarrest_reportweb.pdf ("Along with students of color, disabled students face exceptionally high rates of arrest nationally"); JUSTICE POLICY INSTITUTE, EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS (November 2011), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf (Anecdotal evidence from public defenders, combined with data showing that youth with disabilities are more likely to be affected by the juvenile justice system, suggests that youth with disabilities will also be more affected by zero tolerance policies and school resource officers).

[147] *See* U.S. Dep't of Education 2011-12 Civil Rights Data Collection Questions and Answers, *at* http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2011-12-factsheet.html (last visited Jan. 10, 2014); Civil Rights Data Collection FAQ, *at* http://ocrdata.ed.gov/FAQ (last visited Jan. 10, 2014).

complaints in 2009-10. However, the publicly-available data that OCR gathered and reported to the public inaccurately reports zeros for both students with and without disabilities. Therefore, we know the OCR data are not accurate. We believe that the WCPSS failed to comply with federal requirements to report this data to OCR in for 2009-10 and fear that the district's non-compliance may have been repeated for the 2011-12 data.

Without access to the CRDC data for school-based arrests or referrals to law enforcement disaggregated by disability status, we reference the available data from public records requests indicating that SWD in Wake County disproportionately receive out-of-school suspensions. For example, during the 2011-12 school year, SWD were 12.6% of the WCPSS student population,[148] but were 31.5% of suspended students.[149] In other words, SWD who were suspended constituted a 150% variation from the expected value.

When the data on the risk for out-of-school suspension for students with and without disabilities are compared for secondary schools in WCPSS, we see that in 2009-10, 23.5% of students with disabilities were suspended at least once, compared to 9.8% of their non-disabled peers.[150] When the disability difference is analyzed further by race we find that nearly four out of every ten (37.4%) African-American secondary school students in the WCPSS were suspended at least once.[151] This is nearly four times the risk for White secondary school students with disabilities, which was about one in ten (10.4%).[152] We believe that further investigation will likely show that the racial and disability disparities found in exclusionary discipline in the WCPSS closely mirror the experience of SWD, and especially African-American SWD, regarding school-based referrals to court that often accompany out-of-school suspensions in schools where law enforcement officers are present. We urge DOJ to investigate these and all other related violations pursuant to federal anti-discrimination law on the basis of disability that may be implicated by the policy and practices of the WCPSS and the local law enforcement agencies described herein.

VI. School Policing Practices are Not Educationally Necessary and There Are Less Discriminatory, More Effective Alternatives

Having set forth evidence of a disproportionately adverse impact on African-American students and SWD, the remaining two questions that must be answered to determine whether the disparate impacts amount to unlawful discrimination are: (A) whether current policies and practices permitting the unregulated involvement of law enforcement officers in addressing student misbehavior meets an important educational goal;[153] and (B) whether there is an equally or more effective response that has "less of a burden or adverse impact on the disproportionately

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[148] Wake Cnty. Pub. Sch. Sys., *Student Demographics: Special Education Services*, WCPSS.NET (2011), http://www.wcpss.net/about-us/our-students/demographics/reports/book11/SpEd.pdf.
[149] Public Records from WCPSS (Nov. 16, 2012)(on file with ACS).
[150] *The Center for Civil Rights Remedies*, THE CIVIL RIGHTS PROJECT AT UCLA, "Suspension Rates at U.S. Schools – Nationwide (2009-2010), *at* http://schooldiscplinedata.org (last visited Jan. 8, 2014).
[151] *Id.*
[152] *Id.*
[153] U.S. Dep't of Justice, *Title VI Legal Manual* (Jan. 11, 2011), *available at* http://www.justice.gov/crt/about/cor/coord/vimanual.php.

impacted group[s]."[154] In Wake County, school policing policies and practices are educationally unsound, and there are less discriminatory, more effective alternatives to ensure school safety.

A. Educational Necessity

Ensuring school safety is of paramount importance. However, there is also no evidence to suggest that Wake County's current school security policies and practices, outlined in detail in the above sections, are reasonably calculated to improve the learning environment or school safety.[155] To the contrary, Complainants' experiences indicate that current policies and practices instead lead to a more hostile school environment for all students and have disproportionately damaging impacts on the educational and emotional well-being of African-American students and SWD.

The individual, negative experiences of the Complainants described above are further supported by a wealth of research suggesting that the unregulated practice of using law enforcement in response to minor adolescent violations of school codes may actually undermine safety while also harming educational outcomes and damaging the school climate. Rather than creating a safe, nurturing learning environment that fosters trusting and supportive relationships and respects fundamental freedoms,[156] the manner in which the WCPSS uses SROs, including the teaming of school administrators with law enforcement to address minor student misbehavior, blurs lines of authority and causes many students to feel and experience a prison-like atmosphere of suspicion, control, and dominance.[157] Studies suggest that a heavy police presence intimidates students, creates an adversarial environment, and pushes out the most vulnerable students.[158] Police presence in schools can further alienate students, interfere with normal adolescent development,[159] and work against a cooperative learning environment by producing hostility and fear.[160] Even if some students are not targeted as "suspects" or "law breakers," they may suffer serious psychological impacts by witnessing classmates being targeted, TASERed, interrogated, whisked away in handcuffs, and charged with delinquency or

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[154] U.S. Dep't of Justice, U.S. Dep't of Education, *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, 11 (January 2014), *at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf.

[155] *Id.* at 11. (The Departments will consider both the importance of the goal that the school articulates and the tightness of the fit between the stated goal and the means employed to achieve it.").

[156] *See* UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, art. 29.

[157] *See* Henry A. Giroux, *Ten Years After Columbine*, COUNTER PUNCH, April 20, 2009, http://www.counterpunch.org/giroux04212009.html (last visited on Jan. 9, 2011), *citing* CHRISTOPHER ROBBINS, EXPELLING HOPE (2008); WILLIAM LYONS & JULIE DREW, PUNISHING SCHOOLS: FEAR AND CITIZENSHIP IN AMERICAN PUBLIC EDUCATION (2006); HENRY A. GIROUX, THE ABANDONED GENERATION (2004); Paul J. Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79 (2008).

[158] CATHERINE Y. KIM & I. INDIA GERONIMO, POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS 6 (2009).

[159] *See* ANNENBERG INSTITUTE FOR SCHOOL REFORM, MAKE THE ROAD NEW YORK, & NEW YORK CIVIL LIBERTIES UNION, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 10 (2009), http://www.nyclu.org/files/publications/nyclu_pub_safety_with_dignity.pdf (citation omitted) (last visited on Jan. 9, 2011).

[160] *See* Beger, *The "Worst of Both Worlds*," *supra* note 5, at 341, *citing* Clifford H. Edwards, *Student Violence and the Moral Dimensions of Education*, 38 PSYCHOLOGY IN THE SCHOOLS 249-57 (2001).

criminal offenses.[161] This criminalized environment is the opposite of the nurturing, open, and truly safe environment teachers need to build trust, engage with students, and facilitate the pursuit of knowledge and understanding.[162]

In addition to creating a hostile environment for all students, unregulated school policing practices can have incredibly damaging impacts on individual students who are referred to court for minor misbehavior at school. Once referred to court, young people miss valuable class time, often falling behind, or further behind, their peers as a result.[163] Studies have further shown that, even when controlling for other school-based factors such as grades, retention, and school suspension, a school-based arrest doubles the probability of a student dropping out of school.[164] A subsequent court appearance then nearly quadruples the likelihood that a student will drop out.[165] In Wake County, students are at great risk of these negative academic outcomes in light of the fact that the presence of largely unregulated police officers has served to increase, rather than lower, the number and rate of students being referred to court for school-based behavior.[166] As discussed previously, these unregulated school policing practices have exceedingly weighty consequences for 16- and 17-year-old students because these students are prosecuted in the adult system and must bear lifelong consequences of criminal charges and convictions.[167]

While school staff and law enforcement officers may be justified in filing complaints in response to the most serious and unlawful student misbehaviors, frequently filing complaints against students for non-violent, developmentally-normative behavior committed in school is not an educationally necessary or justifiable policy or practice. In fact, recent federal guidance specifically states that "law enforcement approaches (such as arrest, citations, ticketing, or court referrals) should be used only as a last resort, and never to address instances of non-violent misbehavior that do not pose a *serious and immediate threat* to school safety."[168] However, as described by the Complainants, law enforcement officers in Wake County are routinely involved in criminalizing student behaviors that do not pose a serious or immediate threat to school safety.[169] Even to the extent that some school-based complaints may be filed in response to an actual act of violence, the Complainants describe provocative and physically threatening and

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[161] *See* COMMUNITY RIGHTS CAMPAIGN, YOUTH JUSTICE COALITION, & DIGNITY IN SCHOOLS, POLICE IN LAUSD SCHOOLS: THE NEED FOR ACCOUNTABILITY AND ALTERNATIVES 8 (2010), http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Police%20in%20LAUSD%20Schools%20-%2002%20sm.pdf (last visited on Jan. 9, 2011).

[162] *See* Arrick Jackson, *Police-School Resource Officers' and Students' Perception of the Police and Offending*, 25 POLICING: AN INTERNATIONAL JOURNAL OF POLICE STRATEGIES AND MANAGEMENT 631, 632 (2002).

[163] Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV.C.R.-C.L.L.REV. 581, 595 (2009).

[164] Sweeten, Gary, "Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement" 23.4, Justice Quarterly, 462-480, at 478 (December 2006) (emphasis added).

[165] *Id.*

[166] *See infra* Chart 2.

[167] Emily Buss, *Rethinking the Connection Between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 514 (2009) (reviewing Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice (2008).

[168] U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, p. 11, 16 (January 2014), *available at* www.ed.gov/school-discipline (emphasis added).

[169] *See e.g.* S.P. who was criminally charged for inadvertently possessing a small pocket knife even though there was no allegation that he did use or even intended to use the pocket knife in a violent manner; *See also* J.H. who was charged in juvenile court after an SRO viewed a cell phone video of him play-fighting with a friend three months earlier.

inappropriate interactions with school police where it has been the police who caused an escalation of non-violent behavior into more serious misbehavior through the use of excessive and unreasonable force or other aggressive tactics.

Ultimately, school security policies and practices cannot be educationally necessary when they manifest in the routine violation of students' constitutional and civil rights. Further, to the extent that the high frequency and observed disparities in delinquency complaints are the end product of the disparate exposure of African-American students and SWD to illegal searches and seizures, unlawful interrogations, and other violations of constitutional rights, or to a failure to accommodate students' disabilities in accordance with state and federal law, the resulting disparities are not justifiable from an educational or public safety rationale.

B. Less Discriminatory Alternatives

Even if existing policies and practices regarding school policing confer some educational benefit on WCPSS students, which Complainants assert they do not, the policies and practices would nonetheless violate students' rights. This is because there are far more effective, less discriminatory, research-based alternatives available to promote school safety and effectively respond to student misbehavior. The success of many of these alternatives has already been demonstrated in other districts across the country that have chosen to take affirmative steps to address racial and disability disparities and the unnecessary criminalization of students. The WCPSS and Wake County law enforcement agencies could likewise implement research-based, more effective alternatives to current practices. Below is a non-exhaustive list of less discriminatory alternatives that could nearly eliminate violations of students' rights and greatly reduce discriminatory disparities related to school policing. In particular, these alternatives could attain the greatest impact if integrated into comprehensive school policing reform.

i. Memorandum of Understanding, Law Enforcement Agency Policies, and School Board Policies

The lack of clear, comprehensive policies defining the appropriate roles and expectations for law enforcement officers in WCPSS schools greatly contributes to the increased and harmful criminalization of students and to the growing racial and disability disparities. To date, no clear guidelines have been implemented, either by the WCPSS or law enforcement agencies, regarding appropriate training, limitations, and accountability for the police officers who serve in WCPSS schools and interact with students on a daily basis.

Recently released federal guidance outlines important guiding principles for improving school discipline practices and policies, calling for schools to operate security programs in a manner that ensures SROs do not become involved in routine school disciplinary matters. The report also calls for schools to provide clear definitions of the officers' roles and responsibilities, written documentation of those roles, proper training, and continuous monitoring through regular data collection and evaluation. The report suggests formalizing these partnerships through MOUs to clarify roles and areas of responsibilities, scope of work, and modes of data sharing.[170]

[170] *See generally* U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, (January 2014), *available at* www.ed.gov/school-discipline. The guidance further

The MOU that currently exists among the WCPSS and law enforcement agencies does not adequately address training, use of force, data, accountability, or any of the other matters related to racial and disability disparities outlined in recent federal guidance.[171] The creation of a new MOU, that is made publicly available on the district and law enforcement agencies' websites, could greatly reduce current violations and patterns of discrimination if it:

- Clearly defines the roles and limitations of SROs, including when they should and should not become involved in behavior management;
- Requires on-going training in areas, including, but not limited to: cultural competency, adolescent development, working with SWD, students' rights, deescalating situations without using physical force, alternatives to arrests and court referrals, and the consequences of court involvement;
- Provides for continuous monitoring through regular data collection and evaluation;
- Prohibits school-based arrests and court referrals for minor misbehavior;
- Mandates the use of alternative consequences and interventions;
- Requires that law enforcement officers have positive experience working with students prior to being hired as an SRO;
- Prohibits the hiring of law enforcement officers who have a history of racial profiling or excessive force;
- Prohibits school-based arrests and court referrals for behaviors that are manifestations of students' disabilities;
- Prohibits the use of pepper spray, TASERs, and other weapons unless there is an immediate threat of serious physical injury that cannot be stopped with less harmful means;
- Mandates adequate supervision and oversight; and
- Mandates the consideration of racial disparities in arrests and complaints as part of SROs' annual performance evaluations.

Comprehensive agreements that contain, among other terms, bright line prohibitions against arrests and delinquency and criminal complaints for minor offenses committed by students in schools have been shown to greatly reduce the negative impacts of school policing while also enhancing student success.[172] For example, in 2004 in Clayton County, Georgia, an

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recommends that MOUs between school administrators and SROs delineate clear limits on the scope of an officer's responsibilities, specifying that arrests, citations, and court referrals should be used only as a last resort, and never to address instances of non-violent misbehavior that do not pose a serious and immediate threat to school safety. In this manner, MOUs could identify and document specific examples of the types of conduct or incidents that do not meet the definition of an immediate threat to safety, such as tardiness, loitering, use of profanity, dress code violations, and disruptive or disrespectful behaviors, and schools could thereby reduce students' involvement in the juvenile justice, while still allowing SROs to address serious school safety issues.

[171] *Id*.

[172] New guidance from the Department of Education strongly recommends that MOUs between school administrators and SROs delineate clear limits on the scope of an officer's responsibilities, specifying that arrests, citations, and court referrals should be used only as a last resort, and never to address instances of non-violent misbehavior that do not pose a serious and immediate threat to school safety. In this manner, MOUs could identify and document specific examples of the types of conduct or incidents that do not meet the definition of an immediate threat to safety, such as tardiness, loitering, use of profanity, dress code violations, and disruptive or disrespectful

innovative, cooperative agreement was developed between multiple stakeholders in an effort to ensure misdemeanor delinquent acts such as fighting, disrupting school, disorderly conduct, most obstruction of police, and most criminal trespass do not result in the filing of a complaint except in extreme circumstances. After the implementation of the agreement: the presence of dangerous weapons on campus decreased by 70%; there was an 87% decrease in fighting offenses and a 36% decrease in disorderly conduct and related offenses; and offense rates for African-American students decreased by 86% for fighting offenses and by 64% for disruption of school offenses. Notably, graduation rates increased over the same period of time.[173] Similarly, in Jefferson County, Alabama, Judge Brian Huff led an effort to replicate the protocol from Clayton County.[174] After the agreement was implemented, the number of ungovernable, truancy, and runaway petitions, as well as school-related offenses that were filed in Jefferson County Family Court, which handles juvenile matters, dropped by nearly 40%, from 4,000 in 2007 to 2,500 in 2011.[175]

The unnecessary criminalization of students would be further alleviated through the implementation of a common set of law enforcement agency policies for all SROs, as well as a comprehensive set of policies governing WCPSS staff responsibilities in matters related to school security. Currently, the practices of SROs across Wake County are dictated by the individual policies of their respective law enforcement agencies. In some cases, these policies purport to be tailored to the SRO program and working in schools. In other cases, the policies governing SRO conduct are the same governing the conduct of police officers who patrol the streets. Accordingly, students in the same school district but in different schools may face officers who are held to very different sets of standards and protocols. In order to ensure that all WCPSS students, regardless of the school that they attend, are being served by law enforcement officers who are consistently held to the same high standards, it is essential that all SROs, regardless of employer law enforcement agency, operate from a common set of standards.

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behaviors, and schools could thereby reduce students' involvement in the juvenile justice, while still allowing SROs to address serious school safety issues. *Id.*

[173] ADVANCEMENT PROJECT, ENDING THE SCHOOLHOUSE TO JAILHOUSE TRACK, *available at* http://safequalityschools.org/pages/clayton-county-ga; THE HONORABLE STEVEN C. TESKE CHIEF JUDGE, TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS SUBCOMMITTEE HEARING ON "ENDING THE SCHOOL TO PRISON PIPELINE," *available at* http://www.judiciary.senate.gov/pdf/12-12-12TeskeTestimony.pdf.

[174] ANNIE E. CASEY FOUNDATION, AS SUSPENSIONS, EXPULSIONS AND JUVENILE ARRESTS GROW, JDAI SITES PUSH BACK ,*available at* http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources/May10newsletter/FeatureStory.aspx.

[175] Eric Velasco, *Jefferson County Family Court Judge Brian Huff Saluted on Teen Programs*, THE BIRMINGHAM NEWS, *available at* http://blog.al.com/spotnews/2012/07/jefferson_county_family_court.html. *See also* INTERGOVERNMENTAL AGREEMENT BETWEEN DENVER PUBLIC SCHOOLS AND DENVER POLICE DEPARTMENT (February 2013), *available at* http://safequalityschools.org/resources/entry/Padres-IGA. The Denver Public Schools and the Denver Police Department entered into a formal Intergovernmental Agreement in order to address concerns that police were being used to handle minor disciplinary matters. The collaborative agreement makes clear distinctions between disciplinary issues and crimes, and requires SROs to treat them differently. Specifically, SROs are required to first attempt to deescalate situations and arrest or issue citations only in cases when it is absolutely necessary, in accordance with the district's discipline policy, which explicitly favors restorative practices over law enforcement intervention in dealing with student behavior. Unless absolutely necessary, discipline problems are to be left to educators.

Similarly, the district has failed to implement a comprehensive school board policy that more clearly defines the appropriate role of WCPSS staff in facilitating law enforcement involvement in school-related matters.[176] In order to ensure that there are common standards across the district to which school staff are held accountable in ensuring disciplinary matters are not inappropriately delegated to law enforcement officers, the WCPSS could create a board policy that, among other things:

- Establishes clear limits on when school staff may solicit and/or permit the involvement of law enforcement in handling minor student misbehavior;
- Establishes clear limits on when school administrators may permit a student to be removed from class for law enforcement-related matters;
- Establishes clear expectations regarding an administrator's duty to notify and, absent exigent circumstances, obtain consent from parents prior to allowing a police officer to interrogate or search a student;
- Establishes that school staff may not permit law enforcement officers to utilize force against or arrest students in situations where it is the school's legal duty to accommodate the child's disability;
- Prohibits school staff from acting at the behest of law enforcement officers in order to assist the officers in circumventing laws and policies; and
- Excludes evidence that was illegally obtained through unlawful searches and interrogations from use against students in suspension, expulsion, and administrative transfer proceedings.

In an effort to limit excessive criminalization of its students, the San Francisco Unified School District ("SFUSD") revised its Student and Family Handbook to include a provision aimed at restricting the involvement of police officers in school-based offenses. The provision reads:

> SFUSD recognizes the serious potential consequences for youth of juvenile court involvement and wishes to avoid unnecessary criminalization of our students…Staff members and site administrators shall only request police assistance when (1) necessary to protect the physical safety of students and staff; (2) required by law; or (3) appropriate to address criminal behavior of persons other than students. Police involvement should not be requested in a situation that can be safely and appropriately handled by the District's internal disciplinary procedures.[177]

ii. Alternatives to Arrests and Court Referrals for Minor Misbehavior

[176] In December of 2013, the board approved a policy that purports to dictate how principals are to respond when non-SRO police officers want to question, search and/or arrest students. This policy does not pertain to interactions with SROs, nor does it set firm limits, only loose guidelines. Wake Cnty. Bd. of Educ., *Board Policy 6605: Investigations and Arrests by Law Enforcement*, WCPSS.NET (December 3, 2013), http://www.wcpss.net/policy-files/series/policies/6605-bp.html.

[177] SAN FRANCISCO UNIFIED SCHOOL DISTRICT STUDENT AND FAMILY HANDBOOK, *available at* http://www.sfusd.edu/en/assets/sfusd-staff/2012-2013%20Student%20and%20Family%20Handbook%20-%20English.pdf.

Research consistently shows that alternative consequences, such as restorative justice, restitution, substance abuse treatment, community service, and mandatory counseling, are far more effective in reducing student misbehavior and promoting school safety than traditional school policing measures. The WCPSS does not currently have any programs that formally serve as alternatives to arrest and court referrals. The WCPSS and law enforcement agencies should ensure the availability and use of alternative programs that better support students and ensure that disciplinary sanctions are administered by school administrators, not by police officers, court counselors, or judges.

Across the country, other districts have begun to implement alternatives to traditional policing models and referrals to court, often with dramatic success. As described above, Clayton County, Georgia has demonstrated great success in reducing incidences of violent behavior in school by focusing on alternatives that improve school climate. In Clayton County schools, students must receive warnings for first offenses and, after a second offense, are referred to mediation or school conflict training programs. It is not until a student commits a third or subsequent similar offense during the same school year, and the principal conducts a review of the student's behavior plan, that a complaint for school-based delinquent behavior can be filed.[178] In Philadelphia, a middle school plagued by significant crime successfully improved its school climate through the implementation of a "noncoercive, nonviolence based safety system" that removed aggressive security guards, instead implementing "engagement coaches" trained in nonviolent conflict resolution skills whose role it was to "continually interact[] with children in a supportive instead of punitive role."[179] After the implementation of this alternative to traditional school policing, the number of serious incidents at school fell by 90% within the span of one year.[180] Miami-Dade and Broward County school districts in Florida are among the most recent districts to take steps to refer students to counseling or mentoring in order to address misbehavior, rather than allowing law enforcement to refer those students to the court system.[181]

iii. Targeted Recruitment and Screening of Qualified SROs

Under the current contracts and MOU between WCPSS and law enforcement agencies, the selection of SROs is left entirely to local law enforcement agencies, and the only qualification required for candidates to become an SRO is that they meet certification requirements to be a police officer. Accordingly, there are no safeguards to ensure that, even at the most basic level, the officer has a demonstrated expertise, interest, and commitment to working with youth or that the officer would be a good match for the unique school environment to which he or she is assigned.

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[178] ADVANCEMENT PROJECT, ENDING THE SCHOOLHOUSE TO JAILHOUSE TRACK, *available at* http://safequalityschools.org/pages/clayton-county-ga; THE HONORABLE STEVEN C. TESKE CHIEF JUDGE, TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS SUBCOMMITTEE HEARING ON "ENDING THE SCHOOL TO PRISON PIPELINE," *available at* http://www.judiciary.senate.gov/pdf/12-12-12TeskeTestimony.pdf.

[179] Jeff Deeney, *A Philadelphia School's Big Bet on Nonviolence*, THE ATLANTIC, (2013) *at* http://m.theatlantic.com/national/archive/2013/07/a-philadelphia-schools-big-bet-on-nonviolence/277893/.

[180] *Id.*

[181] David Smiley & Michael Vasquez, *Broward, Miami-Dade work to close the 'school-to-prison pipeline*, MIAMI HERALD, (2013), *at* http://www.miamiherald.com/2013/11/10/3744981/broward-miami-dade-work-to-close.html.

In order to most effectively prevent students from being unnecessarily and discriminatorily criminalized, it will be crucial for the WCPSS and law enforcement agencies to require rigorous qualifications in order for an officer to be placed in any school setting. Experience working with youth and a demonstrated interest and commitment to youth development should be among the most fundamental of requirements for an SRO to be hired. In no event should an officer be placed in a school setting against his will or without previous experience working with youth. Further, no law enforcement officer with a history of racial profiling or excessive force should ever be stationed in a school setting. Involving school administrators, parents, students, and community members in the selection of the SRO for a given school from an approved applicant pool would be one tool for better ensuring an officer would be a good match for that particular school environment.

iv. Training for SROs, Security Personnel, and School Staff

Research has shown that "most police officers who interact frequently with juveniles are not benefiting from the wealth of new scientific research available about adolescent brain development. Nor are police provided information on promising and best practices for interacting with teens that stems from our growing understanding of how teenagers' brains differ from those of adults."[182] This lack of training is particularly detrimental to outcomes for SWD and students who have been victims of trauma.

Currently, neither the WCPSS nor law enforcement agencies require on-going training on adolescent development or any other youth-focused topic for security personnel. One way for the WCPSS and law enforcement agencies to effectively reduce the negative and discriminatory impacts of school policing practices in the district is to require mandatory, intensive, on-going trainings for SROs, security administrators, security guards, and other WCPSS staff on topics including, but not limited to:

- Legal standards for searches, seizures, interrogations, and use of force in schools;
- Age-appropriate, collaborative, problem-solving approaches for adults to utilize in dealing with student behavior, including, but not limited to: Positive Behavioral Interventions and Supports (PBIS);[183] restorative justice;[184] Social and Emotional Learning;[185] and Think:Kids[186];

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[182] *If Not Now, When?: A Survey of Juvenile Justice Training in America's Police Academies,* STRATEGIES FOR YOUTH: CONNECTING COPS AND KIDS, (February 2013), *available at* http://strategiesforyouth.org/sfysite/wpcontent/uploads/2013/03/SFYReport_02-2013_rev.pdf.

[183] *PBIS Frequently Asked Questions*, POSITIVE BEHAVIORAL INTERVENTIONS & SUPPORTS, http://www.pbis.org/pbis_faq.aspx (last visited January 2, 2014); *See also Positive Behavioral Interventions and Supports (PBIS) Models*, DIGNITYINSCHOOLS.ORG (2011), http://www.dignityinschools.org/content/positive-behavioral-interventions-and-supports-pbis-models (last visited January 2, 2014); N.C. Dep't. Pub. Instruction, *Positive Behavior Intervention and Support*, NCPUBLICSCHOOLS.ORG, http://www.ncpublicschools.org/positivebehavior/background/ (last visited January 2, 2014).

[184] U.S. Dep't of Justice, *OJJDP Model Programs Guide*: *Restorative Justice*, OJJDP.GOV, *at* http://www.ojjdp.gov/mpg/progTypesRestorative.aspx (last visited January 2, 2014).

[185] Collaborative for Academic, Social, and Emotional Learning, *What is Social and Emotional Learning (SEL)?*, CASEL.ORG, http://casel.org/why-it-matters/what-is-sel/ (last visited January 2, 2014).

[186] *Our Collaborative Problem Solving Approach*, THINK:KIDS, *at* http://www.thinkkids.org/learn/our-collaborative-problem-solving-approach/ (last visited January 2, 2014).

- Adolescent development and psychology;
- Recognizing and responding appropriately to students who have experienced trauma, abuse, and exposure to violence;
- Properly identifying and refering students exposed to trauma and violence for appropriate services, including local mental health programs;
- Working with students who have disabilities and other special needs and ensuring protection of their rights under state and federal law;
- Cultural competency;
- Sexual harassment;
- Implicit bias and institutional racism;
- De-escalating students without use of unreasonable and excessive physical force;
- Using safe restraint techniques;
- Maximizing community-based resources;
- The short- and long-term consequences for youth of court involvement and arrests;
- Strategies for engaging parents; and
- Student privacy rights.

Such training of SROs should cover the proper role and responsibilities of officers, consistent with the school's written policies or MOU, and officers should be trained on the need to avoid using law enforcement to address school disciplinary issues. Officers should be trained specifically on how to distinguish between, and appropriately respond to, disciplinary infractions appropriately handled by school officials and major threats to safety or serious criminal conduct that requires law enforcement involvement.[187]

v. Training for Students and Parents

In addition to providing training for law enforcement officers and school staff regarding students' rights, training students is another crucial step in ensuring these rights are protected. Specifically, students should be trained in how to respectfully assert their rights to:

- be free from unreasonable and excessive force;
- refuse to consent to searches not based on reasonable suspicion or probable cause;
- remain silent or have their parent or an attorney present during custodial interrogations; and
- have their privacy protected.

Students should further receive training in behaviors that could be construed by law enforcement officers as being "criminal" and what consequences could result from those behaviors. They should also receive training in what behaviors are more appropriately construed as school discipline issues and should be dealt with by school administrators rather than law enforcement officers.

[187] U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 10 (January 2014), *available at* www.ed.gov/school-discipline.

In addition to training students, the district and law enforcement agencies should likewise offer training for parents and guardians so that they can better understand the rights and responsibilities that their students have in schools. Ultimately, training can empower students and parents to challenge unlawful practices in schools before even more harm occurs.[188]

vi. Annual Data Collection and Publication

Neither the WCPSS nor the law enforcement agencies publicly reports, or collects, according to responses to public records requests, data related to school policing.[189] This omission is detrimental to parents', students', and concerned citizens' ability to hold the district and law enforcement agencies accountable for inappropriately criminalizing students, and is in violation of federal reporting requirements.[190]

Recently released school discipline guidance from the U.S. Departments of Education and Justice outline what form such monitoring of school-based law enforcement programs should take. The report requires comprehensive data collection on officer activity – specifically data on any school-based arrests, citations, searches, and referrals. It also stipulates that disaggregated data on these activities should be publicly reported consistent with applicable federal, state, and local privacy laws. In addition, the Departments call for schools to review, analyze, and act on this data to eliminate negative or unintended consequences stemming from the use of SROs or involvement of local law enforcement officials on school campuses.[191]

Whereas the WCPSS has neglected to monitor the impacts of its school policing programs, districts such as Charlotte-Mecklenburg Schools have utilized data collection and publication as a means for improving school security programs and student outcomes. According to a police officer with the Charlotte-Mecklenburg Police Department, data collection has enabled the Department to focus "not only the number of arrests, but on who is being arrested and why," and, through that, to discover "that 49% of school-based arrests were for minor offenses, a number that was too high and needed to be addressed."[192] According to the Department representative, "[w]ithout this real-time, systematic approach to data collection, [it] would not have been able to develop a strategy for reducing arrests for minor offenses and slowing the effect of the 'school to prison' pipeline."[193]

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[188] JOHANNA WALD AND LISA THURAU, FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO KEEP SCHOOLS SAFE AND PROTECT VULNERABLE STUDENTS, (March 2010) *available at* http://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/do-no-harm.pdf.

[189] This allegation is rooted in the fact that this information has never been produced despite numerous public records requests, and on the fact that the Civil Rights Database Collection website currently reflects no information regarding school-based arrests, etc. for Wake County.

[190] This failure to record and report arrest data to the Department of Education's Civil Rights Data Collection project is in violation of the 1980 Department of Education Organization Act and 30 C.F.R. 100.6(b) of the Department of Education Regulation implementing Title VI of the Civil Rights Act of 1964.

[191] U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 11-16 (January 2014), *available at* www.ed.gov/school-discipline.

[192] Paige Buckley, *Counting Kids: The Value of Data Collection for Policing Youth Effectively*, STRATEGIES FOR YOUTH: CONNECTING COPS & KIDS, (October 2012), *at* http://strategiesforyouth.org/counting-kids/.

[193] *Id.*

In order for the WCPSS and law enforcement agencies to craft meaningful strategies to reduce the unnecessary and discriminatory criminalization of students, the entities should collect data and publish an annual report on school policing to include:

- Data about SROs, security administrators, and private security, disaggregated by:
  - School(s);
  - Employer;
  - Years of experience in current position;
  - Years of experience as a law enforcement officer;
  - Years of experience working with youth;
  - Salary;
  - Gender;
  - Race;
  - Age; and
  - Type of weapon(s) carried.

- Data about school-based searches, interrogations, uses of force, arrests, delinquency complaints, and criminal complaints disaggregated by:
  - Student's school;
  - Student's grade;
  - Student's age;
  - Student's race;
  - Student's gender;
  - Student's disability status;
  - Student's economic status (e.g. economically disadvantaged vs. not economically disadvantaged);
  - Officer(s) involved;
  - School personnel involved;
  - Location of incident;
  - Alternatives utilized;
  - Alleged offense(s); and
  - Outcome (e.g., referral to alternative, arrest, or complaint).

vii. Complaint Procedures

Currently, there is no meaningful process in Wake County for students, parents, and staff to seek remedies when SROs or other law enforcement officers engage in misconduct on school grounds. This lack of a meaningful complaint process is all the more concerning in light of the fact that law enforcement and school staff actions related to school policing are not carefully monitored. The WCPSS has a grievance policy and process, but it is only applicable to school district employees. SROs are not technically WCPSS employees – even though they are partially funded by the district – because they are employees of local law enforcement agencies. Moreover, the law enforcement agencies' internal affairs policies and processes are not well-publicized and are largely ineffective means of seeking relief.

To ensure that students' rights are protected, the WCPSS and law enforcement agencies should create a standardized, well-publicized, easy-to-use complaint system that requires, in response to all grievances, timely investigations and written findings by the superintendent or area superintendents, as well as the option to appeal the matter to the Board of Education. Notably, the U.S. Departments of Education and Justice have specifically called for schools to develop a complaint process that allows student or community concerns about officer activities to be efficiently raised and addressed.[194]

In addition, this measure has been successfully implemented in other districts that have sought to reduce criminalization of students and racial disparities. In 2012, in response to citizen concerns regarding police presence and misconduct in schools, the Oakland School Police Department enacted a policy allowing for citizen complaints so as to increase police accountability in local schools. Under the policy, citizens have multiple mechanisms for filing complaints, including online, via mail, and in person. Anonymous complaints are permitted. Investigations must be conducted and written reports to complaints generally must be made within 45 days. Complainants can appeal police reports to the superintendent, who must investigate the appeal and issue written findings. Complainants may then appeal to the Board of Education, which must also issue written findings. Forms have been created in six languages for the community to report officers behaving inappropriately, to report officers who handled situations exceptionally well, and to make general recommendations. Forms and flyers explaining the process are required to be available in every school in the district. Finally, the Office of the Chief of Police is required to prepare a detailed, semi-annual statistical summary of grievances.[195]

viii. Community Involvement and Oversight

Across the country, school districts and police departments are partnering with community stakeholders in implementing innovative solutions to ending the school-to-prison pipeline. Below are some examples of how districts are utilizing community involvement to end unnecessary criminalization of students and reduce disparities:

- In Broward County, Florida, community stakeholders and the local school district recently signed a collaborative agreement to work together to eliminate harmful discipline practices and disparities.[196]

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[194] U.S. DEP'T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE, 11 (January 2014), *available at* www.ed.gov/school-discipline.

[195] PUBLIC COUNSEL LAW CENTER, FAQS ABOUT THE OAKLAND UNIFIED SCHOOL DISTRICT POLICE COMPLAINT POLICY AND COMPLAINT FORM, *available at* http://www.publiccounsel.org/tools/assets/files/FAQ-on-Oakland-School-Police-Complaints.pdf; Michael Soller, Oakland Local, *Oakland Students, Parents Say New School Police Complaint Policy Gives Them a Voice*, OAKLAND LOCAL.COM (Sept. 11, 2012), http://oaklandlocal.com/article/oakland-students-parents-say-new-school-police-complaint-policy-gives-them-voice-community-v; *Oakland School Police Complaints Process*, Black Organizing Project, *available at* http://blackorganizingproject.wordpress.com/bettering-our-school-system-b-o-s-s/oakland-school-police-complaints-process/.

[196] COLLABORATIVE AGREEMENT ON SCHOOL DISCIPLINE (November 5, 2013), *available at* http://b.3cdn.net/advancement/db79d1858f4c5f3e13_7hm6bq78b.pdf; San Diego Voice, *NAACP Brokers Groundbreaking Agreement to Close School to Prison Pipeline in Broward County*, (November 2013), *at* http://sdvoice.info/naacp-brokers-groundbreaking-agreement-to-close-school-to-prison-pipeline-in-broward-county/.

- In Denver, Colorado, the school system and police department have entered into an agreement requiring, among other things, that SROs meet with community stakeholders each semester so as to discuss concerns and get feedback on ways to improve the program in schools.[197]
- In Clayton County, Georgia, a team of stakeholders from the juvenile justice system, law enforcement, the local school system, and social services groups collaboratively created an agreement to reduce the criminalization of students for minor misbehavior. The team reviewed data, solicited input, and educated stakeholders on best practices. The team also created a multidisciplinary panel to assess the needs of students at risk for referral to law enforcement, and to refer the students to services outside of the school, such as family therapy, cognitive behavioral therapy, and wrap-around services.[198]

Community-based organizations, such as some of the Complainants, can be involved via a community-based oversight panel or civilian review board that includes students, parents, teachers, administrators, advocates, and law enforcement agency representatives charged with:

- Monitoring the implementation of the MOU and school board policy;
- Reviewing school policing data;
- Hearing complaints about SROs and security staff (e.g., MOU violations, illegal searches and seizures, discrimination, excessive force, etc.); and
- Meeting with SROs and security staff each semester to review concerns and provide feedback.

School policing experts have specifically lauded the value of a community board being charged with "regularly review[ing] all school-based incidents leading to law enforcement intervention to ensure that no abuses, racial profiling, or other targeting of certain students or groups of students is taking place."[199]

In addition to community groups overseeing the actions of SROs, authorities at the state and federal levels should likewise be closely monitoring potential abuses of students' rights. Policing experts recommend that "schools where more than 3% of the students have been arrested or summoned by SROs should trigger an immediate audit by the state Department of Education and the Attorney General's office" who should in turn "investigate the number of charges, the kinds of behavior being charged, the types of students who are being charged,

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[197] INTERGOVERNMENTAL AGREEMENT BETWEEN DENVER PUBLIC SCHOOLS AND DENVER POLICE DEPARTMENT (February 2013), *available at* http://safequalityschools.org/resources/entry/Padres-IGA.

[198] ADVANCEMENT PROJECT, ENDING THE SCHOOLHOUSE TO JAILHOUSE TRACK, *available at* http://safequalityschools.org/pages/clayton-county-ga; THE HONORABLE STEVEN C. TESKE CHIEF JUDGE, TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS SUBCOMMITTEE HEARING ON "ENDING THE SCHOOL TO PRISON PIPELINE," *available at* http://www.judiciary.senate.gov/pdf/12-12-12TeskeTestimony.pdf.

[199] JOHANNA WALD AND LISA THURAU, FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO KEEP SCHOOLS SAFE AND PROTECT VULNERABLE STUDENTS, (March 2010) *available at* http://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/do-no-harm.pdf.

whether charges are being overused in certain schools and by certain school officials, and the use of alternative sanctions that will not result in criminal records."[200]

VII. Longstanding Efforts to Collaboratively Reform Harmful Policing Policies and Practices

Despite over four years of active advocacy efforts targeted at educating WCPSS students, parents, and policymakers – as well as law enforcement officials – on the ongoing issues of students' rights being violated and widening discriminatory disparities caused by school policing in Wake County, neither the local law enforcement agencies nor the district have taken the steps necessary to address the growing problems in Wake County. Below is a non-exhaustive list of previous attempts to educate and work collaboratively with the district in remedying discrimination and violations of students' rights:

- December 2009: Advocates for Children's Services (ACS) – a project of Legal Aid of North Carolina and complainant – published an issue brief titled, *Zero Tolerance for the School-to-Prison Pipeline in Wake County: Magnitude of the Crisis*;[201]
- July 2010: ACS published report titled, *Research-Based Recommendations for Improving School Discipline in Wake County Public Schools*,[202] and then presented the recommendations to the school board;[203]
- February 2011: ACS and the UNC Juvenile Justice Clinic published a report titled, *Law Enforcement Officers in Wake County: The Human, Educational, and Financial Costs*;[204]
- June 2011: ACS contacted the WCPSS Superintendent about concerns regarding the renewal of SRO contracts;
- August 2011: ACS wrote the WCPSS Board of Education a letter about an inadequate evaluation of the SRO program;
- December 2011: ACS and local community partners published a white paper about SROs in WCPSS, which was accompanied by letters of support, a bibliography, news articles, and stories of impacted families;[205]

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[200] JOHANNA WALD AND LISA THURAU, FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO KEEP SCHOOLS SAFE AND PROTECT VULNERABLE STUDENTS, (March 2010) *available at* http://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/do-no-harm.pdf.

[201] Jason Langberg & Cary Brege, *Zero Tolerance for the School-to-Prison Pipeline in Wake County: Magnitude of the Crisis*, (Dec. 2009), *at* http://www.indyweek.com/pdf/081810/WakeSTPPIssueBrief.pdf.

[202] *Research-Based Recommendations for Improving School Discipline in Wake County Public Schools*, Advocates for Children's Services of Legal Aid of North Carolina, (July 2010), *available at* http://www.indyweek.com/pdf/081810/RecommendationsForWCPSSBoardofEducationFinal.pdf.

[203] T. Keung Hui, *Wake schools hear ideas on discipline*, NEWSOBSERVER.COM (July 2010), http://www.newsobserver.com/2010/07/30/603844/wake-schools-hear-ideas-on-discipline.html.

[204] JASON LANGBERG, BARBARA FEDDERS, & DREW KUKOROWSKI, LAW ENFORCEMENT OFFICERS IN WAKE COUNTY SCHOOLS: THE HUMAN, EDUCATIONAL, AND FINANCIAL COSTS (2011), *available at* http://www.legalaidnc.org/public/ACS/IssueBrief_Feb-11_SROs_Rev.pdf; T. Keung Hui, *Limits proposed on school police*, NEWSOBSERVER.COM (February 2011), http://www.newsobserver.com/2011/02/04/966971/limits-proposed-on-school-police.html; T. Keung Hui, *Report calls Wake to limit use of police officers in schools*, NEWSOBSERVER.COM (February 2011), http://www.newsobserver.com/2011/02/03/966087/report-calls-wake-to-limit-use.html.

- January 2012: ACS published an op-ed commenting on, among other school-related issues, the insufficient MOU;[206]
- March 2012: ACS and families of students who had been physically harmed by SROs met with then school board chair Kevin Hill regarding concerns about SROs;
- April 2012: ACS contacted the WCPSS Board of Education with concerns related to the SRO program;
- September 2012: ACS and one of its community partners met with WCPSS Security Director Russ Smith and then Assistant Superintendent, Judith Peppler. Subsequently, ACS sent a letter to then school board chair Kevin Hill detailing concerns regarding the meeting and the apparent lack of oversight of the SROs in the WCPSS.
- January 2013: Community advocates contacted the WCPSS School Board regarding its unstudied proposal to add more private security guards.[207]
- April-May 2013: ACS participated on the WCPSS Task Force for Safer Schools in Wake County and shared concerns related to school policing;[208]
- May 2013: ACS and a UNC Law professor published commentary titled, *School Safety in North Carolina: Realities, Recommendations & Resources*, in response to the N.C. Center for Safer Schools' request for public input on school safety issues. The commentary was sent to the WCPSS Board of Education;[209]
- August 2013: ACS published a report titled, *The State of the School-to-Prison Pipeline in the Wake County Public School System*;[210]
- November 2013: ACS emailed board about Broward County developments.

VIII. Conclusion

The WCPSS and law enforcement agencies' school policing policies and practices violate rights guaranteed to students under the U.S. Constitution, and unlawfully discriminate against African-American students and SWD in violation of Title IV, Title VI, Section 504, and the ADA. Complainants respectfully request that the Department of Justice fully investigate these claims and require the WCPSS and law enforcement agencies to cease their discriminatory policies and practices and adopt policies and practices that are administered in a manner that does not harm students or discriminate against African-American students and SWD.

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[205] *School Resource Officers White Paper*, Advocates for Children's Services of Legal Aid of North Carolina (December 2011), *available at* http://www.newsobserver.com/content/media/2012/4/30/SRO%20White%20Paper.pdf.

[206] Jason Langberg, *Better school discipline*, NEWSOBSERVER.COM (January 2012), http://www.newsobserver.com/2012/01/23/1793346/better-school-discipline.html.

[207] T. Keung Hui, *Wake may add security guards at elementary schools*, NEWSOBSERVER.COM (January 2013), http://www.newsobserver.com/2013/01/19/2618314/wake-may-add-security-guards-at.html.

[208] Wake Cnty. Pub. Sch. Sys., *Task Force for Creating Safer Schools in Wake County Materials*, WCPSS.NET https://www.wcpss.net/about-us/our-leadership/board-of-education/task-force-safer-schools/ (last visited January 10, 2014).

[209] BARBARA FEDDERS, JASON LANGBERG, & JENNIFER STORY, SCHOOL SAFETY IN NORTH CAROLINA: REALITIES, RECOMMENDATIONS & RESOURCES (2013), *available at* http://www.legalaidnc.org/public/learn/media_releases/2013_MediaReleases/school-safety-in-north-carolina.pdf.

[210] T. Keung Hui, *Report critical of Wake school discipline policies*, NEWSOBSERVER.COM (August 2013), http://www.newsobserver.com/2013/08/19/3119031/report-critical-of-wake-school.html.

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Advancement Project is a next generation, multi-racial civil rights organization that advances universal opportunity and a just democracy for all. Advancement Project believes that sustainable progress can be made when multiple tools—law, policy analysis, strategic communications, and research— are coordinated with grassroots movements. For the past ten years, Advancement Project has focused on the use and devastating effects of harsh school discipline policies and practices and the increased role of law enforcement in public schools. We work at both the national level and with local grassroots organizations throughout the country to support work on the ground, build capacity for community-led work, and build bridges amongst those working to end the School-to-Prison Pipeline.

Advocates for Children's Services (ACS) is a statewide project of Legal Aid of North Carolina (LANC). LANC is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove barriers to economic opportunity. ACS' mission is to fundamentally transform the public education system into one that empowers all children with the knowledge, skills, and experiences necessary to be responsible citizens and critical, courageous, creative thinkers. ACS staff work to dismantle the school-to-prison pipeline and achieve education justice through legal advocacy, community education, and collaboration. For the past four years, ACS has operated a special project based in Wake County called the Push Out Prevention Project (POPP). The goals of POPP include: Reducing suspensions and school-based court referrals; Improving the quality of alternative education programs; Improving the qualifications, trainings, limitations, and oversight of school resource officers; Reducing the disparate push out of low wealth students, students of color, and students with disabilities; and increasing transparency and accountability through improved data collection and publication and community oversight

The **American Civil Liberties Union Foundation** (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 550,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU and its affiliates throughout the country work daily in the courts and in legislatures to safeguard the rights of children in school. The ACLU has identified the "school to prison pipeline," a set of policies and practices that render at-risk youth more likely to become incarcerated than to receive a high school diploma, as a major civil rights challenge of our time. The ACLU is committed to ensuring that youth in public schools obtain the constitutional protections to which they are entitled. In support of this commitment, the ACLU has appeared in numerous cases students' rights cases before the Supreme Court and in federal district courts throughout the country. This work is a priority for the ACLU's Racial Justice Program.

The **American Civil Liberties Union of North Carolina** (ACLU-NC) is the North Carolina state affiliate of the American Civil Liberties Union, and the ACLU-NC Legal Foundation (ACLU-NCLF) is the 501(c)(3) arm of the ACLU-NC that coordinates and carries out its legal and educational work around civil liberties issues. The North Carolina affiliate of the ACLU was founded in 1965, is based in Raleigh, and has grown to approximately 10,000 members and supporters statewide. Our mission is to preserve and defend the guarantees of individual liberty found in the North Carolina Constitution and the US Constitution, with particular emphasis on freedom of speech, freedom of association, freedom of religion, equal protection under law for all people, the right to privacy, the right to due process of law, and the right to be free from

unreasonable search and seizure. As an organization dedicated to the ideals presented in the North Carolina and U.S. constitutions, we seek to help all students to achieve equal access to educational opportunity, including protection of all students' rights. Our organization has voiced strong opposition to the proliferation of School Resource Officers in the Wake County Public School System in the past, as well as concerns over the disparate impact that school based referrals into the juvenile justice and criminal justice system have on African American versus white students.

The **Civil Rights Project at UCLA's Center for Civil Rights Remedies** is dedicated to improving educational opportunities and outcomes for children from subgroups who have been discriminated against historically due to their race/ethnicity, and who are frequently subjected to exclusionary practices such as disciplinary removal, over-representation in special education, and reduced access to a college-bound curriculum. The Center conducts new research to identify problems or issues with educational policy or it's implementation, takes direct action to improve policy, and enhances the capacity of advocates to press for successful remedies at the local, state and federal levels. We develop research-based remedies relevant to policymakers and educators, models for federal and state legislation, requests for administrative action, and supports to civil rights groups, state agencies and local educational organizations actively engaged in the remedy process.

The **Coalition of Concerned Citizens for African-American Children** (CCCAAC) is a parent based organization advocating for students who attend public schools. Our goal is to empower parents to become effective advocates for their children while providing them with information on Wake County Public School System's laws policies, and procedures that govern our children, and to assist parents in helping their children make choices that will enhance their children's educational opportunities. The CCCAAC believes all children should receive a quality education that will give them the skills necessary to become productive citizens in today's society.

The **Dignity in Schools Campaign** (DSC) is a national coalition of 75 organizations from 22 states that challenges the systemic problem of push-out in our nation's schools and advocates for the human right of every young person to a quality education and to be treated with dignity. The DSC unites parents, youth, advocates and educators to support alternatives to a culture of zero-tolerance, punishment and removal in our schools. We advocate for positive approaches to school climate and discipline, such as restorative practices and School-Wide Positive Behavior Interventions and Supports (SWPBIS) that create safer, more supportive school communities and improve educational outcomes.

The **Duke Children's Law Clinic** is a community law office that provides free legal advice, advocacy, and representation to low-income children in 11 counties in North Carolina. The clinic is staffed by upper-level Duke Law students and two supervising attorneys who are Duke Law faculty members. The primary areas of expertise of the clinic are in the areas of school discipline, special education, and children's disability (specifically, SSI). Most of the work of the clinic involves individual representation of students, and on average, the clinic represents about 100 children a year in individual cases. However the Clinic also engages in policy work and advocacy on the local and state level. Finally, the Clinic is a partner in a Medical-Legal

Partnership for Children in which area pediatricians and their staffs are trained with regard to legal issues facing their patients, and given the ability to refer those patients for legal representation.

The **Education Justice Alliance** (EJA) is a group of concerned individuals in Wake County working for a reduction in the number of public school students pushed off the academic track through unfair suspensions, harsh discipline policies, and academic failure. EJA is a non-partisan grassroots group that participates in civic engagement efforts. EJA works for an educational system that is effective, equitable, and inclusive. We promote racial, socio-economic, and gender equity. We seek to decrease unfair suspensions and expulsions, and to improve positive approaches to discipline that meet the academic, social, and emotional needs of all students.

Justice Served NC is a grassroots initiative in North Carolina providing empowerment programs to re-entry youth between the ages of 14-24. Our team provides a 24 month program that highlights confidence building, court system education, career development, resource allocation and referral services to ensure that the youth populations that we serve successfully transition back into society.

Founded in 1909, the **National Association for the Advancement of Colored People** (NAACP) is the nation's oldest and largest civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. The NC Conference of NAACP Branches is 70 years old this year and is made up of over 100 Adult, Youth and College NAACP units across the state, convenes the more than 160 members of than Historic Thousands on Jones Street (HKonJ) Peoples Assembly Coalition, and is the architect of the Moral Monday & Forward Together Movement.

The **North Carolina Central University's Juvenile Law Clinic** represents juveniles on reviews, misdemeanors and felonies in the county court system, and youths facing long-term suspension in Durham Public Schools. The clinic was created in response to the epidemic of juveniles who are falling between the cracks in the juvenile justice system. Its mission is to train and educate lawyers to serve the needs of juvenile offenders in a holistic manner.

North Carolina Heroes Emerging Among Teens (NC HEAT) is a youth-led organization. We are a multicultural group of youth seeking a common purpose: civil rights, human rights, and justice in our communities and our public schools. We use peer education and organizing campaigns to advocate for youth liberation. This often means defending schools against destructive cut-backs, privatization and austerity. It further aims to end to the school-to-prison pipeline, promote safety & security for LGBTQ students, and secure resources and equality for immigrant youth.

The **North Carolina Justice Center** is a 501(c)3 nonprofit organization, working on issues concerning low-income North Carolinians. As a leading progressive research and advocacy organization, our mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services, and fair treatment it needs to achieve economic security. The Education and Law Project of the NC Justice Center seeks to improve

and reform public education from pre-K to 12th grade through policy advocacy, community outreach, and litigation. We are committed to ensuring that all students-- including minority students, low-income students, at-risk students, and students with disabilities -- have access to a high-quality education. We provide legal assistance to families that encounter barriers to accessing public schools or obtaining necessary educational supports for their students. The Education and Law Project is also involved in litigation involving the state constitutional right to a sound, basic education; virtual charter schools; students with disabilities; and school vouchers.

The **University of North Carolina Juvenile Justice Clinic** (UNC JJC) represents youth in delinquency proceedings, criminal cases, and school exclusion proceedings in the Triangle area of North Carolina. UNC JJC faculty write and lecture in a broad range of areas related to youth justice at the local, state, and national level. The clinic also engages in law reform and policy projects.

The **University of North Carolina Center for Civil Rights** strives to make America's promise of justice and opportunity a reality by helping excluded communities transcend institutionalized boundaries of race, class and place. Through legal representation outreach, research and litigation, the Center works to address the discrimination that limits opportunities for African American and low wealth individuals, families and communities.