



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
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January 22, 2014

Dear Mr. Smith and Ms. Bhargava:

We write to offer our support for the complaint filed by the Advocates for Children's Services (ACS) and several other organizations concerning discriminatory school policing in the Wake County Public School System. The exclusion of Wake County students alleged in that complaint contributes to the School-to-Prison Pipeline (STPP) and is representative of the harsh and needless school push-out plaguing our nation's schools.

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Our principal mission is to secure equal justice under law by utilizing the skills and resources of the private bar to address the factors that contribute to racial justice and economic opportunity. The Lawyers' Committee seeks to guarantee that all students receive equal educational opportunities in public schools and institutions of higher learning, and we believe that to do so, we must eliminate the discipline gap between minority students and their non-minority peers. To that end, breaking the STPP is central to the mission of our organization.



The Special Litigation and Educational Opportunities Sections of the U.S. Department of Justice have jurisdiction to initiate an investigation and file litigation to challenge violations of the U.S. Constitution and federal civil rights laws described in the Complaint. As evidenced by this Complaint, the presence of law enforcement in our schools fosters a prison-like environment that criminalizes students – particularly young people of color – for trivial behaviors and minor infractions. This is also true at the national level. The most recent Civil Rights Data Collection conducted nationally by the U.S. Department of Education (ED) revealed that during the 2009-2010 school year, Black and Hispanic students represented more than 70% of those students who were arrested or referred to law enforcement.¹ In acknowledgement of the alarming rate at which students of color are being excluded from school through police and harsh discipline, ED and the U.S. Department of Justice (DOJ) released joint guidance regarding school discipline to assist schools in meeting their legal obligations under Titles IV and VI of the Civil Rights Act of 1964.² This guidance is accompanied by Guiding Principles issued by ED.³

The ACS Complaint alleges that the Wake County Public School System (WCPSS) over-relies on school police and employs unregulated school policing practices, often in response to minor infractions of school rules, resulting in the routine violation of students' educational and constitutional rights. This Complaint further describes a school policing scheme riddled with flaws that fuel the School-to-Prison Pipeline and are specifically cited by ED and DOJ as indicative of an inappropriate school discipline system.

I. The Use of Police for Misbehavior Best Addressed by School Administrators

ACS alleges that WCPSS inappropriately delegates discipline of students for non-violent low-level offenses to school police. The Guiding Principles target such systems and include recommendations for eliminating inappropriate student referrals to the justice system, and keeping discipline within the purview of school administrators. Selective use of police presence is essential in schools given that,

¹Rachel Wilf, *Disparities in School Discipline Move Students of Color Toward Prison*, The Center for American Progress, <http://www.americanprogress.org/issues/race/news/2012/03/13/11350/disparities-in-school-discipline-move-students-of-color-toward-prison/>.

²U.S. DEPARTMENT OF EDUCATION & U.S. DEPARTMENT OF JUSTICE, Dear Colleagues Letter, January 8, 2014, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

³ED, *Guiding Principles- A Resource Guide for Improving School Climate and Discipline*, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (January 8, 2014).

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as U.S. Attorney General Eric Holder aptly noted upon release of the guidance, “[a] routine school discipline infraction should land a student in a principal’s office – *not* in a police precinct.”

The Complaint alleges that in the 2011-12 school year, 90% of the 763 school-based delinquency complaints were for misdemeanor charges.⁴ The minor charges alleged certainly fall within the realm of low level infractions that ED and DOJ state should be in the purview of school administrators. These supposed “crimes” include offenses such as throwing water balloons, stealing paper from a recycling bin, and play-fighting with a friend.⁵

II. *Disparities in School Discipline*

The Complaint alleges that the policing policies and practices of WCPSS and associated local law enforcement agencies have a discriminatory impact on Black students and students with disabilities. To ensure that law enforcement is appropriately utilized, the joint guidance and Guiding Principles highlight the oversight obligations of schools enlisting police to patrol classrooms. The joint guidance clearly charges schools with ultimate responsibility for any discriminatory outcomes in school exclusion explaining that “[s]chools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or law enforcement personnel. To the contrary, the Departments may hold schools accountable for discriminatory actions taken by such parties.”⁶

According to the facts in the Complaint, during the 2011-12 state fiscal year, more than one-third of all delinquency complaints filed in Wake County were school-based, and despite the fact that Black students comprise only 24.4% of the WCPSS population, they made up 74.4% of those delinquency complaints.⁷ By comparison, White students made up 49.3% of the student population but received only 17.6 % of the complaints.⁸ In Wake County, North Carolina, these practices are particularly pernicious because North Carolina is the only state in the country that automatically treats all 16 and 17-years olds as adults with no option

⁴ ACS Complaint, 4.

⁵*Id.*

⁶ED&DOJ, *supra* note 2 at 7.

⁷ Jason Langberg & Jennifer Story, *Advocates for Children's Services*, 5 (2013).

⁸*Id.*



to return to the juvenile delinquency system.⁹ Federal guidance makes it clear that WCPSS is accountable for these disparities in referrals.

III. Inadequate Delineation of Responsibility between WCPSS and School Police

There are also allegations of an unaccountable school police lacking training and exempt from a data collection necessary to review their efficacy. The Guiding Principles call for schools to “give special consideration to training and ongoing development” of school-based police, that includes “information concerning the appropriate role for law enforcement officers in the district and schools.”¹⁰ Additionally, in order to ensure appropriate use of law enforcement ED notes that a Memorandum of Understanding (MOU) between the schools and police should “provide clear definitions of the officers’ roles and responsibilities on campus, written documentation of those roles, proper training, and continuous monitoring of the program’s activities through regular data collection and evaluation.”¹¹

The Complaint explains that the formal relationship between WCPSS and the law enforcement agencies is dictated by employment contracts and a MOU that dictates expenses, but 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.¹² Furthermore, it is noted that no existing policies set forth any requirements regarding what data must be collected by the WCPSS or law enforcement agencies regarding student arrests, school-based complaints, searches, interrogations, and use of force or restraints.¹³ This arrangement is direct contradiction with the careful delineation of responsibility and accountability structures outlined by ED in its Guiding Principles governing MOUs and allows for inappropriate use of law enforcement without proper oversight.

⁹See, N.C. Gen. Stat. Ann. § 7B-1501 (defining a delinquent juvenile as “[a]ny 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, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31) (emphasis added). According to counsel, due to the statutory definition of delinquent juveniles, youth who have reached the age of 16 cannot be treated as delinquent juveniles and, accordingly, are treated as adults and sent into the criminal system upon the commission of a crime.

¹⁰ ED, *supra* note 3 at 8.

¹¹*Id.*

¹² ACS Complaint, 23.

¹³*Id.* at 27.



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Equal access to quality education requires that school districts implement policies designed to keep children in school and address misbehavior in ways that are proportional to the offense. However, too many school districts continue to disproportionately push students of color out of school, and into the criminal justice system. We urge the DOJ to investigate the Complaint filed by ACS and take this opportunity to put action behind its joint guidance with ED as it pertains to school policing.

We welcome the opportunity to discuss our comments further. Please contact either Brenda Shum, Director of the Educational Opportunities Project at (202) 662-8332 or bshum@lawyerscommittee.org with questions.

Respectfully,

/s/ BLS

Brenda L. Shum, Director
Educational Opportunities Project
Lawyers' Committee for Civil Rights Under Law

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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 VI and IV 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:

We are an organization dedicated to fair treatment of children and youth in the justice system, and improvement of the system and related institutions in their response to youth.

Among our other objectives is the reduction of the numbers of children and youth referred to the formal justice process by schools. Commonly known as the "school to prison pipeline," the reliance of schools on the criminal justice system as a disciplinary tool has vast consequences for children, all too often forcing them from schools to the streets, without any meaningful education and hence, opportunities for life.

We have on our advisory committee representatives of every state in the Southeast and this phenomenon is commonplace in our experience. It has particular impact on minority students and disabled children in school. The patterns and practices of schools and law enforcement described in the complaint which result in disparate treatment of these children and the effect of criminalizing them, depriving them of the education they are entitled to, are too familiar to us. This is especially true in North Carolina, where children as young as 16 are automatically charged as adults. Indeed, the individual cases cited in the complaint as examples of excessive use of physical force, criminal charges, and unlawful searches, seizures, and interrogations may as well be clients we represent in our own practices throughout the southeastern United States.

Because we believe that the complaint presents allegations representative of our own experience, and an opportunity to ameliorate those conditions in a meaningful way, not just for children in Wake County, North Carolina but elsewhere, we support intervention by your office in response to the complaint.

Please contact us if you need additional information about our organization and our interest in these proceedings.

Sincerely,

Eric Zogry, Director
Southern Juvenile Defender Center



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January 14, 2014

Jonathan M. Smith, Chief
Special Litigation Section
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Re: Endorsement of Complaint by Advocates for Children's Services, et al.,
against Wake County Public School System and Local Law Enforcement
Agencies

Dear Mr. Smith:

I write on behalf of the Southern Poverty Law Center in support of the Complaint filed by Advocates for Children's Services and several other organizations against the Wake County Public School System and local law enforcement agencies challenging policies and practices that unlawfully target and harm a disproportionate number of African-American students and students with disabilities for minor school misbehavior. These harsh policies and practices over-criminalize hundreds of students pushing them out of school and into the juvenile and criminal justice systems – a path often described as the school-to-prison pipeline.

The Southern Poverty Law Center is dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of our society. Using litigation, education and other forms of advocacy, we work toward the day when the ideals of equal justice and equal opportunity will be a reality. As such, we have an intense interest in dismantling the school-to-prison pipeline and ensuring that the most vulnerable children in the Wake County Public School System are not pushed out of schools and into the juvenile justice or criminal justice systems.

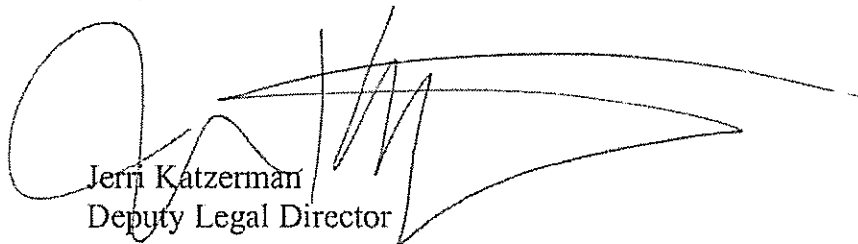
All children deserve a quality education. Students should be able to attend school without fear of being harassed, discriminated against and unnecessarily punished. Research finds that harsh law enforcement policies and practices do not increase school safety or reduce crime and often destroys school climate. Additionally, subjecting a disproportionate number of African-American students and students with disabilities to these harsh practices

Jonathan M. Smith
August 16, 2011
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sends the devastating message to these students, parents, teachers, and the community that these students are not as valuable as their white peers.

We urge the Department of Justice to accept the Complaint for investigation and direct the district and local law enforcement agencies to adopt policies and practices that protect all students.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jerri Katzerman', is written over the typed name and title. The signature is stylized and extends across the width of the text below it.

Jerri Katzerman
Deputy Legal Director

Cc: Jennifer Story (via email to jenr@legalaidnc.org.)