

May 13, 2014

Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Educational Opportunities Section, PHB
Washington, D.C. 20530

Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Attorney General Eric Holder and Secretary Arne Duncan:

During this week that marks the 60th anniversary of *Brown v. Board of Education*, community organizations in Chicago, Newark, and New Orleans, all members of the national Journey for Justice Alliance, file three complaints under Title IV and Title VI of the Civil Rights of 1964 with the Education Opportunities Section of the Department of Justice's Civil Rights Division ("DOJ") and the Department of Education's Office for Civil Rights ("OCR").

As we commemorate the landmark civil rights victory that struck down the "separate but equal" doctrine and the system of codified racism in our public schools, we respectfully request that you open an investigation of the racially discriminatory school closings that are the subject of these complaints.

Journey for Justice is a coalition of grassroots organizations in twenty-one cities across the country. The coalition has come together because, across our communities, education "reformers" and privatizers are targeting neighborhood schools filled with children of color, and leaving behind devastation. By stealth, seizure, and sabotage, these corporate profiteers are closing and privatizing our schools, keeping public education for children of color, not only separate, not only unequal, but increasingly not public at all.

Adding insult to injury, the perpetrators of this injustice have cloaked themselves in the language of the Civil Rights Movement. But too many of the charter and privately-managed schools that have multiplied as replacements for our beloved neighborhood schools are test prep mills that promote prison-like environments, and seem to be geared at keeping young people of color controlled, undereducated, and dehumanized. Children of color are not collateral damage. Our communities are not collateral damage.

Thus, we stand in solidarity, Kenwood Oakland Community Organization in Chicago, Coalition for Community Schools, Conscious Concerned Citizens Controlling Community Changes, and Vietnamese American Young Leaders of New Orleans in New Orleans, New Jersey's Parents Unified for Local School Education in Newark, and Journey for Justice member organizations across the country, to shed light on the racial injustice of school closings. Neighborhood schools are the hearts of our communities, and the harm caused by just one school closure is deep and devastating. This is death by a thousand cuts.

We wait with hopefulness for DOJ and OCR to investigate our civil rights complaints so that we can begin the work of rebuilding our communities and using sustainable and community accountable school transformation models to build schools that meet all children's needs.

Respectfully,

Kenwood Oakland Community Organization (*Chicago, IL*), Coalition for Community Schools (*New Orleans, LA*), Conscious Concerned Citizens Controlling Community Changes (*New Orleans, LA*), Vietnamese American Young Leaders of New Orleans (*New Orleans, LA*), New Jersey Parents Unified for Local School Education (*Newark, NJ*), and the national Journey for Justice Alliance



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VIA MAIL

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VIA EMAIL AND MAIL

Office for Civil Rights
New York Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Email: ocr.newyork@ed.gov

RE: Complaint filed against the New Jersey Department of Education, acting through the superintendent of Newark Public Schools, under Title IV and Title VI of the Civil Rights Act of 1964

I. INTRODUCTION

This is an administrative civil rights complaint filed with the Office for Civil Rights of the Department of Education (OCR) and the Educational Opportunities Section of the Department of Justice's Civil Rights Division (DOJ) under Title IV and Title VI of the Civil Rights Act of 1964 on behalf of African-American students enrolled at Bragaw Avenue Elementary School, Hawthorne Avenue Elementary School, and Roseville Avenue Elementary School, and all similarly situated African-American students in Newark.

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This action is filed in response to the national crisis of school closures, and the recently announced “One Newark Plan” that perpetuates a long-standing school closing crisis in Newark. For decades, schools across the county that serve African-American students have been denied equitable resources leaving students disadvantaged and deprived of an equal opportunity to learn. Without libraries, without a full range of college, career and enrichment course offerings, without counselors or highly qualified and supported teachers or the resources students need, students in urban districts have had little to no opportunity to meet their full potential. Education “reform” policies are destroying public schools by either closing them, turning them over to private management companies, firing teachers and/or squeezing education budgets. These policies are almost exclusively found in communities with higher concentrations of students of color, such as the South Ward in Newark.

The “One Newark Plan” will continue the pattern of shuttering public schools in communities of color. The “One Newark Plan” would close 13 neighborhood K-12 schools, continuing 20 years of disinvestment in public schools that began when the New Jersey Department of Education took control of Newark Public Schools. If the “One Newark Plan” is implemented, it will raise to 26 the number of neighborhood schools closed over the past five years. These closures discriminate against African-American students, and therefore, the federal government must stop them.

II. COMPLAINANTS

This complaint is filed on behalf of the Newark branch of New Jersey’s Parents Unified for Local School Education (PULSENJ), a membership organization based in New Jersey and a member of Journey 4 Justice, a national coalition intent on stopping discriminatory school closings. PULSENJ is a parent-led grassroots organization created to train and mobilize parents. The purpose of PULSE is to support and assure a high quality public education for all children by informing parents about educational issues and parents’ rights, bringing parents into the decision making process, empowering parents in their role as advocates for their children, and assisting them in their interactions within the school system.¹

This complaint is also filed on behalf of Tawanda Sheard, a parent at Bragaw Avenue Elementary School, Lauren Melton, a parent at Roseville Avenue Elementary School, Yeraldin

¹ <http://www.pulsenj.org/about-us.html>

Holguin, a parent at Roseville Avenue Elementary School, and Jacqueline Edwards, a parent at Hawthorne Avenue Elementary School.

III. RESPONDENTS

The Respondent in this action is the New Jersey Department of Education, acting through the superintendent of Newark Public Schools. In 1995, the State Board of Education authorized the removal of Newark's local board of education and the creation of a state-operated school district.² Although some control has been returned to the local advisory board, the state still controls the "governance" of Newark Public Schools (NPS), which means that the superintendent can veto any local advisory board decisions.³ Moreover, the local advisory board cannot hire or fire a superintendent until governance is returned.⁴

IV. OCR AND DOJ HAVE JURISDICTION TO INVESTIGATE THE NEW JERSEY DEPARTMENT OF EDUCATION FOR THE TITLE IV AND TITLE VI VIOLATIONS CAUSED BY THE "ONE NEWARK PLAN"

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and the Department of Education's implementing regulations, 34 C.F.R. Part 1000, OCR has the authority to investigate allegations that recipients of federal financial assistance from the Department of Education are discriminating on the basis of race, color, or national origin.

DOJ is responsible for enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination in public elementary and secondary schools based on race, color, or national origin among other bases.⁵ DOJ also has jurisdiction over Title IV and Title VI complaints against recipients of DOJ funds or upon referral from the Department of Education.⁶

Because the New Jersey Department of Education is a recipient of federal financial assistance from the Department of Education and by virtue of its control over the Newark Public Schools is responsible for the discrimination caused by the "One Newark Plan," OCR and DOJ have jurisdiction to investigate this complaint.

² *In re Newark QSAC Appeal*, 2013 N.J. Super. Unpub. LEXIS 1682, at 2 (N.J. Super. Ct. App. Div. July 8, 2013).

³ Education Law Center, "ELC's lawsuit leads state to return control of fiscal management to Newark advisory board," available at <http://www.edlawcenter.org/news/archives/other-issues/elcs-lawsuit-leads-state-to-return-control-of-fiscal-management-to-newark-advisory-board.html> (last accessed May 12, 2014).

⁴ *Id.*

⁵ U.S. DEP'T OF JUSTICE & U.S. DEP'T OF ED., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 2 (Jan. 8. 2014).

⁶ U.S. DEP'T OF JUSTICE & U.S. DEP'T OF ED., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 2, n.2 (Jan. 8. 2014).

Complaints of discrimination are timely filed within 180 days of the discriminatory act that gives rise to the complaint. On the nights of December 17 and 18, 2014, the superintendent of Newark Public Schools held school meetings announcing the details of the One Newark plan.⁷ Therefore, this complaint is timely filed.

V. FACTUAL BACKGROUND

A. State Takeover

Since July 12, 1995, the New Jersey Department of Education has controlled Newark Public Schools (NPS).⁸ NPS was the third district taken over by the state, following the takeover of Jersey City (1989) and Paterson (1991).⁹ These three school districts are among the largest in the state and serve higher proportions of African-American students as compared with other school districts.¹⁰ In addition, all three school districts are considered Abbott Districts, a designation reserved for the poorest districts in the state, which entitles those districts to additional education resources to assure “parity,” including the right to have all school building and renovation project costs paid for by the state.¹¹

Despite community opposition, New Jersey continues to take control of districts, but fails to address the root causes of inequality. Last year, the state took over another school district, Camden, which has conditions very similar to the other state-controlled districts.¹² Rather than providing a “thorough and efficient” education as required by the New Jersey Constitution, the state has attempted to cut the state-wide education budget, to the particular detriment of students of color, but fortunately has been stopped from this irresponsible course of action by the New Jersey Supreme Court.¹³

Despite the fact that the state has controlled NPS for 20 years, the problems that state took over NPS to fix persist. In fact, they are almost the same “challenges” the current superintendent

⁷ Mooney, John, NJSpotlight, “One Newark’ reform plan proves divisive even before official release,” December 18, 2013, available at <http://www.njspotlight.com/stories/13/12/18/one-newark-reform-plan-proves-divisive-even-before-official-release/> (last accessed May 12, 2014).

⁸ In re Newark QSAC Appeal, at 2.

⁹ MacFarquhar, Neil, The New York Times, “Judge Orders a State Takeover of the Newark School District,” April 14, 1995, available at <http://www.nytimes.com/1995/04/14/nyregion/judge-orders-a-state-takeover-of-the-newark-school-district.html> (last accessed May 12, 2014).

¹⁰ Id.

¹¹ Education Law Center, “The history of Abbott v. Burke,” available at <http://www.edlawcenter.org/cases/abbott-v-burke/abbott-history.html> (last accessed May 12, 2014); Education Law Center, “Abbott Districts,” available at <http://www.edlawcenter.org/cases/abbott-v-burke/abbott-districts.html> (last accessed May 12, 2014).

¹² Zubrzycki, Jaclyn, Education Week, “N.J. moves to take over another district,” May 31, 2013, available at <http://www.edweek.org/ew/articles/2013/06/05/33nj.h32.html> (last accessed May 12, 2014).

¹³ Dlugin, Lee, People’s World, “N.J. Supreme Court upholds right to public education,” May 26, 2011, available at <http://www.peoplesworld.org/n-j-supreme-court-upholds-right-to-public-education/> (last accessed May 12, 2014).

has cited to justify the “One Newark Plan.” Among other reasons the state gave for the initial takeover in Newark, the state claimed students were under-achieving on standardized tests, schools were mismanaged and had loose fiscal policies, and buildings were poorly maintained and neglected.¹⁴ The state also claimed that NPS administrators worked in comfortable offices and drained needed resources from students.¹⁵ Fast forward nearly 20 years and the superintendent has cited the same or similar reasons for the “One Newark Plan while receiving a very comfortable salary and bonus.¹⁶ State control is not working. Rather than continuing to blame locally elected officials, the state must listen to the community, conduct a comprehensive needs assessment, and develop a plan that addresses inequality and provides all NPS students with the appropriate resources to ensure they succeed.

While the state takeover was the foundation for the slow demise of public education in Newark, there have been other catalysts. In particular, the now ubiquitous “education reform” policies that have taken hold nationally have been aggressively pursued in Newark. Because of state control, the Newark community is often at the whim of these national trends and is powerless to resist them because mechanisms for local control and accountability have been obliterated.

B. Outside Influences And Expansion Of Charter Schools

In 2010, Mark Zuckerberg, then Chief Executive of Facebook, agreed to donate up to \$100 million in matching funds to NPS.¹⁷ However, the donation required the establishment of the “Foundation for Newark’s Future,” which oversees the distribution of the donation.¹⁸ Some of the funds have been used for “school options,”¹⁹ i.e. expansion of charter schools. Since 2010, the state has approved 15 charter schools in Newark, primarily to North Star, an Uncommon Schools affiliate,

¹⁴ McLarin, Kimberly J., The New York Times, “New Jersey prepares a takeover of Newark’s desperate schools,” July 23, 1994, *available at* <http://www.nytimes.com/1994/07/23/nyregion/new-jersey-prepares-a-takeover-of-newark-s-desperate-schools.html> (last accessed May 12, 2014).

¹⁵ *Id.*

¹⁶ Mooney, John, NJSpotlight, “Against backdrop of contention, state releases Anderson’s bonus payments,” April 29, 2014, *available at* <http://www.njspotlight.com/stories/14/04/28/against-backdrop-of-contention-state-releases-anderson-s-bonus-payments/> (last accessed May 12, 2014); “Building a System: One Newark – Plan,” December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

¹⁷ Perez-Pena, Richard, The New York Times, “Facebook founder to donate \$100 million to help remake Newark’s schools,” September 22, 2010, *available at* http://www.nytimes.com/2010/09/23/education/23newark.html?_r=0 (last accessed May 12, 2014).

¹⁸ *Id.*

¹⁹ Gardella, Rich & Myers, Lisa, NBC News, “Two years after Zuckerberg’s \$100 million gift, Newark schools have ‘a long way to go,’” October 8, 2012, *available at* http://www.nbcnews.com/id/49248995/ns/us_news-education_nation/t/two-years-after-zuckerbergs-million-gift-newark-schools-have-long-way-go/#.U3FfiiiPaSo (last accessed May 12, 2014).

and TEAM Academy, a KIPP affiliate.²⁰ Both networks plan on expanding further. The superintendent now admits these “school options” are driving a “fiscal challenge” in NPS.²¹

In particular, because charter schools are funded by local school district budgets, they siphon off public school funds and resources.²² As a result, public schools are forced to cut their budgets, resulting in less access to counselors, librarians, nurses, teachers, assistant teachers, and other necessary support resources.²³ As charter schools expand and public schools work with smaller budgets, families are forced to make a choice between attending under-resourced public schools or charter schools that are receiving significantly more support from the district and the benefits of substantial private money.²⁴ As families are funneled into charter schools, the enrollment at public schools drops. Ultimately, this siphoning leads to claims that public schools are under-enrolled and should be closed or co-located.²⁵ The New Jersey Department of Education perpetuates these policies and then uses the consequences to further sabotage public schools and the children that attend them.

As a result of the Zuckerberg donation, Governor Chris Christie informally agreed to give Mayor Cory Booker a major role in choosing a new superintendent for NPS.²⁶ To no ones’ surprise, the Mayor recommended Cami Anderson, a former executive director of Teach for America and a top-aide during his first mayoral campaign.²⁷

In May 2011, the New Jersey Department of Education approved Mayor Booker’s recommendation and appointed Anderson as superintendent.²⁸ Since then, Superintendent Anderson has aggressively promoted the expansion of Teach for America in Newark and the expansion of charter schools, which has resulted in the shuttering or “resiting”²⁹ of ten

²⁰ Newark Public Schools, School Directory, <http://www.nps.k12.nj.us/Page/9616> (last accessed May 12, 2014).

²¹ Building a System: One Newark – Plan,” December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

²² *Id.*

²³ Interview with Jacqueline Edwards, Parent of student at Hawthorne Avenue Elementary School (March 28, 2014).

²⁴ Interview with Sharon Smith, Co-founder of Parents Unified for Local School Education (May 3, 2014).

²⁵ A co-location occurs when a charter school takes partial control of a public school building, such that some students are enrolled in the public school, while other students are enrolled in the charter school.

²⁶ Perez-Pena, Richard, The New York Times, “Facebook founder to donate \$100 million to help remake Newark’s schools,” September 22, 2010, *available at* http://www.nytimes.com/2010/09/23/education/23newark.html?_r=0 (last accessed May 12, 2014).

²⁷ Perez-Pena, Richard, The New York Times, “Ex-adviser to Booker is expected to lead Newark’s schools,” May 3, 2011, *available at* <http://www.nytimes.com/2011/05/04/education/04newark.html> (last accessed May 12, 2014).

²⁸ *Id.*

²⁹ A resiting occurs when the neighborhood school building is closed and students are required to attend a different facility. The name of the neighborhood school building follows the students to the new school building. Students whose school is resited suffer the same types of harms as those detailed in Section V(F). Students have to find new transportation options, have longer commutes to school, increased safety risks, and may also suffer from the same or similar social-emotional tolls that these restructurings create.

neighborhood schools.³⁰ Despite cutting the budget for an already under-resourced NPS,³¹ the Governor and the Department of Education continue to pay Superintendent Anderson a salary of over a quarter of a million dollars and exorbitant bonuses.³²

C. Previous School Closures

During her tenure, Superintendent Anderson has closed or “resited” ten neighborhood schools. In her first year in office, Anderson closed five neighborhood schools—Broadway Elementary School, Camden Middle School, Clinton Avenue Elementary School, Dayton Street Elementary School, and Fifteenth Avenue Elementary School. These school closures disproportionately affected African-American students:

2011-12 School Closures and Demographics		
School Name	White	African-American
Broadway Elementary School	3.4%	35.5%
Camden Middle School	0.0%	87.1%
Clinton Avenue Elementary School	3.0%	95.5%
Dayton Street Elementary School	0.0%	86.1%
Fifteenth Avenue Elementary School	0.4%	82.6%
Total Schools	1.1%	73.4%
District Total	7.9%	52.8%

Source: New Jersey Department of Education, 2010-11 Enrollment.

³⁰ New Jersey Department of Education, Enrollment data from 2010-11 to 2013-14 (data analysis on file with author).

³¹ Holland, Bill, Petition: “No bonus for Cami Anderson,” available at <http://petitions.moveon.org/sign/no-bonus-for-cami-anderson> (last accessed May 12, 2014).

³² Mooney, John, NJSpotlight, “Against backdrop of contention, state releases Anderson’s bonus payments,” April 29, 2014, available at <http://www.njspotlight.com/stories/14/04/28/against-backdrop-of-contention-state-releases-anderson-s-bonus-payments/> (last accessed May 12, 2014).

According to the New Jersey Department of Education, in 2010-2011, African-American students made up 52.8% of enrollment in the district. However, they made up 73.4% of the students most directly affected by school closures the following school year. In comparison, although White students made up 7.9% of the school district, they only made up 1.1% of the students affected by school closures. Thus, White students were over seven times less likely to be adversely affected by school closures than would be predicted by their district student enrollment.

As shown by the chart above, four of the five schools affected had an African-American enrollment rate of over 82%. The only exception was Broadway Elementary School, which disproportionately serves another group of students of color, Latino/as. Without Broadway Elementary, African-American and White students make up 86.2% and 0.3% of the students most directly affected by school closures, respectively.

In comparison, none of the schools had higher than a 3.4% White enrollment rate. In fact, two schools, Camden Middle School and Dayton Avenue Elementary School, had absolutely no White students enrolled. For a raw number comparison, only 13 White students were directly affected by the school closures in the 2011-12 school year, but 843 African-American students were affected.

But the school closures did not stop after the 2011-12 school year. In the 2012-13 school year, the New Jersey Department of Education, acting through Superintendent Anderson, closed another four schools, again disproportionately affecting African-American students:

2012-13 School Closures and Demographics³³

School Name	White	African-American
Burnet Street School	0.9%	77.5%
Eighteenth Avenue School	1.4%	88.5%
Martin Luther King Jr.	0.0%	81.1%
Peshine Avenue School	0.0%	93.9%
Total Schools	0.4%	86.4%
District Total	7.9%	53.4%

Source: New Jersey Department of Education, 2011-12 Enrollment.

Again, African-American students were disproportionately affected in the 2012-13 school closures, and even more so than in the previous year's round of school closures. African-American students made up 53.4% of enrollment in the 2011-12 school year. However, they made up 86.4% of the students most directly affected by school closures. In comparison, although White students still made up 7.9% of the school district, they only made up 0.4% of the students affected by school closures. Thus, White students were nearly 20 times less likely to be adversely affected by school closures than would be predicted by their average district student enrollment.

As shown by the chart above, all four schools affected had an African-American enrollment rate of over 77%. In comparison, none of the schools had higher than a 1.4% White enrollment rate. In fact, two of the four schools had absolutely no White students. For a raw number comparison, only five White students were directly affected by school closures in 2012-13, but 1,094 African-American students were affected.

In response to these school closures, the community filed a Title VI complaint with the OCR. In addition to the schools listed above, the complaint included the closure of two ninth grade academies at Barringer High School.³⁴ In a response letter dated January 4, 2013, the OCR indicated

³³ Note that this list excludes Luis Munoz Marin Elementary School. Although the school was closed in the 2012-13 school year, it was later reopened. Nevertheless, during that one school year, students had to endure the disruption caused by the closure of their school.

³⁴ See Attachment 1, Sharon Smith OCR complaint, July 9, 2012.

that the allegations were appropriate for investigation.³⁵ However, to the knowledge of those filing this complaint, OCR has not taken any action to remedy the harm that has been caused by those closing. Because this pattern of discriminatory closings has gone unchecked, the superintendent has been emboldened to close more schools. In fact, during the 2013-14 school year, another school was closed—Samuel L. Berliner—which had a 2.5% White enrollment, but an 87.5% African-American enrollment.

D. The “One Newark Plan” And Its Implementation

On December 17, 2013, the superintendent announced these discriminatory school closures would continue through the implementation of the “One Newark Plan.”³⁶ According to the superintendent, the “One Newark Plan” is meant to ensure that Newark students have 100 excellent schools.³⁷ However, the “One Newark Plan” will target schools mostly in the South Ward and mostly serving African-American students, and either close them, convert them to charters, or “renew” them, meaning that teachers and administrators will have to reapply for their positions.³⁸ The alleged reasons for these actions include: “chronic under-achievement,” “declining enrollment,” “ongoing fiscal challenges,” and deteriorating buildings--the same or similar reasons cited for the original state takeover nearly 20 years ago. To the extent these “challenges” remain after 20 years of state control, the fault lies squarely with the state, not with the African-American students and their communities that will suffer the consequences of these closures. Further, none of these reasons are legitimate, and they certainly are not sufficient reasons to close neighborhood schools.

Several concerned community members have challenged the plan, but their concerns have been largely ignored. In February, after the community expressed concerns at a local advisory meeting, the superintendent did not reconsider her plan, but instead decided that she would no longer attend future advisory meetings, and in this one area, she has been true to her word.³⁹

³⁵ See Attachment 2, OCR Response Re Case No. 02-12-1295, January 4, 2013.

³⁶ Mooney, John, NJSpotlight, “‘One Newark’ reform plan proves divisive even before official release,” December 18, 2013, available at <http://www.njspotlight.com/stories/13/12/18/one-newark-reform-plan-proves-divisive-even-before-official-release/> (last accessed May 12, 2014); “Building a System: One Newark – Plan,” December 2013, available at <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

³⁷ “Building a System: One Newark – Plan,” December 2013, available at <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

³⁸ “One Newark Long-Term Ward Plan – FAQ,” December 2013, available at <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

³⁹ Mooney, John, NJSpotlight, “Fine print: Anderson says she’ll no longer attend school board meetings,” February 26, 2014, available at <http://www.njspotlight.com/stories/14/02/26/fine-print-cami-anderson-open-letter-to-newark-families-says-she-ll-no-longer-attend-school-board-meetings/> (last accessed May 12, 2014); see Attachment 3, Newark Public Schools, “An open letter to Newark families,” February 25, 2014.

The plan has also faced criticism from at least five school principals,⁴⁰ 77 clergymen,⁴¹ Parent Organization presidents,⁴² the Newark Student Union,⁴³ the American Federation of Teachers,⁴⁴ the National Education Association, a couple of state legislators, the NAACP State Conference, and several other concerned community members.⁴⁵

While the superintendent recently sent a letter to parents further delaying the already delayed implementation of the “One Newark Plan,” finally acknowledging the community’s concern that she does not have a transportation plan, and also acknowledging that parents are not filling out the “open enrollment” application as timely as she had hoped, she stays steadfast in her determination to implement the “One Newark Plan,” despite its harmful effects.⁴⁶

E. The Racially Discriminatory Effects Of The “One Newark Plan”

The “One Newark Plan” will continue the pattern of school closings that discriminate against African-American students. The “One Newark Plan” calls for five conversions to charter schools, three conversions to Early Childhood Centers, three resitings, one phase-out, and one permanent closure.

⁴⁰ McGlone, Peggy, The Star-Ledger, “5 Newark principals suspended indefinitely, allegedly for opposing One Newark plan,” January 20, 2014, *available at* http://www.nj.com/education/2014/01/5_newark_principals_have_been_suspended_allegedly_for_opposing_one_newark_plan.html (last accessed May 12, 2014).

⁴¹ Strauss, Valerie, The Washington Post, “Clergy warn Christie: Your Newark school reform is a mess,” April 19, 2014, *available at* <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/04/19/clergy-warn-christie-your-newark-school-reform-is-a-mess/> (last accessed May 12, 2014).

⁴² Braun, Bob, Bob Braun’s Ledger, “Cry for Newark,” April 30, 2014, *available at* <http://bobbraunsledger.com/cry-for-newark/> (last accessed May 12, 2014).

⁴³ The Newark Student Union is an organization founded by and for Newark students with the goals of protecting student right, ensuring they receive a quality education, and empowering the student voice in the political process. It is especially important that Newark students have a voice in the own future since the education system is supposed to be for their benefit. <https://www.facebook.com/NewarkStudentsUnion/info>

⁴⁴ Strauss, Valerie, The Washington Post, “Gov. Christie’s new crisis: Protests grow over state control of Newark schools,” February 27, 2014, *available at* <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/02/27/gov-christies-new-crisis-protests-grow-over-state-control-of-newark-schools/> (last accessed May 12, 2014).

⁴⁵ McGlone, Peggy, The Start Ledger, “Hundreds protest Newark’s plan to close schools and lay off teachers,” March 27, 2014, *available at* http://www.nj.com/education/2014/03/hundreds_protest_newarks_plan_to_close_schools_and_lay_off_teachers.html (last accessed May 12, 2014).

⁴⁶ See Attachment 4, Letter from Cami Anderson, April 21, 2014.

2014-15 Proposed School Closures and Demographics (One Newark Plan)⁴⁷

School Name	White	African-American
*Alexander Street School	0.3%	97.1%
*Bragaw Avenue Elementary School	1.2%	89.2%
†Chancellor Avenue Annex	0.7%	87.2%
‡Eagle Academy	3.1%	79.1%
*Hawthorne Avenue Elementary School	0.0%	89.6%
*Madison Avenue Elementary School	0.2%	93.1%
†Maple Avenue School	1.1%	93.4%
‡Miller Street School	0.8%	53.2%
*Newton Street School	0.9%	83.2%
†Roseville Avenue Elementary School	1.1%	61.8%
ΔWeequahic High School	0.0%	97.4%
▲ West Side High School	0.7%	91.9%
Total (One Newark)	0.7%	86.3%
District Total	7.9%	50.9%

Source: New Jersey Department of Education, 2013-14 Enrollment.

*These schools will be closed and reopened under new charter management.

†These schools will be closed and reopened as early childhood centers.

‡These schools are being resited. Data for Girls Academy is unavailable because this is its first year in operation.

ΔThese schools are being phased-out.

▲ These schools are being permanently closed.

⁴⁷ "Building a System: One Newark – Plan," December 2013, available at <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

African-American students make up 50.9% of the district, but they will make up 86.3% of the students most directly affected by the “One Newark Plan.” In comparison, White students make up 7.9% of the district, but only 0.7% of students affected by the “One Newark Plan.” White students are 11 times less likely to be adversely affected by the “One Newark Plan” than would be predicted by their district student enrollment.

Furthermore, five of the schools that will be affected have an African-American enrollment rate of over 90%, and, overall, nine have an African-American enrollment rate of at least 83%. In general, although some schools have a higher Latino enrollment than the other schools, all of the schools have an African-American enrollment rate higher than the district average.

In comparison, only one school has a White enrollment rate higher than 1.2%—Eagle Academy at 3.4%. In fact, at least two schools, Weequahic High School and Hawthorne Avenue Elementary School, have absolutely no White students. Only 26 White students will be directly affected by the “One Newark Plan,” but 3,368 African-American students will be affected. To reiterate, these school closures are predominately affecting the South Ward, a community with a higher African-Americans population. Eight of the thirteen schools that will be most affected are in the South Ward, with only three in the West Ward, one in Central Ward, one in East Ward, and zero in North Ward. The concentration of the “One Newark Plan” in the South Ward will only exacerbate the adverse impacts on the South Ward community.

F. Harm Caused By “One Newark Plan”

This complaint is filed on behalf of parents at Bragaw Elementary, Hawthorne Elementary, and Roseville Elementary, but the adverse impacts of the “One Newark Plan” will similarly affect students and families at schools throughout Newark, primarily in the South Ward.

The “One Newark Plan” would create several hardships for parents and students. First, the “One Newark Plan” would create additional transportation obstacles. According to the “One Newark Plan” FAQ, the only elementary school parents who would qualify for transportation assistance are those who live at least two miles away from their school.⁴⁸ That means that students who live within a two-mile radius may have to walk to school, which could be close to a 40 minute walk. Tawanda Sheard, the mother of a 10-year old at Bragaw Avenue Elementary, does not have a car to drive her daughter to school.⁴⁹ She created a 55-minute video showing how far her daughter may have to walk to school—it used to take her daughter five minutes to walk to school, but now it will

⁴⁸ One Newark, Questions and Answers, <http://onewark.org/q-and-a/> (last accessed May 12, 2014).

⁴⁹ Interview with Tawanda Sheard, parent of student at Bragaw Avenue Elementary School. (March 28, 2014).

take much longer.⁵⁰ The video shows the dangerous bridges Ms. Sheard's daughter would have to cross, the speeding traffic on the street, the abandoned homes, the various construction sites and equipment, and the complete absence of crossing guards.⁵¹ In addition to these health and safety risks, Ms. Sheard has concerns about the conditions her daughter would face during the extremely bad winters in Newark. Her daughter may have to be out in the cold and walk through rain or snow for a prolonged period of time. Even if Ms. Sheard's daughter does qualify for transportation assistance, she would only qualify for a bus ticket on public transportation.⁵² Ms. Sheard would be unable to accompany her daughter because it would become too expensive and time-consuming for her, particularly given that the district generally only pays for half of the public transportation fare.⁵³ Her daughter would be left all alone on the bus with strangers.

Mrs. Melton, the mother of a student at Roseville Elementary School, expressed similar health and safety concerns because of the lack of adequate transportation. Ms. Melton expanded upon her concerns by explaining that public buses in Newark are notoriously dangerous.⁵⁴ There have been stabbings and robberies on public buses.⁵⁵ Riding the bus has become so dangerous that bus drivers are now enclosed behind a plexi-glass box to keep them safe.⁵⁶ If the "One Newark Plan" is implemented, elementary school students will be exposed to these dangers.

Students are already beginning to feel the social-emotional effects of the potential school closings and the new dangers they may encounter. Ms. Sheard's daughter has often woken up in the morning crying because her school might be closing.⁵⁷ In fact, Ms. Sheard's daughter has told her mother that she no longer wants to attend school because it is closing anyway.⁵⁸ No matter how close her new school may be, Ms. Sheard's daughter will have to go through unexpected and unnecessary changes, which are already taking a toll on her. Moreover, students' anxiety may be elevated if they are forced to merge with students from another school. The school climate may be extremely tense, particularly if rival gang members are assigned to the same school.⁵⁹

Unfortunately, the feelings that Ms. Sheard's daughter is experiencing are not unique to her. Mrs. Melton has seen an attendance issue at Roseville Avenue Elementary School since it was

⁵⁰ The Bragaw Commute, <https://www.youtube.com/watch?v=Jw466lS6xRg> (last accessed May 12, 2014).

⁵¹ Id.

⁵² One Newark, Questions and Answers, <http://onewark.org/q-and-a/> (last accessed May 12, 2014).

⁵³ Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014).

⁵⁴ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁵⁵ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁵⁶ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁵⁷ Interview with Tawanda Sheard, parent of student at Bragaw Avenue Elementary School. (March 28, 2014).

⁵⁸ Interview with Tawanda Sheard, parent of student at Bragaw Avenue Elementary School. (March 28, 2014).

⁵⁹ Interview with Sharon Smith, Co-founder of Parents Unified for Local School Education (May 3, 2014).

announced that Roseville would be converted to an Early Childhood Center.⁶⁰ Many parents are tired of having to fight to keep their schools open, and they are enrolling them in schools outside of Newark.⁶¹ Mrs. Holguin, the mother of a student at Roseville, has been active at meetings to keep her daughter's school open, but now even she is thinking about enrolling her daughter outside of Newark.⁶² The students who are attending Roseville have to deal with serious disruptions to their education. Because of the plan to convert Roseville to an Early Childhood Center, there has been constant construction during school hours.⁶³ This construction is interfering with the ability of teachers to teach and students to learn.

Despite arguments from the superintendent that schools are "under-achieving," parents have nothing but praise for their teachers and administrators. In fact, Jacqueline Edwards, the mother of a student at Hawthorne Elementary School, is extremely grateful for all of the teachers who went to her home after her daughter was hit by a car.⁶⁴ The teachers made sure that Ms. Edward's daughter kept up with her schoolwork by working with her at home after school.⁶⁵ However, it was not just math and English that Ms. Edward's daughter was learning.

Parents want their children to be well-rounded individuals. However, parents whose children may be forced to attend privately-managed charter schools are doubtful that the charter schools will appropriately engage students. Ms. Melton, an educator herself, has seen children at charter schools lose the love of learning.⁶⁶ Often, students at charter schools have to work longer hours than most adults do. They have to attend school from eight in the morning until five in the afternoon, and then they have hours upon hours of homework.⁶⁷ The almost exclusive focus on test performance means that several charter schools have inadequate extracurricular activities.⁶⁸ Most do not have sufficient sports, debate teams, music, gym, art, or any of the other opportunities that create balanced and critical thinkers.⁶⁹ Instead, "students are treated like they are in the military."⁷⁰ They are subjected to extremely punitive school discipline policies, with some students being pushed out of school for failing to meet performance goals on tests.⁷¹

⁶⁰ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶¹ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶² Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014).

⁶³ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶⁴ Interview with Jacqueline Edwards, Parent of student at Hawthorne Avenue Elementary School (March 28, 2014).

⁶⁵ Interview with Jacqueline Edwards, Parent of student at Hawthorne Avenue Elementary School (March 28, 2014).

⁶⁶ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶⁷ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶⁸ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁶⁹ Interview with Sharon Smith, Co-founder of Parents Unified for Local School Education (May 3, 2014).

⁷⁰ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁷¹ Interview with Sharon Smith, Co-founder of Parents Unified for Local School Education (May 3, 2014).

Moreover, even if parents wanted to send their children to a charter school, there is no guarantee that their children will be accepted because charter schools often have selective admission. In fact, there is no guarantee that children will be accepted into any school. Mrs. Holguin received the results of her enrollment application on May 9, 2014.⁷² Despite filling out the application on time and listing all of the closest schools available to her, Mrs. Holguin's daughter was not accepted to any of the six schools she listed.⁷³ Instead, Mrs. Holguin was told that she would have to fill out another application because the schools she selected were in high demand and did not have sufficient space for her daughter.⁷⁴ The letter also stated that her daughter may not have been selected at any of the schools because she did not list at least eight schools.⁷⁵ However, the "One Newark Plan" does not adequately take into consideration the fact that many parents want their children to attend schools that are close to home. Asking parents to list at least eight schools means that parents will have to list schools that are extremely far away.⁷⁶ To add insult to injury, parents would have to send their children to their seventh or eighth choice, not their first, second, or even third choice. The parents of Newark do not have a choice, they only have a chance. It is an unfortunate reality for Mrs. Holguin.

However, if students are accepted to these privately-managed charter schools, they will often have teachers that are less-experienced than public school teachers, and unlike the public school teachers they currently learn from, do not come from their community.⁷⁷

There is a particularly close connection between families and teachers in many of the schools that may be closed. Parents refer to these schools as "generational schools." The children attend these schools, their parents attended these schools, and in some cases, even their grandparents attended these schools.⁷⁸ The trust and strong relationships that are developed through several generations cannot be quantified in numbers. The community knowledge that is developed cannot be completely understood in a plan that did not have community input. In one instance, 50 years of knowledge were lost when the principal at Roseville Avenue Elementary School was forced to resign for trying to keep Roseville open.⁷⁹

⁷² Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014).

⁷³ Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014).

⁷⁴ Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014); *see* Attachment 5, Letter from Cami Anderson informing Mrs. Holguin that she would have to reapply.

⁷⁵ Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014); *see* Attachment 5, Letter from Cami Anderson informing Mrs. Holguin that she would have to reapply.

⁷⁶ Interview with Yeraldin Holguin, Parent of student at Roseville Avenue Elementary School (May 12, 2014).

⁷⁷ Interview with Sharon Smith, Co-founder of Parents Unified for Local School Education (May 3, 2014).

⁷⁸ Interview with Jacqueline Edwards, Parent of student at Hawthorne Avenue Elementary School (March 28, 2014).

⁷⁹ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

Although the superintendent claims that she wants to increase “school options,” she has not listened to parents who have repeatedly told her that their choice is to attend their neighborhood school. The parents at Hawthorne, Bragaw, and Roseville were forced to fill out the “universal enrollment” application, but they were not able to list their number one choice because their current schools were not on the list. In their place were the names of the two privately-managed charter schools that are slated to take over management of Hawthorne and Bragaw next year. There was nothing to replace Roseville because Roseville will be turned into an Early Childhood Center, despite the fact that there are already several Early Childhood Centers within a one-mile radius.⁸⁰ Parents are not being given more choice, but are instead being told what to do.

G. The Invalid Rationales For The “One Newark Plan”

The superintendent provided a list of four reasons for the “One Newark Plan”—(1) chronic under-achievement, (2) declining enrollment, (3) ongoing fiscal challenges, and (4) deteriorating buildings.⁸¹ However, the superintendent never explained the formula used to measure and weigh these factors in deciding whether to close schools, convert them to charter schools, or renew them. Close examination of these rationales shows that they don’t justify the decision to close schools.

i. Chronic Under-Achievement

One of the cited reasons for the “One Newark Plan” is “chronic under-achievement.” However, “under-achievement” is being measured through “student growth percentiles” on test scores. According to Bruce Baker, a researcher at Rutgers University, the problem with “student growth percentiles”—a measure of relative growth in test scores over a school year—is that they do not account for student characteristics.⁸² Thus, the demographics of a school determine whether a school is “under-achieving,” meaning that the statistical tools used to develop the “One Newark Plan” target schools and students with the highest needs, not necessarily the most “under-achieving.”

In particular, schools that serve higher percentages of students who are African-American or Latino typically have lower test scores⁸³ because of a lack of adequate resources, a long-standing history of segregation and oppression, and social and educational policies that are detrimental to people of color. The same is true for schools that serve higher percentages of students who receive

⁸⁰ Interview with Lauren Melton, Parent of student at Roseville Avenue Elementary School (May 10, 2014).

⁸¹ “Building a System: One Newark – Plan,” at 4-8, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁸² Weber, Mark & Baker, Bruce D., “An empirical critique of ‘One Newark,’” at 5, January 24, 2014.

⁸³ Weber, Mark & Baker, Bruce D., “An empirical critique of ‘One Newark,’” at 5, January 24, 2014.

free-or-reduced lunch.⁸⁴ Similarly, if school test scores are averaged across all grades, as they were for the “One Newark Plan,” schools that serve higher proportions of 4th graders will automatically have lower test scores because 4th graders have the lowest averages among 3rd-8th graders.⁸⁵ An analysis that fully and appropriately considers school demographics shows that some “under-achieving” schools are actually performing higher than would be predicted based on their demographics, including Bragaw and Hawthorne.⁸⁶ Yet, these schools are still labeled as “under-achieving.”

To compound the concerns with the statistical model used for the “One Newark Plan,” a report by the Institute on Education Law and Policy (IELP) concludes that NPS is intensely segregated.⁸⁷ The report found that 84.1% of Newark’s schools are “intensely segregated,” indicating that they have zero to 10% White students.⁸⁸ Given Mr. Baker’s critiques, along with the findings of the IELP, it is no surprise that the majority of the schools affected are in the South Ward, a neighborhood with a higher percentage of African-American residents.

Finally, there is no indication that the charter schools that are supposed to replace public schools will serve higher-needs students any better than neighborhood schools. This is particularly true because charter schools serve a significantly lower proportion of students who qualify for free and reduced lunch.⁸⁹ In other words, the test scores of charters are inflated because they do not serve students with the same needs as the schools that they will be replacing. As a final point, test scores are not truly reflective of how well charter schools are performing, particularly because “under-achieving” students are often pushed out and into public schools. Those “under-achieving” students’ test scores are ultimately reflected in the receiving neighborhood schools, not in the charter school’s data.

ii. DECLINING ENROLLMENT

The superintendent also asserts that the decision to close schools is justified by declining enrollment.⁹⁰ While overall enrollment in NPS has declined slightly, the closing schools are actually

⁸⁴ Weber, Mark & Baker, Bruce D., “An empirical critique of ‘One Newark,’” at 5, January 24, 2014.

⁸⁵ Weber, Mark & Baker, Bruce D., “A response to ‘correcting the facts about One Newark Plan: a strategic approach to 100 excellent schools,’” at 5-7, March 24, 2014.

⁸⁶ Weber, Mark & Baker, Bruce D., “A response to ‘correcting the facts about One Newark Plan: a strategic approach to 100 excellent schools,’” at 10, March 24, 2014.

⁸⁷ Flaxman, G., Orfield, G., & Tractenberg, P., “New Jersey’s apartheid and intensely segregated urban schools,” 2013.

⁸⁸ Flaxman, G., Orfield, G., & Tractenberg, P., “New Jersey’s apartheid and intensely segregated urban schools,” 2013.

⁸⁹ Flaxman, G., Orfield, G., & Tractenberg, P., “New Jersey’s apartheid and intensely segregated urban schools,” 2013.

⁹⁰ “Building a System: One Newark – Plan,” at 6, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

over-enrolled according to Mr. Baker's analysis.⁹¹ The superintendent acknowledges that the decrease in enrollment has largely been a result of charter school expansion in Newark,⁹² but rather than making attempts to provide the existing public schools with better resources, she has decided to close schools or hand over school buildings to charter schools, thus catalyzing the expansion of charters to the detriment of NPS.

iii. Ongoing Fiscal Challenges

A third reason cited for the "One Newark Plan" is "ongoing fiscal challenges."⁹³ However, the superintendent's actions to close public schools and open charters is making that fiscal crisis worse, not better. According to the "One Newark Plan," by the 2016-17 school year, 36% of NPS' general fund will go to payments to charter schools.⁹⁴ In other words, funds that are supposed to go to public schools are being siphoned off to fund charter schools, to the detriment of public school children. As a result, and in conjunction with budget cuts imposed by the superintendent, NPS has cut librarians, counselors, nurses, teachers, and other school staff members.⁹⁵ Any logical person would conclude that if the reason for fiscal challenges is the expansion of charter schools, than the solution cannot be further expansion of charter schools.

Equally as important, the superintendent has not explained how much the restructuring of schools will cost. The restructuring of NPS will, at a minimum, create new transportation costs, construction costs for school conversions to early childhood centers, and legal costs associated with the transfer of NPS buildings to charter operators.

iv. Deteriorating Buildings

A final reason cited for the "One Newark" plan is deteriorating buildings.⁹⁶ However, it is impossible to assess this justification because the Long Range Facilities Plan for NPS has not been updated since 2005, in violation of the Educational Facilities Construction and Financing Act.⁹⁷ Given this failure to conduct required planning and assessment, OCR and DOJ should insist that the

⁹¹ Weber, Mark & Baker, Bruce D., "An empirical critique of 'One Newark,'" at 17, January 24, 2014.

⁹² "Building a System: One Newark - Plan," at 6, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁹³ "Building a System: One Newark - Plan," at 7, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁹⁴ "Building a System: One Newark - Plan," at 7, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁹⁵ Interviews with Sharon Smith, Johnnie Lattner, Tawanda Sheard, Lauren Melton, Jacqueline Edwards, and Yeraldin Holguin.

⁹⁶ "Building a System: One Newark - Plan," at 8, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁹⁷ Weber, Mark & Baker, Bruce D., "An empirical critique of 'One Newark,'" at 17, January 24, 2014.; P.L. 2007, c.137

respondent prove that this is a legitimate justification. Nevertheless, if buildings are truly in disrepair, it is because of the very failure of the state to make renovations. The state is under an important financial obligation to Abbott districts, such as Newark, yet it is abundantly clear that the state has not met its obligations. The state cannot refuse to invest in buildings and then decide to close those very same buildings because they are deteriorating.

The superintendent states that it will cost \$1.3 billion to bring all schools up to 21st century standards.⁹⁸ Coincidentally, that is just about exactly how much money NPS will have to hand over to charters from the 2012-13 to 2016-17 school year.⁹⁹ Rather than fuel the expansion of charter schools, those \$1.3 billion should be used to invest in NPS.

VI. THE “ONE NEWARK PLAN” DISCRIMINATES AGAINST AFRICAN-AMERICAN STUDENTS

A. The “One Newark Plan” Intentionally Discriminates Against African-American Students

The “One Newark Plan” targets African-American students in a discriminatory fashion. African-American students make up 51% of the district, but 86% of students affected by “One Newark.” In comparison, White students make up 7.9% of enrollment, but only 0.6% of students affected by “One Newark.” Further supporting an inference of discrimination is the fact that the superintendent has ignored the concerns of African-Americans and has stopped attending local advisory meetings, suggesting she is unable to give a convincing non-discriminatory explanation for the closings. That she has been unwilling or unable to explain the precise reasons for closings or the formula used to make the decision, further suggests a improper motive.

Further, past actions of the superintendent demonstrate that she has engaged in a “pattern or practice” of unlawful discrimination. Since becoming superintendent, it has been the “standard operating procedure ... rather than the unusual practice” to close schools that disproportionately serve African-American students. As shown in Section V(C) above, ten schools have been closed since 2011, which had an overall 80% African-American student enrollment, although the district average was just over 50%. Similarly, these same schools have had less than a 1% White student enrollment, despite a district enrollment of close to 8%. This pattern of discriminatory conduct provides strong evidence of an intent to discriminate.

⁹⁸ Building a System: One Newark – Plan,” at 8, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

⁹⁹ “Building a System: One Newark – Plan,” at 7, December 2013, *available at* <http://onewark.org/supporting-materials/> (last accessed May 12, 2014).

Further supporting the inference of intentional discrimination is the flimsiness of the stated justification for the closings. As explained above, the superintendent provided four reasons for the “One Newark Plan.” However, as explained in Section V(G), all four explanations are flawed. The “chronic under-achievement” argument fails because the statistical model used by the state does not adequately account for demographic differences between schools. The “under-enrollment” argument fails because closing schools, in the aggregate, are actually over-enrolled. The “ongoing fiscal challenges” argument fails because the proposed solution to close schools and expand privately managed charter schools will make any “fiscal challenges” worse, not better. Finally, the “deteriorating buildings” argument fails because the state has an obligation to pay for the costs of school renovations for Abbott school districts, such as Newark and if buildings are deteriorating it is because the state failed to provide the resources to adequately maintain them. Because each of these reasons fail to justify the decision to close schools, they should be found to be a pretext for discrimination.

B. The “One Newark Plan” Will Have A Disparate Impact/Effect On African American Students

There can be no doubt that the "One Newark Plan" has a disparate impact on African American students. As shown above in Section V(E), African-Americans make up 51% of the school district, yet 86% of the students directly affected by the “One Newark Plan.” This is in comparison to White students who make up close to 8% of the school district, but less than 1% of the students directly affected.

As explained in Section V(F), the “One Newark Plan” will have severe adverse effects on the African-American community. Not only will African-American families lose access to their neighborhood schools, but they will also lose access to trusted and qualified teachers and administrators, generational community knowledge, a well-rounded curriculum, a caring and responsive code of conduct, access to parent facilities, ease of access and safety going to and from school, and peace of mind for both parents and children.

In this case, the New Jersey Department of Education has articulated at least four reasons why they believe the “One Newark Plan” is necessary to meet an important educational goal. However, as explained above in Section V(G), as well as in Section VI(A) above, all of the rationales are either flawed or do not bear a manifest demonstrable relationship to the solutions.

Ultimately, there are less discriminatory alternatives that could have been implemented by the superintendent. First and foremost, the "One Newark Plan" is a consequence of years of

disinvestment. Thus, one clear and simple less discriminatory alternative is to provide the proper resources to every school, including librarians, counselors, nurses, teachers, and building renovations and resources necessary to have an equal opportunity to learn.

Rather than following through with the “One Newark Plan,” which will disproportionately displace African-American students, the superintendent should implement the “Sustainable Success Model,”¹⁰⁰ which calls for locally controlled design for school improvement. Specifically, the Sustainable Success Model requires school districts to do four things:

- (1) Undertake a comprehensive needs assessment--done in partnership with parents, educators, students, and community members—so that local solutions are tailored to local problems,
- (2) Implement research-based instructional and educational reforms,
- (3) Address essential social, emotional and physical needs of students, and
- (4) Recognize parent, student, and community leadership as key to sustainable student success.

The Sustainable Success Model offers more comprehensive and lasting improvements than the “One Newark Plan” and has far less discriminatory effects.

VII. REQUESTED RELIEF

Complainants request the following remedies:

1. Require the New Jersey Department of Education halt the “One Newark Plan,” and in particular, keep neighborhood schools open;
2. Require the New Jersey Department of Education declare a moratorium on school closings, conversions to charters, and renewals in Newark;
3. Require that the New Jersey Department of Education fully fund Newark schools so that all students will succeed academically;
4. Require that the New Jersey Department of Education fully implement the Sustainable Schools Model in Newark, including conducting a needs assessment and creating a collaborative process that engages parents, students, educators, and other community members to create locally designed school improvement.

¹⁰⁰ Communities for Excellent Public Schools, *A Proposal for Sustainable School Transformation* (July 2010), available at http://www.turnexchange.net/national_turn/archives-news/a-proposal-for-sustainable-school.attachment/attachment/Sustainable%20School%20Transformation%20Proposal_CEPS.pdf.

V. CONCLUSION

Complainants, on behalf of students and parents of Hawthorne Avenue Elementary School, Bragaw Avenue Elementary School, and Roseville Avenue Elementary School, and all similarly situated students in Newark, particularly in the South Ward, respectfully ask that DOJ and OCR investigate the claims made in this Complaint.

Respectfully submitted on May 13, 2014 by:

PARENTS UNIFIED FOR LOCAL
SCHOOL EDUCATION-NEW JERSEY

ADVANCEMENT PROJECT

/s/ Sharon Smith

/s/ Johnnie Lattner

/s/ Judith Browne Dianis

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APPENDIX

- ATTACHMENT 1 Sharon Smith, Title VI Complaint, July 9, 2012
- ATTACHMENT 2 DOE Response to Title VI Complaint, January 4, 2013
- ATTACHMENT 3 Cami Anderson, Letter re Attendance at Advisory Board Meetings
- ATTACHMENT 4 Cami Anderson, Letter re One Newark Enrolls and Transportation
- ATTACHMENT 5 Cami Anderson, Letter re Lack of Placement through One Newark Enrolls
- ATTACHMENT 6 Communities for Excellent Public Schools, A Proposal for Sustainable School Transformation (July 2010)

Electronically attached as a separate file.

July 9, 2012

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(973) 336-8426

U.S. Department of Education
Office for Civil Rights
Customer Service Team
400 Maryland Avenue, SW
Washington, D.C. 20202

To Whom It May Concern:

We are writing to file a complaint against the Newark Public School District under Title VI of the Civil Rights Act of 1964. The Newark Public School District's actions, as well as the criteria and methods of administering those actions, have the effect of discriminating against African American and Latino students because of their race in violation of Title VI and its implementing regulations.

The Newark Public Schools have been under state control since July 12, 1995 – one of the first state takeovers in the nation. For the past 10 years the graduation rates of its high schools has been on average 50% to 55%. In 2010- 2011 SY the enrollment of the Newark Public School (NPS) District was 33,279 and the demographics of the district consisted of 53% African- American and 38% Hispanics. At least 79% of the students received free lunch. Furthermore, the population also included 16% special needs students, 8% LEP and 1% homeless students. The current budget of the NPS District is over a \$717M dollars , along with private influences. This unlimited stream of private funds has developed battles between charter and traditional public schools, which has created a slow demise of the traditional public schools.

In recent years Newark has become the model of “education reform” based on the external influences of the \$100 million dollar gift from Face book owner- Mark Zuckerberg. The conditions of this support from Zuckerberg came with a price, which included school closures, co-locations, and the Newark 2020 Plan. The plan has produced displacement of students, larger class sizes (30-40 students), and an increase in violence, and destruction of neighborhood schools.

One of the recent actions of Newark Public School Superintendent Cami Anderson was to ignore the vote of the *elected* Newark Public School Advisory Board to lease properties of the District to seven charter schools. This has created a public out-cry. One of the schools affected by the vote of the Superintendent is the building for the school formerly known as Burnett Street Elementary School.

In 2007-2008 Burnett Street School met its Annual Yearly Progress (AYP) after it had been listed as needs improvement on the AYP list for two years. Accordingly, former Principal Jackson was acknowledged for exemplary work of removing Burnett Street School off the *needs improvement (NCLB)* list by the incoming Superintendent Clifford Janey. In the school year 2009-2010 Principal C. Jackson was removed from Burnett Street Elementary and sent to Ann Street to help improve the test scores there. Burnett Street was the recipient of a less productive principal. After Principal Jackson's departure the student mobility rate went from 29% (2008) to 51% (2011) Due to "under-utilization" of the Burnett Street Elementary the building was listed for closure.

The "Renew" Burnett Street School is now co-located in the building with Gray Oaks Charter School. In 2010- 2011 SY the population of the Burnett Street school was 211 and the demographics of the building consisted of 79% African- American and 20% Hispanics. At least 93% of the students received free lunch. Furthermore, the population also included 19.9% of special needs students, 4% LEP, and 5% homeless students. By the end of 2011-2012 SY Burnett Street School will no longer exist. The building will be occupied by Gray Oaks Charter and another charter school. Unless chosen through a lottery, the students no longer have a community school, special needs students are deprived of the supports they had, and there is no consistency or planning for the homeless students. The District has abandoned the children of Burnett Street School. This has become the status quo for school closings in Newark. Students are told to choose a school- but the nearest schools at times are at least 3 miles away.

Newark, along with NJDOE is gearing up to intervene in 75 predominately African American and Latino schools, taking action that could lead to massive school closings within three years. The schools targeted by NJDOE for closure are in very poor neighborhoods of color across the state and have served these communities for decades. The NJDOE plan for "aggressive intervention" and potential school closures is the centerpiece of a new "accountability" initiative launched by the Christie Administration after obtaining a U.S. Department of Education waiver from certain provisions of the federal No Child Left Behind Act (NCLB) in 2011. The waiver allows NJDOE to use test scores and graduation rates to create three new classifications of schools: "Priority," "Focus" and "Reward"

In early April, NJDOE released the list of schools in the new classifications:

- 75 schools are classified as Priority Schools based on low scores on state standardized tests; 97% of the students attending these schools are African American and Latino, 81% are poor, and 7% are English language learners. This compares to District demographics of 91% African American and Latino.
- 183 schools are classified as Focus Schools based on low graduation rates or large gaps on state tests; 72% of the students in these schools are African American and Hispanic, 63% are poor, and 10% are English language learners.
- 112 schools are classified as Reward Schools based on high achievement or high levels of growth on state tests; 20% of the students in these schools are African American and Hispanic, 15% are poor, and 2% are English language learners. (ELC/May 2012)

Needless to say, we have joined our community in fighting these actions through organization and advocacy. We have seen the impact similar actions have had on poor and working-class communities of color across the country. We have seen all of the harms that befall children whose educational lives are rendered unstable just as they so often face instability and upheaval in other aspects of their lives. We have seen spikes in violence and watched tragedies unfold on the evening news.

What is perhaps more disturbing is that we have not seen any improvement in the educational outcomes of our children in these cities. It is not surprising to us that there is simply no evidence that closing down schools, vital community institutions, and displacing students has a positive impact on those students' education. What is surprising is that Public School Districts like ours continue to take these ill-advised actions, despite the notably disparate impact that they have. Actions such as these, which have such a disparate impact on people of color, should be scrutinized. The Newark Public School District should be required to provide an explanation for their drastic actions. Thus far, they have not. Generalized appeals to the notion that our schools are "failing" and we must try something to remedy this situation are simply not sufficient. The fact that public schools already provide a subpar education to children of color does not justify compounding that problem by closing schools – a tactic that has never worked. In other words, we take issue with experimental reforms such as these when it is only children of color who are the subject of the experiment, and *especially* when the experiment has already failed.

The U.S. Department of Education has the power and the *responsibility* to enforce Title VI and put an end to these actions. For these reasons, I request that the USDOE immediately launch an investigation into the Newark Public School District's activities and bring a legal action to stop these closures immediately.

We also make my request in solidarity and conjunction with a number of other concerned parents, students, and community members from other cities that are part of an unfortunate trend of school closures in communities of color

Sincerely,

Donald Jackson

Sharon Smith



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 4, 2013

Sharon Smith
P.O. Box 22625
Newark, New Jersey 07101

Re: Case No. 02-12-1295
Newark Public School District

Dear Ms. Smith:

On July 18, 2012, the U.S. Department of Education, New York Office for Civil Rights (OCR) received the above-referenced complaint you filed against the Newark School District, in which you alleged that the District discriminated on the basis of race, national origin and disability against African-American, Hispanic and disabled students by closing the following schools at the end of school year 2011-2012: 18th Avenue School; Burnet Street School; Dayton Street School; Dr. Martin Luther King, Jr. School; the Ninth Grade Academy at Barringer High School; and the Ninth Grade Academy at West Side High School.

Based on information you provided in your complaint, supporting documentation, and in a telephone conversation with OCR staff on September 7, 2012, OCR determined that your allegation is appropriate for investigation.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and the ADA.

Because OCR has determined that it has jurisdiction and that the complaint was filed in a timely manner, it is opening the allegation for investigation. Please note that opening the allegation for investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegation, in accordance with the provisions of Article III of OCR's *Case Processing Manual*.

OCR's goal is the prompt and appropriate resolution of the allegations contained in a complaint. OCR offers, when appropriate, an Early Complaint Resolution (ECR) process, similar to mediation, to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegation(s). Some information about the ECR process is contained in the publication entitled, "OCR Complaint Processing Procedures", which was enclosed with OCR's previous letter to you acknowledging your complaint. This information is also on OCR's website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#II>.

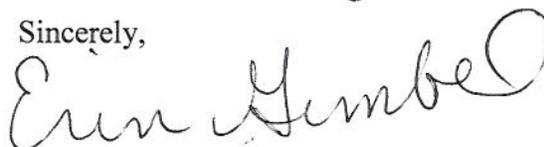
Also, when appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the recipient. This agreement must be aligned with the complaint allegations or the information obtained during the investigation, and it must be consistent with applicable regulations. Additional information about this voluntary resolution process may be found in the publication "OCR Complaint Processing Procedures", which was enclosed with OCR's previous letter to you, acknowledging your complaint. This information is also on OCR's website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#III>.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights. If this should occur, you may file a separate complaint with OCR alleging such harassment or intimidation.

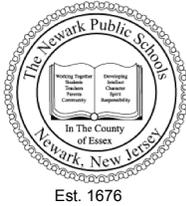
Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released could constitute an unwarranted invasion of personal privacy.

OCR will communicate with you periodically regarding the status of your complaint. If you are interested in resolving your complaint through OCR's ECR process or have any questions, please contact Ryan Milligan, Compliance Team Attorney, at (646) 428-3812, or Ryan.Milligan@ed.gov; or Eric Bueide, Compliance Team Attorney, at (646) 428-3851, or Eric.Bueide@ed.gov.

Sincerely,



Erin Gimbel
Compliance Team Leader



Cami Anderson
State District Superintendent

THE NEWARK PUBLIC SCHOOLS
2 Cedar Street
Newark, New Jersey 07102-3091
www.nps.k12.nj.us



Christopher D. Cerf
Commissioner of Education

February 25, 2014

An Open Letter to Newark Families,

The goal of our district is to work with families every day to provide students with a great education. From the daily conversations we have with families as they drop their children off at school, to regular parent/teacher conferences to discuss a child's progress, and to community meetings to discuss Universal Enrollment options, we greatly value our interactions with parents and community members each and every day. Newark Public Schools (NPS) is totally committed to your children and their education – it's why we're moving aggressively to increase equity, transparency and accountability throughout the system.

We have come to realize that one particular venue—the monthly meetings chaired by NPS' School Advisory Board (SAB)—are no longer focused on achieving educational outcomes for children. The dysfunction displayed within this forum sets a bad example for our children, and it's no longer a place where meaningful interaction and dialogue occurs between NPS and the public. As a result, Superintendent Anderson and the NPS Leadership team will no longer attend these meetings until the SAB can commit to ensuring a space conducive to open dialogue with the community.

In light of this decision, NPS will redouble its efforts to ensure the community is informed about One Newark plans and other key initiatives. NPS will continue to create community events and discussions throughout the city and publish the agendas and minutes of these events online and in schools. We will also continue to meet with parent advisory groups and attend student leadership forums to garner feedback in order to ensure that your concerns are effectively debated and addressed.

Finally, NPS will videotape its monthly update, traditionally presented at the SAB meeting, and distribute it directly on our website - <http://www.nps.k12.nj.us/> - and on Channel 77, the Newark community cable network.

Dialogue with you is more important than ever before. We look forward to continuing to implement our ongoing efforts and adding new options to facilitate greater access to information.

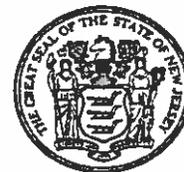
Sincerely,
Newark Public Schools



Est. 1676

Cami Anderson
State District Superintendent

THE NEWARK PUBLIC SCHOOLS
Office of the State District Superintendent
2 Cedar Street
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Phone: 973-733-7333
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April 21, 2014

Dear Parent/Guardian:

I am writing to update you on the status of One Newark Enrolls – a system of true choice where all families can access great public school options for their children. One Newark Enrolls streamlines the enrollment process by creating one application and one timeline for families to manage.

We are excited by the initial participation of over 12,000 families who submitted applications in the first round. The Round 2 application will open on **May 26, 2014**, to ensure that those students and families who did not previously participate are aware of their options and can receive a school match by this summer.

Shortly after the first deadline closed, we conducted several focus groups to get input from participating families about the overall process and about what families need in the next phase to make an informed choice. As a result of feedback from families and community members, the district is working to identify transportation options before sending match letters. Our desire to offer specifics about transportation will delay the distribution of notification by one week, to the **week of May 5th**.

We sincerely appreciate your patience and consideration as we explore this transportation solution. We recognize this is an inconvenience to our families, as you eagerly await your school matches for the upcoming school year. We are committed to providing you, in the coming days, with more details about the revised timeline and the various ways you can reach out to our staff with any questions you may have. Below please find some key dates that you should be aware of right now.

We look forward to your continued feedback as the district strives to make each school year better for you and your child.

In Service,

NEW Key Dates:

- | | |
|-------------------|--|
| • Week of May 5: | Round 1 school matches mailed home to families |
| • May 12-June 6: | Round 1 in-school registration process |
| • May 12 – 23: | Round 1 appeals window open |
| • May 26- June 6: | Round 2 application available |
| • Mid-Late July: | Round 2 school matches mailed home to families |
| • August: | Round 2 registration process |



Est. 1878
Cami Anderson
State District Superintendent

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Dear Family of Yerlin Holguin,

Student Enrollment Number: 447010854

Thank you for participating in One Newark Enrolls – a system for students and families to choose the best school options that meet their needs. You were one of over 12,600 families who participated in the first round by submitting an application – thank you!

We know that you considered many factors when making your choices. We did everything we could to ensure that your child was matched with the highest possible school on your list. We took special consideration for students in need of additional support, siblings, and neighborhood preferences. We're happy to share that 88% of Newark applicants were matched to a school. Of those who were newly matched, 86% got one of their top 3 choices and 95% got one of their top 5. Only 12% of families received "no match" (generally because they ranked a handful of schools with limited and highly sought after seats). We are dedicated to supporting all families in pursuit of excellent school options – including students who matched in Round 1, those who did not, and those who have yet to exercise choice.

The schools you applied to had many more applicants than seats available, and we were not able to match Yerlin Holguin with any of these schools. In most cases, this occurred because families only ranked a small number of schools and/or only ranked schools in very high demand. If your child needs a new school for next year, we want to assure you that your child will have a spot in a public school for the upcoming school year.

Here's what we need from you: we need to work together to find a good fit for your student.

- Please take the time to submit a Round 2 application and select up to 8 schools that you would like your child to attend. The more schools you select, the higher your chances are of getting into a school of your choice.
- Round 2 will open on May 26 and close on June 6. That is a lot of time to learn about school options in your neighborhood and in the city! To begin learning about schools and open house schedules, please visit: www.onewark.org.
- You will be able to apply online at www.newarkenrolls.org, or by filling out a paper application at any participating district or charter school.
- **If you do not submit a Round 2 application or we are unable to match your child, we will assign you to the closest school with available seats.**

Here's what you can expect from us: good customer service.

- To get help with this process, please call 973-733-7333, email info@newarkenrolls.org, or visit the website at www.onewark.org to find contact information for all participating Newark schools.
- We understand that transportation is key for accessing your school match. Please find additional information about transportation options at www.onewark.org.
- We know families who have students receiving special education services have unique factors to consider when making choices about the best school setting for their child. We want to be as supportive as possible and will ensure representatives from the Office of Assistant Superintendents and/or the Office of Special Education reach out to you while you consider options.

We are excited to work together in the next phase of the enrollment process.

All the best,

Cami Anderson