

BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF CIVIL RIGHTS

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| THE CONCERNED CITIZENS OF        | ) |
| DUPLIN COUNTY, an unincorporated | ) |
| association,                     | ) |
|                                  | ) |
| Complainant,                     | ) |
|                                  | ) |
| v.                               | ) |
|                                  | ) |
| DUPLIN COUNTY BOARD OF EDUCATION | ) |
|                                  | ) |
| Respondent.                      | ) |

Complainant brings this complaint under Title VI of the Civil Rights Act of 1964 against the respondent, Duplin County Board of Education, seeking relief for racially discriminatory acts by the respondent which include specific changes to the school system’s facilities plan. Those changes will deny students equal access to quality educational resources on the basis of their race, color and national origin, and deepen existing racial disparities in both facilities and student assignment.

**I.     INTRODUCTION**

African-American, Latino and mixed-race students (hereinafter “non-white students”) in Duplin County Schools (hereinafter “DCS”) and their families, have been injured by the racially discriminatory decision by the DCS Board of Education (hereinafter “the board”) to adopt a facilities plan that will close three predominantly non-white middle schools and move students assigned to those schools into retrofitted, K-8 elementary schools. This decision will have a discriminatory impact on non-white DCS students, who will continue to be denied access to

quality facilities, and who will be increasingly and disproportionately concentrated in racially segregated schools.

The last twenty years of board decisions with respect to student assignment and facilities provides important context for this Complaint. When new facilities were needed in the northern and eastern sections of the county in the mid-1990s, the board invested the resources to build two brand new schools, and substantially renovated and expanded a third. Two of those schools serve hyper-segregated white student populations. See Affidavit of Win Batten.<sup>1</sup> Since that time, the board has been repeatedly confronted by the need to address aging and declining facilities in the region surrounding and including the town of Warsaw. Those schools serve majority black and Latino students. Despite decades of recommendations -- most recently in 2011 by the School Planning Section of the N.C. Department of Public Instruction (DPI)-- and over the objections of Complainant and others during the public comment period, the board voted on July 1, 2014 to close three middle schools and move those students into already aging and declining facilities, which it proposes to retrofit and convert from K-5 to K-8 schools.

The effect of the board's decision is racially discriminatory in two ways. First, the board is treating majority non-white student communities differently than it did majority white student communities where it built brand new schools that disproportionately benefited the latter, but now seeks to close and retrofit schools which will disproportionately serve students of color. Second, the board's facilities plan will result in greater numbers of students being racially isolated in DCS, which will adversely impact non-white students' ability to access quality educational resources, and harm all students by depriving them of an integrated educational experience. Two of the three middle schools to be closed are racially balanced, while one is high-minority. Middle schools offer an opportunity to bring together more diverse students in

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<sup>1</sup> Mr. Batten's affidavit will be filed separately.

Duplin County. The board's plan will separate more students by race for a greater portion of their K-12 public school experience.

Complainant asks the Department of Education to fully investigate these claims, to require the board to evaluate the racially discriminatory impacts of its facilities plan, to implement less discriminatory alternatives, and to ensure equal access to educational resources in DCS.

## **I. JURISDICTIONAL AND ADMINISTRATIVE FACTS**

### **A. Complainants**

The organizational Complainant, the Concerned Citizens of Duplin County ("CCDC"), is an unincorporated non-profit community association whose members include parents with children attending public school in Duplin County, North Carolina. Members and representatives of the CCDC have attended numerous meetings of the Duplin County School Board and the Duplin County Board of Commissioners, and have repeatedly pressed CCDC concerns over the discriminatory impacts of the 2014 K-8 Facilities Plan before both governing bodies.

### **B. Federal Financial Assistance**

The DCS has been a recipient of federal financial assistance for many years. The board's 2013-2014 budget shows nearly three million dollars (\$3,000,000) in federal funds expended on Language Acquisition, Title VI State Improvement, and IDEA VI-B programs, among others.<sup>2</sup>

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<sup>2</sup> See 2014-2015 Budget Detail "Federal" tab, at <http://www.duplinschools.net/Page/9882>

### **C. Timeliness**

This complaint is being filed within 180 days of the board's vote at its meeting on July 1, 2014 to approve the discriminatory facilities plan.<sup>3</sup> Complainant contends that the facilities plan, as detailed below, has a racially disparate impact on children of color.

### **D. Exhaustion of Administrative Remedies**

Complainant has repeatedly appeared before the board over the past six to eight months to voice its concerns, and has sought other opportunities to meet with board members to present data and research showing that the plan will have racially discriminatory effects, will result in impermissible racial segregation, and will thus harm all students.

Following the board's decision in July to proceed with the plan, the Complainant continued to object to that decision and to urge the board to explore less discriminatory alternatives. Complainant made its concerns known to the Duplin County Board of County Commissioners in September 2014, and has corresponded with the county attorney since then.<sup>4</sup>

Despite Complainant's efforts to convince the board to rescind this discriminatory plan, the board refuses to explore other alternatives, continues to move forward with the plan, and fails to address the growing racial disparities in both student assignment and facilities in the district. Complainant has taken all reasonable steps possible to obtain relief directly from the board, but has been met with clear and continued opposition.

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<sup>3</sup> The DCS School Board does not provide written minutes of its meetings. Audio recordings of meetings are available online at: <http://www.duplinschools.net/Page/10621>.

<sup>4</sup> See correspondence attached hereto as Exhibit 1.

## **E. No Other Pending Proceedings**

Complainant has not filed a lawsuit raising these claims in state or federal court. Thus, there are no other pending actions concerning this matter. This complaint has not been investigated by another federal, state or local civil rights agency. There are no other means for Complainant to pursue to resolve these issues under comparable legal standards.

### **I. DISPARATE IMPACT**

#### **A. Summary of Prima Facie Case of Disparate Impact**

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

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.<sup>5</sup>

The non-discrimination requirements of Title VI ensure equal access to educational opportunity for all students. In *Alexander v. Sandoval*, the Supreme Court held that no private cause of action exists to prohibit disparate impact under Title VI, but various agencies continue to maintain disparate impact regulations that are presumptively valid.<sup>6</sup> Consequently, this prohibition against disparate impact and the resulting discriminatory effect of a facially neutral

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<sup>5</sup> 34 C.F.R. § 100.3(a).

<sup>6</sup> *Alexander v. Sandoval*, 532 U.S. 275, 289-90 (2001).

policy still binds school districts and is still enforceable by the Department of Education's Office of Civil Rights.<sup>7</sup>

Under a disparate impact theory, an individual filing a Title VI administrative complaint with the Office of Civil Rights bears the initial burden of establishing a *prima facie* case that a facially neutral practice has a racially disproportionate effect.<sup>8</sup> Following the complainant showing statistical evidence to illustrate how a policy has disproportionately harmed or excluded minorities, the burden shifts to the defendant to establish that the policy is justified by an educational necessity.<sup>9</sup> A complainant may counter and eventually prevail over the defendant's argument by demonstrating that an equally effective alternative practice would result in less racial disproportionality or proving that the legitimate practices are a pretext for discrimination.<sup>10</sup>

## **B. Background**

Duplin County is one of the most impoverished counties in North Carolina. Out of the population of Duplin County, 24.38% of its residents are considered to be in poverty according to ACS 2008-2012 data.<sup>11</sup> This means that the county is ranked as the 16<sup>th</sup> most impoverished county in North Carolina (out of 100 counties).<sup>12</sup> Duplin County has an estimated population of 58,505 people. Out of this population, 57.17% identify as white, 25.25% identify as black, and 20.61% identify as Hispanic/Latino. The majority of the Latino-identified population is Mexican (59.29%).

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<sup>7</sup> See 34 C.F.R. § 100.3(b)(2).

<sup>8</sup> See, e.g., *Larry P. v. Riles*, 793 F.2d 969 (9<sup>th</sup> Cir. 1984).

<sup>9</sup> See, e.g., *id.*; *Debra P. v. Turlington*, 644 F.2d 397, 407 (5<sup>th</sup> Cir.1981).

<sup>10</sup> See, e.g., *Georgia State Conference of Branches of NAACP v. State of Ga.*, 775 F.2d 1403 (11<sup>th</sup> Cir. 1985).

<sup>11</sup> <http://www.usa.com/rank/north-carolina-state--population-in-poverty-percentage--county-rank.htm?hl=Duplin&h1st=NC&yr=6000>

<sup>12</sup> *Id.*

The school district demographics are quite different. In 2013-14, DCS served 9631 students: 3389 white (35%), 2325 black (24%), and 3588 Latino (37%).<sup>13</sup> DCS operates sixteen schools, including eight elementary schools, three middle schools, four high schools, and one district-wide early college. Of the eight elementary schools, B.F. Grady Elementary, Beulaville Elementary, Chinquapin Elementary serve grades PreK-8. North Duplin Elementary serves grades PreK-6, and Kenansville Elementary, Rose Hill-Magnolia Elementary (RHM), Wallace Elementary, and Warsaw Elementary all serve grades PreK-5. The three middle schools in Duplin County, Charity Middle, E.E. Smith Middle, and Warsaw Middle all currently serve grades 6-8. North Duplin Jr.-Sr. High serves grades 7-12, and East Duplin High, James Kenan High, and Wallace-Rose Hill High all serve grades 9-12. Duplin Early College High serves grades 9-13.<sup>14</sup>

In its 1979-1980 “School Survey Report” for Duplin County, the Division of School Planning for the state Department of Public Instruction (DPI) offered two strategic planning alternatives for DCS. Although there were some differences, it is notable that both options recommended the consolidation of North Duplin and James Kenan High School attendance areas, the construction of a new high school, the conversion of James Kenan High School to a junior high, the conversion of North Duplin High School to a junior high, and the closure of Warsaw Junior High (now Warsaw Middle), E.E. Smith Junior High (now E.E. Smith Middle), and North Duplin Junior High.<sup>15</sup> The board followed none of those recommendations.

A 1982-1983 update from DPI again emphasized the need to consolidate James Kenan and North Duplin high school students in a new school, closing Warsaw and North Duplin Junior

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<sup>13</sup> <http://www.ncpublicschools.org/fbs/accounting/data/grs14>

<sup>14</sup> Information describing the Duplin County school Attendance Zones can be found at: [www.duplinschools.net](http://www.duplinschools.net)

<sup>15</sup> See attached Exhibit 2, “Duplin County 1979-1980”, School Survey Report, North Carolina Department of Public Instruction Division of School Planning, pp. 13-16.

High, and converting James Kenan and North Duplin high schools into junior high schools. DPI's 1982-1983 report also recommended E.E. Smith no longer be used as a junior high, but converted into a special programs facility following necessary modifications and refurbishment.<sup>16</sup> Again, respondent ignored these recommendations.

Much of DPI's 1989-1990 School Survey Report echoed its recommendations from a decade earlier: consolidate all high school students in the James Kenan and North Duplin attendance areas, convert North Duplin High to a middle school, and end the use of E.E. Smith as a middle school. Upon information and belief, those recommendations recognized the need to address resistance to racial integration in the schools in the northern, whiter part of the county. However, the school board again neglected to act on these recommendations, upon information and belief because of the board majority's desire to maintain white majority schools. The board did agree with DPI's recommendation to convert Rose Hill-Magnolia and Wallace Elementary from K-6 to K-5 schools, but ignored a similar recommendation for North Duplin Elementary. The board did pursue nearly all of DPI's recommendations regarding the majority-white East Duplin attendance area, including the construction of brand new schools in Beulaville and at the B.F. Grady school site, and substantial expansion and enhancement of Chinquapin Elementary.<sup>17</sup>

In July of 2004, the Duplin County Board of Education hired SFL+A architects to help design a master plan for Duplin County Schools.<sup>18</sup> The Facilities Study Steering Committee identified racial imbalance and "inequities between schools" as a "con" of the then-current organizational plan.<sup>19</sup> In the various alternative plans the committee looked at, it repeatedly

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<sup>16</sup> See attached Exhibit 3, "Duplin County: An Update 1982-1983," North Carolina Department of Public Instruction, Division of School Planning, p. 24.

<sup>17</sup> See attached Exhibit 4, 1989-1990 Duplin County School Survey Report, North Carolina Department of Public Instruction Auxiliary Services, Division of School Facility Services School Planning, p. 41

<sup>18</sup> See attached Exhibit 5, "Duplin County Schools—draft report," SFL+A, 2005.

<sup>19</sup> *Id.*, p. 82.



identified “racial balance” as a “pro.”<sup>20</sup> Ultimately, the committee reached consensus around a plan that include the short term priority of a new middle school/high school in B.F. Grady/Kenansville, and longer term priorities for the renovation or replacement of Charity Middle School, a new middle school for James Kenan/North Duplin, a new middle school in East Duplin Attendance Zone, a new North Duplin High School, and a new Wallace-Rose Hill High School.<sup>21</sup> The 2004 plan thus implicitly re-emphasized the need for new schools that would achieve better racial balance by drawing students across existing attendance areas, and would also replace the aging middle school facilities. K-8 facilities were mentioned as one possible alternative proposal, but were rejected by the committee.

In 2011, DCS received the most recent report from the School Planning Division at DPI. The 2011 report included the following “Priority Recommendations”

1. The middle schools are in the most need of replacement. Recommend combining the student populations of EE Smith and Warsaw Middle Schools and the middle school students from North Duplin Senior High into a new middle school building. Remove the middle school students from the existing K-8 elementary schools. All middle school students can attend two centrally located facilities.  
. . . .
5. It should be the goal to have students divided into grades k through 5 for elementary, 6 through 8 for Middle and 9 through 12 for High School.<sup>22</sup>

The DPI report also highlighted overcrowding at BF Grady and the urgent need for redistricting, stating that the school “is suffering most from over utilization. Middle school students should be removed from BF Grady and Beulaville to bring them back to student levels that can be supported by the facilities.”<sup>23</sup> BF Grady was identified as being overcapacity for both classrooms and core facilities, and Beulaville for classrooms and cafeteria space.

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<sup>20</sup> *Id.*, p. 85.

<sup>21</sup> *Id.*, p. 3.

<sup>22</sup> See “Facility Survey and Recommendations Report for Duplin County Schools”, Duplin, North Carolina, October 2011 (hereinafter, “2011 DPI Report”), p. 7, accessible at: [http://www.duplinschools.net/cms/lib01/NC01001360/Centricity/Domain/6/board\\_meeting\\_files/DuplinCountySchoolsFacilityStudy.pdf](http://www.duplinschools.net/cms/lib01/NC01001360/Centricity/Domain/6/board_meeting_files/DuplinCountySchoolsFacilityStudy.pdf).

<sup>23</sup> *Id.*, p. 7.

Regarding high schools, the report also recommended “consolidating the four schools into two using the same boundaries established from the two new middle schools.”<sup>24</sup> Not only has the school board refused to act on these recommendations, it has adopted a plan that contradicts every aspect of DPI’s conclusions. Upon information and belief, the board’s refusal was motivated by a desire to maintain a white majority in the East Duplin area schools.

In 2013 the board hired Hite Associates to prepare a school facilities plan, which was completed in April 2014.<sup>25</sup> Although the Hite Report includes information about the option of a new middle school to replace EE Smith and Warsaw, and to either replace or substantially renovate Charity, it is clear that even before the final Hite Report was presented on April 29, 2014, the board had determined that it would pursue the conversion of the K-5 elementary schools to K-8, and not the long-recommended new and consolidated middle school option. The study presented to the board on April 29 focused almost exclusively on the K-8 option.<sup>26</sup>

On July 1, by a vote of 4-2, with the two African American members dissenting, the board adopted its new facilities plan. The approved plan includes: expansion of B.F. Grady K-8, a new gym in North Duplin Junior/Senior High School, the closure of E.E. Smith, Warsaw and Charity Middle Schools, and the conversion of Kenansville Elementary, Warsaw Elementary, Rose Hill-Magnolia Elementary, and Wallace Elementary from K-5 to K-8. The estimated cost of implementing this plan is over \$56 million dollars.

### **C. The Facilities Plan Will Have a Disparate Impact on Students of Color in DCS**

#### **1. The Plan Creates Disparities in the Quality and Safety of Facilities and Resources**

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<sup>24</sup> See 2011 DPI Report, *supra* n. 20, p. 6.

<sup>25</sup> “Duplin County Schools Facility Plan”, Hite Associates, April 29, 2014, can be accessed at: [http://www.duplincountync.com/pdfs/2014\\_School\\_plan.pdf](http://www.duplincountync.com/pdfs/2014_School_plan.pdf).

<sup>26</sup> *Id.*

DCS has four school attendance zones (Kenan, Wallace Rose, East Duplin, and North Duplin), with the following schools and demographics:

**Kenan Area:** Kenansville Elementary (K-5), Warsaw Elementary (K-5), EE Smith Middle (6-8), Warsaw Middle (6-8), James Kenan High (9-12). In 2013-14 there were 1559 students attending school in the Kenan Area: 814 (36.6%) Latino, 913 (41%) African American, 422 (19%) white.<sup>27</sup>

**Wallace Rose Area:** Wallace Elementary (K-5), Rose Hill-Magnolia Elementary (K-5), Charity Middle (6-8), Wallace-Rose Hill High (9-12). In 2013-14 there were 2691 students in the Wallace Rose Area: 1102 (41%) Latino, 857 (31.9%) African American, 643 (23.9%) white.

**East Duplin Area:** BF Grady Elementary (K-8), Beulaville Elementary (K-8), Chinquapin Elementary (K-8), East Duplin High (9-12). In 2013-14 there were 3406 students in East Duplin, 1065 (31.3%) Latino, 400 (11.7%) African American, 1812 (53.2%) white.

**North Duplin Area:** North Duplin Elementary (K-6), North Duplin Junior/Senior High (7-12). There were 1139 students in North Duplin in 2013-14: 540 (47.4%) Latino, 113 (9.9%) African American, 454 (39.9%) white.

DCS also operates a district-wide Early College High School, which in 2013-14 served 171 students, 67 (39.2%) Latino, 42 (24.5%) African American, 58 (33.9%) white.

Given the district's overall demographics (37% Latino, 24% African American, 35% white), an attendance area level analysis using +/- 15% deviation demonstrates racial imbalances in the Kenan Area (high African American, high Latino) and the East Duplin Area (high white). North Duplin is just barely balanced (low African American). Three of the four schools in the East Duplin attendance area are severely racially imbalanced (greater than 20% deviation from the district overall demographics) white; the fourth is severely imbalanced Latino. Three of the

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<sup>27</sup> See <http://www.ncpublicschools.org/fbs/accounting/data/grs14>, and the chart attached hereto at Exhibit 6.

five schools in the adjoining Kenan Area are racially imbalanced high African American/low white; two are severely imbalanced.<sup>28</sup>

When DCS needed new schools in the predominantly white East Duplin Attendance Area, two new schools were constructed to serve that population, BF Grady (1995) and Beulaville (1996). Additionally, substantial renovation and expansion was made to Chinquapin Elementary (1995). Both Chinquapin and Beulaville serve hypersegregated (> 20% deviation from district baseline) white populations.

According to the 2011 DPI Study, both BF Grady and Beulaville are rated Level I: Excellent, which means a life expectancy of 30+ years and “Best quality of construction with flexibility for changing educational programs. Properly maintained.” The 1995 renovations at Chinquapin, which included classrooms (27 teach stations), a media center, and gym/multipurpose room, was also rated Level I. Additionally, both BF Grady and Beulaville comply “with current fire safety standards . . . and standards for handicap access.”<sup>29</sup> Beulaville is over its classroom and dining core capacity; BF Grady is substantially over its classroom, dining core and media center capacity.<sup>30</sup>

The four elementary schools slated to be retrofitted as K-8 programs need significant renovations in the current configuration as K-5. The cafeteria, kitchen, media center, multi-purpose room, and many of the classrooms at Kenansville Elementary are all housed in a single story building built in 1980, which was rated Level II: Good (life expectancy 20-25 years, sound condition, well maintained; adaptable for changing educational programs; can be renovated or modified). Eight additional classrooms were built in 2000 and are rated Level I. DPI pointed out however that many of the heating and cooling system components at Kenansville Elementary

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<sup>28</sup> See attached Ex 6.

<sup>29</sup> See 2011 DPI Report, *supra* n. 20, pp. 27-31.

<sup>30</sup> *Id.*, p. 60.

had never been replaced, the kitchen is not air conditioned, the kitchen hood air system was not in working condition, and the facility does not have a fire suppression system.<sup>31</sup> The music room and computer lab are undersized, and the school needs to add a chair lift or ramp to the stage area to comply with the American Disabilities Act (ADA) standards. The building is not large enough to serve the Pre-K population, which must be housed in a modular unit.<sup>32</sup>

Rose-Hill Magnolia's administrative office, classrooms, media center, cafeteria, multi-purpose room are all housed in the same single-story building built in 1972, which DPI rated Level II in 2011. Some additional classrooms added in a separate single story building built in 1999 were rated Level I. DPI specifically noted the lack of air conditioning in the kitchen, the non-functioning kitchen hood, HVAC issues that "result in a failure to provide a constant supply of fresh air to all occupied spaces as required by the NC State Building Code, and lack of a fire suppression system. DPI also noted that several of the classrooms are undersized, there is no ramp to the multi-purpose room, and the 1972 portion of the schools does not comply with the ADA.<sup>33</sup>

The administrative space, most of the classrooms, media center, cafeteria, and multipurpose room at Wallace Elementary are all in the same single story building built in 1975, rated Level II. A classroom addition with 7 teaching stations (there are 30 in the original building) was built in 2000 and is rated Level I. As with the other elementary schools proposed for retrofit to K-8, Wallace Elementary School kitchen is not air conditioned, the kitchen does not have a working kitchen hood, nor does the facility have a fire suppression system. Many of the classrooms at Wallace are oddly shaped, with some rooms being oversized and others (including the Exceptional Children's classroom and the computer lab) undersized. The larger

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<sup>31</sup> See 2011 DPI Report, *supra* n. 20, pp. 13-14.

<sup>32</sup> *Id.*, pp. 13-15.

<sup>33</sup> *Id.*, pp 16-17.

classrooms are partitioned using wood dividers. The building also has ADA compliance issues.<sup>34</sup>

The main building at Warsaw Elementary, rated Level II, was built in 1974 and houses the administrative office, most of the classrooms (28 teach stations), the media center, cafeteria, and multipurpose room. An additional single story building was built in 2000 with 2 extra classrooms (Level I). DPI reported that the restrooms throughout the facility do not meet ADA requirements; there are not enough restroom facilities for faculty, and the kitchen lack air conditioned and a working kitchen hood. There is no fire suppression system in the building. Like Rose Hill-Magnolia, the HVAC system does not provide a constant supply of fresh air to all occupied spaces. Additionally, several of the classroom areas are “oddly shaped spaces.”<sup>35</sup>

The board’s adopted plan will move the majority non-white students who attend or would attend Warsaw (52% Latino, 59% African American, 9.9% white), E.E. Smith (45% Latino, 32% African American, 19.7% white) and Charity (36.6% Latino, 36% African American, 24% white) middle schools into these retrofitted facilities, with their aging and in many cases outdated infrastructure. The more recent construction at these schools all focused on some limited additional classroom space; not on renovating or bringing up to code the core facilities which will necessarily serve the 6-8 grade students to be added to these schools. The board’s decision in adopting the K-8 facilities plan will have a racially and ethnically discriminatory impact on African American and Latino children, in that they will be subjected to inequities in school facilities and resources as compared to the predominantly white student population that attends newer, safer, modern, and code-compliant facilities.

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<sup>34</sup> *Id.*, pp. 18-19.

<sup>35</sup> *Id.*, pp 21-22.

## 2. The Plan Increases Racial Segregation Among Schools in Duplin County

Demographic data for each individual school is attached as Exhibit 6. The data demonstrates that the board's adopted facilities plan will have an unjustified disparate effect on non-white students. According to the most current demographic information (2013-2014) provided by DCS and collected by DPI, 9 out of 15 (60%) schools are racially imbalanced, and 7 of those (47%) are severely imbalanced (>20% from district average). Currently, there are just 6 schools in the district within the +/- 15% demographic deviation, and two of those are just outside that range (Wallace-Rose Hill High is just above +15% deviation for African American students; E.E. Smith Middle School is just below -15% for white students). Additionally, according to DPI, 50% of all students in Duplin County (4725 out of 9460) attend racially imbalanced schools.<sup>36</sup>

The board's adopted facilities plan, which according to the board will be implemented without any changes to the current school assignment areas, results in the closing of two of the six (33%) racially balanced schools in the district. While the overall percentage of racially isolated schools will remain the same (60%, 8 of 12), the percentage of severely imbalanced schools increases to 50% (6 of 12). Perhaps most importantly, the adopted facilities plan will also increase the *number of students* attending racially imbalanced schools, as a portion of the students from Charity and E.E. Smith (both currently balanced) will be sent to Rose Hill-Magnolia Elementary, which is already hypersegregated. Additionally, segregation in Warsaw Elementary and Warsaw Middle will be further entrenched, and students in the area will never be

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<sup>36</sup> For purposes of this analysis, the Duplin Early College has not been included, since it is a districtwide program that is unaffected by attendance area boundaries. It is worth noting however that the Early College program, though small, is very diverse and racially balanced, suggesting that similar programs—like magnet schools, of which there are none in Duplin—might be a viable strategy for addressing the perpetuation of racially isolated schools, rather than the new facilities plan, which only reinforces segregated education.

afforded the diverse educational environment that a consolidated middle school plan, like the one recommended by DPI but rejected by the board, would have provided.

3. Respondent cannot show that its discriminatory facilities plan is justified by any educational necessity.

At the time the board selected the facilities plan, it rejected reasonable, less-discriminatory alternatives before it. As noted above, for at least four decades, and most recently as 2011, the North Carolina Department of Public Instruction recommended constructing new, consolidated middle schools in the county to replace aging middle school facilities. This alternative would most effectively utilize DCS current resources, manage growth, and ensure equity among schools in the district. Although the board has claimed that there will be some cost savings realized under the adopted plan (primarily through the purported reduction in operational and personnel costs, including the layoff of a principal, school nurse or counselor), neither the board nor any other entity has presented any consistent cost estimates to support that claim. In fact, in the information included in the Hite Report, the middle school alternative represents substantially *lower* costs for the district (conversion of four K-5 schools to K-8 = \$48,042,860; new middle school for EE Smith and Warsaw and renovation of Charity= \$22,378,533; two new middle schools ≈ \$35,021,657).<sup>37</sup> The evidence presented to and by the board during this process demonstrates that the so-called cost savings justification is pretext.

The board also failed to give sufficient contextual analysis to the middle school alternative. The DPI 2011 report highlights critical issues of overcrowding, particularly in the K-8 schools in the disproportionately white East Duplin attendance area. These issues could be effectively addressed through the consolidated middle school plan and by moving all or some 6-8 graders out of these schools and into the new middle schools. This not only would free up space

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<sup>37</sup> Hite Report, *supra* n. 22, “Capital Project Cost Projections.”



in the elementary schools, but would also have the effect of reducing racial segregation within the district. The board's selection of what it calls a "K-8 plan,"<sup>38</sup> which will result in the continued racial isolation of both white and non-white students and which demonstrates that the board is more willing to keep white students in overcrowded facilities and trailers rather than meaningfully integrate them with students of color, also demonstrates pretext, especially in the face of the practicable, less-discriminatory alternative of the middle school plan.

Finally, there is the fact that for over 40 years the board had publicly and repeatedly been advised, and in turn represented to the public, that the district's long-term plan was to replace the aging middle schools with new facilities. A K-8 alternative was not part of any of the School Survey Reports, and in fact DPI recommended in 2011 that *all* schools follow the K-5, 6-8, 9-12 configuration.<sup>39</sup> The board offered no substantive or reasonable justification for rejecting this recommendation or for preferring the K-8 option.

## **II. CONCLUSION**

The DCS board's adoption of the 2014 K-8 facilities plan will have a significantly disparate impact on African American and Latino students, and constitutes illegal discrimination based on race, color, and national origin specifically prohibited by Title VI of the Civil Rights Act of 1964 and its implementing regulations. Complainant respectfully requests that the Department of Education Office of Civil Rights

- a) fully investigate these claims;
- b) compel Duplin County Schools and the Duplin County Board of Education to stop any implementation of the discriminatory K-8 Facilities Plan;

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<sup>38</sup> The plan actually only selectively implements the K-8 model, leaving North Duplin Jr./Sr. High.

<sup>39</sup> See 2011 DPI Report, *supra* n. 20, p. 8.

- c) require that Duplin County Schools and the Duplin County Board of Education implement less discriminatory alternatives to the K-8 facilities plan, and
- d) ensure that any student assignment or facilities plan adopted and implemented by Duplin County Schools and the Duplin County Board of Education does not disproportionately deny equal educational opportunities to African American or Latino students.

Respectfully submitted this the 24th day of December, 2014

UNC CENTER FOR CIVIL RIGHTS

 Mark Dorosin

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## **Index of Attached Exhibits**

1. Complainant Correspondence
2. “Duplin County 1979-1980”, School Survey Report, North Carolina Department of Public Instruction Division of School Planning
3. “Duplin County: An Update 1982-1983,” North Carolina Department of Public Instruction, Division of School Planning
4. 1989-1990 Duplin County School Survey Report, North Carolina Department of Public Instruction Auxiliary Services, Division of School Facility Services School Planning
5. “Duplin County Schools—draft report,” SfL+A, 2005.
6. 2013-2014 Student Demographics By School