Legal Aid of North Carolina, Inc.
Advocates for Children's Services

Mailing Address: PO Box 2101, Durham, NC 27702
Physical Address: 201 West Main Street, Suite 400, Durham, NC 27701
919.226.0052/0053 • Fax 919.226.0566 • www.legalaidnc.org/acs

Lewis Pitts, Esq. Managing Attorney | Erwin Byrd, Esq. Staff Attorney | Jason Langberg, Esq. Equal Justice Works Fellow | Peggy Nicholson, Esq. Powell Fellow | Jennifer Richelson, Esq. Push Out Prevention Project Fellow | Angela Nikolitch, NCCP Paralegal

June 12, 2012

VIA FACSIMILE (202-453-6021) AND U.S. MAIL

Office for Civil Rights
District of Columbia
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Re: Title VI Complaint filed against Wake County Public School System

To Whom It May Concern:

Please consider this letter a Complaint filed on behalf of students with limited English proficient ("LEP") parents against Wake County Public School System ("WCPSS" or "the District").[1] Complainants allege that WCPSS has discriminated against them on the basis of national origin and has engaged in practices that have the effect of discrimination in violation of its obligations under Title VI of the Civil Rights of 1964 ("Title VI") and its implementing regulations, 42 U.S.C. § 2000d; 34 C.F.R. pt. 100. Complainants, through their respective counsel, file this Complaint in their individual capacities and on behalf of all other similarly situated students and their parents.

As set forth below, Complainants allege that WCPSS fails to provide adequate translation services to Latino students and their LEP parents. Complainants maintain that despite WCPSS having notice that their parents do not speak English and speak Spanish as their primary language, WCPSS repeatedly failed to provide their parents with important written documents in Spanish relating to long-term suspension and the provision of special education services that the District routinely provides to English-speaking parents in English. When a student receives a long-term suspension recommendation or becomes involved in special education, that student's parent has a right to certain written documentation to ensure the student's and parent's education rights are preserved. Federal law requires that schools provide LEP parents certain written materials in their primary or native language. The District's failure to do so constitutes discrimination against Complainants and their parents in violation of Title VI.

[1] The contact information for the District is as follows: Wake County Public School System, 5625 Dillard Drive, Cary, NC 27518, (919) 431-7400.

Advocates for Children's Services ("ACS"), a statewide project of Legal Aid of North Carolina, represents three WCPSS students, M.H., T.H., and K.R., and submits this Complaint on their behalf. The Southern Poverty Law Center ("SPLC"), which has a long history of fighting to improve educational outcomes for disadvantaged and vulnerable children, joins ACS in representing these individual Complainants, their parents, and further, in its sole capacity, represents all other similarly-situated students and LEP parents.

STATEMENT OF JURISDICTION

WCPSS is a recipient of federal financial assistance and is therefore subject to the anti-discrimination prohibitions of Title VI. WCPSS's operating budget for the 2011-12 school year includes $145,808,338 in federal funding.[2] This Complaint is being filed within 180 days of the Complainants and their parents receiving documents in English in violation of their rights to have the documents provided in their primary language. Complainants have not filed a lawsuit raising these claims in state or federal court. This Complaint has not been investigated by another federal, state, or local civil rights agency or through the WCPSS internal grievance procedures, including due process proceedings.

COMPLAINANTS

Complainants M.H., T.H., and K.R. are Latino students enrolled in WCPSS. Their parents speak Spanish as their primary language and understand little to no English. During the 2011-12 school year, all three students were recommended for long-term suspension for the rest of the school year. During the same school year, all three students also were served by the WCPSS Special Education Services Department: M.H. and T.H., as students with disabilities eligible for special education and related services; and K.R., as a student referred for evaluation but ultimately found ineligible for special education services.

As explained in detail below, despite having notice that M.H.'s, T.H.'s, and K.R.'s parents do not speak English and speak Spanish as their primary language, WCPSS failed to provide the Complainant's parents with the following important documentation in Spanish:

- Adequate written notices for long-term suspension recommendations;
- Other important written documents relating to long-term suspension, including individualized information on the student's suspension and alternative education options and next steps for appealing the suspension or enrolling in alternative education;
- Prior written notice of meetings relating to the special education process; and

[2] Adopted Budget 2011-12, Wake County Public School System at 3, http://www.wcpss.net/budget/2011-12-official-budget/2011-12-adopted-budget.pdf (last visited May 8, 2012).

- Written information relevant to the provision of special education services to their child including, but not limited to, copies of Individualized Education Programs (IEPs), IEP Team meeting minutes, results of evaluations, and progress reports, all of which contain information critical to a parent's ability to give fully informed consent and to participate in the special education process.

1. M.H.

M.H. is a 12-year-old, sixth grade, Latino student at Holly Ridge Middle School ("Holly Ridge") in WCPSS. M.H. has a learning disability and an IEP. M.H. speaks English and Spanish and lives with his mother, E.H., whose native language is Spanish. E.H. does not speak English and understands very little written or spoken English. Spanish is the primary language spoken in M.H.'s household.

On February 3, 2012, E.H. received a call from Ms. Matthews, an English as a second language ("ESL") teacher at Holly Ridge. Ms. Matthews told E.H. in Spanish that M.H. had been short-term suspended with a recommendation for long-term suspension for the rest of the year.

That same day, E.H. went to the school to talk with Principal Brian Pittman. Ms. Matthews interpreted for E.H. Principal Pittman told E.H. that M.H. was being recommended for long-term suspension for the rest of the year. While E.H. was at the school, she was asked to sign paperwork that was entirely in English. E.H. could not understand the documents and said she would not sign it. The school gave E.H. copies of the paperwork, which included: 1) a letter from the school in English with information on the policies M.H. was alleged to have violated, his special education rights, and his right to appeal the suspension; 2) a "Notice of Suspension" template in English that was filled out in English and contained a detailed narrative of the alleged incident; 3) a "Notice of Suspension" template in Spanish that was not filled out; 4) a "Request for Appeal Hearing Form" in English; 5) a "Request for Appeal Hearing Form" in Spanish; and 6) a "DEC 5(a) Prior Written Notice" form in English that contained information on E.H.'s special education rights under federal and state law, including her right to be notified when changes are made to M.H.'s education program and details about an upcoming manifestation meeting.[3]

Because the individualized information regarding M.H. was in English, E.H. could not understand these documents and had to seek translation help from M.H.'s afterschool tutor, who does not work for WCPSS and is not fluent in Spanish.[4]

[3] *See* Exhibit 1(A) (Notice of Long-Term Suspension and Other Important Documents Relating to Suspension and Special Education Rights Given to M.H.'s Mother by WCPSS on February 3, 2012).

[4] Prior to M.H.'s long-term suspension in February 2012, E.H. also received written Parent Notification forms from WCPSS on several occasions intended to notify her of M.H.'s removal from regular classes for disciplinary reasons. These notifications were provided to E.H. in English only. *See* Exhibit 1(B) (Written Parental Notifications Regarding Discipline that WCPSS Provided to M.H.'s Mother in English Only).

2. T.H.

T.H. is a ninth grade, Latina student at Athens Drive High School ("Athens Drive") in WCPSS. Athens Drive and WCPSS have long been aware that T.H.'s mother does not speak English and understands very little written or oral English.[5] T.H. is a child with a learning disability and has an IEP.[6] T.H.'s IEP has never been provided to T.H.'s mother in Spanish.[7]

On November 14, 2011, T.H. was allegedly caught smoking marijuana on campus. She was recommended for long-term suspension for the remainder of the school year, but was offered a drug treatment program ("Alternative Counseling Education" or "ACE" program) as an alternative. A letter and a "Notice of Student Suspension from School," written solely in English, were sent to T.H.'s mother on November 16, 2011. The letter contained information about the recommended punishment, the right to appeal, the ACE program, and the consequences of not appealing the suspension or enrolling in the ACE program. The "Notice of Student Suspension from School" contained information regarding the appeals process, T.H.'s rights during the initial 10 school days of the suspension, and a description of the alleged offense.[8] Included in the packet were generic handbooks in Spanish about the rights of parents of special education students and about due process policies and procedures.

A manifestation determination review ("MDR") was held on November 21, 2011. The "Invitation to Conference/Prior Notice" was sent to T.H.'s mother in English. Following the meeting, the completed forms reflecting the outcomes of the process were provided to the parent in English.

T.H. accepted the offer of the ACE program and was allowed to return to school after a five-day suspension. If she failed to successfully complete the ACE program, the long-term suspension would be re-activated.

T.H. was successfully participating in the ACE program and passing her drug tests. However, on January 20, 2012, the day before the last ACE program class, T.H. was reported to

[5] *See* Exhibit 2(B).

[6] Although not at issue here, the special education services provided to T.H. are ineffective and further evidence of the poor quality of services that are able to persist when a student's parent is not able to adequately participate in the provision of special education services to his or her child. Prior to her suspension, the only special assistance T.H. was receiving was "Mandatory Guided Study" during lunch and "Curriculum Assistance" as a class, despite her long record of learning difficulties and academic failure. Both of these interventions are generic and not tailored specifically for students with learning disabilities. Since being long-term suspended, the only education T.H. is receiving is four hours per week of "home/hospital" (or "homebound") instruction. For two consecutive years, the North Carolina Department of Public Instruction (DPI), Exceptional Children Division found that WCPSS violated state and federal laws protecting long-term suspended students with disabilities by providing students with only four hours per week, on average, of homebound instruction during their suspensions. Additionally, at the time of her suspension, T.H. had not been re-evaluated in eight or nine years.

[7] *See* Exhibit 2(C).

[8] *See* Exhibit 2(A).

have possibly re-offended and failed her final drug test. The program notified Athens Drive of the negative drug test.

On February 3, 2012, Athens Drive Assistant Principal Stallworth called T.H.'s mother. He explained that T.H.'s long-term suspension had been re-activated. T.H.'s mother understood some, but not all, of what he said, and was unable to ask questions. T.H.'s mother did not understand that Mr. Stallworth was asking her to come to the school to pick up T.H. T.H.'s 11-year-old brother, who was home sick from school, had to interpret that part of the conversation.

On February 13, 2012, T.H.'s mother received a letter in the mail from Athens Drive regarding T.H.'s absences from school. Even though T.H. was suspended, Athens Drive was marking T.H. with an unexcused absence each day that she did not attend school, thereby activating the provisions of the state compulsory attendance statute.[9] The letter was solely in English.[10]

On February 15, 2012, a letter was mailed to T.H.'s mother, which she received on February 17, 2012 (10 school days after T.H. was sent home).[11] The letter indicated that the long-term suspension recommendation from November 2011 was being reactivated and that T.H. could enter the Second Chance Online Resource for Education ("SCORE") program and/or appeal the long-term suspension.[12] The letter was solely in English.

[9] *See* N.C. Gen. Stat. § 115C-378(e) ("The principal or the principal's designee shall notify the parent, guardian, or custodian of his or her child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal or the principal's designee shall notify the parent, guardian, or custodian by mail that he or she may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education.").

[10] *See* Exhibit 2(C).

[11] *See* WCPSS Board Policy R&P 6500(C) ("When a recommendation for long-term suspension is made, the principal must provide written notice to the parents of the recommendation for long-term suspension, by certified mail, facsimile, e-mail, or any other written method reasonably designed to achieve actual notice. The notice shall be provided to the parents by the end of the work day during which the recommendation for long-term is made when reasonably possible, and in no event later than the end of the following workday."), *available at* http://www.wcpss.net/policy-files/series/policies/6500-rp.html.

[12] The SCORE program is an online alternative education program that was started during the 2009-10 school year. Students participate via computer for four to six hours per day. There are no teachers in the room with students—all instruction is virtual. Students participate in the program from home or at one of six sites located at community-based organizations. Participating students are not provided with free transportation or free and reduced-price lunch. There are no honors, advanced placement, or elective classes. There is no group work, hands-on learning, or physical activity. Students are not allowed to participate in extracurricular activities. Most of the students in the program fail the end-of-grade and end-of-course exams.

3. K.R.

K.R. is a 15-year-old, ninth grade student at Garner High School ("Garner").[13] K.R. was identified as a LEP student until June 2011, when he was exited from the LEP program. Spanish is the primary language spoken in K.R.'s household.

K.R. lives with his mother, K.C., and his father in Wake County. K.C.'s native language is Spanish; she understands very little English and speaks even less. K.R.'s father speaks and understands more English than K.C, but his father's native and primary language is Spanish. K.R.'s mother is the parent the school contacts when issues arise with K.R. at school. Garner is aware that Spanish is the native language of K.R.'s mother and father.[14]

On October 21, 2011, K.R. was charged with a possession of a small amount of marijuana on campus. He was recommended for long-term suspension for the remainder of the school year, but was offered a drug treatment program ("Alternative Counseling Education" or "ACE" program) as an alternative. A letter, a "Notice of Suspension," and several attachments were sent to K.R.'s mother solely in English.[15] A bilingual therapist, working with the family through a community mental health organization, spoke to the school on behalf of K.C. and informed them that K.C. does not understand English and could not understand the documents the school had sent. The school responded by giving K.C. a copy of the generic school handbook in Spanish, but did not provide her with a written translation of any of the notices specific to K.R. With help from the therapist, K.C. was able to enroll K.R. in the ACE Program so that he could return to school after a 10-day suspension. K.R. successfully completed the ACE Program after his 10-day suspension.

On November 3, 2011, K.C. submitted a written referral to the school requesting that K.R. be evaluated for eligibility for special education services because she had concerns about his ability to read and write. An IEP Team meeting was convened on December 5, 2011. No testing or evaluations had been conducted prior to the meeting, and the Team decided that no further testing was necessary and stopped the special education process for K.R. Although an interpreter was present at the meeting, all of the written information from the meeting was provided to K.R.'s mother in English only, including the meeting minutes, the "DEC 1/Referral

[13] Garner relies heavily on the use of long-term suspension as a disciplinary response. During the 2008-09 school year, Garner long-term suspended 81 students, the third most of any school in the state. During the 2009-10 school year, Garner long-term suspended 79 students, the second most of any school in the state. During the 2010-11 school year, Garner long-term suspended 63 students, which was more than the vast majority of whole school districts in North Carolina.

[14] This is evidenced by the fact that whenever the school needs to speak with K.R.'s mother, they ask a school counselor who speaks both English and Spanish to interpret the conversation. Furthermore, Ms. Katherine Woody, an Assistant Principal at Garner, stated in K.R.'s suspension appeal hearing (held on March 6, 2012) that she was aware K.R.'s mother speaks Spanish only.

[15] Although K.R.'s mother did not keep the originals, the information typically sent home by WCPSS in these circumstances contains important information about the recommended punishment, the right to appeal, the ACE program, and the consequences of not appealing or enrolling in the ACE program.

Prior Notice," and the "DEC 5/Prior Written Notice."[16] These documents contained important information about K.C.'s due process rights and information on the basis of the Team's decision. K.C. reports that she did not know she had a right to have any input in the meeting and did not realize she could challenge the school's decision.

On February 6, 2012, K.C. received a call from Assistant Principal Woody Garner informing her, in Spanish though an interpreter, that K.R. was short-term suspended from school and being recommended for long-term suspension for the rest of the year. Later that week, on February 10, 2012, K.R.'s mother received a letter from the school dated February 8, 2012. The letter was entirely in English and stated that K.R. had been suspended for 10 days with a recommendation for long-term suspension. The letter provided important information in English, such as a description of the policies K.R. was alleged to have violated and his right to appeal the principal's recommendation. There were also three enclosures: 1) a "Notice of Suspension;" 2) a "Request for Appeal Hearing Form;" and 3) a "Due Process Procedure for Student Suspension Recommendations Exceeding Ten Days."[17] All enclosures were in English. Neither of K.R.'s parents received any of this written information in Spanish.

On February 14, 2012, the Office of Student Due Process sent a letter in English to K.R.'s parents.[18] The letter stated that the Discipline Review Committee had reviewed K.R.'s suspension and decided to offer K.R. enrollment in an alternative education program.[19] The letter also stated that K.R. could still appeal the suspension recommendation and provided information on how to request an appeal. No written information on the Committee's decision, how to enroll K.R. in the alternative education program, or K.R.'s right to appeal the suspension was provided in Spanish to either of K.R.'s parents.

As soon as K.C. learned the school had recommended long-term suspension for K.R., she wanted to appeal. Under state law, a suspension appeal hearing must be held before the long-term suspension is actually imposed (i.e., before the student's 11th day out of school). However, because K.C. was not offered any information in Spanish on her right to appeal, she was unclear on how to invoke her right to appeal and unable to get a hearing scheduled until March 7, a month after K.R.'s suspension began. At the appeal hearing, the hearing panel determined that K.R. should be allowed to return to school rather than be suspended for the rest of the school year. However, because K.R. was not allowed to return to school while K.C. attempted to request and schedule an appeal hearing, the delay in the hearing resulted in K.R. missing 24 days of school.[20]

---

[16] *See* Exhibit 3(A) (Important Special Education Documents that K.R.'s Parents Should Have Received in Spanish from WCPSS). Notably, on these forms, K.R.'s "Ethnicity" is misstated as American Indian/Alaskan.

[17] *See* Exhibit 3(B) (Notice of Long-Term Suspension and Other Important Documents Relating to Suspension sent to K.R.'s parents by WCPSS in February 2012).

[18] *Id.*

[19] *See* N.C. Gen. Stat. § 115C-390.9(a) ("Students who are long-term suspended shall be offered alternative education services unless the superintendent provides a significant or important reason for declining to offer such services.").

[20] *See* Exhibit 3 (K.R. Documents).

DISCRIMINATION CLAIM

WCPSS Has Failed to Develop and Implement a System that Ensures That Important Documents Related to School Discipline and Special Education Services Are Translated into the Parent's Native Language.

Under Title VI, recipients of federal funding may not discriminate against individuals on the basis of national origin.[21] Nor may recipients engage in practices that have the effect of subjecting individuals to discrimination.[22] To prevent discrimination based on national origin, school districts must "adequately notify national origin-minority group parents of activities which are called to the attention of other parents."[23] Furthermore, "'[n]otification must be sufficient so that parents can make well-informed decisions about the participation of their children in a district's programs and services."[24] The Office for Civil Rights ("OCR") has found that "Title VI is violated if . . . parents whose English is limited do not receive school notices and other information in a language they can understand."[25]

OCR analyzes the adequacy of notifications to national origin minority group parents using a four-factor balancing test: 1) the number or proportion of LEP individuals likely to encounter the program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.[26] As explained in detail below, applying this test to school discipline and special education services in WCPSS reveals not only that LEP parents have a right to receive notices of long-term suspension[27] and special education documents[28] concerning

---

[21] 42 U.S.C. § 2000d.
[22] 42 U.S.C. § 2000d-1; 34 C.F.R. § 100.3(b)(2).
[23] Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595 (May 25, 1970) (former Department of Health, Education, and Welfare Memorandum clarifying that Title VI and the regulations require school districts to "take affirmative steps to rectify the language deficiency in order to open its instructional program to [LEP] students"), *available at* http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html.
[24] The Provision of an Equal Education Opportunity to Limited-English Proficient Students U.S. Dep't of Educ., Office for Civil Rights (Revised Aug. 2000), http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html.
[25] *Id.*; *see also* Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency, U.S. Dep't of Educ., Office for Civil Rights (Sept. 27, 1991), http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html.
[26] OCR follows the test set forth in Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,459 (June 18, 2002) [hereinafter *Title VI Guidance*]. In the Title VI Guidance, the Department of Justice notes its "responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance." *Id.* at 41,457-41,458; *see also* Wade S. Kolb III, *When "Practicable" and "Feasible" May Mean "Mandatory": The Rights of Limited English Proficient Parents*, UNC School of Government, School Law Bulletin, Sept. 2010, at 5, http://sogpubs.unc.edu/electronicversions/pdfs/slb1002.pdf.
[27] *See* 42 U.S.C. § 2000d; N.C. Gen. Stat. § 115C-390.8(b); WCPSS Board Policy 6500(B)(4), *available at* http://www.wcpss.net/policy-files/series/policies/6500-bp.html.
[28] *See* 42 U.S.C. § 2000d; 20 U.S.C. §§ 1400 *et seq.*; N.C. Gen. Stat. §§ 115C-106.1 *et seq.*; WCPSS Board Policy 6220 and 6220.1, *available at* http://www.wcpss.net/policy-files/series/policies/6220-bp.html.

parental consent, notice, and participation in Spanish, but also that WCPSS has blatantly and egregiously discriminated against Complainants by providing these documents solely in English.

1. The Hispanic and LEP Student Populations in WCPSS Exceed Five Percent.

OCR has determined that "[t]he greater the number or proportion of these LEP persons, the more likely language services are needed."[29] DOJ Guidance suggests that providing written translation services for any LEP group that constitutes five percent of the eligible population will be considered strong evidence of compliance.[30]

WCPSS is the largest school district in North Carolina and the sixteenth largest school district in the United States.[31] During the current 2011-12 school year, there are 21,960 Hispanic or Latino students, 11,040 LEP students, and 5,913 ESL students in WCPSS.[32] Hispanic students constitute 15.0% of the total student population, and LEP students constitute 7.5% of the total student population.[33]

In North Carolina, each school district must administer a home language survey "to every student at the time of enrollment" and maintain the survey in the student's permanent record.[34] WCPSS provides its own home language survey to families.[35] Therefore, WCPSS should know the parents whose primary language is Spanish and the total number of such parents. As that information is not publicly available, we are unable to provide it at this time.

2. LEP Students in WCPSS Frequently Come in Contact with School Discipline Procedures and Special Education Services.[36]

a. *School Discipline*

Hispanic students in WCPSS are frequently and disproportionately suspended. During the 2010-11 school year:

- Hispanic students received 2,631 short-term suspensions (i.e., suspensions lasting between one and 10 school days) and 122 long-term suspensions (i.e., suspensions lasting 11 or more school days).[37]

[29] *Title VI Guidance*, *supra* note 26, at 41,459.
[30] *Title VI Guidance*, *supra* note 26, at 41,464.
[31] Demographics, WCPSS, http://www.wcpss.net/demographics/ (last visited May 8, 2012).
[32] *Id.*
[33] *Id.*
[34] N.C. Admin. Code Title 16 Ch. 6 Subch. D Section 0106.
[35] Home Language Survey, Wake County Public School System, http://www.wcpss.net/forms/student-assignment/individual/home-language-survey.pdf (last visited May 8, 2012).
[36] WCPSS does not provide data on the number or percentage of LEP parents or guardians with children who have been suspended by WCPSS or served by the WCPSS Special Education Services Department.
[37] North Carolina Department of Public Instruction, Annual Study of Suspensions and Expulsions, at 81 (2010-11), http://www.dpi.state.nc.us/docs/research/discipline/reports/consolidated/2010-11/consolidated-report.pdf.

- 1,314 LEP students were suspended at least once.[38]
- The short-term suspension rate for Hispanic students was 2.6 times greater than the rate for White students.[39]
- The average length of short-term suspensions for Hispanic students was 11.6% greater than the length for White students.[40]
- The long-term suspension rate for Hispanic students was 3.6 times greater than the rate for White students.[41]
- The average length of long-term suspensions for Hispanic students was 36.7% greater than the length for White students.[42]
- Hispanic students were punished more severely than similarly situated White students.[43] (See Table 1 below.)

Table 1: First Time "Offenders" Who Received a Short-Term Suspension[44]

Offense	Hispanic	White
Disruptive Behavior	25.9%	13.3%
Aggressive Behavior	32.3%	9.2%
Cell Phone Use	71.8%	29.9%

Table 2: Hispanic Students Who Received at Least One Suspension[45]

School	2009-10	2010-11
Athens Drive High School	39	32
Garner High School	51	65
Holly Ridge Middle School	9	9

Table 3: Hispanic Students with a Disability Who Received at Least One Suspension[46]

School	2009-10	2010-11
Athens Drive High School	6	5
Garner High School	15	16
Holly Ridge Middle School	5	2

[38] *See* Exhibit 4 (Annual Report of Student Suspensions (2009-10) and Annual Report of Student Suspensions (2010-11), WCPSS, Presented at the WCPSS Economically Disadvantaged Student Performance Task Force, Oct. 6, 2011).
[39] Ken Gattis, North Carolina Department of Public Instruction, Presentation at the WCPSS Economically Disadvantaged Student Performance Task Force (Oct. 6, 2011), *available at* http://www.wcpss.net/e-d-task-force/10-6-11/Gattis.ppt#257,1,NC Schools Dropout Data.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] No first time offenders were long-term suspended or expelled for these offenses. Therefore, the most severe punishment was short-term suspension.
[45] *See* Exhibit 4 (Annual Report of Student Suspensions (2009-10) and Annual Report of Student Suspensions (2010-11), WCPSS, Presented at the WCPSS Economically Disadvantaged Student Performance Task Force, Oct. 6, 2011).
[46] *Id.*

Table 4: LEP Students Who Received at Least One Suspension[47]

School	2009-10	2010-11
Athens Drive High School	65	32
Garner High School	40	26
Holly Ridge Middle School	4	8

b. *Special Education Services*

The WCPSS Special Education Services Department serves a large number of Hispanic and LEP students. In 2009, WCPSS provided special education services to 18,984 students.[48] Of those students, 1,975 (10.9%) were Hispanic and 1,500 (8.3%) were LEP.[49] These numbers only include students determined to be eligible for special education services and do not account for Hispanic and/or LEP students who were evaluated for special education services but found ineligible for some reason.

3. School Discipline Procedures and Special Education Services Are Important Components of a Student's Ability to Receive an Education.

a. *School Discipline*

School discipline is undeniably an important aspect of a child's educational experience. Although there is no federal constitutional right to an education,[50] the United States Supreme Court repeatedly has emphasized the importance of public education.[51] Suspension prohibits

[47] *Id.*
[48] Demographics, WCPSS, *available at* http://www.wcpss.net/demographics/reports/book10/Ve-SpEd.pdf (last visited May 15, 2012).
[49] *Id.*
[50] *San Antonio v. Rodriguez*, 411 U.S. 1, 35 (1973).
[51] *See e.g.*, *Plyler v. Doe*, 457 U.S. 202, 221 (1982) ("In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."); *Ambach v. Norwick*, 441 U.S. 68, 76 (1979) ("The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions."); *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) ("[A]s…pointed out early in our history,…some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society."); *School District of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) ("Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government."); *Brown v. Board of Ed. of Topeka, Shawnee County, Kansas*, 347 U.S. 483, 493 (1954) ("Today, education is perhaps the most important function of state and local governments . . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted."). Additionally,

students from obtaining their education, and suspended students face devastating consequences. The United States Supreme Court has noted that suspension can "seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment."[52] National organizations, such as the American Academic of Pediatrics, the American Psychological Association, and the National Association of School Psychologists have found that out-of-school suspensions can increase a student's likelihood of delinquent activity, drug use, mental health problems, academic failure, and dropping out.[53]

WCPSS students recommended for long-term suspension face the possibility of being excluded from school for 11 school days or more.[54] Most recommendations for long-term suspension in WCPSS are for the rest of the school year. During the 2010-11 school year, the average length of long-term suspensions for Hispanic students was 50 school days—more than a quarter of the total school year.[55] Therefore, it is critical that all LEP parents have a complete understanding of the right to challenge a suspension and the information necessary to do so.

"Where laws and regulations require parental consent, participation, or notice, language services for LEP parents may be imperative."[56] Students have a "legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required

---

in North Carolina, every child must have "an opportunity to receive a sound basic education" in public schools. *See* N.C Const. Art I, § 15; N.C. Const. Art. IX, § 2; *Leandro v. State*, 346 N.C. 336, 347 (1997) (a sound basic education is "one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society."). North Carolina school districts must identify "at-risk" students and address their needs with additional educational resources "in an effort to enable them to compete among their non 'at-risk' counterparts and thus avail themselves of their right to the opportunity to obtain a sound basic education." *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 637 (2004); N.C. Gen. Stat.. § 115C-105.41 ("Students who have been placed at risk of academic failure; personal education plans"). Included in the North Carolina Supreme Court's definition of at-risk students are students who "show limited proficiency in English" and students who "are a member of a racial or ethnic minority group[.]" *Hoke County Bd. of Educ.*, 358 N.C. at 637 n.16.

[52] *See Goss v. Lopez*, 419 U.S. 565, 575 (1975).

[53] *See* Jane Conoley, et al., American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations* (2006); American Academy of Pediatrics, Committee on School Health, *Out-of-School Suspension and Expulsion*, 112(5) Pediatrics 1206-07 (2003); National Association of School Psychologists, *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers* (2001).

[54] *See* WCPSS Board Policy 6410(B), *available at* http://www.wcpss.net/policy-files/series/policies/6410-bp.html.

[55] Dr. Ken Gattis, NC Department of Public Instruction, Presentation to the WCPSS Economically Disadvantaged Student Performance Task Force, Oct. 6, 2011.

[56] Kolb, *supra* note 26, at 7.

by that Clause."[57] WCPSS students facing long-term suspension have many due process rights, including the right to receive written notice of the suspension.[58] The North Carolina school discipline statute requires written notice of long-term suspension to be provided to the Complainant parents in Spanish.[59] Importantly, the new statute, which was signed into law by Governor Beverly Perdue less than a year ago, clarified the notice requirement for LEP parents:

> When school personnel are aware that English is not the primary language of the parent or guardian, the notice shall be written in both English and in the primary language of the parent or guardian when the appropriate foreign language resources are readily available. All notices described in this section shall be written in plain English, and shall include the following information translated into the dominant non-English language used by residents within the local school administrative unit:
>
> > (1) The nature of the document, i.e., that it is a long-term suspension notice.
> > (2) The process by which the parent may request a hearing to contest the long-term suspension.
> > (3) The identity and phone number of a school employee that the parent may call to obtain assistance in understanding the English language information included in the document.[60]

WCPSS Board Policy also requires that notice be provided in the parent's primary or first language when the appropriate foreign language resources are readily available.[61] The importance of parental notice when a student is recommended for long-term suspension in North Carolina is evident.

b. *Special Education Services*

The importance of parental consent, participation, and notice in the special education context is clear. The special education services provided to students in WCPSS are mandated by the Individuals with Disabilities Education Act ("IDEA"), a federal effort to promote the education of students with disabilities and provide them with access to a free and appropriate education ("FAPE").[62] The IDEA represents a Congressional response to the fact that without such protections in place, a majority of children with disabilities in the United States would be

---

[57] *See Goss*, 419 U.S. at 574.
[58] *See Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972).
[59] N.C. Gen Stat. § 115C-390.8(b).
[60] *Id.*
[61] WCPSS Board Policy 6500(B)(4) *available at* http://www.wcpss.net/policy-files/series/policies/6500-bp.html; WCPSS Board Policy R&P Note 1-2, *available at* http://www.wcpss.net/policy-files/series/policies/6500-rp.html.
[62] 20 U.S.C. §1400 *et seq.*

"either totally excluded from schools or . . . sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'"[63]

Under the discrimination analysis employed by OCR, "decisions by a Federal, state, or local entity to make a certain activity compulsory . . . can serve as strong evidence of the program's importance."[64] In accepting IDEA money for special education programs, WCPSS agreed to abide by its mandate that special education and related services be provided to every qualifying student with a disability in compliance with federal law. Both the North Carolina Department of Public Instruction and the Wake County Board of Education have incorporated the federal procedural requirements into their own policies.[65]

The laws and regulations outlined under IDEA require parental consent, participation, and notice, suggesting that language services for LEP parents are imperative to complying with federal law in the special education context.[66] Indeed, IDEA recognizes the importance of language services in these contexts by giving LEP parents specific rights.[67] First, IDEA defines "consent" to mean "that [t]he parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication."[68] This definition applies to the entire act, so wherever "consent" is required, that consent must be in the parent's native language.[69] Second, IDEA specifies that whenever notice to parents is required, "the notice . . . must be . . . provided in the native language of the parent . . . unless it is clearly not feasible to do so."[70] Lastly, IDEA makes explicit provision for the involvement of LEP parents in the development of the IEP. The act requires that in IEP Team meetings, a local educational agency (LEA) "must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for parents . . . whose native language is other than English."[71] Parents must also receive, at no cost, a final copy of the IEP.[72]

---

[63] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179 (1982) (quoting H.R. Rep. No. 94-332, at 2 (1975)).
[64] *Title VI Guidance*, *supra* note 26, at 41,460.
[65] *See Policies Governing Services for Children with Disabilities*, Department of Public Instruction, Exceptional Children Division (Amended June 2010), *available at* http://www.ncpublicschools.org/docs/ec/policy/policies/policies-62010.pdf; WCPSS Board Policy 6220 and 6220.1, *available at* http://www.wcpss.net/policy-files/series/policies/6220-bp.html.
[66] Kolb, *supra* note 26, at 7.
[67] *Id.* at 14.
[68] 34 C.F.R. § 300.9(a) (2009). The regulations also define "native language" as "[t]he language normally used by the individual." *Id.* § 300.29(a)(1).
[69] The IDEA requires a parent to give consent to the child's initial evaluation, which determines whether the child is eligible for special education. 34 C.F.R. § 300.300(a) (2009). If a child is found eligible, the parent must consent before any services are provided. *Id.* § 300.300(b). A parent must also consent before a child is reevaluated. *Id.* § 300.300(c).
[70] 34 C.F.R. § 300.503(c)(ii) (2009). IDEA requires that notice be provided whenever an LEA plans to evaluate a child, reevaluate a child, change the child's educational placement, initiate special educational services, or change the special educational services already provided. *Id.* § 300.503(a).
[71] *Id.* § 300.322(e).
[72] *Id.* § 300.322(f).

Special education services are critical to ensuring that students with disabilities have access to the public education system. In accepting federal money and adopting guidelines for the provision of special education services which stress parental consent, notice, and participation, WCPSS acknowledged the importance of special education and the value of giving parents a key role in the process. By failing to provide Spanish-speaking, LEP parents with documents written in their native language, WCPSS has undermined those parents' ability to participate to the same extent as English-speaking parents and effectively discriminated against them.

4. WCPSS Has Sufficient Resources Available to Provide Adequate Translation for LEP Parents.

Wake County is an urban area with a total population of over 900,000.[73] Nearly 10% of the total population—88,297 individuals—are persons of Hispanic or Latino origin.[74] The U.S. Census Bureau estimates that 46,517 Wake County residents were born in Latin America, and 64,504 residents speak Spanish at home.[75]

WCPSS's budget for the 2011-12 school year totals $1,535,611,915.[76] WCPSS has many services already in place for Spanish-speaking families, including a Center for International Enrollment,[77] a Customer Service Center with a "Spanish Language Specialist,"[78] an Office of English as a Second Language,[79] and a Hispanic/Latino Outreach Services division.[80] Additionally, there are numerous colleges and universities in the area with programs in Spanish,[81] certified court interpreters,[82] and private companies. Wake County also has an entire department devoted to overseeing the provision of special education services and ensuring compliance with federal requirements,[83] and an Office of Student Due Process.[84]

---

[73] Wake County Quick Facts from the U.S. Census Bureau, http://quickfacts.census.gov/qfd/states/37/37183.html (last visited May 11, 2012).
[74] *Id.*
[75] *Id.*
[76] Adopted Budget 2011-12, Wake County Public School System, at 3, http://www.wcpss.net/budget/2011-12-official-budget/2011-12-adopted-budget.pdf (last visited May 8, 2012).
[77] Center for International Enrollment, WCPSS, http://www.wcpss.net/center-international-enrollment/ (last visited May 8, 2012).
[78] Customer Service Center, WCPSS, http://www.wcpss.net/customer-service-center/ (last visited May 8, 2012).
[79] English as a Second Language, WCPSS, http://www.wcpss.net/curriculum-instruction/esl/index.html (last visited May 8, 2012).
[80] Hispanic/Latino Outreach Services, WCPSS, http://www.wcpss.net/isd/prevention-services/hispanic-latino/index.html (last visited May 8, 2012).
[81] *See e.g.*, Meredith College, http://www.meredith.edu/forlang/programs.htm#spanish (last visited May 11, 2012); North Carolina State University, http://fll.chass.ncsu.edu/ (last visited May 8, 2012).
[82] *See* Spanish Foreign Language Registry, NC Administrative Office of the Court, http://www.nccourts.org/citizens/cprograms/foreign/documents/spanishforeignlanguageregistry.pdf (last visited May 8, 2012).
[83] Special Education Services, WCPSS, http://www.wcpss.net/special-education/ (last visited May 8, 2012).
[84] Office of Student Due Process, WCPSS, http://www.wcpss.net/student-dueprocess/ (last visited May 14, 2012).

Despite these readily available resources, LEP Latino parents are not receiving critical written documents concerning discipline and special education in Spanish.

REMEDIES

Complainants respectfully request that WCPSS:

A. Provide the Complainant students and parents with all past and future documents related to suspension and special education in Spanish.

B. Identify all other students and parents whose rights were violated and remedy the violations.

C. Provide all LEP parents whose primary language is Spanish with documents related to suspension in Spanish.[85]

D. Provide all LEP parents whose primary language is Spanish with documents related to special education in Spanish.[86]

E. Develop comprehensive websites in Spanish for school discipline and special education matters.

F. Ensure adequate availability of Spanish-speaking staff for the Office of Student Due Process, Special Education Services Department, and transition counselors.

G. Develop written policies and safeguards to ensure that no future Title VI violations take place.

H. Provide LEP students and parents with training, in Spanish, about their rights.

I. Provide staff with training on the rights of LEP students and parents.

CONCLUSION

Based on the above, Complainants respectfully request that the Office for Civil Rights accept jurisdiction over and fully investigate the claims contained herein.

[85] At a minimum, LEP parents and guardians should be provided with the following documents in Spanish: notice of suspension, Discipline Review Committee correspondence, appeal forms, hearing decisions, and information about alternatives to suspension and alternative education programs.

[86] At a minimum, LEP parents and guardians should be provided with the following documents in Spanish: invitations to IEP Team meetings, IEPs, evaluation results, and documentation related to manifestation determination reviews, functional behavioral assessments, and behavior intervention plans.

Respectfully,

Jason Langberg
Attorney for WCPSS Students
Legal Aid of North Carolina, Inc.
P.O. Box 2101
Durham, NC 27702
T: 919-226-0051 ext. 438
E: jasonl@legalaidnc.org

Peggy Nicholson
Attorney for WCPSS Students
Legal Aid of North Carolina, Inc.
P.O. Box 2101
Durham, NC 27702
T: 919-226-0051 ext. 420
E: peggyn@legalaidnc.org

Jerri Katzerman
Deputy Legal Director
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
T: 334-956-8320
E: jerri.katzerman@splcenter.org
**admitted in Arizona and Washington*

Caren Short
Staff Attorney
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
T: 334-956-8450
E: caren.short@splcenter.org
**admitted in New York*

Enc.