

being denied access to advanced-level and Advanced Placement (AP) courses, while also facing disproportionate punishment through the disciplinary process. The SOMSD entered into a voluntary Resolution Agreement with OCR in October 2014, committing to address practices hindering African-American students and to put in place remedies to ameliorate the identified racial disparities.⁵⁹ Simultaneous to the signing of the Resolution Agreement by the SOMSD, the American Civil Liberties Union of New Jersey (ACLU-NJ) and The Center for Civil Rights Remedies at The UCLA Civil Rights Project filed claims on behalf of two students, alleging the practices identified by OCR.⁶⁰ While both individual claims in the UCLA and UCLA Civil Rights Project filing were settled, the *systemic* issues identified by OCR, ACLU-NJ and the UCLA Civil Rights Project have yet to be addressed.

“Eliminating tracking is necessary because SOMSD’s current practice has a disparate negative impact on students of color and therefore violates their rights under Title VI. Recent guidance from the Department of Education provides support for the claim that the exclusion of Black and Latino students from upper level classes is violative of Title VI. When considering Title VI claims, OCR has definitively stated it will consider a “school district’s decision to provide a particular resource to students, such as technology, or a gifted and talented program, as evidence that the district believes the resource is important” and that OCR “expected these resources to be equitably provided without regard to students’ race, color or national origin.” For Black SOMSD high school students, the impact of tracking is that they are under-represented in Levels 5 and 6 (the highest academic levels) and Advanced Placement classes, and over-represented in Level 2 and 3 classes (lower academic levels). This has created a school within a school at Columbia High School. While the high school is composed of slightly less than 50 percent White students, over 70 percent of the lower-level classes are filled by Black students and over 70 percent of the higher level classes are filled by White students. Students have described knowing the level of a class by looking through a window and noting the racial composition of the class.”⁶¹

14. On October 16, 2017 the Board of Education of the SOMSD released data it claimed offered proof of compliance with the OCR Resolution Agreement. The data,

⁵⁹ Resolution Agreement. School District of South Orange and Maplewood. OCR Docket No. 02-13-5003.

⁶⁰ Complaint against the South Orange and Maplewood School District under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 (October 9, 2014)

⁶¹ *Id.* p. 7.

which was directed by OCR to be reported annually in 2015, 2016 and 2017, but was not, revealed racial disparities in the assignment of students to classes in Columbia High School as worse, or worse, than 2014 when the district signed the OCR Resolution Agreement.⁶²

At the start of the current (2017-2018) academic year, the Black Parents Workshop heard from African-American parents of Columbia High School students that were denied access to advanced-level courses, by the decision of the Guidance Department, and in direct contradiction with SOMSD's Access and Equity, and Academic Placement policies. The organization appealed to the district superintendent on the students' behalf, and the students were then enrolled in the courses of their preferences. (See Black Parents Workshop Correspondence attached hereto as **Exhibit D**.) The Black Parents Workshop also became aware of other instances in which African-American and Hispanic students met resistance in 'moving up' to more rigorous courses. Frustrating African-American students' mobility was a 'gatekeeping' role the Guidance Department has historically played and that has led to the wide racial disparities in advanced-level classes in the leveled academic structure of the school district. These barriers are not a practice of yesteryear, but the present-day practice that still exists within the school district.

15. The data SOMSD released on October 16, 2017 (See Course Enrollment by Race attached hereto as **Table IV**.) revealed the depths to which SOMSD failed over the three-year monitoring period to address racial disparities identified by OCR.⁶³ These disparities are particularly pronounced in mathematics and science; two areas that are considered growth areas for careers and economic opportunity in the 21st century.

⁶² Under the terms of the OCR Resolution Agreement, the SOMSD was to annually report to OCR on progress made in remedying racial disparities on August 14, 2015, August 14, 2016, and August 14, 2017. The SOMSD did not produce any data until October 2017.

⁶³ At its October 16, 2017 meeting, the SOMSD Board of Education released partial data required under the terms of the Resolution Agreement the district signed with the U.S. Department of Education. The data revealed that over the three-year period since the signing of the Agreement, October 2014, racial disparities in advanced-level classes and Advanced Placement (AP) courses widened, and African-American students were predominantly populating lower level courses. The data was presented as a PowerPoint presentation: *Update on Office of Civil Rights Consent Agreement. South Orange Maplewood School District*. October 16, 2017.

“All students should have the opportunity to receive high-quality mathematics instruction, learn challenging grade-level content, and receive the support necessary to be successful. Much of what has been typically referred to as the “achievement gap” in mathematics is a function of differential instructional opportunities. Differential access to high-quality teachers, instructional opportunities to learn high-quality mathematics, opportunities to learn grade-level mathematics content, and high expectations for mathematics achievements are the main contributors to differential learning outcomes among individuals and groups of students.”⁶⁴

16. The failure is extensive and indicates that SOMSD either willfully violated the Resolution Agreement or is wholly incapable of compliance. The data paints a picture of the racial stratification that occurs in this facially integrated school district once high school students enter their school building and are separated by race in classrooms.

17. The manner in which this data was presented to the public, upon the instruction of Board leadership to district staff, is consistent with the lack of transparency in the SOMSD. The PowerPoint presentation at the October 16, 2017 Board meeting was misleading in the manner in which minor improvements in African-American student access to rigorous courses over the 3-year period of OCR review was represented as large gains. The use of percentage differences between the targeted years in the descriptive analysis of the data made it appear as though SOMSD had made some progress toward closing the achievement gap. It has not. The oral presentation also deflected from the large disparity between African-American students and White students in Level 3 (‘College Prep’) courses. It was not until Board member Johanna Wright insisted, that the actual numbers of African-American students in specific classes was discussed and the public received a more accurate and truthful representation of the status of African-American students in the SOMSD.

⁶⁴ See National Council of Teachers of Mathematics. Position Statement. *Closing the Opportunity Gap in Mathematics Education*.

18. On the PowerPoint slide for **Grade 10-Physics** the descriptive paragraph was “Enrollment in College Prep physics and Honors physics increased among the black student population.” Yet, the data on the slide showed only an increase of 8 African-American students in Honors Physics, and a decrease of 1 African-American student in Advanced Physics, and an increase of 46 White students in Advanced Physics between the academic years 2016-2017 and 2017-2018. On the slide for **Grade 7**, the descriptive paragraph noted “The number of students taking accelerated math (Algebra I) has trended upwards across all demographics. 7.8% Black, 13.2% White, 16% Other.” The data box on the slide presents a different picture. There was a decrease of 12 African-American students in Honors-Math and 1 African-American student in Algebra I-Advanced between the academic years 2016-2017 and 2017-2018. While there was a decrease of 24 White students in Honors-Math during the same period, there was an uptick of 14 White students in Algebra I-Advanced.

19. In the most rigorous courses, those designed to make students college and career ready, African-American students are noticeably absent in a high school in which they are a significant plurality. The data⁶⁵ reveals in part:

Grade 6

- In 2016-2017, there were 74 Black students enrolled in Mathematics-Honors while in 2017-2018, there were 56 Black students enrolled. For the same course, there were 124 White students enrolled in 2016-2017 and 153 White Students enrolled in 2017-2018. The number of Black students in Mathematics-Honors decreased.
- In 2016-2017, there were 20 Black students enrolled in 7th grade Mathematics-Honors, and in 2017-2018 there were 18 Black students enrolled in that course. For the same course, there were 112 White students enrolled in 2016-2017, and

⁶⁵ The SOMSD uses the terms “Black” and “African-American” interchangeably.

85 White students enrolled in 2017-2018. The number of Black students in 7th grade Mathematics-Honors decreased.

Grade 7

- In 2016-2017, there were 15 Black students enrolled in Algebra I-Advanced, and 14 Black students enrolled in that course in 2017-2018. For the same course, there were 85 White students enrolled in 2016-2017, and 99 White students enrolled in 2017-2018. The number of Black students decreased in Algebra I-Advanced.

Grade 8

- In 2016-2017, there were 4 Black students enrolled in Geometry-Advanced, and 13 Black students enrolled in that course in 2017-2018. In 2016-2017, there were 66 White students enrolled in Geometry-Advanced, and 80 White students enrolled in 2017-2018. The year-to-year increase in the number of White students in Geometry-Advanced was greater than the total number of Black students.
- In 2016-2017, there were 28 Black students enrolled in Algebra-I, and in 2017-2018 there were 15 Black students. For the same course and academic years, there were 125 White students and 74 White students respectively. The number of Black students in a gateway mathematics course again decreased and were still miniscule despite a drop in White students.
- In 2016-2017, there were 83 Black students in Algebra-Honors and in 2017-2018 that number was down to 43. The numbers of White students in this course were 80 and 83 for the respective academic years.

Grade 9

- In 2016-2017, there were 9 Black students enrolled in Geometry-Honors and 13 Black students enrolled in that course in 2017-2018. In 2016-2017, there were 13 White students enrolled in that course and 37 White students enrolled in 2017-2018.
- For Geometry-Advanced, in 2016-2017, there were 9 Black students enrolled and in 2017-2018 there were 10 Black students enrolled. There were 61 White students enrolled in 2016-2017 and 89 White students enrolled in 2017-2018.
- In the accelerated Algebra-2-Advanced course there were 5 Black students and 73 White students enrolled in 2016-2017, and 3 Black students and 67 White students enrolled in 2017-2018. The district claims that these were the last students tested into accelerated mathematics.
- In the Biology-College Preparatory course in 2016-2017, there were 131 Black students and 30 White students. In 2017-2018, there were 108 Black students and 32 White students. This is another example of how Black students in Columbia High School are segregated into so-called College Preparatory or 'Level 3' courses.
- In the Biology-Honors course in 2016-2017, there were 67 Black students and 231 White students. The following academic year, 2017-2018, there were 62 Black students and 261 White students enrolled in the course. The number of Black students enrolled in the course decreased.

Grade 10

- There were 49 Black students and 23 White students in 2016-2017 enrolled in Physics-College Preparatory. In 2017-2018, there were 73 Black students and 21 White students enrolled in the course.

- There were 54 Black students and 116 White students enrolled in Physics-Honors in 2016-2017. The next academic year there were 62 Black students and 107 White students.
- In Geometry-College Preparatory there were 43 Black students and 20 White students enrolled in 2016-2017, and 58 Black students and 14 White students enrolled in 2017-2018. This fits a pattern of warehousing Black students in 'College Preparatory' courses.
- There were 33 Black students and 68 White students enrolled in Geometry-Honors in 2016-2017, and 50 Black students and 55 White students enrolled in 2017-2018.
- In 2016-2017, there were 6 Black students and 15 White students enrolled in Geometry-Advanced, and in 2017-2018 there was 1 Black student and 13 White students enrolled in the course.
- In Algebra-2-College Preparatory, there were 7 Black students and 3 White students in 2016-2017, and 4 Black students and 1 White student in 2017-2018.
- Enrolled in Algebra-2-Advanced in 2016-2017 were 9 Black students and 36 White students. The following year, there were 11 Black students and 61 White students enrolled.
- In Pre-Calculus-Advanced, there were 7 Black students and 53 White students enrolled in 2016-2017, and in 2017-2018 there were 6 Black students and 54 White students enrolled.

Grade 11

- In Advanced Placement (AP) Calculus-AB in 2016-2017, there were 4 Black students and 11 White students. The next year in the course there were 3 Black students and 14 White students.
- In Advanced Placement (AP) Calculus-BC in 2016-2017, there were 4 Black students and 36 White students. In 2017-2018, there were 4 Black students and 43 White students enrolled in the course.
- For Chemistry-College Preparatory in 2016-2017, 40 Black students and 25 White students were enrolled in the course. The next academic year there were 43 Black students and 9 White students in the course. This again fits the pattern of 'College Preparatory' classes being primarily filled by Black students.
- In 2016-2017 in Chemistry-Advanced Placement (AP), there were 6 Black students and 28 White students enrolled. In the same course in 2017-2018, there were 6 Black students and 26 White students.
- In 2016-2017, 71 Black students and 100 White students were enrolled in Chemistry-Honors. The following academic year, there were 46 Black students and 99 White students enrolled in the course.

Grade 12

- Calculus-3-Advanced and Linear Algebra are each semester courses used by students to demonstrate an additional year of accelerated mathematics. In 2016-2017 in Calculus 3-Advanced, there were 3 Black students and 21 White students. The number of Black students decreased by 3 from the previous academic year, 2015-2016. In 2017-2018, there were 2 Black students and 26 White students. The number of Black students again decreased from the previous year.

- In 2016-2017 in Linear Algebra there were 3 Black students and 21 White students. The number of Black students decreased from the prior academic year, 2015-2016. In 2016-2017, there were 2 Black students and 25 White students enrolled in the course. The number of Black students again decreased from the prior year.

The data shows a clear pattern of tracking of African-American students into lower-level academic courses. Though the district has announced it will eliminate ‘Level 2’ courses, a course level that is below the minimum standards of academic proficiency, the data demonstrates that ‘Level 3’ or ‘College Preparatory’ courses serve as a warehouse for African-American students. The overwhelming majority of African-American students are enrolled in Level 3 courses, and their ranks in higher-level courses – Honors, Advanced and Advanced Placement (AP) – significantly drop in grades 9 through 12. The inability to enroll in rigorous courses disables African-American students from the necessary preparation to perform at expectations on state assessments, enroll in 4-year colleges or seek employment in occupations that provide high-wage earnings.

20. On February 20, 2018, SOMSD Superintendent Dr. Thomas Ficarra presented a proposal to realign mathematics curricula to meet district objectives for STEM education. In his presentation (See Slides from Superintendent’s Presentation attached hereto as **Exhibit E.**), he presented data that fully confirmed the degree to which African-American students have been disadvantaged. Board of Education members, on the public record, admitted the school district’s failures and their own failures in educating African-American children.

21. The SOMSD data is consistent with the data from state assessments in terms of the depths of the racial achievement gap in the school district. While the SOMSD data suggests significant in-district deficiencies in the teaching and support of African-

American students, the student performance on state assessments exposes the degree of deficits of African-American students relative to their White peers.

21. The data from the PARCC⁶⁶ testing, the New Jersey state education assessments, reveals just how African-American students in the SOMSD have been underserved and disadvantaged by the school district's practices. The PARCC assessments is measured by Expectations of student performance, as Not Yet Meeting, Partially Meeting, Approaching Meeting, Meeting and Exceeding, with each benchmark assigned a "Level" from 1 to 5. While standardized testing has shortcomings that have been widely discussed and chronicled, these assessments, while just a snapshot of student progress, are nonetheless one tool by which to gauge student preparedness.

22. What the PARCC data reveals about the SOMSD is that by the measure of statewide assessments, the district has failed African-American students. This failure is particularly pronounced in mathematics. This is relevant to this claim because the SOMSD employed, for over a decade, a mathematics supervisor who put in place a rigid system of tracking and leveling. This district supervisor orchestrated the 'creaming' of advanced-level and Advanced Placement (AP) courses with White students who exceeded proficiency so the district could claim success on exam pass rates. Meanwhile, African-American students who should have been allowed access to these courses, and would have likely done well in the courses and benefited from taking more rigorous courses, were kept out.⁶⁷ African-American students were relegated to lower-level and less rigorous mathematics courses, and their progress in the subject was stunted by the district. This was done with the full knowledge of the SOMSD administration, Board of Education and teachers. The racial disparities in mathematics courses and student achievement are a direct result of the collusion between this former district employee and the SOMSD Board of Education. The extent of these harmful practices is denoted by a former Columbia High School student, now matriculated in college, who posted her

⁶⁶ The acronym 'PARCC' stands for Partnership for Assessment of Readiness for College and Careers

⁶⁷ This practice of restricting African-American and Hispanic students from enrolling in advanced-level courses continues. In February 2018, the Black Parents Workshop was informed of the difficulty a student encountered in changing a class, while several White students were allowed to do so with ease.

thoughts regarding her former mathematics teacher on Facebook. (See CHS Alumna Facebook Post attached hereto as **Exhibit F**.)

23. The Spring 2017 PARCC results are a window into the deficit African-American students experience in the SOMSD that is not of their making. For the Language Arts-Grade 3 assessment (See PARCC Language Arts-Grade 3 attached hereto as **Table V**.), there was only one elementary school where over half of the African-American students tested scored at Level 4, Meeting Expectations. In all of the elementary schools for which there is PARCC data, the majority of African-American students tested at Level 1 (Not Yet Meeting Expectations), Level 2 (Partially Meeting Expectations) or Level 3 (Approaching Expectations). In one elementary school, Tuscan Elementary School, only 12.5% of African-American students tested achieved Level 4 status, Meeting Expectations.

24. For the Mathematics-Grade 5 PARCC assessment (See PARCC Grade 5-Mathematics attached hereto as **Table VI**.), there is a stark difference between the percentage of White and African-American students that met Level 4 status, Meeting Expectations. For example, in Seth Boyden Elementary School, 60% of White students tested at Level 4, compared to just 27.1% of African-American students. In Jefferson Elementary School, 58% of White students tested at Level 4 compared to just 27.8% of African-American students.

25. This trend continues in the PARCC data for middle schools in the Mathematics-Grade 8 assessment (See PARCC Grade 8-Mathematics attached hereto as **Table VII**.). This is an important benchmark as it represents the transition to high school. In both of SOMSD's middle schools, African-American students hovered at the 35% mark of Level 1, Not Yet Meeting Expectations. This low performance has a direct bearing on the ability of African-American students to transition to advanced-level courses once enrolled in Columbia High School. Results on the Language Arts-Grade 8 assessment (See PARCC Language Arts-Grade 8 attached hereto as **Table VIII**.) paints a similar picture. In Maplewood Middle School and South Orange Middle School, only 26.9% and

31.4% of African-American students tested reached Level 4 status, Meeting Expectations, compared to 40.7% and 49.2% of White students in the respective schools.

26. The implications for African-American students in Columbia High School is seen in the Algebra I PARCC assessment (See PARCC Algebra I attached hereto as **Table IX.**), as only 16.1% of African-American students taking the test were at Level 4, Meeting Expectations, compared to 58.2% of White students tested. The gap becomes wider in the Algebra II PARCC assessment (See PARCC Algebra II attached hereto as **Table X.**), as only 16.4% of African-American Columbia High School students reached Level 4 status compared to 76.8% of White students who took the test. The same wide racial disparities can be seen in the PARCC Language Arts Grade 9 assessment. (See PARCC Language Arts-Grade 9 attached hereto as **Table XI.**)

27. What the PARCC data shows is a systemic failure that has fed the persistent racial achievement gap in the SOMSD. These results are confirmation of the suspicions of African-American parents that their children are not receiving proper instruction, assigned menial work, and ironically, subjected to ‘teaching to the test’ by teachers who feel pressured to have their students perform well on PARCC. There is also evidence (See Algebra I Homework Assignment attached hereto as **Exhibit G.**) of the dumbing down of homework for students enrolled in Level 3 (‘College Prep’) mathematics in Columbia High School.

28. The factors facilitating the racial tracking of African-American students in the SOMSD are many but the most significant appear to be – segregation in K-5 schools, implicit bias, subjective assessments of teachers and staff, and racism.⁶⁸

29. The failure of the SOMSD to correct these practices was even cited by the community of Montclair as it set out to address its own racial achievement gap in its

⁶⁸ See Jacqueline, J.J. *Black Students and School Failure*. p. 89. Praeger Publishers. 1990. – “The National Alliance of Black School Educators (NABSE) emphatically states in a 1984 report that one of the primary barriers to blacks students’ achievement is racism. Hence, their organizational ideology asserts that the cumulative and the historical effects of racism must be rectified through equity, academic excellence, and cultural relevance.”

public schools. When the Montclair School District's Achievement Gap Panel released its report on racial disparities in Montclair's schools, it cited the SOMSD, and the district being targeted by the ACLU, as an example not to follow.

"South Orange-Maplewood School District is among the New Jersey school districts with the highest racial disparities in tracking and student discipline... The South Orange-Maplewood lawsuit will be a 'wake up' call for our community to take deliberate action to focus on our own disparities and create meaningful and sustainable change in our district."⁶⁹

D. *SOMSDs Racially Discriminatory Practices Have Harmed Post-High School Pathways for African-American Students*

1. The purpose of elementary and secondary education in the United States is to provide children and adolescents with the requisite tools, skills and experiences to enable them to maximize opportunities for personal welfare, economic security and further academic enrichment in post-secondary institutions. The use of academic tracking and leveling has impaired the post-high school pathways of African-American students in the SOMSD by restricting their access to the courses necessary for consideration for admission to 4-year colleges and employment. While class-status certainly intersects at times with race to impede academic advancement, the experience in South Orange and Maplewood has been that Black students from solidly middle-class households have been tracked into lower-level courses. This pattern has led to many middle-class Black families removing their children from the school district and placing them in out-of-district private schools; or moving out of the community and relocating to a more supportive school district⁷⁰. According to annual data reported out in New Jersey School Performance Reports, African-American students who graduate from the district's Columbia High School are significantly limited in their post-graduation opportunities vis-

⁶⁹ "Montclair Education Panel: Let's Not Become Like South Orange Maplewood." Patch.com. June 25, 2015.

⁷⁰ Many African-American families of means now opt to remove their children from the SOMSD rather than subject their children to the well-documented abuses in the school district.

à-vis their White peers.⁷¹ This embedded disadvantage reinforces lifetime income inequality by race and sustains disparities that are evident in housing, employment and wealth generation.

Overview	Demographic	Academic Achievement	PDF	College and Career Readiness	Grad/ Postsecondary	Climate and Environment	Staff	Accountability	Narrative
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 NJ SCHOOL PERFORMANCE REPORT	Columbia High School	13-4900-030
	2016-2017	ESSEX
		SOUTH ORANGE-MAPLEWOOD
	Grade Span 09-12	17 PARKER AVE MAPLEWOOD, NJ 07040-1327

This section contains information about students enrolling in colleges and universities after graduation from high school. Postsecondary enrollment information is collected from the National Student Clearinghouse, which collects data from at least 95% of higher education institutions nationwide.

Postsecondary Enrollment Rates: Fall

This table shows the enrollment rates of Class of 2017 high school graduates into 2-year or 4-year institutions the fall after high school graduation. The following columns show the percentage of these enrolled students by 2-year or 4-year institution.

Student Group	% Enrolled in Any Institution	% Enrolled in 2-Year Institution	% Enrolled in 4-Year Institution
Statewide	71.1%	29.5%	70.5%
Schoolwide	78.8%	12.8%	87.2%
White	79.3%	4.5%	95.5%
Hispanic	83.3%	10%	90%
Black or African American	78.9%	21.9%	76.1%
Asian, Native Hawaiian, or Pacific Islander	75%	0%	100%
American Indian or Alaska Native	*	0%	*
Two or More Races	*	0%	*
Economically Disadvantaged Students	80.4%	24.4%	75.6%
Students with Disabilities	61.4%	25.9%	74.1%
English Learners	*	0%	*

Postsecondary Enrollment Rates: 16 month

This table shows the enrollment rates of Class of 2016 high school graduates into 2-year or 4-year institutions 16 months after high school graduation for the school and each student group. The following columns show the percentage of these enrolled students by 2-year or 4-year institution, public or private institution, or in-state or out-of-state institution.

Student Group	% Enrolled in Any Institution	% Enrolled in 2-Year Institution	% Enrolled in 4-Year Institution	% Enrolled in Public Institution	% Enrolled in Private Institution	% Enrolled in In-State Institution	% Enrolled in Out-of-State Institution
Statewide	76.1%	33.6%	66.5%	73.6%	26.4%	65.5%	34.6%
Schoolwide	85.7%	22.1%	77.9%	58.7%	41.3%	44.7%	55.3%
White	85.1%	6.7%	93.3%	47%	53%	24.2%	75.8%
Hispanic	90%	33.3%	66.7%	66.7%	33.3%	61.1%	38.9%
Black or African American	87%	35.6%	64.4%	69%	31%	62.6%	37.4%
Asian, Native Hawaiian, or Pacific Islander	*	*	*	*	*	*	*
American Indian or Alaska Native	N	N	N	N	N	N	N
Two or More Races	*	*	*	*	*	*	*
Economically Disadvantaged Students	88%	39.5%	60.5%	79%	21%	75.3%	24.7%
Students with Disabilities	71.1%	74.1%	25.9%	88.9%	11.1%	77.8%	22.2%
English Learners	*	*	*	*	*	*	*

An "*" indicates that data is not displayed to protect student privacy. "N" indicates no data is available to display

Source: New Jersey Department of Education, School Performance Report
South Orange-Maplewood School District

2. What the postsecondary enrollment rates show is that 16 months after graduation from Columbia High School, the percentage of African-American graduates enrolled in a 4-year institution declines significantly.⁷² The same is true for Hispanic graduates. This is telling because in the Fall following graduation, the percentage of Columbia High School students enrolled in any postsecondary institution is nearly identical for Whites (79.3%), African-Americans (78.9%) and Hispanics (83.3%). The percentage of White graduates still enrolled in a 4-year institution, 16 months after graduation is relatively unchanged.

⁷¹ The 2015-2016 School Performance Reports, also known as school 'Report Cards,' issued by the New Jersey Department of Education reveals the lag in African-American 4-year college participation for Columbia High School graduates 16 months after receiving their diplomas.

⁷² See *Complaint against the South Orange Maplewood School District under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973*. p. 23 (October 9, 2014) – "The Superintendent's Excellence and Equity Report indicates that only 13 percent of Level 3 students and 5 percent of Level 2 students earned a college degree."

The majority of African-American and Hispanic students enrolled in a postsecondary institution after graduation matriculate at an in-state institution. The decrease in 4-year enrollment for African-American and Hispanic students could be attributed to the financial burden but the majority are attending college in-state, paying lower tuition and fees than if they attended school outside New Jersey. There is also a substantial number of African-American students in Maplewood and South Orange whose families have the means to afford college. What is suspect is the large increase in African-American and Hispanic students in 2-year institutions, 16 months after graduation. This could be a function of personal finances, but likely also attributable to a lack of preparedness stemming from their being tracked into less rigorous courses during their education in the SOMSD.

3. The harm inflicted upon African-American children by the SOMSD's discriminatory practices has been a matter of concern among young people, Black and White, in the community for some time. The racial tracking of African-American students has offended their White peers who are unaccepting of their friends being treated in this manner, given their relationships dating back to elementary school. Many White students reflect on being in the same classroom with their African-American friends in elementary and middle school but being racially divided upon entering Columbia High School. It is well known that you can walk through the corridors of the high school, peer into a classroom, and tell whether it is a lower-level or advanced class by the racial composition of the students. Determined to highlight this injustice, students once staged a walkout at the high school to call attention to tracking and racial disparities in academic achievement.⁷³

4. It would not be the last time students would voice their frustrations with the SOMSD and the treatment of African-American youth in both communities. A group of students spoke out about the marketing of Maplewood and South-Orange as "stigma free communities" at an event at Columbia High School.⁷⁴ Young people also expressed

⁷³ "Students rally on racial issues." The Star-Ledger. March 30, 2006.

⁷⁴ "Black Students Contest Idea That Maplewood, South Orange Are 'Stigma Free.'" VillageGreen.com. October 27, 2016.

outrage when African-American youth, many students in the school district, were assaulted by Maplewood police officers upon attempting to return home after the town's Independence Day fireworks event in 2016.⁷⁵ When an African-American teacher at Columbia High School, Thomas "T J" Whitaker, first informed the Board of Education that SOMSD students had been assaulted by the Maplewood Police Department, the district did not respond or inquire further about the incident. In 2017, students at Columbia High School insisted on staging an Assembly on Race to specifically address what they deemed a racially hostile environment in the high school. After much pushback and resistance by the school administration, the students were granted permission to hold the assembly. In late spring several student groups convened the 'Race Assembly' for their fellow students, and made formal presentations on the ways in which white privilege, bias and racial discrimination harmed students in the school.⁷⁶

5. Students have also expressed their concerns through formal mechanisms. In 2016, a group of African-American students founded the Black Student Union (BSU) at Columbia High School to represent the concerns of the African-American student population. One of the founders of the BSU was a student, Jordan Fields⁷⁷, who had been the complainant on the racial tracking aspect of the ACLU and UCLA Civil Rights Project filing with OCR. Another founder of the BSU, Nina Kambili, was the elected student representative to the SOMSD Board of Education. Ms. Fields and Ms. Kambili are currently enrolled in college but remain active in the community. They both serve as Alumni Trustees on the Black Parents Workshop⁷⁸ Board of Trustees. Successive student Board representatives, elected to serve as the advocate for student concerns, have been

⁷⁵ Black youth were attempting to return to their homes on July 5, 2016 after Maplewood's Independence Day fireworks event, and were physically directed by Maplewood police toward the border of neighboring Irvington, New Jersey, a predominantly Black community. Police officers pepper sprayed, punched and kicked Black youth and used excessive force in an unprovoked attack. Upon the release of video of the evening, delayed for almost one year, the chief and captain of the Maplewood Police Department were relieved of their duty and tendered their resignations at the request of the Maplewood Police Department after significant community outrage.

⁷⁶ The participating student organizations were the Black Student Union, Diversity Rocks and the MAC Scholars Program.

⁷⁷ "Why can't an N.J. man's daughter take AP calculus." The Washington Post. April 14, 2014.

⁷⁸ The Black Parents Workshop was organized in 2014 by African-American parents concerned about the racial achievement gap in the SOMSD.

very vocal in their opposition to tracking, the leveling system, and the treatment of African-American students.

6. Young people have also engaged the electoral system to advocate for an end to discriminatory practices. In 2017, two recent African-American graduates of Columbia High School, a female and male, were candidates for the Board of Education during the school board election in November.⁷⁹ Both candidates took firm stands against tracking, the leveling system and called attention to the instances during which African-American students were mistreated. Their presence in the campaign shifted the focus of candidates' forums and made the needs of students the primary focus of the election.

7. Students were also active during the election. Three African-American Columbia High School students served as the panel at a candidates' forum sponsored by the Black Parents Workshop.⁸⁰ The moderator of the forum was Nina Kambili, the former student representative to the Board of Education who was also a founder of the BSU. The event, held in the Maplewood Public Library, attracted a large audience and generated significant interest.

8. The school district has also been the subject of years of complaints by parents, dissent by the African-American community and many white residents, and legal complaints aimed at the leveling system and district practices. This has not been a debate behind closed doors. It has been public, visible and continuous over the course of many years. Despite possessing data that clearly demonstrates the harmful effects of academic tracking and leveling, the South Orange-Maplewood School District has resisted efforts to cease these practices, engaged in coded rhetoric on 'diversity' as a means to suppress legitimate outrage over racial bias in the public schools, and even when appearing to take steps to address these long-standing issues, have permitted internal practices that contradicts Board policies and frustrates reforms.

⁷⁹ Felisha George (CHS '12) and Avery Julien (CHS '17) were candidates for the Maplewood Board of Election for the November 2017 election.

⁸⁰ "SOMA Black Parents Workshop Holds Student-Led Candidates Forum." VillageGreen.com. October 28, 2017.

E. Racially Disparate Discipline in the SOMSD

1. There exists in the SOMSD a pattern of racially disparate discipline targeting African-American students. These students have been subjected to stringent disciplinary penalties for offenses also committed by their White peers, who receive lesser punishment. The administration of ‘justice’ is subjective and African-American students are frequently on the receiving end of punishment that is disproportionate to the alleged offense. Further complicating the racial profiling of African-American students is the excessive application of the state’s harassment, bullying and intimidation (HIB) statute against African-American students, particularly its use against African-American males. Though, it is documented in the ACLU complaint that African-American females are equally burdened by the district’s disciplinary tactics.

2. African-American students, and their parents, frequently cite treatment in SOMSD schools that they consider accusatory, unfair and intent on resulting in a disciplinary infraction against the student. This environment is the in-school version of what African-American motorists encounter when driving. African-American students have relayed encounters in the classroom where they experience the dismissive attitude of teachers who seem eager to label African-American students “difficult” or “insubordinate” to justify their removal from the class and/or receiving punishment. J.I. reports having been taken out of the classroom setting and tested for drug use simply for exhibiting the same behavior as his White counterparts. A.F., an Honors student with no prior disciplinary history, was suspended from school and not permitted to return until he provided evidence of a negative drug test *simply because he fell asleep in class*. The casting of African-American students as behaviorally challenged has led to suspensions, expulsions, out-of-district placements and contributed to the racial achievement gap in the school district.⁸¹

⁸¹ *Discipline Disparities: Myths and Facts*. The Equity Project. Center for Evaluation and Education Policy. Indiana University.

3. There is a direct link between the loss of classroom time due to disciplinary penalties and the degree of African-American students' lack of academic progress.⁸² Removal from the classroom is an outcome that, particularly for "offenses" a teacher should be able to address in the moment, is counterproductive for students. The arbitrary nature by which African-American students are disciplined only breeds contempt on the part of the student and further disengages him or her from learning. Discipline in the SOMSD has become a tool by which African-American students are queued for the school-to-prison pipeline.

4. Minor breaches in student conduct are escalated into major confrontations that teachers then use to justify punishment. This targeting by teachers is due to the lack of cultural competency among the staff and implicit bias. SOMSD has failed to provide

⁸² The American Federation of Teachers (AFT), in its official policy statement for K-12 education, suggests the following steps to combat school discipline disparities:

1. Provide ongoing professional development and training, aligned with school and district reform goals, to all school staff, with a focus on evidenced-based positive school discipline, conflict resolution, cultural relevancy and responsiveness, behavior management, social justice and equity.
2. Earmark funding specifically for states to provide necessary training, to develop or revamp data collection and analysis, and to support alignment of mental health services, community intervention systems, and children and youth services, to sustain a comprehensive system of interventions and supports.
3. Increase districtwide and statewide investments in social-emotional learning and student-support teams, focusing on academic engagement, equitable access to rigorous coursework and developmentally appropriate behavioral instruction.
4. Include time to collaboratively analyze and address school discipline data as part of any school and district reform process.
5. Review and monitor existing discipline codes to ensure they are developmentally appropriate and effective. Routinely monitor implementation to ensure equitable administration of the codes.
6. Restore critical school personnel—counselors, psychologists, nurses and school social workers, who have the knowledge and expertise to appropriately address student behavior.
7. Restore and provide training to essential paraprofessional and school-related support personnel—including instructional aides, bus drivers, security and school resources officers, cafeteria staff and custodial staff, who engage with students across multiple school environments and have the capacity to develop and sustain healthy school and community relationships beyond the classroom.
8. Include students, families, educators and support personnel, juvenile justice professionals, law enforcement officers, child welfare workers and other community members in the development and implementation of school improvement or reform plans. Focus on improving physical conditions, communication between stakeholders, and structures that affect school climate.
9. Implement alternatives to suspension and expulsion to manage student behavior. Establish criteria for high-quality alternative education settings and develop transition protocols for students who are returning to their community schools.

teachers training in conflict resolution and de-escalation techniques and has given teachers full discretion in applying punishment to students. The absence of significant numbers of African-American teacher-peers in SOMSD schools also allows the negative characterization of African-American students to go unchallenged and unchecked. African-American students are often left at the mercy of White, female teachers whose perception of students of color is biased.

*"Teachers can minimize behavior problems before they start by simply learning how to engage students better," Nance says. He adds that there are initiatives that have been shown to make schools both safer and more successful when it comes to disciplining students."*⁸³

5. This is particularly unfair to African-American children in elementary schools who do not have the capacity to question their mistreatment by an adult authority figure. This was the case in Marshall Elementary School when an African-American male was put in the closet as punishment by a White teacher, and the teacher faced no repercussions. At the middle schools and high school, African-American students' frustrations boil over when they are fully aware they are being subjected to punishment more severe than their White peers. African-American students at Columbia High School have also voiced complaints over the manner in which they are treated by overzealous school security guards, employed by the SOMSD through an outside contractor.

6. Psychologists suggest this typecasting of African-American children could result in their dehumanization and lead to more serious consequences as protections normally afforded to children will not be extended to them.

"Consequently, although prejudice toward Black children might result in negative academic evaluations and social exclusion (Farkas, 2003; Lareau & Horvat, 1999; Skiba, Trachok, Chung, Baker & Hughes, 2012), dehumanization of Black children might conflict with perceptions of children needing protection. In other words, children may be afforded fewer basic protections in contexts where they

⁸³ "When a high school seems like a prison." The Christian Science Monitor. October 14, 2016.

are dehumanized, making them vulnerable to harsh treatment usually reserved for adults.”⁸⁴

7. Data provided the ACLU by the SOMSD revealed “clear disparities based on race and disability”⁸⁵ in the application of discipline. The ACLU further noted:

*“...the data provided by the District illustrates clear disparities based on race and disability. The largest single disparity was for Black students who also have disabilities; it appears that black students with disabilities are being disciplined especially harsh under SOMSD’s policies compared to White students without disabilities. For example, there was a 28.2 percentage point difference between the suspension rate for Black students with disabilities and White students without disabilities at SOMAD’s Columbia High School (CHS).”*⁸⁶

8. These practices, similar to academic tracking and leveling, have a disparate impact upon African-American students. SOMSD’s policies continue to violate Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability. These provisions of law under U.S. Department of Education regulations, prohibit government policies that have the *effect*, even if unintentional, of discriminating by race or disability. Under disparate-impact review, if SOMSD’s disciplinary policies or practices harm African-American students or students with disabilities, the policies and practices are unlawful unless they can be justified by an *educational necessity* and there are no other means that are less discriminatory that can be employed to achieve the same educational goals.

⁸⁴ Goff P.A., Jackson M.C., Di Leone, B.A., Culotta, C.M. & DiTomasso, N.A., *The Essence of Innocence: Consequences of Dehumanizing Black Children*. Journal of Personality and Social Psychology. p. 527. Vol. 106. No. 4. (2014)

⁸⁵ *Complaint against the South Orange Maplewood School District under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973*. p. 4. (October 9, 2014)

⁸⁶ *Ibid.*

II. Evidence of SOMSD's Insufficient Remedies to Address Racial Disparities

A. *SOMSD has Undermined Its Own Policies*

1. In 2015 after much public debate and under considerable pressure, the Board of Education established and adopted new and revised policies that set the guidelines for access to and placement in courses. The Access and Equity Policy (5755.1) and Academic Placement Policy (2314)⁸⁷ in theory were to allow students unfettered access to the courses of their choice; with a special emphasis on removing the barriers to advanced-level and Advanced Placement (AP) courses that the OCR, and the ACLU and UCLA Civil Rights Project identified as driving racial disparities in academic achievement.

2. The new Access and Equity and Academic Placement policies replaced existing guidelines and procedures that required certain pre-requisite steps, such as teacher and guidance counselor recommendations, statewide assessment scores and qualifying examinations to allow enrollment in advanced-level and AP courses. Under the policies adopted in the fall of 2015, these restrictions were removed and conceivably students could now choose courses at will, without yielding to Guidance Department input or teacher recommendations. In addition, the Academic Placement policy set a goal of enrollment in advanced-level courses to approximate the demographic profile of the student population in each school.⁸⁸

3. Despite the appearance of 'open access,' the manner in which the policies were implemented and the absence of necessary student support services doomed both policies from the start. The failure of SOMSD is clear when examining its own data on enrollment

⁸⁷ The SOMSD adopted **Policy 5755.1 Access and Equity** on October 19, 2015. The policy is an expression of the district's commitment to the principles of open access to courses and equity in eradicating racial disparities and the achievement gap. The policy outlines the terms by which students in the district can choose to enroll in courses. **Policy 2314 Academic Placement**, adopted on December 21, 2015, allows students and/or their parents to determine their course selection without recommendation from teacher or guidance counselor.

⁸⁸ Policy 2314 states "The Board shall make every effort to ensure that enrollment in classes at advanced levels proportionately reflects the demographic profile of the individual school consistent with governing law and the Board's commitment to equal opportunity for all students."

in courses in Columbia High School. While the intent of advocates in calling for the removal of barriers to access was to achieve equity, it was never to abandon students and leave them without proper support to achieve success in the classroom. SOMSD has given African-American students false ‘freedom of choice’ by feigning open access to all courses but then declaring to these students “you are own your own.” SOMSD has placed the responsibility and burden for their academic success entirely on the shoulders of teenagers, and then stand ready, along with elements of the White community, to deem African-American students’ failures or low-performing once they encounter difficulties or fail out of the class. SOMSD has created the perfect storm for the marginal outcomes for African-American students that has become the norm in the school district. Yonezawa, Wells and Serna look at issues of “freedom of choice” and arrive at the same conclusion.

“In all of the schools that we studied “freedom of choice” in course placement, a mechanism that educators used to create more heterogeneous or mixed “ability” classes, was popular but unsuccessful. Choice was popular among educators because it targeted the process of ability grouping rather than the structures or cultures that support it. That is, it placed the onus of the reform on students to take high-track courses rather than on educators to dismantle track structures and address cultural norms – e.g., the conflation of race, class and intelligence – that support ability grouping.”⁸⁹

4. Subsequent to the adoption of these policies, the district’s Guidance Department put into place course transfer rules that violated the spirit and intent of the new Access and Equity, and Academic Placement policies.⁹⁰ The new rules permitted students, upon September enrollment, to only ‘level-down’ but not ‘level-up’ with no justification for this unequal treatment of student course preferences. By doing this, all students, but particularly African-American students, due to historical practices, were again disadvantaged and found themselves unable to enroll in more rigorous courses aimed at

⁸⁹ Yonezawa, S., Wells, A., & Serna, I. (Spring 2002) *Choosing Tracks: “Freedom of Choice” in Detracking Schools*. American Educational Research Journal (pp. 37-67), Vol. 39, No 1.

⁹⁰ 2017-18 Guidance Information Sheet. Department of Guidance. South Orange Maplewood School District.

college preparation.⁹¹ The district's Guidance Department claimed spring enrollment periods and the summer vacation period were sufficient to give students the opportunity to level-up.⁹²

B. *SOMSD Failed to Comply with an Office of Civil Rights Resolution Agreement*

5. The SOMSD voluntarily entered into a Resolution Agreement (OCR Docket No. 02-13-5003) with the U.S. Department of Education Office of Civil Rights in October 2014. SOMSD signed the Resolution Agreement understanding the expectation of the OCR, and the African-American community, that the district would remedy identified deficiencies driving racial disparities in student access and achievement. By voluntarily signing the agreement, SOMSD implied it was acting in good faith to comply with the law and was prepared to take action to close the racial achievement gap. It was never communicated to the public, or was understood by the African-American community, that no substantive improvements would be made under the 3-year period of active OCR monitoring. Another cohort of African-American children received an inferior education as a result of the dysfunction and resistance of the SOMSD. After the 3-year review period, it is apparent that not only did SOMSD fail to address the deficiencies, the academic standing of African-American students worsened relative to their White peers.

6. SOMSD is solely responsible for the academic achievement gap harming African-American children in the school district. Despite two-decades worth of dispirited experiences of African-American students, and data that clearly points out their underachievement, isolation and displacement, the SOMSD has proven unable or unwilling to do the right thing. The SOMSD has knowingly sustained de-facto segregation in K-5 schools and re-segregated classrooms in its high school in defiance of

⁹¹ In letters dated September 17, 2017 and September 20, 2017 to SOMSD Interim Superintendent Dr. Thomas Ficarra, the Black Parents Workshop intervened on behalf of two African-American students who were denied their request to move up to higher level courses in September 2017. In both cases, the Guidance Department denied the students' requests. Dr. Ficarra subsequently approved their enrollment in the respective courses.

⁹² The guidelines state the "**Deadline to request a meeting to drop down a level** (we cannot honor requests to move up a level) is **October 2**; if the change is made, the student's grade will be transferred to the new class."

the injuries incurred by African-American students. Though in contradiction with best practices and scholarly research dismissive of tracking and leveling as effective educational tools, SOMSD, over the terms of successive elected Boards of Education and professional staff, maintained and expanded a system it was well aware was creating a learning deficit for African-American children.

7. The OCR detailed specific steps the district was required to take to demonstrate its resolution of the practices OCR cited as possible violations of Title VI of the Civil Rights Act of 1964. Among the steps were annual reporting of data detailing the racial composition of courses, the hiring and retention of a consultant to assess course enrollment data and barriers to student participation, and put in place practices and procedures to address the racial achievement gap, a review of counseling services and training for staff and administrators, the maintenance of data and community and student outreach. On each of these steps SOMSD either failed to comply, substantially fell short of compliance or undercut its compliance through internal practices.⁹³

8. Four examples are demonstrative of SOMSD's failure in this regard. First, the contract with Sage Consultants, the consultant firm the district retained, was prematurely terminated after only one year of the three-year contract period.⁹⁴ Sage was not permitted to continue the work it had set in place to execute 'action plans' to address the deficiencies it had cited in its assessment. The district gave no rational reason for the

⁹³ SOMSD has, to date, failed to produce any evidence of correspondence with OCR, as stipulated in the Resolution Agreement or self-initiated, between the time the district signed the agreement in October 2014 and October 2017. The Black Parents Workshop requested copies of SOMSD correspondence to OCR in spring 2017 from the Board president, and its request received no response. The first correspondence SOMSD disclosed was in connection with the data presentation at the October 16, 2017 Board of Education meeting. The OCR Resolution Agreement was not posted on the district's website until October 2017. The website is subject to a separate OCR Resolution Agreement (Docket Number 02-16-1479) alleging violations of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35.

⁹⁴ Sage Consultants played an important role as an independent party to assess the district's compliance with the OCR Resolution Agreement. Superintendent Dr. John Ramos gave no explanation for discontinuing the engagement of Sage Consultants. SOMSD opted to transfer the functions of Sage to in-house personnel. The work that Sage produced came to a standstill, as did any effort to inform the public of steps taken to address the issues cited by OCR.

termination of Sage's contract and the work product the consultant produced was never implemented.

9. Second, the district failed to maintain the data required by OCR and the Board of Education never substantiated claims by the then superintendent, Dr. John Ramos, that data collection was occurring in each school in the district. In fact, no such effort was in place.

10. Third, the OCR Resolution Agreement required annual reporting by SOMSD on specific enrollment criteria on the dates of August 14, 2015, August 14, 2016 and August 14, 2017. SOMSD never produced said reports or publicly disclosed such reports, and did not report out on the data requirements stipulated by OCR until October 16, 2017.⁹⁵

11. Fourth, the district did not engage the community or students in the specific areas stipulated in the Resolution Agreement. Community groups and students were left to ponder the status of OCR compliance as SOMSD failed to engage the public as agreed upon in the Resolution Agreement.⁹⁶ There has been a complete lack of transparency in the disclosure of work being done by the district to ensure OCR compliance. Students at Columbia High School voiced their frustration and opted to plan and host a student assembly in the spring of 2017. In fact, the former superintendent opted to pursue a 'strategic planning process' that tangentially touched upon the issues identified by the OCR as problematic but did not directly correlate with the work of Sage consultants. In fact, the core issues identified by OCR were missing from the larger strategic planning process.

⁹⁵ Concerned that the SOMSD had not produced any of the data the OCR Resolution Agreement stipulated, the Black Parents Workshop in May 2017 requested the data in a letter to Board of Education President Elizabeth Baker. The Black Parents Workshop received no response. The district did not disclose the required data until October 16, 2017.

⁹⁶ The only community outreach specifically on the OCR Resolution Agreement was done by Sage Consultants, the firm that was released from its contract after only one year.

12. SOMSD demonstrated indifference toward the OCR Resolution Agreement, with some Board of Education members openly questioning the legitimacy of the federal agency and questioning its authority to intervene in the district.

13. It is the intentionality of SOMSD's complicity that warrants judicial scrutiny because it suggests a willingness to violate the law to preserve a system of white privilege that entitles White children to an education denied African-American children enrolled in the same school. There is a vindictiveness in the nature of support of such a system in communities that purport to be inclusive and boast of their racial diversity.

C. *SOMSD Has Resisted Offers of Assistance*

14. The South Orange-Maplewood School District has not been without interested parties in the larger communities that have volunteered time and effort to stem the long-standing racial achievement gap and advocate for equitable practices in the district's schools that will benefit all students.

15. The Black Parents Workshop (BPW), a community-based parents' advocacy organization founded in 2014, has been working to advance the interests of African-American children in the South Orange-Maplewood School District and has taken affirmative steps to assist the district in eliminating systemic practices that contribute to racial disparities in academic achievement and student discipline. These steps include:

A. On January 8, 2015 upon the invitation of then principal of South Side High School, Dr. Carol Burris, the Black Parents Workshop led a delegation of district administrators and Board of Education members to visit the high school in Rockville Center Long Island. South Side High School and the Rockville Centre School District has gained a national reputation for eliminating academic tracking or "leveling" and the racial achievement gap in a racially diverse school district. South Side High School is a National Blue-Ribbon School of Excellence, a New

York State High Performance School and designated a “Gold” High School by U.S. News and World Report.

Among members of the visiting delegation were: Elizabeth Daugherty, President of the Board of Education; Susan Grierson, Assistant Superintendent for Curriculum; Johanna Wright, Board Member; Wayne Eastman, Board Member; Philip Stern, Board Counsel; Paula Bethea, President South Orange Maplewood Education Association (SOMEA); Elizabeth Aaron, Principal Columbia High School; Jerrill Adams, Principal Maplewood Middle School; Kevin Mason, Assistant Principal Tuscan Elementary School; and Walter Fields, Chairman Black Parents Workshop.

i. Dr. Burris, a nationally recognized and honored educator, subsequently offered her assistance to help the SOMSD achieve similar outcomes as the Rockville Centre School District.

B. Also, in November 2014, the Black Parents Workshop communicated with Dr. Donna Ford, a nationally recognized expert on the achievement gap and Gifted & Talented programs, and a tenured professor specializing in education research at Vanderbilt University. Professor Ford offered her services to the district to help guide its compliance with the Office of Civil Rights Resolution Agreement and develop a plan to achieve equity.

C. In November 2015, upon the request of Superintendent Dr. John Ramos, the Black Parents Workshop provided substantive editing to the proposed policies on Access & Equity (Policy 5755.1), and Academic Placement (Policy 2314). BPW’s edits were incorporated into the final versions of both policies. The Board is complicit in undermining both policies.

Also, in 2015 the Black Parents Workshop participated and supported the Education Summit convened by Dr. John Ramos and subsequently participated in the three-day Strategic Planning exercise in 2016.

D. The Black Parents Workshop communicated with the Compliance Team Investigator at the U.S. Department of Education Office of Civil Rights on February 2, 2016 and expressed our concern that the South Orange-Maplewood School District was failing to comply with the Resolution Agreement it signed with OCR in 2014.

E. On March 18, 2016 the Black Parents Workshop sent a letter to Board President Elizabeth Baker warning against budget cuts that would reduce teachers and by effect increase teacher-student ratios, and negatively impact the Access & Equity, and Academic Placement policies.

F. On June 7, 2016, upon the invitation to the Black Parents Workshop by the NAACP Legal Defense and Educational Fund, the nation's foremost civil rights litigation organization, SOMSD Superintendent Dr. John Ramos and BPW Chairman Walter Fields met with their senior staff. The organization offered to assist the district in complying with the Office of Civil Rights Resolution Agreement.

G. During the 2015-2016 school year, the Black Parents Workshop supported African-American students in Columbia High School who organized and created the Black Student Union as a vehicle to communicate their concerns to the school administration and school district.

H. The Black Parents Workshop arranged a meeting with staff at the Morgan State University School of Education and Urban Studies in Baltimore, Maryland to discuss developing a teacher pipeline for the express purpose of recruiting African-American teachers to the district. The meeting was facilitated by the president of the University, Dr. David Wilson. The meeting took place in Baltimore on April 25, 2017 and Assistant Superintendent Kevin Walston and Columbia High School teacher Thomas Whitaker accompanied BPW Chairman Walter Fields to that meeting.

I. In May 2017, the Black Parents Workshop sent a letter to Board President Elizabeth Baker requesting the following information by July 1, 2017:

- i. A breakdown of course enrollment, by level and AP status, and by race, gender, and teacher for students grades 8-12 in the 2016-2017 school year; and
- ii. The district's plans for the 2017-2018 school year that will put in place appropriate tools and interventions to elevate Black student achievement

The data was not released until October 16, 2017.

J. On August 23, 2017 the Black Parents Workshop objected to the adoption of a grades 6-8 Social Studies curriculum that left unaddressed issues in the K-5 curriculum that came to light during the misguided 5th grade 'slave auction poster' assignment. BPW raised questions as to what teachers participated in the development of the curriculum, how many African-American teachers were part of that process, how many of the district's teachers or staff attended the state-run summer New Jersey Amistad Institute, and how community groups were engaged and how they were selected to engage.

K. On September 27, 2017 the legal counsel to the Black Parents Workshop sent a letter to the district demanding it 'cease and desist' practices impeding Black students' access to higher-level courses. BPW took this action after hearing from parents whose children were denied access to the classes of their choice, even upon being recommended by a teacher and guidance counselor, due to Guidance Department rules that only permitted students to "level-down" but not "level up" in September.

L. The Black Parents Workshop reached out to Dr. Robert Jarvis, Director of the Center for Educational Leadership at the Graduate School of Education at the University of Pennsylvania; who also leads a three-state – Pennsylvania, New Jersey and New York - consortium on educational equity. BPW Chairman Walter Fields traveled to Philadelphia to meet with Dr. Jarvis on September 28 2017 to see how the SOMSD might be able to participate in the consortium. By teleconference, BPW Chairman Walter Fields also spoke to Dr. Aaron Graham,

the co-director of the New Jersey Consortia for Excellence through Equity. In New Jersey, the Consortia is now a project under the New Jersey Association of School Administrators.

i. In the process of meeting with Dr. Graham on October 2, 2017, BPW Chairman Walter Fields learned that Dr. Graham approached the SOMSD one year prior to join the Consortia – a group that includes the Montclair, Teaneck, Hackensack and Hoboken school districts – with no success. Dr. Jarvis, Dr. Graham and BPW Chairman Walter Fields met with SOMSD Interim Superintendent Dr. Ficarra on October 10 2017 to advocate for the district to join the 44 New Jersey school districts that have made a commitment to equity. Dr. Ficarra did take action and committed the district to become a member of the Consortia.

K. On September 30 2017 the Black Parents Workshop sponsored a Legal Workshop for Parents of Students with Special Needs with participation by the Senior Staff Attorney for the New Jersey ACLU, the president of the Special Education Parents Advisory Committee (SEPAC), and a private attorney with experience representing families of students with special needs. This workshop was held because the Black Parents Workshop is acutely aware of how special needs students have been treated in this district.

Despite these genuine efforts to assist the school district, and consequently its students, community groups have met frustration, deception and silence.

III. Summary of SOMSD Actions/Omissions

A. The Facts Alleged in the complaint above set forth the following acts and omissions by the SOMSD:

1. The District has maintained a tracking and leveling system that the SOMSD acknowledged to the OCR created racial disparities in the assignment of students to advanced-level and Advanced Placement (AP) courses.

2. The District has failed to address and remedy the issues identified in the October 2014 OCR Resolution Agreement, resulting in an additional three years of *de facto* segregation in classes in Columbia High School.
3. The District has maintained a policy and practice of disproportionate punishment of African American students as set forth in the ACLU complaint attached hereto and has failed to put in place prescriptive measures to address the disproportionate punishment of African-American students in the disciplinary process compared to their White peers. Evidence demonstrates that the SOMSD continues to perpetuate a system of racially based punishment and discipline.
4. The District has maintained a system of *de facto* segregated elementary schools and has purposely failed to desegregate the district's K-5 elementary schools.
5. The District has employed racially based policies, practices and procedures that restrict the movement of African American students into higher level classes while allowing the movement of White students into those same classes.
6. The District has maintained policies, practices and procedures which harm disabled students, particularly disabled African American students.
7. The acts and omissions of the OMSD have created an atmosphere wherein White students have been deprived of the benefit of academic and cultural diversity in an educational environment.
8. The discriminatory practices set forth in this complaint were institutionalized policies and procedures which the Board of Education and administration of the SOMSD knew were racially discriminatory yet continued with deliberate indifference.

9. As a result of the actions of the SOMSD as set forth above, African American students both generally and as specifically identified above, have suffered significant identifiable harm.

COUNTS OF THE COMPLAINT

COUNT ONE

The above stated actions of the SOMSD constitute violations of Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §6301 et seq. in that the practice of tracking and leveling as employed by the SOMSD has the intent and effect of reinforcing low expectations of African American students and fails to provide African American students with instruction and curriculum which would allow them to reach high academic standards.

COUNT TWO

The above stated actions of the SOMSD constitute violations of Title VI of the Civil Rights Act of 1964, 42 USC §2000d, et. seq. in that the practice of tracking as set forth above employed by the SOMSD have the intent and effect of discriminating by race and/or disability;

COUNT THREE

The above stated actions of the SOMSD constitute violations of Title VI of the Civil Rights Act of 1964, 42 USC §2000d, et. seq. in that the practice of discipline and/or suspension as set forth above instituted by the SOMSD have the intent and effect of discriminating by race and/or disability;

COUNT FOUR

The above stated actions of the SOMSD constitute violations of 42 U.S.C. §1983 in that under color of state law, the district knowingly and purposely perpetuated policies and practices which they knew were racially discriminatory in restricting African

American students from the same benefits as white children based upon race thereby violating their right to equal protection under law.

COUNT FIVE

The above stated actions of the SOMSD constitute violations of 42 U.S.C. §1983 in that under color of state law, the district knowingly and purposely perpetuated policies and practices which they knew were racially discriminatory in maintaining a system of racial segregation of schools within the District in violation of the Fourteenth Amendment to the United States Constitution.

COUNT SIX

The above stated actions of the SOMSD constitute violations of The Rehabilitation Act of 1973, The Civil Rights Act of 1964, 42 USC §2000d, et. seq. in that the practice of discipline and/or suspension as set forth above instituted by the SOMSD have the intent and effect of discriminating by race and/or disability;

COUNT SEVEN

The above stated actions of the SOMSD constitute violations of the Individuals with Disabilities Act (IDEA) 20 USC§ 33, et. seq. in that it failed to provide requisite services to disabled students, namely M.M. and those similarly situated in the SOMSD.

COUNT EIGHT

The above stated actions of the SOMSD constitute violations of the New Jersey State Constitution, Article I, Paragraph 5 (prohibition against segregation in public schools) and Article 8, Section 4, Paragraph 1 (“thorough and efficient” clause), in that the SOMSD has promulgated and perpetuated segregation in District schools.

COUNT EIGHT

The above stated actions of the SOMSD constitute violations of New Jersey’s Law against Discrimination, N.J.S.A. 10: 5-1, et. seq. in that SOMSD schools, as places of public accommodation, discriminated against African American students on the basis of race by effectuating systems of disparate treatment wherein African American students failed to receive the same benefits and opportunities as White students.

COUNT NINE

The above stated actions of the SOMSD constitute violations of New Jersey’s Law against Discrimination, N.J.S.A. 10: 5-1, et. seq. in that SOMSD schools, as places of public accommodation, discriminated against African American students on the basis of race by effectuating systems of disparate treatment wherein African American students were disproportionately and unfairly disciplined as compared to similarly situated White students.

PRAYER

The following specific remedies are sought to address systemic deficiencies in SOMSD:

1. The elimination of all academic tracking and leveling in SOMSD schools, and the creation of a comprehensive plan that includes:
 - a) Budget allotments for teacher hiring, professional development and programming necessary to support the academic achievement of African-American students.
 - b) A rigorous, detracked curriculum for Columbia High School students that includes a pathway for students' intent on pursuing non-college career options post-high school.
 - c) Curricula realignment K-12 to support the mobility of African-American students into advanced-level and Advanced Placement (AP) courses in Columbia High School.
 - d) Guidance Department plan for African-American student advisement.
 - e) A Community Outreach plan to target African-American households.
 - f) A revised daily class schedule for Columbia High School that will accommodate support programs for African-American students during the school day.
 - g) A teacher recruitment plan that specifies the steps that will be taken to increase the number of African-American students in the school district.
2. The appointment of a Special Master to oversee the district's de-leveling and desegregation plan.
3. The establishment of a \$5 million fund for families of African-American students enrolled in SOMSD during the period 2014-2017 for the purpose of academic support in the form of tutoring, counseling and compensatory education.

4. The establishment of a \$2 million fund for the purpose of recruiting, hiring and the retention of African-American teachers. This fund is to be used to cover the cost of recruitment travel, teacher bonuses and relocation packages.
5. The allocation of \$2 million for targeted support of students with disabilities in Level 3 courses to facilitate their transition to more rigorous courses.
6. The allocation of \$1,500,000 for a longitudinal study of African-American students' post-graduation outcomes for the years, 2000 – 2017.
7. The designation of \$2 million for the purpose of academic enrichment programming targeting African-American and Latino students, K-12.
8. The immediate and full implementation of the New Jersey Amistad African-American History curriculum.
9. The inclusion of AP African-American History as a course offering in Columbia High School and the employment of a qualified teacher for the subject.
10. Annual and mandatory cultural competency and anti-racism training for all SOMSD employees.
11. The creation of an African-American Parent Advocate volunteer position in each school in the SOMSD. These individuals will be tasked with representing the concerns of African-American students and will have full access to school personnel and data, as allowable by law.
12. The creation of a 9-member Community Equity Council tasked with the responsibility to monitor the SOMSD's progress in meeting its stated equity goals. Four members will be appointed by the district superintendent and five members will be chosen upon recommendations from the community.

13. The removal and replacement of building leadership at Columbia High School and Seth Boyden Elementary School.
14. Upon failure to address the systemic failures that have led to racial disparities in the SOMSD, the merger of the district with a neighboring urban school district or the creation of a county school district to racially balance schools and end racial tracking.
15. An award of Compensatory damages.
16. An award of Punitive Damages.
17. An award of attorney's fees pursuant to 42 USC §1988 and/or any other provisions authorizing such award.
18. An award of plaintiff's cost of suit.
19. All other relief that is appropriate under the circumstances.

LAW OFFICES OF ROBERT L. TARVER, JR.

By: s/Robert L. Tarver, Jr.
Robert L. Tarver, Jr., Esq.
Attorney for Plaintiffs

Dated: February 27, 2018

JURY DEMAND

The Plaintiffs demand a trial by jury on all issues so triable.

LAW OFFICE OF ROBERT L. TARVER, JR.
Attorneys for Plaintiff

By: s/Robert L. Tarver, Jr.
Robert L. Tarver, Jr. Esq. (RLT 0472)
Attorney for Plaintiffs

Dated: February 27, 2018

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative hearing

LAW OFFICE OF ROBERT L. TARVER, JR.

By: s/Robert L. Tarver, Jr.
Robert L. Tarver, Jr., Esq.
Attorney for Plaintiffs

Dated: February 27, 2018