



www.blackparentsworkshop.org

P.O. Box 762

Maplewood, New Jersey 07040

(201) 259-8375

blackparentsworkshop@gmail.com

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CONTACT: Walter Fields

Chairman

(973) 738-7876

Robert L. Tarver, Jr., Esq.

Counsel

(732) 341-2152

School District Accused of Racially Tracking African-American Students

Civil Rights Lawsuit filed against South Orange-Maplewood (NJ) School District

(Maplewood, NJ) – In a move that will have repercussions for public school districts across New Jersey, the Black Parents Workshop (BPW) on behalf of plaintiffs’ families, has filed a lawsuit today in U.S. District Court in the District of New Jersey in Newark against the South Orange-Maplewood (New Jersey) School District (“SOMSD”) alleging violations of state and federal law by engaging in discriminatory practices targeting African-American students in the school district. The complaint alleges the school district has been engaged in the ‘tracking’ of African-American students into less academically rigorous classes through a system of academic ‘levels’ or ‘ability groupings’ that has resulted in a systemic racial achievement gap. The lawsuit also alleges that the South Orange-Maplewood School District has engaged in racially disparate practices through the student disciplinary process, and that African-American students have been disproportionately targeted for punishment. In addition, the lawsuit alleges that the school district

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has illegally maintained *de facto* segregation in its K-5 elementary schools. As a result, the complaint alleges, African-American graduates of the district's Columbia High School have been substantially disadvantaged compared to their White peers.

The complaint alleges violations of Title I of the Elementary and Secondary Act of 1965, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Act, Article I, Paragraph V and Article VIII, Section IV, Paragraph I of the New Jersey Constitution and the New Jersey Law Against Discrimination. The plaintiffs seek remedies in excess of \$12 million and specific programs to ameliorate the systemic structures and practices that have harmed African-American students, as well as compensatory and punitive damages,

Black Parents Workshop Chairman Walter Fields said, "This is an important decision to file this complaint. We know income inequality and the wealth gap is often born or exacerbated in the classroom. The futures of African-American children in our nation is dependent upon their receiving a first-class education, no matter their zip code or socio-economic status. We do a disservice to our children when we allow these disparities in educational outcomes, caused by the policies and practices of a school district, to persist."

The South Orange-Maplewood School District, for over two-decades, has used a 'leveled' system of tiered academic classes into which African-American students have been tracked into the lowest levels. The school district has used the leveling system as a means to overwhelmingly place African-American students in **Columbia High School** into a deceptively named 'College Preparatory' level or 'Level 3' in classes that are not of a quality, either in course materials or instruction, to prepare students for the rigor of a college education or a career. Data reveals the wide racial disparities in course levels at Columbia High School that easily be discerned by walking the hallways of the school, peering into classrooms and looking at the racial composition of the class. In Columbia High School, African-American students also come under harsher scrutiny than their White peers and are subject to disparate disciplinary measures.

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At the elementary school level, in grades K-5, the district has maintained *de facto* segregated enrollments, with one elementary school – **Seth Boyden Elementary School**, with a majority African-American student population. This despite the fact that Maplewood is just 3.88 square miles and South Orange is 2.86 square miles.

The SOMSD also has made little effort in recruiting and hiring African-American teachers. The teaching staff in the district is overwhelmingly White though Maplewood is 32.7% African-American and South Orange is 29.1% African-American, and the two towns are in Essex County, the county with the largest African-American population in New Jersey. African-American support staff (e.g. secretaries, custodial, security, transportation) outnumber African-American teachers in most instances in schools.

The result of the lack of concern for the education of African-American children in the South Orange-Maplewood School District is evidenced by their lagging scores on state assessments (NJ PARCC), and the significant gap in 4-year college enrollment between White and African-American students' post-graduation from Columbia High School.

In filing the lawsuit, BPW's Walter Fields noted, "The historic school desegregation case, *Brown v. Board of Education*, focused on the damage inflicted on African-American children by southern states' embrace of the unconstitutional doctrine of '*separate but equal*.' The new Jim Crow in public education, particularly in suburban communities such as Maplewood and South Orange, is the embrace of the equally unconstitutional doctrine of '*equal but separate*' in the maintenance of public schools that are facially integrated but through the school district's policies and practices African-American children are segregated and denied equal educational opportunity."

The South Orange-Maplewood School District came under the review of the U.S. Department of Education Office of Civil Rights (OCR) over the district's policies and practices that OCR cited as possibly violative of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. The district voluntarily signed a Resolution Agreement with OCR in

October 2014 acknowledging its findings and committing to remedy the policies and practices cited. At the same time, the ACLU-NJ and the UCLA Civil Rights Project filed a complaint with OCR against the school district mirroring the claims made by OCR. On October 16, 2017, the South Orange-Maplewood School District released data that clearly demonstrated that the racial disparities in advanced-level courses cited by OCR not only remain, but in many cases widened. Though the district's new Access and Equity, and Academic Placement policies purportedly open access to these courses, the evidence overwhelmingly confirms that the policies are mere words on paper and do not reflect the reality for African-American students.

Black Parents Workshop legal counsel Robert Tarver said, "We are at a point when we have to acknowledge the South Orange-Maplewood School District's inability or lack of will to address its discriminatory practices. The school district is engaged in a pattern of practices that violate federal law and provisions of the New Jersey state constitution prohibiting segregation in public schools, and the denial of a 'thorough and efficient' education. They have been given multiple opportunities to remedy these practices and provide relief to African-American students and their families, and have failed. At this point our only recourse is to seek relief in court."

The lawsuit alleges that the South Orange-Maplewood School District has instituted policies and engaged in practices for over two decades that have denied African-American students a quality education by prohibiting their access to courses that will enable them as college or career ready. The district's own data reveals the wide racial disparity in student enrollment in advanced-level courses. The injury caused African-American students is revealed in their performance on state-mandated assessments and data from the New Jersey Department of Education on post-graduation outcomes.

"What we have in the South Orange-Maplewood School District is a public-school system where children are segregated by race in its elementary schools, experience few Black teachers in their classrooms, African-American children are subjected to punishment for offenses that their White peers also commit but receive lesser punishment, and where all students walk through the same front door at Columbia High School but are then segregated by race in classrooms due to the

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district's embrace of tracking and leveling," said Black Parents Workshop Chairman Walter Fields.

There is significant research that supports the creation of heterogeneous classrooms, and the benefits derived by all students. The research overwhelmingly finds that students who are excelling **are not** harmed when students of lesser proficiency are in the same classroom, but those on the lower end of academic achievement benefit from the rigor of the classroom in advanced-level courses. Organizations such as the nation's largest teachers' union, the National Education Association (NEA), the National Governors Association and the U.S. Civil Rights Commission have taken positions against tracking and leveling while citing the benefits of racially integrated classrooms that include students of varying academic proficiency.

"Our hope," noted attorney Robert Tarver, "is that the South Orange-Maplewood School District will once and for all, with care, focus and intent, develop a comprehensive plan, supported by budget dollars, to de-level its academic structure, abandon tracking as a tool to segregate students by race, overhaul its disciplinary process, provide the necessary supports for African-American students, and recruit, hire and retain African-American teachers. It is time to end the delays and the piece-meal efforts that never dismantles the systemic elements that result in these racially discriminatory practices."

The Black Parents Workshop, founded in 2014, has been intricately engaged in efforts to end discriminatory practices in the district while advocating on behalf of African-American students and their families, and working to enlighten the South Orange-Maplewood School District on best practices that will erase the racial achievement gap. Walter Fields said, "We hope this action will serve notice to other school districts engaging in similar practices as the South Orange-Maplewood School District, and similarly harming African-American students, and encourage African-American parents, and the larger community, to use federal and state laws to ensure that our children are treated fairly and that our tax dollars are not used to discriminate against our own children."

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