

PUSHING THE LINE

Addressing Inequities in Sequoia Union High School District's Student Assignment Plan

A report issued by the Lawyers' Committee for Civil Rights
of the San Francisco Bay Area (LCCR)
www.lccr.com

In collaboration with the law firm of
Bingham McCutchen LLP

July 2013

ACKNOWLEDGEMENTS

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area would like to thank the dedicated parents, teachers, and community members from East Palo Alto and beyond for their commitment to ensuring the educational success for all East Palo Alto students. In particular, we would like to thank **Avani Patel** and **Ellen Mouchawar** for their assistance with this project and their commitment to promoting the success of all East Palo Alto students.

In addition, we are greatly indebted to the law firm of Bingham McCutchen LLP and particularly **Frank B. Kennamer, Bess Kennedy, Marcelo Quiñones, Thai Q. Le, Ali Gramaglia, and Steven A. Erkel** for their invaluable research and writing assistance. This report also significantly benefited from the contributions of our staff, including Executive Director **Kimberly Thomas Rapp**, Legal Director **Oren Sellstrom**, Thurgood Marshall Fellow **Cecilia Chen**, and law clerk **Elizabeth Floyd**.

Educational opportunity is a critical component for the life success of our youth, particularly youth of color. Encouraging and ensuring that supports are in place to help students succeed at every level should be fundamental to our educational systems. Arbitrary and harmful policies that disproportionately and negatively impact students of color are infringements with life-altering implications. This work seeks to bring attention to a problem in Sequoia Union High School District that can be easily addressed to ensure that all students have an equal opportunity to succeed.

Combining direct legal services, policy advocacy, and impact litigation strategies, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area advances the rights of immigrants, refugees, and communities of color, with a specific focus on low-income communities and a long-standing commitment to African Americans. Marshaling the power of the private bar to help effect structural change, we provide leadership and expertise in identifying legal issues and cases that are critical to the advancement of minority and immigrant communities.

TABLE OF CONTENTS

Executive Summary..... 3

Introduction 4

SUHSD's Current Attendance Boundaries, Student Assignment Plan, & Its Disproportionate Impact on East Palo Alto Students 6

SUHSD's Student Assignment Plan’s Negative Effects on East Palo Alto Students’ Educational Success 7

Legal Liability For SUHSD's Student Assignment Plan..... 18

Other Bases For Legal Liability 25

Recommendations 26

EXECUTIVE SUMMARY

Students residing in East Palo Alto (“EPA”), a predominantly low-income, minority neighborhood in the South Bay, are assigned to neighborhood schools in the Ravenswood City School District through 8th grade. But in high school, students are divided and assigned to three different high schools across non-contiguous boundaries in the Sequoia Union High School District (“SUHSD”). This means that unlike other students within SUHSD, many EPA students must travel long distances outside of their neighborhood, leaving their cohort for communities that differ starkly from their own both demographically and socioeconomically.

This unusual assignment plan takes a heavy toll on many EPA students. The transition to high school is a critical juncture for any child’s future success, yet SUHSD’s plan has made a meaningful transition plan for EPA students difficult to implement. Similarly, the sense of social displacement many students experience as they are removed from their peer group during this emotionally tenuous period of adolescence can have lasting effects on their academic achievement. The long bus rides faced by many EPA students exacerbate this sense of isolation by affecting their ability to participate in extracurricular activities, and can affect their physical, social and emotional well-being. The distance and limited public transportation options also prevent many EPA parents from participating actively in their children’s high school.

Due to projected growth in student enrollment over the next ten years, SUHSD is currently reviewing its student assignment plan. This report urges SUHSD to take into careful account the hardships suffered by EPA students under the current assignment plan and to take steps to remedy these deficiencies without delay.

To this end, this report first evaluates preliminary data, which corroborates the negative effects of the current SUHSD high school assignment plan on EPA students. Overall, Ravenswood students fare significantly worse than any other district that feeds into SUHSD, with less than 50 percent receiving a comprehensive high school diploma or certificate, compared to over 90 percent of students from other feeder districts. Strikingly, the data shows a correlation between academic success and the distance students are required to travel. Students attending Carlmont High School, who must travel over three and a half times farther than their peers assigned to the closest neighborhood school, Menlo-Atherton High School, are 16.1 percent less likely to graduate. Unsurprisingly, the data shows that EPA parents exhaust their options to avoid this distance, taking measures from applying for intra-district transfers to enrolling their children at a local charter school.

Second, the report evaluates the legal liability SUHSD may face for its current school assignment plan. Under what is known as the “disparate impact” doctrine, policies and practices that have an unjustified adverse effect on minority students are as illegal as those based on invidious intent. Federal and state anti-discrimination statutes prohibit SUHSD from

implementing policies that have an unjustified, adverse impact on students of color, regardless of intent. Preliminary data suggests that the current assignment plan may be having just such an effect on the academic achievement of EPA students. If a showing of such a disparate impact were made in court, SUHSD would have the burden of demonstrating that the current assignment plan is justified by educational necessity and that there are no equally effective alternative practices that would result in a lesser burden on EPA students of color. In addition to a disparate impact claim, SUHSD could face liability under the Equal Protection Clause of the United States Constitution, the right to educational equality under the California Constitution, or the proscriptions against racial discrimination in the California Educational Code and its accompanying regulations.

Finally, the report offers key principles and concrete recommendations that SUHSD should take into account in reformulating its high school assignment plan. Namely, SUHSD should remove the current assignment plan and replace it with a plan focused on offering families access to quality education closer to their homes and maintaining valuable peer cohorts. To aid all SUHSD students during the transition to 9th grade, SUHSD should allocate resources towards transition programs that allow for middle school and high school curricular collaboration, educate families about high school and the importance of the 9th grade transition, and develop and maintain opportunities for positive peer network development. Lastly, SUHSD should engage the community before, during, and after implementation of a new assignment plan by providing the fullest possible range of communications tools, including community forums, print and online resources, and assigning a community liaison at SUHSD to provide information to families.

INTRODUCTION

EPA is a predominantly low-income, minority neighborhood situated east of Palo Alto and north of Menlo Park. Located on a narrow 2.2 mile strip of land, EPA is isolated from its more affluent neighbors, Palo Alto and Menlo Park, by U.S. Highway 101. Students residing in EPA attend schools in the Ravenswood City School District, which serves students from kindergarten through 8th grade in EPA and East Menlo Park.¹ For high school, EPA students attend schools in SUHSD, a large district which includes the feeder elementary school districts of Menlo Park, Woodside, Belmont- Redwood Shores, Redwood City, Las Lomas, San Carlos, Portola Valley, and Ravenswood. However, unlike other SUHSD students who are assigned to high schools in their area, EPA students are divided and assigned to three different high schools across the entire district: Menlo-Atherton High School (M-A), Woodside High School, and Carlmont High School. In fact, EPA is the only neighborhood in SUHSD whose students are divided into three high schools across non-contiguous boundaries.

Ravenswood, and more specifically EPA, students represent a vastly different demographic than the majority of SUHSD students. In the 2012-2013 school year, 80.9 percent of Ravenswood students were Latino, 8.2 percent were African American, and 8.2 percent were Pacific Islander.² More than 69 percent of Ravenswood students were English Learners,³ and 95 percent were considered socioeconomically disadvantaged.⁴ By comparison, students in the elementary school districts surrounding SUHSD high schools were respectively 61.2 percent,⁵ 63.6 percent,⁶ and 73.1 percent⁷ white. Moreover, English Learners constituted only 7 to 8 percent of the student population,⁸ and only 5 to 9 percent of students were socioeconomically disadvantaged.⁹

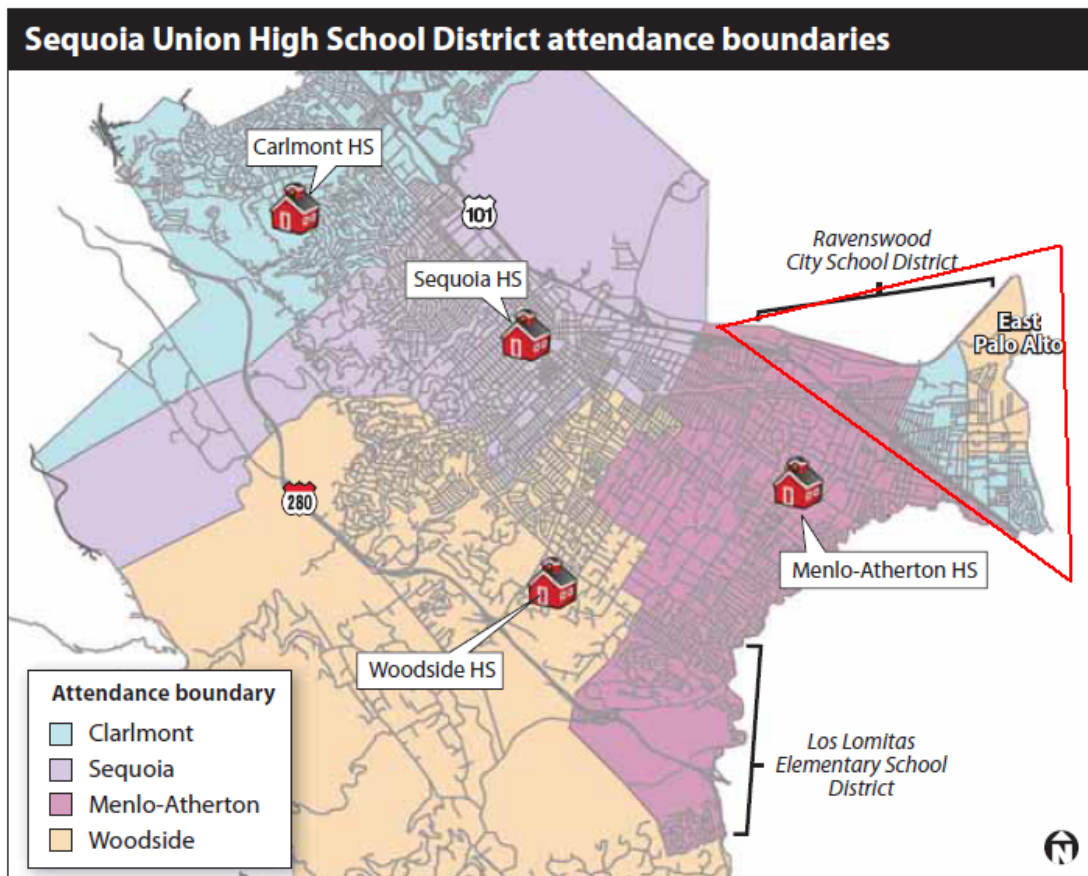
Because of SUHSD's current student assignment plan, a significant number of EPA students must travel a considerable distance - in some cases two hours per day - just to get to high school. The long distance and limited school and public transportation options create significant burdens for students and families. For example, public transit between EPA and Carlmont High School is arduous, requiring up to three transfers and an hour and a half in transit. Moreover, the long distance and difficult commute limits parents' ability to actively participate in their children's school and restricts students from participating in after school activities where bus service is not provided. In addition, there is mounting evidence that EPA students are not weathering the transition well academically—even high-achieving students testing at "Advanced" and "Proficient" on the 8th grade California Standards Test (CST) struggle in 9th grade. EPA students often fail core subjects and fail to attain sophomore standing after their freshman year of high school.

This report is intended to call attention to the inequity of the SUHSD's current student assignment plan and its adverse effects on the educational outcomes of students of color from EPA. Part I of this report explores the SUHSD's current student assignment plan and the numerous barriers to EPA students' educational successes that arise as a result. Part II explains the disparate impact doctrine and explains why SUHSD's continued adherence to its student assignment plan puts itself at legal risk. Part III explores other possible bases of legal liability. Finally, Part IV presents guiding principles and practical solutions to remedy the inequities of SUHSD's student assignment plan.

SUHSD'S CURRENT ATTENDANCE BOUNDARIES, STUDENT ASSIGNMENT PLAN, & ITS DISPROPORTIONATE IMPACT ON EAST PALO ALTO STUDENTS

Since 1986, students attending high school in SUHSD have been assigned to schools based on their residency.¹⁰ SUHSD is generally divided into four attendance zones with one high school serving students within each attendance zone: M-A, Woodside, Carlmont, and Sequoia High School. However, unlike any other neighborhood in SUHSD, EPA is divided into three attendance zones and assigned to high schools across non-contiguous boundaries.¹¹ As a result, students from EPA are assigned to one of three high schools in the Sequoia Union High School District based upon their residency¹² – whose distances range from very close (M-A) to very far (Carlmont). Map 1, below, illustrates SUHSD's current attendance boundaries. EPA, the region highlighted by the triangle, is clearly divided into three attendance zones – M-A (pink), Carlmont (blue), and Woodside (yellow). Compared with the rest of SUHSD, EPA is the only neighborhood divided between three different high schools across non-contiguous boundaries.

Map 1: Sequoia Union High School District attendance boundaries¹³



Under SUHSD's open enrollment/intra-district transfer policy, any student in SUHSD, including EPA students, may request a transfer to a different high school than the one assigned them by residency. Many EPA students utilize the transfer process to attend a school closer to their homes. For example, in the 2011-2012 school year, 90 out of 260 EPA students requested a transfer to a different high school.¹⁴ Of the 90 requests, 80 percent of transfer requests from EPA students were granted with the majority of EPA students requesting a transfer to M-A.¹⁵ There are two exceptions to SUHSD's assignment plan.¹⁶ First, students living in Fair Oaks/Friendly Acres are assigned to M-A, but may request a transfer to any other SUHSD school. Second, and more widely known, any student attending Las Lomas Elementary School District may request, and is guaranteed, a transfer to M-A even if the student resides in the Woodside attendance zone.¹⁷ In the 2012-2013 school year, 85 out of 91 Las Lomas students attended M-A, five enrolled at Sequoia High School, while only one enrolled at nearby Woodside High School.

The SUHSD School Board is required by its policies to regularly review the attendance boundaries, "taking into account school capacities and enrollment data, geographic features, student safety and transportation, racial and ethnic balance, educational programs and community input."¹⁸ Due to projected growth in student enrollment over the next ten years, SUHSD is now reviewing its current student assignment plan and attendance boundaries. The Superintendent's Office will be making recommendations to the SUHSD School Board in the fall of 2013.

History of racial segregation in Ravenswood schools and the creation of the current SUHSD assignment plan

For decades, EPA and the Ravenswood City School District have struggled with segregation due, in part, to racial discrimination in housing policies and the isolating effect of the construction of Highway U.S. 101.¹⁹ Despite the growth and prosperity in other communities around Silicon Valley, EPA has remained a predominantly low-income, minority community.

In the late 1960s and 1970s, EPA schools experienced a number of desegregation efforts.²⁰ Most notably, the SUHSD school board undertook a series of efforts aimed at desegregating Ravenswood High School and surrounding schools in the Sequoia Union High School District.²¹ When Ravenswood High School was constructed in 1958, only 21 percent of its students were African American. By 1970, that number had risen to 94 percent.²² Despite efforts to keep Ravenswood High School open, in a highly contested decision, the District closed the High School in 1976, citing low performance and budgetary concerns.²³

The existing student assignment plan and attendance boundaries were created in 1986. The assignment plan and attendance boundaries have not been altered since their formation almost 30 years ago.

SUHSD'S STUDENT ASSIGNMENT PLAN'S NEGATIVE EFFECTS ON EAST PALO ALTO STUDENTS' EDUCATIONAL SUCCESS

9th grade is the single most critical point to intervene and prevent students from dropping out of school.²⁴ Preparation for 9th grade is essential because it may present the last opportunity to intervene—for many, dropping out is an immediate or imminent result of an unsuccessful transition.²⁵ Far too many students – one third of dropouts nationwide – are never promoted beyond 9th grade.²⁶ Many students, after enduring the tumultuous transition, fail a course or lose motivation in 9th grade.²⁷ Students who fail a course in 9th grade, are much more likely to drop out of high school; research shows that between 70 and 80 percent of students who fail in the first year will not graduate from high school.²⁸

During the transition to 9th grade,²⁹ students endure self-esteem issues, developmental changes, and environmental instability. This transition will determine the student's success in high school and beyond.³⁰ Contrary to popular assumptions, although under-prepared students are more likely to fail one or more courses and eventually drop out, even previously high-achieving students face considerable challenges when they enter high school.³¹

At a time when students' educational achievement is both paramount and precarious, SUHSD's assignment plan measurably impedes, rather than improves, the likelihood of EPA students' academic success. The plan undermines student achievement in numerous ways: the uncertainty and number of high schools receiving EPA students is not conducive to necessary middle and high school collaboration; removing students from the local community impairs parent involvement, curtails students' ability to participate in extracurricular activities, and causes a sense of isolation amongst EPA students; and lastly, long bus rides adversely impact EPA students' health, emotional well-being, and academic achievement.

Lack of a Meaningful Transition Program

Successful transitions between middle school and high school are critical for the academic and long-term success of students. Research shows that transition programs targeting a combination of students, parents, and schools have a measured impact, even after accounting for demographics, family characteristics, and student behavior.³² Successful transition programs require collaboration between 8th and 9th grade educators. Communication between the two is necessary to identify distinctive features of academic, social, and organizational logistics and philosophies in middle school and high school. However, due to the current SUHSD assignment plan, Ravenswood middle school teachers are unable to effectively collaborate with SUHSD high schools because students attend an array of schools. For example, a Ravenswood middle school teacher may have students attending three different SUHSD high schools. Additionally, since the vast majority of Ravenswood teachers instruct across multiple subjects (*e.g.*, English/social studies or math/science), a single Ravenswood middle school

teacher would need to coordinate with six different high school teachers – two teachers at each of the three high schools. As a result, necessary cross-school collaboration regarding curricula becomes unworkable, and providing students with relevant information becomes a burdensome endeavor. These conditions undercut the very foundation of a successful high school transition program: activities that bring middle school and high school administrators, counselors, and teachers together to learn about the programs, courses, and requirements at their respective schools.³³

Isolation

Studies have shown that when student cohorts are disrupted and students are forced into drastically different environments, as they are for EPA students, 9th grade students face changes in school culture that can cause feelings of anonymity and isolation, including larger student populations, less individual support and connections between students and teachers, more tracking by academic ability, and increased competition and downgrading of students' social status.³⁴ EPA students sent off to three different high schools in accordance with SUHSD's assignment plan are isolated because of socio-economic differences, removal from their peer group, and racial differences.

Moreover, when students are removed from their community, their socioeconomic status may serve as an impediment to academic achievement. Students from more socioeconomically challenged neighborhoods may feel incapable of competing with peers from more advantaged neighborhoods.³⁵ As a result, these students are less likely to graduate from high school.³⁶

The isolation stemming from a student's different socioeconomic status is only heightened by a student's removal from his or her cohort. During times of transition, it is particularly important for students to have a sense of belonging.³⁷ When EPA students attend distant schools far away from friends and former classmates, their peer support suffers. The more support from family and friends a student experiences, the more likely he or she is to report a sense of school membership, combating withdrawal from school.³⁸ As a result, EPA students' peer support correlates positively to academic achievement—when SUHSD's assignment plan impairs peer support, academic achievement declines.³⁹

Students of color may also experience isolation due to racial differences and stereotyping.⁴⁰ For example, certain academic or extracurricular activities may become racialized and deemed “white” or appear outside the cultural repertoires of students of color.⁴¹ Here, EPA students' white peers oftentimes come from more affluent communities, and insensitivity and intolerance may lead to dehumanizing comments or behaviors that draw on harmful racial stereotypes about the intelligence, morals, and honesty of their African American and Latino counterparts, leading to “implicit and explicit messages about different racial and ethnic

groups' academic and extracurricular turf."⁴² Furthermore, EPA students are far more susceptible to these comments if administrators and school staff support stereotypes by making public statements marginalizing EPA youth.⁴³ This exclusion also extends to curricular opportunities – students of color are disproportionately assigned to lower tracks and are relatively absent from accelerated tracks.⁴⁴

Parent Involvement & Awareness

Not only does the structure of SUHSD's assignment plan undermine EPA students' peer support, it also makes it more difficult for families to remain involved in their child's education.

Too often families are unaware of SUHSD's assignment plan and its ramifications – until it is too late to meaningfully support their child during the 9th grade transition. Parents who want to plan for their child's high school career have trouble figuring out which high school their child will attend due to the arbitrary attendance boundaries that divide EPA. Furthermore, SUHSD's assignment plan benefits parents who have the means and ability to navigate SUHSD's open enrollment process. However, for many families in EPA for whom English is a second language or who are struggling to make ends meet, SUHSD's student assignment plan creates an additional hurdle to ensuring that their child attends the school best suited for his or her educational success. Coupled with language barriers, cultural differences, educational disparities, and unfamiliarity with the public education system, SUHSD's assignment plan creates virtually insurmountable hurdles for many EPA parents to overcome.

Moreover, because the plan sends EPA students to high schools far outside the community, parents, sometimes lacking transportation, must travel long distances to participate in school activities. Ravenswood school district staff members have noted that

Cecilia's Story⁴⁵

Cecilia is assigned to Woodside High School. Cecilia's mother is very active and engaged in Cecilia's middle school. Cecilia has an Individualized Education Program ("IEP") to help her with her learning disability. When Cecilia and her mother moved the summer between her 7th and 8th grade year, her high school assignment was changed from M-A to Woodside because of how EPA is divided up by SUHSD's attendance boundaries. Cecilia recently told her mother for the first time that she wants to go to college. Although excited, her mother is now worried. Cecilia's mother has worked closely with her middle school teachers, but she has not been able to build the same relationships and support with staff at Woodside High School. If she had known earlier which school Cecilia would be assigned to, she would have spent time at the school as Cecilia progressed through middle school to help facilitate Cecilia's transition. Now Cecilia's mother is concerned about whether she will be able to travel to attend Cecilia's IEP meetings which will be further from her work. In addition, Cecilia has been advised by her middle school counselor not to take physics next year, even though physics is a standard course for every Carlmont freshman. Cecilia's counselor says that Cecilia's middle school teachers have not prepared Cecilia for physics since most of the kids in Cecilia's school will go to M-A, where they take biology their freshman year. Cecilia's mother's primary concern is to support and nurture Cecilia's desire to attend college, despite her learning disability, but she feels extremely overwhelmed and confused by entire process.

over 60 percent of Ravenswood families do not have access to consistent or reliable transportation. Thus, for many EPA parents, simply getting to their child's school becomes a tremendous burden. For example, a parent of a student assigned to Carlmont High School faces an approximately two hour long round trip commute to attend an event at their child's school. The travel required to visit Carlmont, and other distant high schools, creates distinct challenges to parent involvement. Various forms of parent involvement are implicated. SUHSD's plan impairs the access of EPA parents to one-on-one meetings with teachers to discuss academic progress; face-to-face meetings with guidance counselors to discuss course schedules; and the ability to attend school events such as games or plays in which their child may be a participant. These forms of parent involvement provide an opportunity for a parent to show interest and model the value of school work—promoting student achievement.⁴⁶ Rather than promote parent involvement, SUHSD's plan creates obstacles at a critical juncture: when parent involvement should be used to offset the heightened likelihood of disengagement due to the adversities of the 9th grade transition.

Effects of Busing to Distant Schools

The effects of lengthy bus rides to the distant schools of Carlmont and Woodside exacerbate the difficulty of the transition into high school and the sense of isolation that EPA students may experience due to socioeconomic and racial factors. Long bus rides affect students' health, social and emotional well-being, and academic achievement.

In addition to a lengthy bus ride, students who attend Carlmont and Woodside begin classes at 8:00am, earlier than both M-A (with 8:45am, 9:25am, or 9:40am start times) and Sequoia (with an 8:30am start time). Carlmont's and Woodside's start times are earlier than the minimum 8:15am start time recommended to positively address the effects of substantial sleep deprivation in teens.⁴⁷ For EPA students who attend Carlmont or Woodside, the early 8:00am start time compounded with a lengthy bus ride places them at a severe disadvantage relative to their peers who reside closer to the school.

Long commutes to and from school often result in significantly less sleep for students. EPA students who attend Carlmont must wake up over an hour earlier than other SUHSD students. For example, students who live near the first pick-up location for the bus to Carlmont must catch the bus at 6:55am.⁴⁸ Such early pick-up times, undoubtedly, lead to less sleep for EPA students. Sleep deprivation in teenagers can lead not only to "tardiness, sleepiness during class time, and memory loss", but may also impair "regulation of complex tasks, creative thinking, and goal-oriented behaviors."⁴⁹ Health-related factors include increased irritability, anxiety, and depression; and mental fatigue.⁵⁰

Additionally, the long commute to and from school limits students' abilities to participate in extracurricular activities.⁵¹ For example, many EPA students who attend Carlmont do not participate in sports or other extracurricular activities because they have limited means of getting home afterwards. While SUHSD provides a single "late" bus returning to EPA in the evening, this late bus is often tied to specific activities, such as football practice. For students who wish to remain after school for other activities, study groups, or tutoring, a single late bus does not accommodate their schedules.

Participation in extracurricular activities can build a sense of inclusion for marginalized students, creating a feeling of belonging. For EPA students who do decide to partake in extracurricular activities, the long commute leads to even less time for homework, family responsibilities, and sleep, thus undermining the benefits of participating in these activities. Moreover, the long commute following after school activities forces EPA students to return home after dark. For many parents, traveling after sunset raises serious concerns about the safety of their children.

Lengthy bus rides also negatively affect students' short- and long-term academic achievement. Not only do students have limited access to after-school tutoring, have less time to do homework, and experience hours of dead time during their commute,⁵² limited access to extracurricular activities also hurts students' ability to build their college resumes, thus lessening their long-term academic prospects.

The compounding of these effects over the months and years of high school add up quickly: In a single month, a student bused from EPA to Carlmont spends at least 40 hours simply getting to and from school.

Preliminary Data Corroborates These Negative Effects

The data obtained and used in this report includes information from the California Department of Education, Sequoia and Ravenswood District websites, interviews and other publicly-available information. Preliminary data strongly suggests that SUHSD's student assignment plans, which forces students to travel long distances, disperses student cohorts, and inhibits successful high school transitions, results in negative educational outcomes for many students of color from EPA.

Table 1: SUHSD – Retention/Attrition for Entering Freshman in 2007-08 (Class of 2011)⁵³

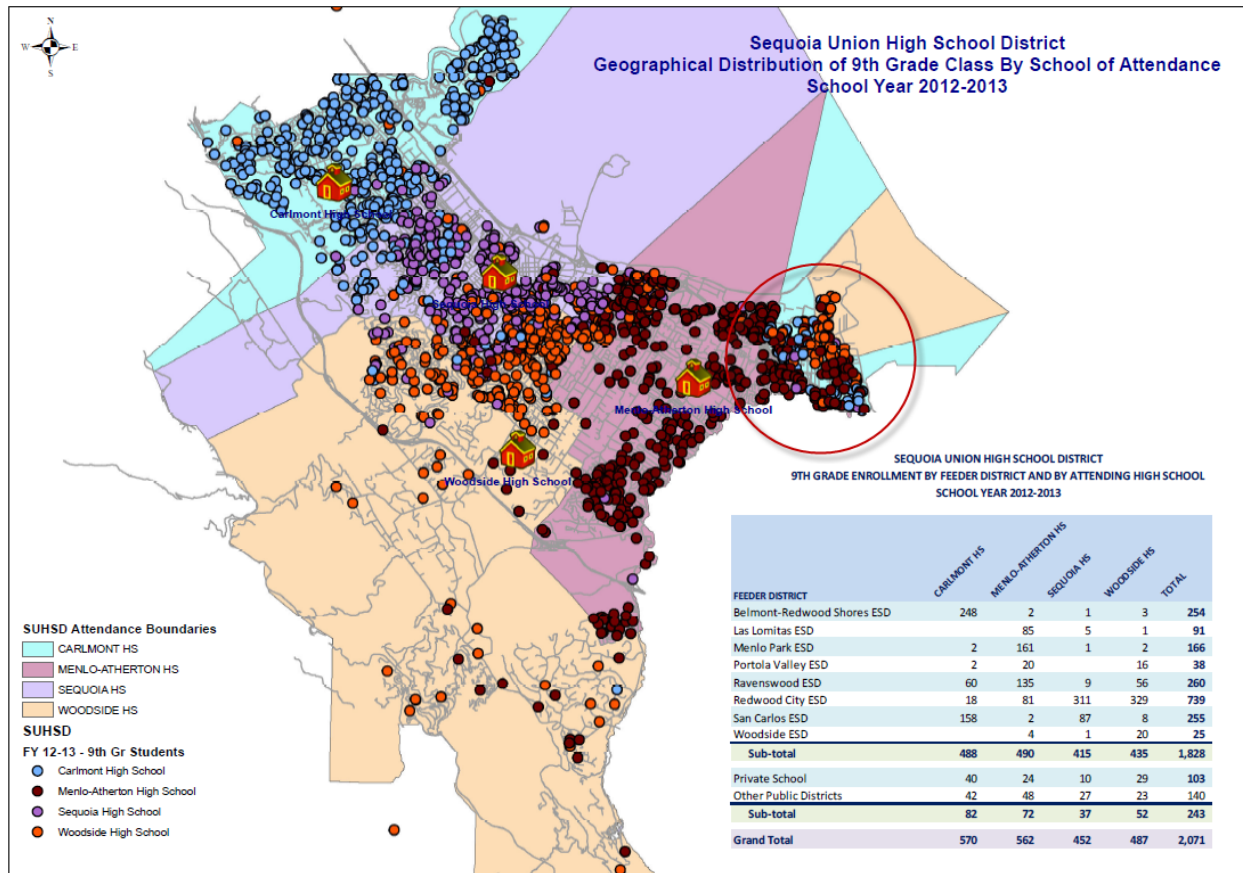
	Total # of Freshmen from Ravenswood	% Received Comprehensive High School Diploma or Certificate	% 9th Grade Cohort Meetings A-G Requirements	Distance from Ravenswood
Carlmont	84	40.5%	6.0%	11.2 miles
Woodside	55	43.6%	5.5%	8.3 miles
Menlo-Atherton	122	56.6%	17.2%	3.2 miles

The data in Table 1 suggests that there may be a correlation between academic success and the distance the students are required travel to attend high school. Comparing the furthest school (Carlmont) with the closest (M-A), the numbers are revealing. There are **16.1% more** Ravenswood students that received a Comprehensive High School Diploma or Certificate from M-A than from Carlmont. Similarly, there are **11.2% more** students from Ravenswood meeting their A-G requirements from M-A than from Carlmont.

Alex's Story

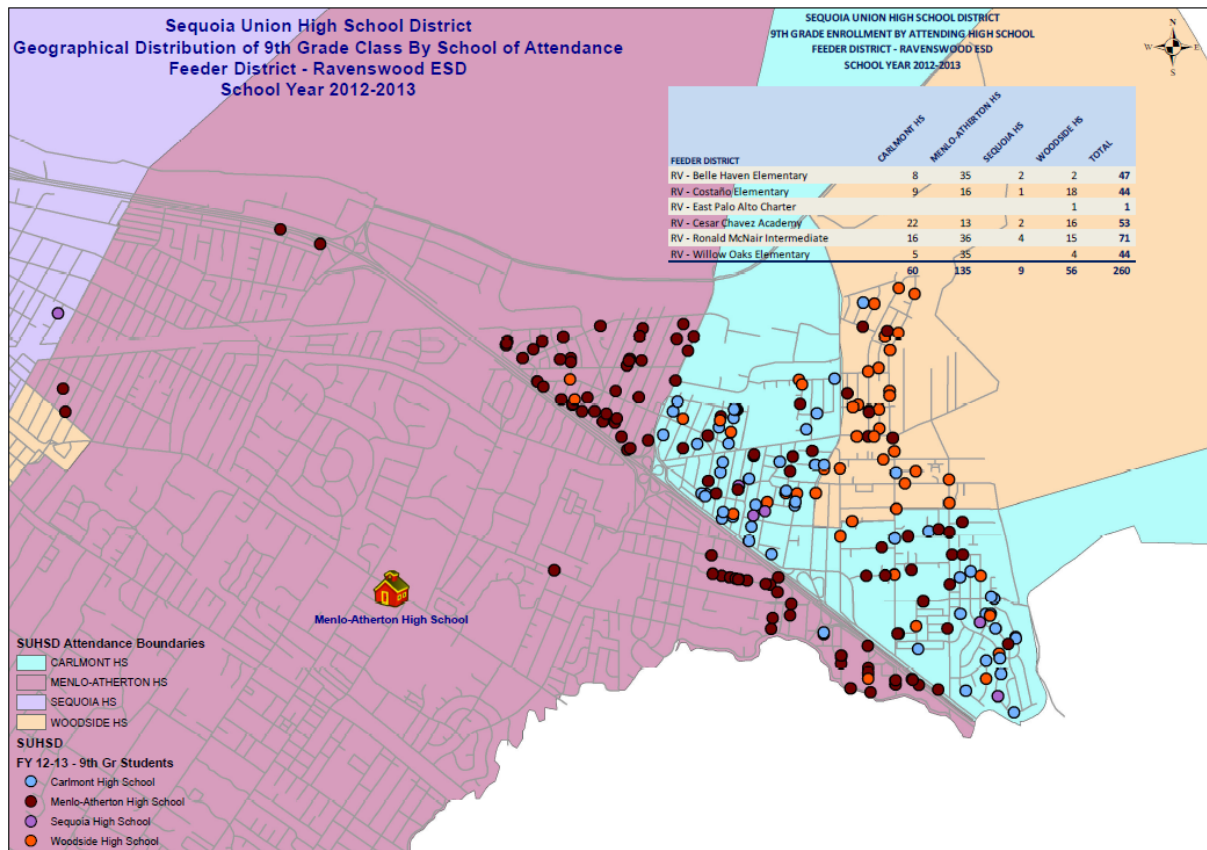
Alex is currently an 8th grader at 49ers/Costaño Academy – a school in EPA. He lives across the street from his best friend, Jennifer, who is also an 8th grader in his class. Alex is assigned to M-A next year, which is the closest high school to where he and Jennifer live. He's excited because he already knows about M-A's sports programs; he played basketball and baseball with M-A kids. He's also excited about M-A's theater program. Because of its proximity, Alex feels like he knows all about M-A already. Academically, Alex performs average or slightly below average in school – both on standardized tests and in his academic grades. However, his mother is relieved because Alex will be able to walk to M-A. Also, their next door neighbor who has a sophomore at M-A has told Alex's mom about the AVID program and after-school tutoring available at M-A. She is thankful that he will be able to participate in these support programs to ensure he will be prepared for college. Alex's family would like to move to another apartment around the corner because rent is more affordable. But, they are worried that Alex will no longer be assigned to M-A if they move.

Map 2: SUHSD- Geographical Distribution of 9th Grade Class by School Attendance (2012-2013)⁵⁴



Map 2 shows that throughout the district, students overwhelmingly attend their closest neighborhood high school. EPA’s closest high school is clearly M-A. The next closest high school – Sequoia – is twice as far for many residents. It is important to note that, even though Sequoia is the second closest school to EPA, no Ravenswood students are assigned to Sequoia via SUHSD’s student assignment plan. Ravenswood students can only attend Sequoia if they apply for an intra-district transfer. The highlighted area on Map 1 shows how SUHSD’s assignment policy singles out the small area of EPA and its students and distributes them to distant schools.

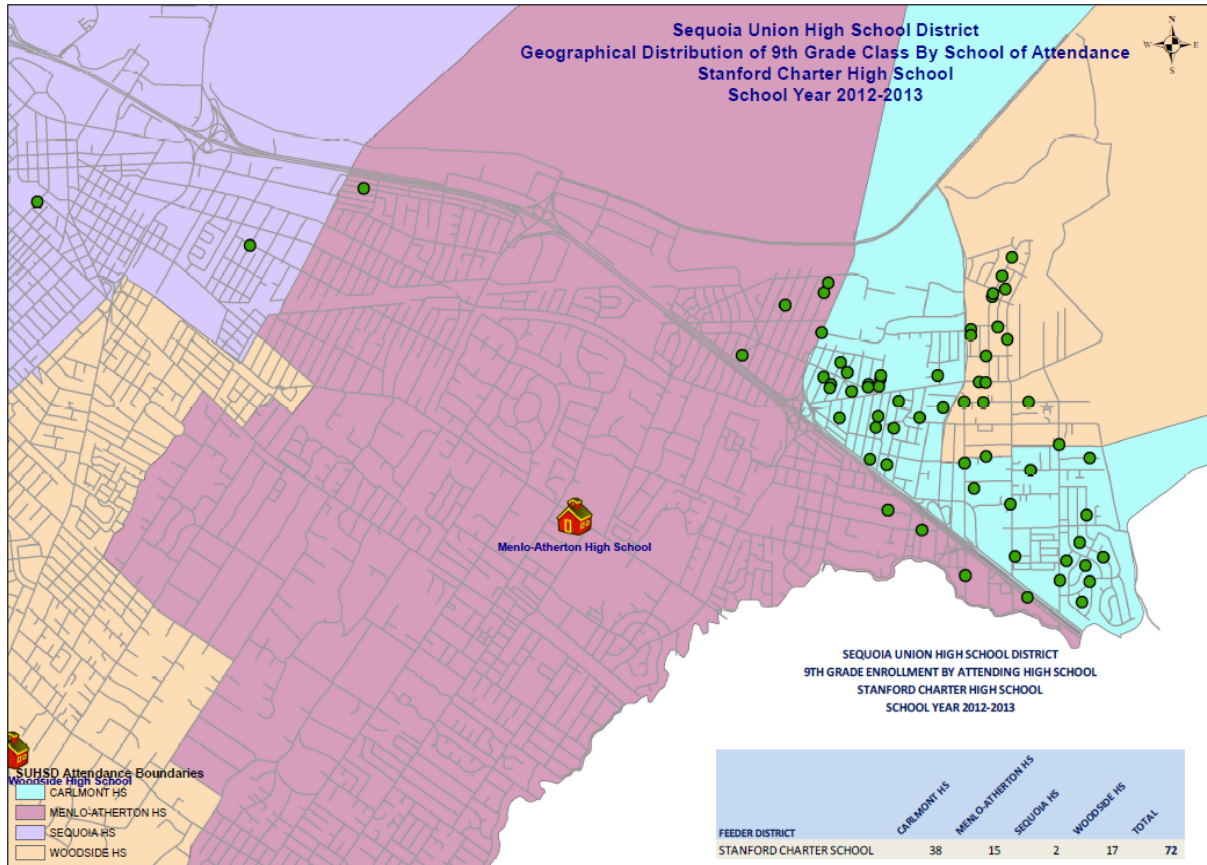
Map 3: SUHSD- Geographical Distribution of 9th Grade Class by School Attendance of Ravenswood (2012-2013)



Map 3 provides a closer look at the small 2.5 square mile EPA community and reveals how three neighbors could be attending three different high schools throughout the SUHSD. EPA students are scattered across the four different high schools even though they live only blocks apart. Ravenswood is the only elementary school district in the SUHSD whose students are assigned to schools across non-contiguous boundaries. As discussed above, SUHSD’s assignment plan subjects Ravenswood schools to the difficult challenges of catering to varying high school curricula and building different relationships with three different high schools.

Map 3 also shows that many EPA parents seek intra-district transfers to the closest high schools to EPA, M-A, ostensibly to avoid the long distance between EPA and their child’s high school.

Map 4: Stanford Charter High School’s Geographical Distribution of 9th Grade Class (2012-2013)



For the families who do not receive an intra-district transfer, many parents enroll their children in schools outside of SUHSD to avoid sending their child to Woodside or Carlmont. Many EPA parents opt to send their child to charter or private high schools located within or close to EPA. Map 4 shows the enrollment at the Stanford Charter High School, or East Palo Alto Academy. The majority of families enrolling in the charter school live in EPA – where the charter school is located. Moreover, the vast majority of the families enrolling in the charter school lived in the Carlmont attendance area – the furthest high school from EPA. The few number of students enrolled outside of this attendance area provides clear evidence that distance is a deterrent.

Overall, EPA students fare significantly worse than students from any other elementary district that feeds into SUHSD.

Jennifer's Story

Jennifer, Alex's best friend, lives across from the street from Alex and has been assigned to Carlmont High School. Since finding out that she must attend Carlmont, Jennifer has become anxious. Although she lives across from Alex, she will now have to wake up at 5:30 in the morning to make the hour long school bus ride to get to Carlmont by the start time of 8:00am. Aside from the school bus, the quickest public transportation option would be for her to take the 6:39am 280 bus from EPA, then the Cal-train, then the 295 bus to arrive at Carlmont at 7:47am. Jennifer knows that, for many kids, if they miss the bus, they just don't go to school that day. Jennifer is a top student in EPA, both in grades and standardized tests, but she is worried about whether she will do well at Carlmont. She's heard of other kids who did well until they ended up going to Carlmont or Woodside. Although these students were initially engaged, they became less and less so with every year in high school and eventually dropped out. Like Alex, Jennifer wants to participate in afterschool activities, both sports and leadership, but she is nervous about doing well academically especially since she won't get home until 8:00pm because of the lengthy commute. Jennifer's parents are considering whether to send her to a charter school in EPA, simply because it is closer to home.

Table 2: SUHSD Feeder Elementary School District by District Comparison of Students' Achievement⁵⁵

	Total # of Freshmen (District wide)	% Received Comprehensive High School Diploma or Certificate	% 9th Grade Cohort Meetings A-G Requirements ⁱ
Belmont-Redwood Shores	238	92.4%	59.7%
Las Lomas	73	91.8%	82.2%
Menlo Park	136	92.6%	75.7%
Portola Valley	23	91.3%	82.6%
Ravenswood	279	47.0%	10.8%

Table 2 shows EPA students are the only students with a below 50 percent rate of receiving a Comprehensive High School Diploma or Certificate – other counterparts enjoy an over 90 percent success rate. Similarly, only about 11 percent of EPA students were on track to

ⁱ The A-G are a sequence of high school courses that students must complete (with a grade of C or better) to be minimally eligible for admission to the University of California (UC) and California State University (CSU). They represent the basic level of academic preparation that high school students should achieve to undertake university work.

complete their A-G requirements – while their counterparts were significantly higher. While there may be, and likely are, numerous reasons for the disparity in academic performance between students from EPA and other SUHSD students, the data clearly illustrates that SUHSD’s student assignment plan is a contributing factor to concerning educational outcomes among EPA students.

LEGAL LIABILITY FOR SUHSD’S STUDENT ASSIGNMENT PLAN

SUHSD’s current student assignment plan creates considerable hurdles for EPA students’ educational success, and leaves many EPA students, who are mostly minorities, disproportionately behind their 9th grade peers. As a result, SUHSD could face legal liability, under both federal and state anti-discrimination laws, for its assignment plan.

1. Overview Of Disparate Impact Law

“Disparate impact” occurs when a policy or practice, although neutral on its face, nonetheless has an unjustified disproportionate and adverse impact on a protected class, such as persons of color.⁵⁶ The law recognizes this as a discriminatory practice and prohibits it with the same force as it prohibits overt discrimination. Disparate impact law applies when a policy or practice is not explicitly discriminatory but nonetheless has a discriminatory impact on a minority group. Disparate impact liability is well-established in many different areas of law, including in the context of employment, housing and education practices.⁵⁷

2. Key Disparate Impact Laws

A disparate impact claim exists under both federal and state law – Title VI of the Civil Rights Act of 1964⁵⁸ (“Title VI”) and its implementing regulations and California Government Code Section 11135 (“Section 11135”), respectively. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities that are federally funded or receive federal assistance.⁵⁹ Similarly, Section 11135 broadly prohibits discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability in programs or activities that are state funded or that receive any financial assistance from the state.⁶⁰

While both Title VI and Section 11135 prohibit intentional discrimination, they also prohibit actions or policies by publicly funded entities that have a discriminatory effect on a particular racial or ethnic group. SUHSD, as a public school district receiving federal and state funding, is required to comply with these standards and regulations. If SUHSD is engaging in such a practice or activity that, albeit neutral on its face, has a disparate impact on a protected group, SUHSD is subject to potential legal liability.

3. Disparate Impact Framework

When presented with a disparate impact claim, courts engage in a multi-step analysis. First, the plaintiff (the individual or entity bringing the claim) must show that a recipient of federal or state funding – here a school district – is engaging in a neutral practice or activity that has a disproportionate adverse impact on a protected group.⁶¹ Additionally, the plaintiff must show a causal connection between the practice and the disproportionate adverse impact.⁶²

Once a plaintiff has made this showing, the school district then must demonstrate a “substantial legitimate justification” for the challenged activity (*i.e.*, the student assignments).⁶³ In the education context, the school district also has the burden of proving that the practice is justified by an “educational necessity.”⁶⁴

If the school district is unable to show a substantial legitimate justification for its practice, the plaintiff has won her claim. Even if the school district has justified the practice, the plaintiff can still prevail in one of two ways. The plaintiff can show either that there are “equally effective alternative practices” that would result in less racial disproportionality or, alternatively, that the school district’s justification for the activity is merely a pretext for discrimination.⁶⁵

4. Disparate Impact Analysis Applied to SUHSD’s Student Assignment Plan

a. SUHSD’s assignment plan has a disproportionate and adverse impact on minority students from EPA

As discussed, to succeed with a disparate impact claim, the plaintiff must first show the court that SUHSD’s assignment plan actually has a disproportionate adverse impact on a protected group.⁶⁶ As previously discussed, initial data and preliminary analysis suggest that SUHSD’s assignment plan has a negative and disproportionate impact on EPA students, who are overwhelmingly minority students, compared to other students in SUHSD. This type of data and analytics can be a helpful tool for a plaintiff to establish a causal connection between SUHSD’s assignment plan and demonstrate a disproportionate adverse impact on EPA students entering the 9th grade.

The vast majority of students in EPA are Hispanic/Latino, African American, or Pacific Islander and, as a result, are protected as a group on the basis of race. The following table displays the breakdown of the percent of students enrolled at each K-8 school in the Ravenswood district, during the 2011-2012 school year, who were identified as being either Black/African American; Hispanic/Latino; Pacific Islander; or White.

Table 3: School Accountability Report Cards (SARCs) for Ravenswood District, Total Enrollment 2011-2012⁶⁷

	% of Black or African American	% of Hispanic or Latino	% of Native Hawaiian or Pacific Islander	% of White
Belle Haven Elementary	.08%	82%	0.07%	0
Brentwood Academy	12.2%	76.7%	8.2%	1.0%
Cesar Chavez Academy	4.5%	82.5%	10.4%	0.4%
Costaño/49ers Academy	15.3%	64.2%	18.1%	0.3%
Green Oaks Academy	3%	86.7%	7.3%	1.1%
Ronald McNair School	11.5%	75.5%	8.9%	1.0%
Willow Oaks	7.4%	83.6%	7.4%	0.1%

As Table 3 shows, the vast majority of EPA students enrolled in every Ravenswood school – 79 percent and above – in 2011-2012 were non-white Hispanic/Latino or African American. By sharp contrast, the percentage of White students in Ravenswood schools hovered between 0 and 1.1 percent. The racial demographic of EPA students demonstrates that minority students are disproportionately impacted by SUHSD’s student assignment plan which sends EPA students to high schools across non-contiguous boundaries. Additional data illustrates that the SUHSD’s student assignment plan, which already has a disproportionate impact on EPA students, also has a negative impact on the educational outcomes of those students.

District by District Comparison of Students' Achievement

Table 4: Sequoia Union High School District - Retention/Attrition for Entering Freshmen in 2007-2008 for the Class of 2011 (District by District)⁶⁸

	Total # of Freshmen (District wide)	% Advanced or Proficient on 8th Grade ELA CST	% Advanced or Proficient on 8th Grade Math CST	% Received Comprehensive High School Diploma or Certificate	% 9th Grade Cohort Meetings A-G Requirements
Belmont-Redwood Shores	238	74%	67.2%	92.4%	59.7%
Las Lomas	73	86.1%	87.1%	91.8%	82.2%
Menlo Park	136	85.6%	81.8%	92.6%	75.7%
Portola Valley	23	76.2%	71.4%	91.3%	82.6%
Ravenswood	279	17.4%	24.2%	47.0%	10.8%

Table 4 shows the achievement of SUHSD students in the Class of 2011 who entered high school from Ravenswood as compared to students who came from other elementary school districts that feed into SUHSD. Overall, the data shows that the percentage of students who received a comprehensive high school diploma or certificate and the percentage of students who met the A-G requirements are significantly lower for EPA students when compared to students from other districts. For example, only 47% of EPA students received a comprehensive high school diploma or certificate, compared to 91.8% of the students from Las Lomas. Similarly, 10.8% of EPA students met the A-G requirements while 82.2% of Las Lomas met their requirements. Although there may be, and likely are, numerous factors contributing to this result, other data suggest that SUHSD's assignment plan is one factor.

Additionally, anecdotal evidence indicates that even high-performing students from EPA experience these adverse impacts upon entering high school. For example, in the 2011-2012 school year, three of the highest-achieving EPA students drastically underperformed in their first semester of high school. All three students scored "Advanced" or "Proficient" on their 8th grade California Standards Test (CST) in Math and English Language Arts (ELA). In their first semester of high school, the student who attended Woodside received a 0.6 GPA and earned

only 15 credits; the student who went to Carlmont received a 1.7 GPA and earned only 30 credits; and the student who went to M-A received a 1.6 GPA and received 32 credits. More alarmingly, these students failed – received Ds or Fs – in core subjects such as math, English, and science, despite their academic achievements in middle school. Additionally, of the entering freshman from EPA in 2010 (242 students), 53% of those students had less than a 2.0 GPA at the end of their freshman year.⁶⁹ Of the entering freshman from EPA in 2011, 43% of the students had below a 2.0 GPA.⁷⁰

Overall, this type of data reflects consistent underperformance by EPA students – more so than any other elementary school district that feeds into SUHSD – and suggests that SUHSD’s assignment plan may be causing this disproportionate and adverse impact on EPA students.

Comparison of EPA Students’ Achievement by High School & Distance from EPA

Table 5: Sequoia Union High School District - Retention/Attrition for Entering Freshmen in 2007-2008 for the Class of 2011 (Intra-District)⁷¹

	Total # of Freshmen from Ravenswood	% Advanced or Proficient on 8th Grade ELA CST	% Advanced or Proficient on 8th Grade Math CST	% Received Comprehensive High School Diploma or Certificate	% 9th Grade Cohort Meetings A-G Requirements	Distance from Ravenswood
Carlmont	84	19.2%	23.3%	40.5%	6.0%	11.2 miles
Woodside	55	11.4%	27.0%	43.6%	5.5%	8.3 miles
Menlo-Atherton	122	18.6%	22.1%	56.6%	17.2%	3.2 miles

When the data is disaggregated by high school, it becomes clear that EPA students who attend more distant high schools perform far worse than their peers who attend schools closer to EPA. The biggest contrast is the achievement of EPA students who attend Carlmont (the furthest school), as compared to EPA students who attend M-A (the closest school).⁷⁴ As previously discussed, the lengthy commute to Carlmont and Woodside has become routine for many EPA students and is likely one of the main factors for these discrepancies in achievement. For EPA students who attend Carlmont, the early 8:00am start time compounded with a lengthy bus ride places them at a severe disadvantage relative to their peers who reside closer to the school. Notably, one SUHSD administrator admitted that, having taken public transportation from EPA to Carlmont, he would not want his children to make the same commute every day. Nonetheless, under SUHSD's student assignment plan, many EPA students have no choice but to make the long, arduous commute every day in order to receive an education.

Las Lomitas: The troubling disparity in SUHSD's Assignment Plan

The small, affluent school district of Las Lomitas enjoys an exception to SUHSD's assignment plan which guarantees all Las Lomitas students a spot at M-A although a number of students reside within the Woodside attendance zone. The exception ensures that all Las Lomitas students can go to the same high school. The numbers are revealing; in the 2012-2013 school year, Las Lomitas had a class of 91 entering freshman. 85 of those students attended M-A, 5 students attended Sequoia, but **only 1** student attended Woodside—even though the majority of students reside closer to Woodside High School.⁷²

In contrast, EPA students from a similarly small community are divided into three separate zones and bused to 3 different high schools. In the 2012-2013 school year, a single school in Ravenswood sent 9 students to Carlmont, 15 students to M-A, and 19 students to Woodside. Tellingly, while students from Ravenswood are overwhelmingly African American, Latino, and Pacific Islander, 65.7 percent of students in Las Lomitas are White.⁷³

There is no stated rationale for the stark difference in how Las Lomitas and EPA students are treated. While SUHSD creates an exception to the student assignment plan that Las Lomitas students to stay together in 9th grade, EPA students are involuntarily dispersed across three high schools. Such disparate treatment between the two communities raises strong concerns about the legality of SUHSD's assignment plan.

Finally, EPA students are the only students in SUHSD who are automatically assigned to high schools that are over ten miles away. Students from EPA are the only students who are assigned to high schools across non-contiguous boundaries requiring significant travel time to and from school. As illustrated above, the academic outcomes of EPA students, arising from numerous challenges unique to EPA students including distance, transportation, and difficult high school transitions, demonstrate that the SUHSD's assignment plan has a negative and disproportionate impact on EPA students.

b. SUHSD has the burden of showing a “substantial legitimate justification”

Once it has been established that the SUHSD’s assignment plan has disparate impact on minority students in EPA, the burden shifts to SUHSD to demonstrate a “substantial legitimate justification” for its assignment plan or face legal liability.⁷⁵ Such a burden would require SUHSD to prove that its assignment plan is necessary to meet a goal that is “legitimate, important and integral to [SUHSD’s] institutional mission.”⁷⁶

For example, SUHSD’s mission is to empower every student to learn to the best of his or her abilities. SUHSD may use this as a basis for its substantial legitimate justification and argue that its school assignment plan is necessary to ensure equal distribution of students given the enrollment restrictions of local high schools, or to maintain diversity across its high schools.

However, to show that its assignment plan is “educationally necessary,”⁷⁷ SUHSD must show that its reason “involves something beyond mere articulation of a rational basis for the challenged practice.”⁷⁸ To meet the “educational necessity” standard, SUHSD would need to offer more than an assertion that its current assignment plan is justified. SUHSD would need to show that its current plan is “essential” to the efficacy of SUHSD’s operations.⁷⁹ Based on the federal guidance on student assignment (discussed below), it would be difficult for SUHSD to meet this standard.

c. Even if SUHSD satisfies its burden, SUHSD may still be liable

Even if SUHSD is able to show a “legitimate justification” for its assignment plan, the plaintiff can still prevail either by showing that there are “equally effective alternative practices” that would result in less racial disproportionality or, alternatively, that SUHSD’s justification is a pretext for discrimination.⁸⁰

Here, there are clear alternatives to SUHSD’s assignment plan available that would have a less discriminatory impact on minority students from EPA. For example, SUHSD’s plan can instead easily be based on identifiable objective criterion, such as those identified in the Department of Education and Department of Justice joint guidance to school districts.⁸¹ This guidance outlines

Open Enrollment Does Not Mean Equity

One proposal currently under consideration by SUHSD would allow any Ravenswood students to request and receive a transfer to M-A. SUHSD’s continued and overreliance on open enrollment attempts to obscure the serious concerns regarding the blatant inequities in the current student assignment plan. Simply allowing parents to request a transfer is not a remedy to arbitrary attendance zones which disproportionately and negatively impact students of color from EPA. Moreover, effective open enrollment depends on a parent base that is informed and active. For many families in EPA, language barriers, educational disparities, economic concerns, and unfamiliarity with public education create significant obstacles to parents successfully availing themselves of the open enrollment option. Open enrollment does not solve the inequities embedded in SUHSD’s student assignment plan. SUHSD must look to more systemic alternatives to rectify the situation.

and prioritizes acceptable criteria, including: equalizing enrollment; minimizing travel times (including facilitating students' walking to school); and ensuring peer continuity.

Numerous alternatives to SUHSD's student assignment plan are readily available and, in some instances, are already practiced by other school districts. For example, one alternative is to simply remove the arbitrary attendance boundaries that divide EPA between three high schools and send all EPA students to M-A, the closest high school. Another option is to remove attendance boundaries through the entire district and enact an open enrollment policy for all high schools. This practice, adopted by San Francisco Unified School District for its elementary and middle school assignments, requires parents to rank their schools of choice. Through a clear set of enrollment preferences (*i.e.* siblings or attendance area) and a lottery system, students are assigned to schools throughout the district. In all, there are a number of student assignment plans that treat all students equally would help eliminate the disparate impact and provide an alternative to SUHSD's current assignment plan.

OTHER BASES FOR LEGAL LIABILITY

1. Equal Protection Clause

SUHSD's student assignment plan could violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. Under the Equal Protection Clause, it is unlawful for any state actor to intentionally discriminate against individuals on the basis of race.⁸² Circumstantial and direct evidence may be used to determine discriminatory intent.⁸³ Disparate impact can establish an "important starting point" to which historical background, specific events, deviation from normal procedures, substantial differences in treatment, and legislative history may provide sufficient evidence of racially discriminatory intent.⁸⁴

Here, SUHSD's student assignment plan clearly has a disparate impact on African American and Hispanic/Latino students from EPA. Within the same district, another set of students – those from Los Lomitas, a predominantly white neighborhood – are explicitly exempt from the SUHSD attendance boundaries and are guaranteed a place at M-A. Such blatant differential treatment between the Las Lomitas and EPA students are strong indicators of invidious intent.⁸⁵ Insofar as SUHSD's plan discriminates against EPA students on the basis of race, SUHSD risks violating students' constitutional rights under the Equal Protection Clause.

2. California Constitution

California students enjoy a state constitutional right to a free education. Article IX of the California Constitution states: "The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district..."⁸⁶ Recognizing the

importance of education, the California Supreme Court ruled that education is a “fundamental interest.”⁸⁷ As such, California’s Constitution prohibits a school from denying students educational opportunities that are equal to school districts throughout California.⁸⁸

In particular, a constitutional violation may occur if schools make their learning environment unsuitable.⁸⁹ Studies have shown that unsuitable learning environments negatively impact the quality of students’ education.⁹⁰ Notably, these surveys indicate that unreasonable commutes to school affect students’ quality of education.⁹¹ By fostering a system that creates additional impediments to academic success, such as excessive commute times and potentially unsuitable learning environments, SUHSD’s assignment plan may violate its students’ state constitutional right to an education.

3. California Education Code & Regulations

Numerous provisions in the California Education Code and its accompanying regulations prohibit all forms of discrimination in the education context.⁹² California Education Code 200, for instance, prohibits racial discrimination in schools. More specifically, California Education Code 220 states: “No person shall be subjected to discrimination on the basis of ...race or ethnicity” To the extent SUHSD’s plan is found discriminatory, SUHSD may be in violation of the California Education Code and its Regulations.

RECOMMENDATIONS

Fortunately, SUHSD has numerous options to address the inequities within its current student assignment plan. The below recommendations seek to provide guiding principles and practical solutions for some of the key issues identified in this report: (1) removal of students from their local community and peer groups; (2) the need for more robust and available transition programs; and (3) the lack of community awareness and engagement around SUHSD’s plan.

Ensure that EPA Students are Treated Equally

- As a starting point, the current SUHSD attendance boundaries that divide EPA students to three different high schools should be removed and replaced by a new assignment plan formulated to provide access to quality education for all students and families. Unequal influence and disparate processes for determining student assignments call into question the fairness of an assignment plan and are likely to diminish overall access to quality education.

“No one at any meeting spoke in favor of maintaining the current boundaries within the East Palo Alto community.”⁹³

- SUHSD should avoid increasing its reliance on its open enrollment/transfer policy as a viable means to address the inherent inequities in SUHSD’s current student assignment plan. Because the disparate treatment of minority students from EPA is ultimately rooted in the arbitrary attendance boundaries that divide EPA students between three high schools, intra-district transfers are insufficient to ameliorate the fundamental inequities of SUHSD’s student assignment plan. Moreover, given the projected enrollment growth across the district over the next ten years, the ability to transfer to a high school closer to EPA is likely to be increasingly difficult for EPA students and is unlikely to provide a long-term solution to the problem.

Offer Families Quality Schools Closer to Home

- SUHSD should ensure that all students have the opportunity to attend quality schools close to home.
- Any new assignment plan should consider the factors set forth in guidance by the Department of Education and Department of Justice, including: (1) equalizing enrollment; (2) minimizing travel time (including facilitating students walking to school); and (3) ensuring peer continuity (e.g., assigning classmates to the same school). Most importantly, the application of these factors should be consistent across neighborhoods.

The number one issue parents, identified, by far and very consistently, at all meetings was preserving communities between middle school and high school.”⁹⁴

Improve Opportunities for 9th Grade Success

- Implementation of a transition program at high schools targeting a combination of students, parents, and school staffs would allow for improved 9th grade performance across SUHSD high schools. Specifically, a transition program should aim to: (1) provide opportunities for students to participate in multiple evidence-based programs that enhance academic success and college awareness; (2) schedule planning meetings for curricular collaboration between middle school and high school teachers and ensure that collaboration is feasible by limiting the number of receiving schools for each middle school; (3) educate families early on about the new school and the importance of the 9th grade transition; (4) instruct students in problem-solving and organizational skills, self-advocacy, and help-seeking techniques that prepare them to persevere when facing difficulty in high school; and (5) create intentional opportunities for positive peer network development.

Assignment Plan Guidance

Boston Public Schools recently adopted an MIT “home-based model” that is intended to allow more students from the same neighborhood to attend the same school and provide parents with more confidence about school choice. This model – in particular, the Boston Committee’s mission to provide access to quality education close to people’s homes – may provide guidance for SUHSD’s modified assignment plan.

Engage Families and Community Stakeholders & Increase Transparency Throughout the Student Assignment Process

- SUHSD should continue to provide forums for community input into the altering of its school assignment plan. Any change in SUHSD’s student assignment plan should be accompanied by robust outreach to educate families and community stakeholders about the new plan. For example, a community guide, translated into all appropriate languages, describing the decision-making process and providing directions on how to navigate the system for all community members could foster the continued engagement from SUHSD families and stakeholders.
- SUHSD should enhance its efforts to ensure that families across SUHSD and its feeder elementary schools receive accurate and up-to-date information about the high school assignment plan and process. Information should be

provided to all families and community stakeholders and should be made readily available for families at middle schools, receiving high schools, and online.⁹⁵ In addition, a bilingual community liaison at SUHSD should be available to provide information and guidance regarding the school assignment plan when called upon by families.

- SUHSD should ensure that all families are aware and informed about its student assignment plan. Many EPA families do not find out where their child will attend high school until 8th grade. Moreover, many EPA families remain unaware of the attendance boundaries that arbitrarily divide EPA students between three high schools. To promote parent involvement and foster trust with communities through the district, SUHSD must do more to ensure that all parents receive accurate and timely information about their child’s high school pathway.

Encourage Understanding of Students’ Backgrounds

- SUHSD may ease the difficulties of the high school transition for EPA students by implementing district-wide inclusivity training for administrators and teachers at its high schools. Specifically, the training would address the misconception – oftentimes exhibited by school administrators – that EPA students are less valued and are an impediment to a successful school. By maintaining a belief that EPA students are fully capable of academic success while understanding and acknowledging the socio-economic, cultural, and transitional challenges facing EPA students at receiving high

schools, administrators and teachers will be able to create a more inclusive and supportive learning environment for all students. This will only serve to benefit all SUHSD students.

¹ Even though the Ravenswood Elementary School District serves students who reside in both EPA and East Menlo Park, this report will focus on the impact that the current SUHSD student assignment plan has on Ravenswood students who reside in EPA.

² Data for Ravenswood City Elementary. See Cal. Dep't Educ., Educ. Demographics Unit, *Enrollment by Ethnicity for 2012-13: District Enrollment by Ethnicity, Ravenswood City Elementary*, CAL. LONGITUDINAL PUPIL ACHIEVEMENT DATA SYST. (Feb. 8, 2013), available at <http://dq.cde.ca.gov/dataquest/>

³ Cal. Dep't Educ., Educ. Demographics Unit, *Number of English Learners by Language for 2012-13: English Learner Students by Language by Grade, Ravenswood City Elementary*, CAL. LONGITUDINAL PUPIL ACHIEVEMENT DATA SYST. (Feb. 8, 2013), available at <http://dq.cde.ca.gov/dataquest/>

⁴ Cal. Dept. Ed. *supra* note 2.

⁵ Data for San Carlos School District. See Cal. Dept. Educ. *supra* note 1.

⁶ Data for Menlo Park City Elementary District. *Id.*

⁷ Data for Woodside Elementary District. *Id.*

⁸ English Learner students constituted 7.1 percent of the total student population in Woodside Elementary District, 8.1 percent in Menlo Park City Elementary District, and 8.5 percent in San Carlos School District. Cal. Dept. Educ. *supra* note 2.

⁹ Students considered to be socioeconomically disadvantaged constituted 5.4 percent of the student body in Menlo Park City Elementary District, 6.6 percent in San Carlos School District, and 9 percent in Woodside Elementary District. See Cal. Dept. Educ. *supra* note 1.

¹⁰ Sequoia Union High School District administrative regulations state that current boundaries were designated in 1986. ADMINISTRATIVE REGULATIONS § 5116.1 (Sequoia Union High Sch. Dist. 2010).

¹¹ The SUHSD attendance zones also divide students from Redwood City School District into three high schools – Carlmont, Sequoia, and Woodside. However, unlike EPA students, Redwood City students are assigned to schools across *contiguous* boundaries, allowing students to attend schools that are closer to where they live. By sharp contrast, students from EPA are divided between three schools across *non-contiguous* boundaries, forcing students to attend schools with no geographic proximity to their homes.

¹² The Ravenswood City School District has an open enrollment policy for all students at its elementary and middle schools. However, this policy has no effect on high school assignments. Even if a student enrolls in a different elementary or middle school than the one assigned to them, their high school assignment is still based on residency.

¹³ David Boyce, "Too many students, too few seats," THE ALMANAC (May 22, 2013), available at http://www.almanacnews.com/morguepdf/2013/2013_05_22.alm.section1.pdf

¹⁴ Sequoia Union High School District, Background Information for Agenda Items for 10/24/12 Board Meeting 6 (Oct. 24, 2012), available at http://www.seq.org/+uploaded/file_535.pdf.

¹⁵ *Id.* at 6. Although 80 percent of EPA students' transfer requests were granted, it is unclear what percentage of EPA students received their first choice in the open enrollment process.

¹⁶ The Tinsley Voluntary Transfer Program allows a limited number of inter-district transfers for students of color entering kindergarten, first or second grade in the Ravenswood City School District. This program came about as a

result of a California appellate court challenge to alleged inter-district segregation. *Tinsley v. Superior Court*, 150 Cal. App. 3d 90 (1983).

¹⁷ Students in Fair Oaks/Friendly Acres, though assigned to Menlo-Atherton, are granted transfers on request to any other SUHSD school. Students in Las Lomas (also referred to as students from “La Entrada”— after La Entrada Middle School which serves Las Lomas students), though assigned to Woodside, may transfer on request to Menlo-Atherton. ADMINISTRATIVE REGULATIONS § 5116.1 (Sequoia Union High Sch. Dist. 2010).

¹⁸ BOARD POLICY § 5116 (Sequoia Union High Sch. Dist. 2007).

¹⁹ Mike Berman, *Race, Ethnicity and Inter-minority Suburban Politics: East Palo Alto, 1950-2002* (2002) (unpublished Master’s thesis, Stanford University), available at <http://dreamsofacity.pbworks.com/w/page/41147318/Becoming%20a%20diverse%20community%20-%20Going%20Deeper>.

²⁰ The Tinsley Voluntary Transfer Plan remains in effect today, which allows students entering kindergarten, first or second grades from Ravenswood to transfer to neighboring school districts.

²¹ These desegregation efforts are described in court challenges to earlier integration plans and assignment policies, see *Gomperts v. Chase*, 329 F. Supp. 1192 (N.D. Cal. 1971); 404 U.S. 1237 (1971); *Sanders v. Trustees, Sequoia Union High School District*, San Mateo County Superior Court No. 166522, as well as to the closure of Ravenswood High School and implementation of a “one-way busing” plan. *Stanton v. Sequoia Union High Sch. Dist.*, 408 F. Supp. 502, 509-11 (N.D. Cal. 1976)

²² *Stanton*, 408 F. Supp. at 509.

²³ *Id.* at 505.

²⁴ Ruth Curran Neild, *Falling Off Track During the Transition to High School: What We Know and What Can Be Done*, THE FUTURE OF CHILD., Spring 2009, at 53, available at <http://futureofchildren.org/futureofchildren/publications/journals/>

²⁵ Research shows that 9th grade retention and failure rates are higher than any other grade. JOSHUA SMITH, NAT’L MIDDLE SCH. ASS’N RES. SUMMARY, TRANSITION FROM MIDDLE SCHOOL TO HIGH SCHOOL 1(2006), available at <http://www.nmsa.org/Research/ResearchSummaries/TransitionfromMStoHS/tabid/1087/Default.aspx>.

²⁶ Neild, *supra* note 20, at 55.

²⁷ A 9th grade student is three to five times more likely to fail a class than students in any other grade. SOUTHERN REGIONAL EDUCATIONAL BOARD, OPENING DOORS TO THE FUTURE: PREPARING LOW-ACHIEVING MIDDLE GRADES STUDENTS TO SUCCEED IN HIGH SCHOOL 24 (2002), available at http://publications.sreb.org/2001/02V41_2002_Outstanding_Pract.pdf.

²⁸ JOSHUA S. WYNER, JOHN M. BRIDGELAND & JOHN J. DIJULIO, JR., JACK KENT COOKE FOUNDATION, ACHIEVEMENT TRAP: HOW AMERICA IS FAILING MILLIONS OF HIGH-ACHIEVING STUDENTS FROM LOWER-INCOME FAMILIES 15 (2007), available at <http://www.jkcf.org/news-knowledge/press-releases/achievement-trap-announcement/>.

²⁹ An academic transition has been defined as: “a process during which institutional and social factors influence which students’ educational careers are positively or negatively affected by this movement between organizations.” Kathryn S. Schiller, *Effects of Feeder Patterns on Students’ Transition to High School*, 72 SOC. EDUC. 216, 216-17 (1999).

³⁰ Among students who go to college, a significant decline in grades at the transition to high school is associated with the likelihood of leaving college before graduation. Joshua S. Smith, *Examining the Long-Term Impact of Achievement Loss During the Transition to High School*, 17 J. Secondary Gifted Educ. 211, 215-16.

³¹ A study of Chicago public high school students demonstrated that “almost one quarter of the students in the top quartile of their 8th grade class were off track by the end of the 9th grade.” ELAINE ALLENSWORTH & JOHN Q.

EASTON, CONSORTIUM ON CHICAGO SCHOOL RESEARCH, THE ON TRACK INDICATOR AS A PREDICTOR OF HIGH SCHOOL GRADUATION 4 (2005), available at <http://ccsr.uchicago.edu/sites/default/files/publications/p78.pdf>.

³² Among a national sample of public school students, those who had full transition programs available at their middle schools performed better in high school and were more likely to graduate. Julia B. Smith, *Effects of 8th-Grade Transition Programs on High School Retention and Experiences*, 90 J. EDUC. RES. 144, 145-50 (1997).

³³ See generally Nancy B. Mizelle, *Helping Middle School Students Make the Transition into High School*, ERIC CLEARINGHOUSE ON ELEMENTARY AND EARLY CHILDHOOD EDUCATION (1999), available at <http://www.eric.ed.gov/PDFS/ED432411.pdf>.

³⁴ KERRI A. KERR, AN EXAMINATION OF APPROACHES TO PROMOTE 9TH-GRADE SUCCESS IN MARYLAND PUBLIC HIGH SCHOOLS, EDUC. RES. SERVICE (2002), available at <http://www.ers.org/spectrum/sum02a.htm>.

³⁵ Ann Owens, *Neighborhoods and Schools as Competing and Reinforcing Concepts for Educational Attainment*, SOCIOLOGY OF EDUCATION, Vol. 83, No. 4 287-311 (2010).

³⁶ See Owens, *supra* note 16, at 302.

³⁷ L. Steinberg, DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Adolescent transitions and alcohol and other drug use prevention*, in OASP PREVENTION MONOGRAPH-8, 13-51 (1991).

³⁸ Kristen Isakson & Patricia Jarvis, *The Adjustment of Adolescents During the Transition into High School: A Short-term Longitudinal Study*, 28 J. YOUTH & ADOLESCENCE 1, 21-22 (1999).

³⁹ See generally, Gonzales *et al.* *Family, Peer and Neighborhood Influences on Academic Achievement among African-American Adolescents*, 24 AM. J. COMMUNITY PSYCHOL. 365-387 (1996).

⁴⁰ If teachers and principals are not proactive about mitigating racial exclusion in social networks, curriculum, pedagogy, course participation, and extracurricular activities, then the distrust and prejudice that exists outside of the school's walls will be brought into the school, manifesting itself in another sort of "opportunity gap." See generally, Prudence L. Carter, *Race and Cultural Flexibility among Students in Different Multiracial Schools*, 112 TCHRS. C. REC. 1529, (2010), available at https://openarchive.stanford.edu/sites/default/files/Carter_TCR_Final2009.pdf.

⁴¹ *Id.* at 1564.

⁴² Prudence L. Carter, *Equity and Empathy: Toward Racial and Educational Achievement in the Obama Era*, 79 HARV. EDUC. REV. 287, 292-93 (2009), available at https://openarchive.stanford.edu/sites/default/files/Carter_HER_Obama.pdf.

⁴³ During parent tours at one receiving high school, the principal of the school attributed low test scores to children commuting from EPA. Similarly, unwelcoming statements directed towards EPA students were made by an administrator at another receiving high school's "open" house. Interview with SUHSD parent.

⁴⁴ See generally, Roslyn Arlin Mickelson, *Subverting Swann: First- and Second-Generation Segregation in the Charlotte-Mecklenburg Schools*, 38 AM. EDUC. RES. J. 215 (2001). For example, the misplacement of students of color in 9th grade Algebra classes highlights the harmful and long-term effects that subjective decision-making and bias can have on a student of color's academic career. Lawyers' Committee for Civil Rights of the San Francisco Bay Area, *Held Back: Addressing Misplacement of 9th Grade Students in Bay Area Math Classes* (2013), available at <http://www.lccr.com/assets/press-releases/HELD%20BACK-%209th%20Grade%20Math%20Misplacement.pdf>.

⁴⁵ SUHSD's current assignment plan creates serious implications in the day-to-day lives of actual students subject to the policy. To bring to life these impacts, drawn from conversations with parents and community members, this report provides three composite portraits of students' experiences who reside within the 2.5 mile EPA residential area.

⁴⁶ Lee Shumow, Deborah Lowe Vandell & Jill Posner, *Risk and Resilience in the Urban Neighborhood: Predictors of Academic Performance Among Low-Income Elementary School Children*, 45 MERRILL-PALMER Q. 309, 326 (1999).

⁴⁷ Kyla Wahlstrom, *Changing Times: Findings from the First Longitudinal Study of Later High School Start Times*, 86 NASSP BULLETIN 3, 3-4 (2002), available at <http://conservancy.umn.edu/bitstream/139295/1/2002%20NASSP%20Bulletin,%20Vol.%2086%20No.%20633.pdf>.

⁴⁸ Sequoia Union High School District, Background Information for Agenda Items for 10/24/12 Board Meeting, *supra* note 14.

⁴⁹ Georgios Mitru et. al, *The Impact of Sleep on Learning and Behavior in Adolescents*, 104 TCHRS. C. REC 4 (2002), 712-15.

⁵⁰ Kyla Wahlstrom, *Changing Times: Findings From the First Longitudinal Study of Later High School Start Times*, 86 NASSP Bulletin 633, (2002), available at <http://bul.sagepub.com/content/86/633/3>.

⁵¹ JEANNIE OAKES, CONCEPT 6 AND BUSING TO RELIEVE OVERCROWDING: STRUCTURAL INEQUALITY IN CALIFORNIA SCHOOLS, available at <http://escholarship.org/uc/item/30q9d8xn>.

⁵² *Id.* at 24.

⁵³ *Id.*

⁵⁴ SEQUOIA UNION HIGH SCH. DIST., GEOGRAPHICAL DISTRIBUTION OF 9TH GRADE CLASS BY SCHOOL OF ATTENDANCE SCHOOL YEAR 2012-2013 (on file with LCCR).

⁵⁵ Data from SUHSD source. EDUC. SERVICES DIVISION, SEQUOIA UNION HIGH SCH. DIST., RETENTION/ATTRITION FOR ENTERING FRESHMAN IN 2007-08: CLASS OF 2011 (Oct. 17, 2012) (on file with LCCR).

⁵⁶ 42 U.S.C. § 2000(e). The Civil Rights Act of 1964, Title VI uses “protected class” as a term that describes characteristics which cannot be targeted for discrimination, including those groups defined by race, color, religion, and national origin. Additionally, under other federal laws and the Constitution, a “protected class” also includes groups defined by sex (the Civil Rights Act of 1964 and the Equal Pay Act of 1963), age (40 and over; the Age Discrimination in Employment Act of 1967), familial status (Civil Rights Act of 1968, Title VIII), disability status (the Americans with Disabilities Act of 1990 and the Vocational Rehabilitation and Other Rehabilitation Services of 1973), veteran status (the Vietnam Era Veterans Readjustment Assistance Act of 1974), and genetic information (the Genetic Information Nondiscrimination Act).

⁵⁷ See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (employment context); *2922 Sherman Ave. Tenants’ Ass’n v. District of Columbia*, 444 F.3d 673, 679 (D.C. Cir. 2006) (housing context); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984) (education context).

⁵⁸ 42 U.S.C § 2000(d) provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

⁵⁹ The Civil Rights Restoration Act of 1987 amended Title VI and related statutes by adding an expansive definition of “program or activity” which had the effect of restoring broad interpretations of Title VI consistent with congressional intent. CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, TITLE VI LEGAL MANUAL, CH VII, §§ A-C (2001), <http://www.justice.gov/crt/about/cor/coord/vimannual.php#VII>.

⁶⁰ Cal. Gov’t. Code § 11135(a).

⁶¹ *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975); see also *Darensburg v. Metro Transp. Comm’n*, 611 F. Supp. 2d 994, 1035-36 (N.D. Cal. 2009)

⁶² *New York City Env. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (1999) (“in order to establish a prima facie case [plaintiffs] had to allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities”).

⁶³ *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)(if the evidence establishes a prima facie case, plaintiff must then determine whether the recipient can articulate a substantial justification for the challenged practice), *abrogation on other grounds recognized by Lee v. Etowah Cnty Bd. of Educ.*, 963 F.2d 1416.

⁶⁴ *Cureton v. NCAA*, 37 F. Supp. 2d 687, 697 (E.D. Pa. 1999), *rev'd on other grounds*, 198 F.3d 107 (3d Cir. 1999) (stating that the defendant must show that the “practice causing the disproportionate effect is nonetheless justified by an ‘educational necessity,’ which is analogous to the ‘business necessity’ justification applied under Title VI”).

⁶⁵ *Georgia State Conference*, 775 F.2d at 1418-21.

⁶⁶ SUHSD is a recipient of federal and state funding.

⁶⁷ RAVENSWOOD CITY SCH. DIST. *School Accountability Report Card (SARC)*, (2011-12), *available at* <http://www.ravenswood.k12.ca.us/Page/243>.

⁶⁸ Data from SUHSD Source, *supra* note 50.

⁶⁹ Avani Patel, *Transition to High School: Qualitative Study of Former Ravenswood Students’ Perspective on the Transition to a Sequoia Union High School* (Oct. 4, 2012) (unpublished manuscript) (on file with LCCR)

⁷⁰ *Id.*

⁷¹ Data from SUHSD Source, *supra* note 50.

⁷² SEQUOIA UNION HIGH SCH. DIST., *GEOGRAPHICAL DISTRIBUTION OF 9TH GRADE CLASS BY SCHOOL OF ATTENDANCE SCHOOL YEAR 2012-2013*.

⁷³ Cal. Dep’t Educ., Educ. Demographics Unit, *Enrollment by Ethnicity for 2012-13: District Enrollment by Ethnicity, Las Lomitas Elementary*, CAL. LONGITUDINAL PUPIL ACHIEVEMENT DATA SYST. (May 30, 2013), *available at* <http://dq.cde.ca.gov/dataquest/>.

⁷⁴ Woodside, also distant, shows lower performance than Menlo-Atherton. The data for Sequoia (twice as far as Menlo-Atherton from Ravenswood), while small in sample size, likewise shows lower performance.

⁷⁵ *Georgia State Conference*, 775 F.2d 1403, 1417 (11th Cir. 1985) (if the evidence establishes a prima facie case, [plaintiff] must then determine whether the recipient can articulate a substantial justification for the challenged practice).

⁷⁶ *Sandoval v. Hagan*, 7 F.Supp.2d 1234, 1278 (M.D. Ala. 1998), *aff’d*, 197 F.3d 484 (11th Cir. 1999), *rev’d on other grounds*, *Alexander v. Sandoval*, 532 U.S. 275 (2000), quoting *Elston v. Talladega Cnty. Bd. of Educ.*, 997 F.2d 1394, 1413 (11th Cir. 1993).

⁷⁷ *See, e.g., Elston v. Talladegna Cnty. Bd. of Educ.*, 997 F.2d 1394, 1413 (11th Cir. 1993).

⁷⁸ *Cureton v. NCAA*, 37 F. Supp. 2d 687, 697 (E.D. Pa. 1999), *rev’d on other grounds*, 198 F.3d 107 (3d Cir. 1999) (stating that the defendant must show that the “practice causing the disproportionate effect is nonetheless justified by an ‘educational necessity,’ which is analogous to the ‘business necessity’ justification applied under Title VI.)

⁷⁹ See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)

⁸⁰ *Georgia State Conference*, 775 F.2d at 1418-21.

⁸¹ U.S. DEP'T OF JUSTICE & U.S. DEPT OF EDUC., GUIDANCE ON THE VOLUNTARY USE OF RACE TO ACHIEVE DIVERSITY AND AVOID RACIAL ISOLATION IN ELEMENTARY AND SECONDARY SCHOOLS (2011), available at <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-2011111.html>.

⁸² See *Vill. of Arlington Heights v. Metro. Hous. Dev.*, 429 U.S. 252 (1977).

⁸³ *Id.* at 267.

⁸⁴ *Id.* at 267-68.

⁸⁵ *Id.* at 267.

⁸⁶ Cal. Const. Art. IX §5.

⁸⁷ *Serrano v. Priest*, 18 Cal.3d 728, 766 (1976).

⁸⁸ *Butt v. State of California*, 4 Cal.4th 668, 685 (1992); see also *Williams v. State*, No. 312236 (Cal. Super. Ct., S.F. County, filed May 17, 2000), available at <http://www.decentschools.org/courtdocs/01FirstAmendedComplaint.pdf>; Lisa Lopez Trifiletti, *The Role of Litigation in Education Reform: Holding California Responsible, While Preserving Local Control*, 38 LOY.L.A.L.REV. 967, 985 (2004) (recognizing that lower courts have held that “[California] may not manage the education system in a way that denies students their fundamental right to educational equality.”).

⁸⁹ See *Williams*, 2000 No. 312236.

⁹⁰ JOINT COMM. TO DEVELOP A MASTER PLAN FOR EDUC., CALIFORNIA STATE LEGISLATURE, THE CALIFORNIA MASTER PLAN FOR EDUCATION 49 (2002).

⁹¹ See *id.*

⁹² Cal.Code of Regs. § 4940(a); see also Cal.Code of Regs. § 4940(c).

⁹³ SEQUOIA UNION HIGH SCH. DIST., BACKGROUND INFORMATION FOR AGENDA ITEMS FOR 6/12/13, BOARD MEETING 12 (2013), available at http://www.seq.org/+uploaded/file_922.pdf.

⁹⁴ *Id.* at 11.

⁹⁵ For any assignment plan formulated, SUHSD should seek to record and maintain documents describing the process followed to arrive at key decisions, including the alternatives considered and rejected.

Lawyers' Committee for Civil Rights of the San Francisco Bay Area
131 Steuart Street, Suite 400
San Francisco, CA 94105
Website: www.lccr.com
Telephone: (415) 543-9697
Email: info@lccr.com