

**JOINT STATEMENT OF THE**  
**WELDON CITY BOARD OF EDUCATION AND THE**  
**ROANOKE RAPIDS GRADED SCHOOL DISTRICT**  
**BOARD OF EDUCATION**  
**IN OPPOSITION TO SCHOOL DISTRICT**  
**CONSOLIDATION PROPOSAL**

**INTRODUCTION**

On May 9, 2011, the University of North Carolina Center for Civil Rights (the “Center”) issued a report (the “Report”) asserting that the continued existence of three separate school districts in Halifax County — the Halifax County Schools (“HCS”), the Weldon City Schools (“WCS”), and the Roanoke Rapids Graded School District (“RRGSD”) — is an ongoing violation of the federal and state constitutions. The report recommends that the three school districts be consolidated to cure the alleged constitutional violations.

The Weldon City Board of Education and Roanoke Rapids Graded School District Board of Education adamantly disagree with the Center’s analysis and firmly oppose the proposed merger. For the reasons explained below, a fair reading of the case law shows that neither the federal Constitution nor our state Constitution require consolidation. All three school districts were desegregated long ago, and there is no underlying constitutional violation to remedy. Moreover, the Supreme Court has held that “inter-district remedies” such as forced school district consolidation can be ordered only in extraordinary circumstances that simply are not present here.

Indeed, there is a substantial risk that a court would find that merging the three school districts and reassigning students to promote racial balance, as the Center appears to recommend, is itself unconstitutional. Moreover, consolidation would put at risk the substantial improvements all three school districts have shown over the past few years and would create great hardships for all the residents of Halifax County, including massive and unprecedented school reassignments, hefty tax increases, and great uncertainty as to the leadership and direction of the merged district. Further, educational research suggests that reassigning students in these three school districts for racial and socioeconomic balance would not result in any significant improvement in student performance. Indeed, merging the three districts on the basis of a belief that poor and minority students cannot succeed unless they attend school with enough White and middle-class students may send a demoralizing message and could prove profoundly counter-productive. Merger would also interfere with local autonomy, reduce opportunities for citizens to participate in decision-making, and discourage educational experimentation and innovation.

As neighboring school districts and educational partners who are deeply committed to student achievement, WCS and RRGSD are confident that each of the three school districts will continue to build on their recent successes and will promote opportunity for their respective student bodies. To merge these districts against their will and without widespread popular support would be a profound mistake and would not serve the interests of the children of Halifax County.

## ANALYSIS

### **I. CONSOLIDATION IS NOT CONSTITUTIONALLY REQUIRED.**

According to the Center, the fact that there are three separate school districts in Halifax County, rather than one, is a “continuing violation[] of the constitutional rights of students.”<sup>1</sup> In particular, the Center contends that the existence of three school districts violates the Equal Protection Clause of the United States Constitution, which provides that “no state shall ... deny to any person within its jurisdiction the equal protection of the laws,” and the North Carolina Constitution, which has been interpreted to require that all students be given the “opportunity to a sound basic education.” The Center further contends that the only effective remedy for these alleged violations is the consolidation of all three school districts. For the reasons set forth below, RRGSD and WCS strongly disagree with these contentions.

#### **A. The Federal Constitution Does Not Require Consolidation.**

The Center’s conclusion that the Equal Protection Clause requires consolidation of HCS, WCS, and RRGSD is based on a misreading of the applicable case law and an incomplete and misleading history of the successful efforts of both WCS and RRGSD to voluntarily desegregate in the 1960s. A fair reading of the case law and relevant history shows that there is no constitutional violation to remedy and no legal obligation to merge.

##### **1. All Three School Districts Came Into Full Compliance with *Brown v. Board of Education* and Achieved Unitary Status Long Ago.**

Neither RRGSD nor WCS has ever been under a desegregation order. Both districts moved quickly to voluntarily desegregate in the 1960s and cooperated fully with federal government officials.<sup>2</sup> Both districts’ desegregation plans were promptly approved and implemented.<sup>3</sup> As a

---

<sup>1</sup> Dorosin et al., “*Unless Our Children Begin to Learn Together . . .*”: *The State of Education in Halifax County*, at 3 (UNC Center for Civil Rights, 2011) (hereinafter, the “Report”).

<sup>2</sup> See, e.g., Letter from Eloise Severinson, Regional Civil Rights Director for U.S. Department of Health, Education, and Welfare, to WCS Superintendent Paul Hammack (March 27, 1969) (approving WCS’s September 1968 desegregation plan and noting that the plan “should effectively eliminate all vestiges of the dual school structure in Weldon City”); Letter from Dewey Dodds, Chief of Education Branch for U.S. Office of Education to WCS Superintendent M.L. Fisher, Jr. (October 22, 1970) (noting that “your district has implemented its desegregation plan and you are now operating a unitary, nonracial school system”); Letter from Harold B. Williams, Acting Assistant Commissioner for Equal Opportunities Program of U.S. Department of Health, Education and Welfare to RRGSD Superintendent J.W. Talley (June 30, 1965) (approving RRGSD’s desegregation plan); Letter from John Hope II, Director for Equal Opportunities Program of U.S. Office of Education to RRGSD Superintendent J.W. Talley (October 3, 1966) (approving RRGSD’s desegregation plan); Letter from State Superintendent Charles F. Carroll to Kenneth Haddock, Acting Director for Equal Educational Opportunities Program of U.S. Office of

result, both districts have been unitary for over forty years, and neither has maintained segregated facilities or denied a single student access to the public schools on the basis of race during that time.

As for HCS, the Supreme Court “implicitly approved” the desegregation plan it adopted in 1970.<sup>4</sup> It is not clear whether the district has been formally released from its desegregation order.<sup>5</sup> But the Center does not even allege, let alone present evidence, that HCS has violated the terms of its desegregation order, maintained segregated facilities, or otherwise racially discriminated against students within the past forty years. Even if HCS has not already been declared unitary, there can be no serious question that it would be today.

## **2. School Districts Have No General Obligation to Merge, Adjust Attendance Zones, or Reassign Students to Promote Racial Balance.**

The Report emphasizes that residents of Roanoke Rapids are predominantly White, whereas residents of Weldon City and much of Halifax County are predominantly Black. According to the Center, this “segregated residential pattern stem[s] from the fact that,” at the turn of the twentieth century, “Whites exclusively owned or worked in . . . paper and cotton mills” in Roanoke Rapids, whereas Blacks worked primarily “in the outlying cotton fields.”<sup>6</sup>

Assuming this explanation for the racial demographic patterns in Halifax County is correct, there is no constitutional remedy for the different racial compositions of the three school districts. It is well settled that “[w]ithout discriminatory intent there can be no violation of the Equal Protection Clause.”<sup>7</sup> Thus, school districts may not intentionally segregate students on the basis of race. But they have no general duty to merge, alter attendance zones, or re-assign students in order to overcome racial housing patterns and promote greater “racial balance,” either within district lines or between adjoining districts. As the Supreme Court has explained:

---

Education (May 11, 1967) (certifying that RRGSD is in compliance with civil rights laws); Letter from Harold B. Williams to J.W. Talley (May 22, 1967) (same).

<sup>3</sup> See *supra* note 2.

<sup>4</sup> *Milliken v. Bradley*, 418 U.S. 717, 747 n.22 (1974).

<sup>5</sup> Although the Center alleges that HCS is still under a desegregation order, the record is not clear on this point. The United States Commission on Civil Rights, an independent federal government commission which tracks these matters, has noted that although United States Department of Justice records did not include a declaration of unitary status, HCS’s former Superintendent, Geraldine Middleton, told the Commission in July 2007 that the district was not currently under a desegregation order. See U.S. Commission on Civil Rights, *Becoming Less Separate?: School Desegregation, Justice Department Enforcement, and the Pursuit of Unitary Status*, at 161 (September 2007).

<sup>6</sup> Report, p. 4.

<sup>7</sup> *Goldsboro City Bd. of Educ. v. Wayne County Bd. of Educ.*, 745 F.2d 324 (4th Cir. 1984) (citing *Washington v. Davis*, 426 U.S. 229 (1976)).

That there [is] racial imbalance in student attendance zones [is] not tantamount to a showing that [a] school district [is] in noncompliance with [a] [desegregation] decree or with its duties under the law. Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance due to the *de jure* violation has been remedied, the school district is under no duty to remedy the imbalance that is caused by demographic factors.<sup>8</sup>

Thus, all three school districts satisfied their legal obligations under *Brown v. Board of Education* when they stopped assigning students to racially segregated schools in the late 1960s and early 1970s and implemented measures to eradicate the present effects of that past discrimination. That Roanoke Rapids has a higher percentage of White residents than Weldon City or the rest of Halifax County is a demographic fact, not a constitutional problem. It does not compel the three school districts to merge or to bus students to promote racial balance across all the schools in the county.

### **3. The Existence of Three Separate School Districts Does Not Constitute an “Inter-District” Constitutional Violation Justifying an “Inter-District” Remedy.**

Despite that fact that each of the three districts has been fully desegregated for two generations, the Center alleges that they are legally required to merge in order to pursue countywide, *inter-district*, racial balance. This argument is based on a misreading of the applicable legal precedents and some significant factual omissions. A fair reading of the cases and the relevant history shows that there is no inter-district constitutional violation to remedy and no legal obligation to merge.

The first case to consider whether a court could order the consolidation of adjoining school districts in a school desegregation lawsuit was *Bradley v. School Board of City of Richmond*.<sup>9</sup> In that case, a group of plaintiffs sued three school districts in Virginia, alleging that disparities in the districts’ racial compositions violated the Equal Protection Clause of the Constitution. Like HCS in North Carolina, the Richmond City school system was under a desegregation order at the time.

---

<sup>8</sup> *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). Cf. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31-32 (“Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of students bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.”); U.S. Department of Education, Office for Civil Rights, *Student Assignment in Elementary and Secondary Schools and Title VI* (Revised September 1998), available at <http://www2.ed.gov/about/offices/list/ocr/docs/tviassgn.html> (“In some areas, the population distribution of a school district enrolling large numbers of minority and nonminority students may result in schools with substantially disproportionate enrollments of students of one race. Although school districts must ensure that students are not assigned on the basis of race, color, or national origin, the law does not require that each school within a district have a racially balanced student population.”).

<sup>9</sup> 462 F.2d 1058 (4th Cir. 1972).

By the time the case reached the Supreme Court, it had been operating under an approved desegregation plan for about one year.<sup>10</sup> Like WCS and RRGSD, the other two Virginia districts had cooperated with federal authorities in the 1960s and adopted and implemented voluntary desegregation plans.<sup>11</sup> It was “thus established that in each of the three school districts the formerly dual system of schools ha[d] been disestablished and effectively replaced with a unitary school system within which no child [was] excluded from school by reason of his race.”<sup>12</sup>

Despite the fact that all three school districts had recently desegregated, a federal district court ordered that they be consolidated “to achieve a greater degree of integration and racial balance.”<sup>13</sup> The district court “felt compelled to order consolidation of the three school units partly because of his concern with what seemed to him an unfortunate racial balance in the three separate systems and partly because he felt this racial balance was the result of invidious state action.”<sup>14</sup> The school districts appealed, and the United States Department of Justice filed a brief in their support.<sup>15</sup>

The Fourth Circuit reversed the district court’s decision. In doing so, the appellate court “agree[d] with the position of the United States that ‘this is not primarily a case about segregation required by law, *because state law has never required segregation as between Richmond and the neighboring school systems.*’”<sup>16</sup> Although the record showed that all three school districts had been segregated in the past, there was no evidence “that there was ever joint interaction between any of the two units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another.”<sup>17</sup> The court concluded that there were “myriad” reasons — “economic, political, and social” — for the different racial compositions of the three school districts.<sup>18</sup> “Whatever the basic causes,” however, “it has not been school assignment, and school assignments cannot reverse that trend.”<sup>19</sup> Thus, there was no constitutional violation, and the district

---

<sup>10</sup> *Id.* at 1061.

<sup>11</sup> *Id.* at 1065.

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

<sup>13</sup> *Id.* at 1061.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1064-65.

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.* at 1065.

<sup>18</sup> *Id.* at 1066.

<sup>19</sup> *Id.*

court did not have authority to order the school systems to merge.<sup>20</sup>

The seminal case on inter-district remedies came three years later, in *Milliken v. Bradley*.<sup>21</sup> In *Milliken*, a federal district court and court of appeals ordered the consolidation of the Detroit City School with multiple adjoining districts “because of their conclusion that total desegregation of Detroit would not produce the racial balance which they perceived as desirable.”<sup>22</sup> Like the Center in its Report, the lower courts in *Milliken* “proceeded on an assumption that the [predominantly Black] schools could not be truly desegregated — in their view of what constituted desegregation — unless the racial composition of the student body of each school substantially reflected the racial composition of the population of the . . . area as a whole.”<sup>23</sup>

The Supreme Court firmly rejected this line of thinking and held that the lower courts had no authority to order merger. Emphasizing that “[n]o single tradition in public education is more deeply rooted than local control over the operation of schools,” the Supreme Court held that consolidation and other “inter-district” remedies are appropriate only under extraordinary and narrowly defined circumstances:

Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one that produces a significant segregative effect in another district. Thus, an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race.<sup>24</sup>

In a subsequent case, the Supreme Court clarified that “what we meant in *Milliken I* by an interdistrict violation was a violation that caused *segregation between adjoining districts*.”<sup>25</sup> Thus, courts may order school districts to merge in desegregation cases only if it can be shown that either (1) district lines were drawn with discriminatory intent to create predominantly White and non-White school districts or (2) the intentionally discriminatory acts of the district to be merged caused a significant degree of racial segregation between the districts.

---

<sup>20</sup> *Id.* at 1069.

<sup>21</sup> 418 U.S. 717 (1974).

<sup>22</sup> *Id.* at 740.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 744-45.

<sup>25</sup> *Missouri v. Jenkins*, 515 U.S. 70, 94 (1995) (emphasis added).

Finally, in *Goldsboro City Board of Education v. Wayne County Board of Education*,<sup>26</sup> the Fourth Circuit applied the rule laid down in *Milliken* in rejecting a North Carolina city school system's claim that the county school district's refusal to merge with it constituted unlawful racial discrimination. The city school district alleged that the county district was maintaining "white haven" schools and that merger was the only effective remedy.<sup>27</sup> The evidence showed, however, that

. . . the primary reasons why defendant has not agreed to change the boundary lines between the two administrative units or to merge the two units have been that in view of the fact that defendant was operating a unitary school system and offering equal educational opportunities to all its students no changes were necessary; that the changes requested by plaintiff would result in hardships to the . . . County school system and its students; that there is strong resistance on the part of parents attending the . . . County schools to any changes which would result in their children being reassigned to schools outside their immediate communities; and there is no legal duty on the part of the defendant to accede to plaintiff's requests in order to assist the plaintiff in what it perceives to be a problem of racial imbalance within its own school system.<sup>28</sup>

The district court found these reasons to be "logical, legitimate, and non-discriminatory" and denied the requested relief.<sup>29</sup>

The Fourth Circuit affirmed the district court's decision. The appellate court confirmed that "[a]n independent school district which has not caused segregation in a neighboring independent district has no duty to rectify a racial imbalance in the other district."<sup>30</sup> Applying the *Milliken* standard, the Court held that "the County Board has done nothing to produce segregation in [the city of] Goldsboro" and therefore could not be required to merge.<sup>31</sup> Next, the Court reviewed the post-*Milliken* cases and surmised that a plaintiff seeking forced school district consolidation "must overcome a formidable hurdle."<sup>32</sup> In particular, the Court quoted with approval the following passage from a recent Fifth Circuit decision:

---

<sup>26</sup> 745 F.2d 324 (4th Cir. 1984).

<sup>27</sup> *Id.* at 326.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 328.

<sup>31</sup> *Id.* at 329.

<sup>32</sup> *Id.* at 332. One commentator has described *Milliken* as an "an almost uniformly insurmountable barrier to interdistrict remedies." Kimberly Jenkins Robinson, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. Rev. 787, 814 (2010).

We believe the [Supreme] Court’s deliberate use of phrases such as “substantial” or “direct cause” and “significant segregative effect” also expresses an insistence that in cases where an interdistrict remedy is requested, there must be *clear proof* of cause and effect and a *careful delineation* of the extent and effect. In the absence of such a showing, school district lines are to be carefully observed and desegregation remedies confined to orders affecting the school district in which the condition of segregation is manifest.<sup>33</sup>

The Court concluded that the city school district had “failed to show any discriminatory intent on the part of the [county school district],”<sup>34</sup> a prerequisite for any relief. The Court also held that the county could not be required to merge even if it had intended to operate “white haven” schools, since the evidence failed to show that the county district’s actions “directly or substantially caused” any change in the racial demographics in the city school district.<sup>35</sup>

These three decisions — *Bradley*, *Milliken*, and *Goldsboro* — are binding in North Carolina and represent the current state of the law on inter-district remedies. Applying these cases to the facts at hand, it is clear that HCS, WCS, and RRGSD have not committed any inter-district violations and that merger is not legally required.

Under *Milliken* and its progeny, school districts can potentially be forced to merge if there is “clear proof”<sup>36</sup> that “district lines have been deliberately drawn on the basis of race.”<sup>37</sup> Throughout its Report, the Center repeatedly alleges that the district lines for HCS, WCS, and RRGSD were “racially gerrymandered.”<sup>38</sup> But the Center provides no convincing evidence in support of this contention, and the historical record refutes it.

WCS was created by the North Carolina General Assembly in 1903, and RRGSD was created by separate legislation passed in 1907.<sup>39</sup> Notably, each statute provided that the district was being

---

<sup>33</sup> *Id.* (quoting *Lee v. Lee County Bd. of Educ.*, 639 F.2d 1243, 1256 (5th Cir. 1981) (emphasis added)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Goldsboro City Bd. of Educ.*, 745 F.2d at 332.

<sup>37</sup> *Milliken*, 418 U.S. at 744-45.

<sup>38</sup> See Report, p. 4 (“Halifax County is a stark example of this historical gerrymandering.”); p. 9 (“Despite changes in the Roanoke Rapids municipal boundaries, the Roanoke Rapids school district lines remained racially gerrymandered . . . .”); p. 29 (“The creation of racialized school districts in Halifax was not a random geographic phenomenon: it was a direct result of racial oppression.”); p. 29 (referring to “the intentional creation of a White enclave of opportunity in Roanoke Rapids”); p. 34 (referring to the “racially gerrymandered district boundaries” of the three school systems).

<sup>39</sup> An Act to Establish Graded Schools in the Town of Weldon (March 2, 1903); An Act to Establish Graded Schools in the Town of Roanoke Rapids, in Halifax County (February 26, 1907).



created for the education of the “white and colored children” who lived there.<sup>40</sup> The fact that both districts were racially segregated is unsurprising, given that virtually all school districts in the country were segregated at the turn of the 20th century. What is important, however, is that this segregation was purely *intra-district*. Neither district was created as a “white” or a “colored” district — indeed, both were expressly created for the education of both “white” and “colored” students. It is therefore impossible to conclude from this historical evidence that the district lines were intentionally “racially gerrymandered.”

The simpler, and more accurate, explanation for why WCS and RRGSD were created is that public schools were badly needed in those communities.<sup>41</sup> Thus, the first students to attend WCS and RRGSD were not White or Black students pulled from HCS schools to enroll in new, racially homogenous, school districts; they were students of all races who happened to live in the communities of Roanoke Rapids and Weldon City and needed public schools to attend.<sup>42</sup> The turn-of-the-century efforts of the citizens of WCS and RRGSD to create public schools for their respective communities reflect initiative and an understanding of the importance of education. They do not reflect a desire to create separate “white” and “colored” school districts.

Given that district lines were not drawn with the intent to create racially homogenous school districts, the only reason HCS, WCS, and RRGSD may be forced to merge is if the discriminatory acts of one or more of the districts were intended to and actually caused a significant degree of *inter-district* segregation.<sup>43</sup> As noted earlier, an “inter-district” violation is unlawful discrimination that creates “segregation between adjoining districts.”<sup>44</sup>

Nowhere in the Report does the Center allege that WCS engaged in *any* discriminatory acts that caused segregation between WCS and either of the other two districts.<sup>45</sup> Absent proof that WCS lines were racially gerrymandered or that WCS engaged in unconstitutional discrimination which

---

<sup>40</sup> *Id.*

<sup>41</sup> See Roanoke Rapids: The First Hundred Years 1897-1997, at 160 (Robert B. Robinson, III, ed., City of Roanoke Rapids, 1997) (“From the founding of Roanoke Rapids in 1897 until 1907, there was no school system. . . . Recognizing the serious need for additional educational opportunities in Roanoke Rapids, a small group of dedicated men drew up a special school district charter introduced into the North Carolina General Assembly and adopted February 26, 1907.”).

<sup>42</sup> The Center also suggests that the fact that RRGSD lines extend beyond the Town of Roanoke Rapids is evidence that the lines were drawn to create a “White” school district. But RRGSD lines tracked the “the larger area [beyond town lines] that most people considered Roanoke Rapids.” See Roanoke Rapids: The First Hundred Years 1897-1997, at 36 (Robert B. Robinson, III, ed., City of Roanoke Rapids, 1997). Indeed, much of this land was uninhabited at the time.

<sup>43</sup> *Milliken*, 418 U.S. 717.

<sup>44</sup> *Jenkins*, 515 U.S. at 94 (emphasis added).

<sup>45</sup> Indeed, the Report notes that by 1975, “WCS was the most integrated of the three districts.” Report, p. 9.

created segregation as between adjoining districts, the law does not require WCS to merge with either HCS or RRGSD.

The Center does, however, allege that HCS and RRGSD committed an inter-district violation by sharing the use of the Chaloner School, a “Negro school” located within RRGSD that served Black students from RRGSD and HCS from 1924 until RRGSD voluntarily desegregated in the 1960s.<sup>46</sup> For the following reasons, the sharing of this school by RRGSD and HCS cannot be the basis for inter-district relief.

First, the “Chaloner School problem” was swiftly addressed to the satisfaction of the federal government in connection with the approval of RRGSD’s desegregation plan.<sup>47</sup> In particular, the U.S. Department of Health, Education and Welfare informed RRGSD in March 1966 that it would approve a desegregation plan whereby HCS was allowed to use the Chaloner School building by some “mutually satisfactory arrangement” between HCS and RRGSD and RRGSD would “assume responsibility for all of the students living within [RRGSD] and formerly attending Chaloner.”<sup>48</sup> The RRGSD and HCS adopted such a plan and worked out the details for a multi-year lease of the Chaloner School by HCS.<sup>49</sup> Although not asked to do so by the federal government, the RRGSD Board also recommended that the State Board of Education transfer of a substantial portion of its capital outlay funding to HCS for use in the area served by the Chaloner School.<sup>50</sup>

Given this sequence of events, any past constitutional violations associated with the maintenance of the segregated Chaloner School have long since been remedied. Courts have limited authority to order desegregation remedies to address the present effects of past discrimination.<sup>51</sup> They do not have remedial authority simply because segregation has existed in the past.

Second, the Chaloner School does not fall within the definition of an “inter-district” violation. The Chaloner School was a Black school located within predominantly White Roanoke Rapids. RRGSD allowed HCS to send Black students to attend school at Chaloner along with Black students from RRGSD. While this was an unfortunate reflection of the *intra-district* segregation that was pervasive at the time, it did not create or promote *inter-district* segregation, or “*segregation between adjoining districts.*” Indeed, the effect of the Chaloner sharing arrangement was that more Black students attended school in predominantly-White RRGSD, and fewer Black students attended school in predominantly-Black HCS. In no way can this arrangement be described as “joint

---

<sup>46</sup> Robinson, ed., *supra* note 41, at 167.

<sup>47</sup> See, e.g., RRGSD Board of Education, Minutes (March 29, 1966); see also *supra* note 2.

<sup>48</sup> RRGSD Board of Education, Minutes (March 29, 1966).

<sup>49</sup> RRGSD Board of Education, Minutes (June 2, 1966).

<sup>50</sup> *Id.*

<sup>51</sup> See *Freeman*, 503 U.S. 467.

interaction” between RRGSD and HCS “for the purpose of keeping one unit relatively white by confining blacks to another.”<sup>52</sup> The Chaloner arrangement was the antithesis of inter-district segregation insofar as it *reduced* “segregation between adjoining districts.”

Third, the Supreme Court has said that “isolated” instances of inter-district violations are not enough to support an inter-district remedy. Rather, the effects of inter-district segregation caused by the intentionally discriminatory acts of school systems must have been “substantial.” Even if the sharing of the Chaloner School were deemed an “inter-district violation,” this isolated incident, which was fully resolved to the satisfaction of the federal government over forty years ago, would not be enough to warrant forced consolidation of three independent school districts today.

In sum, WCS and RRGSD have been operating unitary, non-discriminatory school systems for over forty years. Neither district was racially gerrymandered, and both acted swiftly and voluntarily in the 1960s to cure any constitutional problems relating to intra-district segregation within their respective borders. There is no evidence that either district is responsible for an “inter-district violation” that caused segregation between school districts. Accordingly, the United States Constitution does not require that the districts be merged.

#### **B. The State Constitution Does Not Require Consolidation.**

In addition to alleging a federal constitutional violation, the Report asserts that the existence of three separate school systems is contributing to a violation of the state constitutional rights of students in Halifax County to receive the opportunity for a sound basic education.<sup>53</sup> The Report further asserts that it would be “well within” a court’s authority to order merger under the North Carolina Supreme Court’s decision in *Leandro v. State*.<sup>54</sup> But the Center cites no authority for this novel proposition, and other parts of the Report appear to acknowledge that *Leandro* cannot be stretched this far.

The *Leandro* plaintiffs alleged that North Carolina’s school funding system unconstitutionally denied equal educational opportunities to students in low wealth districts and underprivileged students in urban districts.<sup>55</sup> The North Carolina Supreme Court agreed, holding that the State’s funding scheme violated Article IX, Section 2(1) of the North Carolina Constitution.<sup>56</sup> It explained that Article IX, Section 2(1) requires the State to provide each student with the

---

<sup>52</sup> *Bradley*, 462 F.2d at 1065.

<sup>53</sup> Report, p. 33.

<sup>54</sup> 346 N.C. 336 (1997).

<sup>55</sup> *Leandro*, 346 N.C. at 342-43.

<sup>56</sup> *Id.* at 347.

“opportunity for a sound basic education.”<sup>57</sup> Since *Leandro* was decided, Judge Howard Manning has exercised ongoing jurisdiction and has continually monitored the State and several school districts, including HCS, for compliance with the *Leandro* mandate.

At its heart, *Leandro* is about school funding and resource allocations.<sup>58</sup> It has nothing to do with either race or student assignment. Despite the assertion that forced consolidation would be “well within” a superior court’s remedial power to correct a *Leandro* violation, the Report reflects a clear understanding that *Leandro* cannot be stretched that far.<sup>59</sup> While the Center may question “whether the remedies provided under *Leandro* are sufficient,”<sup>60</sup> they are the remedies our courts have deemed appropriate. Nothing in *Leandro* requires racial or socioeconomic balancing of student bodies within a school district, let alone across districts. And no court has so much as hinted that a forced consolidation of school districts could be ordered to cure a *Leandro* violation, particularly when only one of the school districts to be merged has been found to have a *Leandro* problem.

To the extent the Center believes that consolidation is needed to protect the rights of students in HCS to the “opportunity for a sound basic education,” its concerns are misplaced. In recent years, HCS has shown substantial gains in many areas of student achievement.<sup>61</sup> Moreover, HCS is receiving ongoing support from the North Carolina Department of Public Instruction and is subject to judicial supervision. With the executive and judicial branches of our state government, as well as the local school board, already focusing intensive efforts on improving educational outcomes, it is vain to suppose that better outcomes could be achieved by merging three school districts into one so that students can be bused outside of current district lines in the name of racial diversity.

Finally, the Center’s assumption that merger would significantly improve student performance by improving racial and socioeconomic balance is not supported by educational research. For the reasons noted in Section III, below, consolidating HCS, WCS, and RRGSD would not result in the creation of predominantly “middle class schools” and would not yield significant educational benefits.

---

<sup>57</sup> *Id.*

<sup>58</sup> See *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 609, 599 S.E.2d 365, 373 (2004) (noting that the *Leandro* case “started primarily as a challenge to the educational funding mechanism imposed by the General Assembly that resulted in disparate funding outlays among low wealth counties and their more affluent counterparts”).

<sup>59</sup> See, e.g., Report, p. 36 (“It is possible that the state’s refusal to cast a critical eye on the existence of three school districts in Halifax County is a limitation of the *Leandro* ruling as a school finance adequacy suit.”); Report, p. 36 (“The narrow interpretation of the *Leandro* mandate has limited the decision’s potential impact in helping overcome educational disparities in North Carolina, particularly in such areas as Halifax County.”).

<sup>60</sup> Report, p. 36.

<sup>61</sup> See *infra* Section II.E.

**C. Consolidation Combined with Busing to Achieve Racial Diversity Per Se is Likely Unconstitutional.**

In *Parents Involved in Community Schools v. Seattle School District 1*,<sup>62</sup> the Supreme Court cast serious doubt on the constitutionality of student assignment plans motivated by a desire to achieve “racial balance” in the public schools. *Parents Involved* concerned equal protection challenges to two school districts’ student assignment plans. One of the districts used race as a “tie-breaker” in deciding which students would be given seats at over-subscribed schools, with a view to achieving racial “balance.”<sup>63</sup> The other district sought to maintain a minimum Black student enrollment of between 15 and 50 percent to promote “racial integration.”<sup>64</sup>

The Supreme Court declared both plans unconstitutional. The use of racial classifications in student assignment is subject to strict scrutiny, the most demanding level of judicial review.<sup>65</sup> For a race-conscious student assignment plan to survive strict scrutiny, the school district must show that its action was narrowly tailored to achieve a compelling government interest.<sup>66</sup>

The districts tried to defend their assignment plans by arguing that public school systems have a compelling interest in the “educational and broader socialization benefits [that] flow from a racially diverse learning environment.”<sup>67</sup> Four justices, all members of the majority, rejected this argument, reasoning that the desire to promote racial balance does not justify the use of racial classifications in student assignment plans.<sup>68</sup> In his concurring opinion, the fifth member of the majority, Justice Kennedy, expressed some willingness to give race a modest place in student assignment. According to Justice Kennedy, “a district may consider it a compelling interest to achieve a diverse student population. *Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered.*”<sup>69</sup> Because his concurrence represented the fifth vote needed to obtain a majority on the Supreme Court and was decided on narrower grounds than the plurality opinion, Justice Kennedy’s opinion represents the

---

<sup>62</sup> 551 U.S. 701 (2007).

<sup>63</sup> *Parents Involved*, 551 U.S. at 712.

<sup>64</sup> *Id.* at 732.

<sup>65</sup> *Id.* at 720.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 725.

<sup>68</sup> *Id.* at 730-31 (plurality).

<sup>69</sup> *Parents Involved*, 551 U.S. at 797-98 (Kennedy, J., concurring in part and in the judgment) (emphasis added).

holding of the Court on this point.<sup>70</sup>

Two clear lessons may be drawn from *Parents Involved*. First, assigning individual students on the basis of race is presumptively unconstitutional and very difficult to justify. Second, race may be considered in connection with student assignment only as one aspect of a broader approach to diversity that also includes non-racial elements.

In its Report, the Center proposes the consolidation of three school districts with the express purpose of promoting racial balance. Nothing in the Report suggests that the Center is interested in promoting a more holistic version of “diversity” that considers “other demographic factors, plus special talents and needs,” when assigning students to school. Thus, the adoption of the Center’s plan could — ironically — subject both the County and the new, merged school district to liability for impermissibly using race in connection with student assignment.

## **II. CONSOLIDATION WOULD HAVE SERIOUS ADVERSE CONSEQUENCES.**

### **A. Consolidation Would Not Achieve Racial Balance Absent Massive Student Reassignments and Long Bus Rides.**

The Report repeatedly asserts that consolidation will promote racial and socioeconomic balance in the public schools of Halifax County. But consolidation, by itself, would not achieve *any* measure of racial or socioeconomic balance. Without further action by the newly formed school board, students in the merged district would continue to ride the same buses to the same schools, whatever their racial or socioeconomic makeup. A description of the massive disruption and dislocation that would be required to bus students across Halifax County to achieve the Center’s goals is conspicuously absent from the Report.

An examination of the size and demographics of the three school districts quickly reveals that it would be impossible to achieve countywide racial balance without reassigning literally thousands of students. According to the North Carolina Department of Public Instruction (“NCDPI”), the student bodies of HCS, WCS, and RRGSD reflected the following racial demographics in the 2010-2011 school year (the table also shows the overall racial demographics of the proposed merged school district):

---

<sup>70</sup> See *Marks v. United States*, 430 U.S. 188, 193 (1977) “When a fragmented [Supreme] Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment[] on the narrowest grounds.”

Racial Demographics of Current School Districts and Proposed Merged District

School District	Total Enrollment	White Students	Non-White Students
HCS	3,864 (100%)	173 (5%)	3,691 (95%)
WCS	1,043 (100%)	39 (4%)	1,004 (96%)
RRGSD	2,900 (100%)	2,042 (70%)	858 (30%)
Merged District	7,807 (100%)	2,254 (29%)	5,553 (71%)

In order for the schools in the three current school districts to reflect the county-wide demographics of 29% White and 71% non-White without changing current school enrollments, it would be necessary to bus the following numbers of students out of their current school districts and into an adjoining district:

Minimum Numbers of Students, By Race, Who Would Be Reassigned  
to Achieve Perfect “Racial Balance” in Merged School District,  
If Individual Students Were Selected for Reassignment on the Basis of Race<sup>71</sup>

School District	White Students Bused In	Non-White Students Bused In	White Students Bused Out <sup>72</sup>	Non-White Students Bused Out <sup>73</sup>
HCS	943	0	0	943 (26%)
WCS	262	0	0	262 (25%)
RRGSD	0	1,205	1,205 (42%)	0

To achieve “perfect” racial balance, the new merged district would need to bus, at a minimum, 943 non-White students from HCS into RRGSD (26% of the HCS student body), 262 non-White students from WCS into RRGSD (25% of the WCS student body), and 1,205 White students from RRGSD into HCS and WCS (42% of the RRGSD student body). Overall, 2,410 students, or 31% of the 7,807 students attending all three school districts, would need to be reassigned across district boundaries to achieve perfect racial balance.

---

<sup>71</sup> Because the percentages of White students in HCS and WCS are so similar and so small, this report assumes that no students would be bused between HCS and WCS for racial diversity.

<sup>72</sup> Percentages listed are of total student body for the district based on 2010-2011 enrollment data.

<sup>73</sup> Percentages listed are of total student body for the district based on 2010-2011 enrollment data.

This analysis assumes that no White students would be bused out of HCS or WCS and no non-White students would be bused out of RRGSD. For the reasons described in Section I.C, above, however, any such effort to assign individual students on the basis of race would almost certainly be held unconstitutional under the Supreme Court’s decision in *Parents Involved*. If representative, rather than racially targeted, portions of the student body of each existing school district were bused across existing district lines to achieve racial balance, reassignments would be even more widespread, as reflected in the table below.<sup>74</sup>

Numbers of Students, By Race, Who Would Be Reassigned  
to Achieve Perfect “Racial Balance” in Merged School District  
If Representative Portions of Each Student Body Were Reassigned

School District	Bused In (White)	Bused In (Non-White)	Bused Out (White)	Bused Out (Non-White)	Total Number Bused Out of Current District <sup>75</sup>
HCS	1,010	425	64	1,371	1,435 (37%)
WCS	277	117	15	379	394 (38%)
RRGSD	79	1750	1,287	542	1,829 (63%)

On this analysis, 3,658 students, or 47% of the students currently attending school somewhere in Halifax County, would be reassigned to a school in one of the adjoining districts to achieve “perfect” racial balance throughout the County as between White and non-White students.

While it would be theoretically possible to reassign fewer students to achieve less than “perfect” racial balance, the numbers above are sufficient to show that any serious effort to reassign students in Halifax County for racial diversity would be an enormous undertaking that would result in substantial disruptions in the lives of many students and their families. Moreover, the numbers set out above do not even begin to take into account the length of bus rides that would be required to achieve racial balance across a 731-square-mile county. Given the demographics of residential housing in the area, it is clear that many students in the northwest and southeast ends of Halifax County, in particular, would need to travel very long distances in order to distribute White and non-White students evenly countywide.

Finally, the projections set out above underestimate the impact that busing for racial balance would have on students in Halifax County in that they examine only overall White/non-White or minority/non-minority balance. Presumably, any plan to bus students for true “racial diversity”

---

<sup>74</sup> This analysis continues the assumption that no students would be bused between HCS and WCS.

<sup>75</sup> *Id.*



would need to be designed to disperse pockets of particular racial minorities and spread them around the schools in the County. For example, children from the Haliwa-Saponi Native American tribe, which has a strong demographic presence in and around Hollister, North Carolina, would presumably need to be bused to schools in other parts of the county. Hispanic students would also need to be redistributed to ensure racial balance countywide.

To be clear, neither WCS nor RRGSD oppose the idea of racial balance in the abstract, and both districts affirmatively value diversity. Both districts also acknowledge that, during the 1960s, concerns about student reassignments and long bus rides necessarily gave way, in many cases, to the pressing needs to end intentional racial segregation within school districts. Where, however, there is no underlying constitutional violation and inter-district merger and busing is not constitutionally required,<sup>76</sup> neither WCS nor RRGSD can condone a plan that would lead to extraordinary disruption and distress in the lives of students and their families.

### **B. Consolidation Would Require Substantial Tax Increases for Most Halifax County Residents.**

There are three ways that city and county school districts may be merged under North Carolina law. First, a merger may be initiated by agreement of the boards of education of the districts to be merged, subject to the approval of the State Board of Education.<sup>77</sup> Since WCS and RRGSD oppose the proposed merger, this is not an option here.<sup>78</sup>

Second, a city board of education may force a merger by notifying the State Board of Education that it is dissolving itself, whereupon the State Board will adopt a merger plan.<sup>79</sup> Neither WCS nor RRGSD has any intention of dissolving itself, so this option, too, is unavailable.

The final way in which a county school district may be merged with one or more city school administrative units is on the recommendation of the county board of commissioners and the approval of the State Board of Education.<sup>80</sup> If the State Board declines to approve the plan presented by the county commissioners, the plan may be approved by the General Assembly.<sup>81</sup> This is the only

---

<sup>76</sup> See *supra* Section I.

<sup>77</sup> N.C. Gen. Stat. § 115C-68.

<sup>78</sup> As correctly noted in the Report, the “processes for voluntary merger are preferable, as they allow for community input and consensus, detailed planning and local control over the unification process — necessary steps to facilitating a district unification that creates a positive framework for countywide comprehensive educational reform.” Report, pp. 38-39.

<sup>79</sup> N.C. Gen. Stat. § 115C-68.2

<sup>80</sup> N.C. Gen. Stat. § 115C-68.1.

<sup>81</sup> *Id.*

way that school districts may be merged without their consent under North Carolina law.<sup>82</sup>

If a county board of commissioners wishes to force a merger against the will of one or more school districts, it must prepare a plan addressing a myriad of complex issues, such as the method of constituting the new board of education; the manner in which board members will be selected; whether members will be nominated, elected, or appointed from districts at large; the length of terms of office; whether elections will be partisan or non-partisan; the organization of the board; the method for filling vacancies; the powers and duties of board members; the compensation to be paid to board members; the transfer of facilities, properties, deeds, contracts, and other assets and liabilities to the new board; and procedures necessary for an orderly merger.<sup>83</sup>

In addition, the plan adopted by the county commissioners must “require that the county adopting the plan provide local funding per average daily membership to the resulting local school administrative unit for subsequent years of at least the highest level of any local school administrative unit in the county during the preceding five fiscal years before the merger.”<sup>84</sup> For purposes of this requirement, “local funding per average daily membership means the budgeted local expense per average daily membership.”<sup>85</sup> Thus, a merger initiated by the county will always result in a tax increase whenever there has been any variation in the past five years in local per-pupil funding, including supplemental taxes, among the districts to be merged.

According to an analysis performed by the accounting firm of Rives & Associates, LLP in March 2011, the highest budgeted local expense per average daily membership for HCS, WCS, and RRGSD over the past five years appears to be \$2,016 per pupil in combined county appropriations and supplemental taxes for WCS in 2008-2009.<sup>86</sup> Based on this figure, Rives & Associates estimates that the impact of a consolidation of HCS, WCS, and RRGSD would be *an annual tax increase of*

---

<sup>82</sup> The Report lists “Merger by Action of General Assembly” as a fourth way in which school districts may be consolidated. As correctly noted in the report, however, the North Carolina Constitution prohibits the General Assembly from merging specific school districts on its own initiative. Report, p. 38. The General Assembly may create funding incentives for merger, but it may not order specific school districts to consolidate.

<sup>83</sup> N.C. Gen. Stat. §§ 115C-67; 115C-68.1.

<sup>84</sup> N.C. Gen. Stat. § 115C-68.1(a).

<sup>85</sup> N.C. Gen. Stat. § 115C-68.1(d).

<sup>86</sup> See Rives & Associates, LLP, North Carolina City Schools Consortium: Potential Cost Impact of Consolidated School Systems (March 8, 2011). While Rives & Associates based its analysis on data available from NCDPI, which was up to date only through the 2008-2009 fiscal year, the firm noted that “it may be relatively safe to assume that county funding has decreased from prior year levels due to the economic crisis facing the nation.” Rives & Associates, p. 10.

\$7,285,560 for the citizens of Halifax County.<sup>87</sup> The Roanoke Rapids Daily Herald has reported that numbers provided by the Center and Halifax County suggest that merger would result in a tax increase of up to 29%.<sup>88</sup> This burden would be borne primarily by residents of the HCS school administrative unit, who currently do not pay a supplemental tax and who comprise the largest segment of the overall county population. As the Center's Elizabeth Haddix has publicly acknowledged, "Right now there's a question of feasibility for county tax payers."<sup>89</sup>

One of the many strengths of maintaining smaller, separate school districts is the flexibility afforded to citizens and their elected representatives in determining supplemental tax rates to support their local schools. The proposed merger would undermine this principle and subject the majority of taxpayers in Halifax County to a tax increase during the middle of an economic crisis. While it is certainly within the purview of the County Commissioners to increase taxes, either with or without merger, some may question whether the time is right for such an action.

### **C. Consolidation Would Lead to a Net Reduction in State Funding for Students in the Merged School District.**

Another important consequence of merger would be the loss of state-funded "base" allotments to WCS and RRGSD. Because "base" allotments are made without regard to the number of students enrolled in a school district, the loss of these allotments would not be offset by increases in the Average Daily Membership or "ADM" allotments for the new, merged, school district. According to the report issued by Rives & Associates, a merger of HCS, WCS, and RRGSD would result in the loss of the following base allotments currently made to WCS and RRGSD<sup>90</sup>:

- Loss of Central Office Administration allotments for each district (\$720,000 total annually).
- Loss of five Career and Technical Education teacher positions for each district (\$574,000 total annually).
- Loss of Career and Technical Education program support allotment for each district (\$20,000 total annually).
- Loss of one Limited English Proficiency teacher assistant position in RRGSD (\$29,750 total

---

<sup>87</sup> The Rives & Associates report also notes that the actual tax increase could be even higher should counties "be required to also fund their county-based charter schools at this new adjusted local per-pupil rate as a result of a merger requirement." Rives & Associates, p. 11.

<sup>88</sup> Roger Bell, *Unification Could Mean Tax Increase* (Roanoke Rapids Daily Herald, 2011).

<sup>89</sup> *Id.*

<sup>90</sup> Some of these numbers are based on estimates and assumptions made by Rives & Associates in light of the unavailability of up-to-date data from the State. All such assumptions and estimates are clearly identified in the Rives & Associates report.

annually).<sup>91</sup>

- Loss of one pre-kindergarten teacher for children with disabilities for each district (\$110,096 total annually).

A hold-harmless provision would protect all of these allotments except the one for Career and Technical Education program support for the first two years following merger. After the hold-harmless period, however, the total impact of the loss of these “base” allotments would be a *reduction in state funding of \$1,453,846 annually*. These funds would revert to the State and would not be available for other uses in Halifax County. Any offsets would need to come from local funds and would therefore require additional tax increases.

Another serious risk that must be considered in connection with any proposed merger is the possible loss of federal funding. This is a complex issue, as federal funding for local school districts is determined in reference to both federal and state formulas. In an addendum to its March 8, 2011 report on the funding implications of school consolidation, the accounting firm of Rives & Associates concluded that the effects of school consolidation on federal funding are “uncertain.” Based on the current demographics of the three school districts in question, however, Title I funding for the merged school district would be held harmless to at least 95% of the total allocations to the three separate districts.<sup>92</sup> Nevertheless, a potential reduction of up to 5% in Title I funding in an area that relies so heavily on Title I must be seriously considered, especially in the current economic climate.

#### **D. Research Suggests that Consolidation May Be Economically Inefficient and Counter-Productive.**

In a peer-reviewed report published by the National Education Policy Center in February 2011, researchers Craig Howley, Jerry Johnson, and Jennifer Petrie reviewed the history of school consolidations in the United States as well as econometric and school quality studies.<sup>93</sup> Their findings and conclusions cast serious doubt on the breezy assumption that consolidating school districts inevitably creates costs savings and promotes economic efficiency. Among the key finding and recommendations in the report are the following:

- “[C]ontemporary research does not support claims about the widespread benefits of consolidation. The assumptions behind such claims are most often dangerous oversimplifications. For example,

---

<sup>91</sup> As of the date of the Rives & Associates Report, WCS did not qualify for this base allotment.

<sup>92</sup> According to information relayed by the United States Department of Education to Rives & Associates, the Department calculates allocations made to state educational authorities every two years based on data then available. If HCS, WCS, and RRGSD merged during the 2011-2012 school year, the Department would not use data from the merged school district until it calculates allocations for fiscal year 2013-2014.

<sup>93</sup> Craig Howley et al., *Consolidation of Schools and Districts: What the Research Says and What It Means* (National Education Policy Center, 2011).

policymakers may believe ‘We’ll save money if we reduce the number of superintendents by consolidating districts’; however, larger districts need — and usually hire — more mid-level administrators.”<sup>94</sup>

- “Research also suggests that impoverished regions in particular often benefit from smaller schools and districts, and they can suffer irreversible damage if consolidation occurs.”<sup>95</sup>
- Although consolidation is often promoted as a way “to reduce costs through economies of scale and to improve teaching and learning,” these two benefits “are, however, potentially contradictory, because economies of scale can undermine teaching and learning.”<sup>96</sup>
- “A sizable body of research investigating school size has consistently found larger size (after moving beyond the smallest schools) to be associated with reduced rates of student participation in co-curricular and extracurricular activities, more dangerous school environments, lower graduation rates, lower achievement levels for impoverished students, and larger achievement gaps related to poverty, race, and gender. In particular, moreover, larger district size has been shown to be negatively associated with the achievement of impoverished students.”<sup>97</sup>
- “[L]ow wealth and minority populations tend to be inordinately and negatively affected by consolidation initiatives.”<sup>98</sup>
- “Financial claims about widespread benefits of consolidation are unsubstantiated by contemporary research about costs savings (mostly, but not exclusively, from research on district consolidation) and learning (mostly, but not exclusively, from school-size research).”<sup>99</sup>

Like the Rives & Associate report discussed above, this recent report and survey of the academic literature casts serious doubt on the Center’s unsupported assumption that merging HCS, WCS, and RRGSD would achieve costs savings, economic efficiency, or educational benefits for the students in Halifax County.

#### **E. Consolidation Would Put at Risk the Substantial Gains Each of the Three School Districts Has Made in Recent Years.**

The Center’s consolidation proposal is premised largely on the assumption that greater racial

---

<sup>94</sup> *Id.* (Executive Summary).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 8.

<sup>97</sup> *Id.* at 9. The study notes that this research is “correlational” and does not establish a clear causal relationship, although “the correlations are largest for the most impoverished students.” *Id.*

<sup>98</sup> *Id.* at 10.

<sup>99</sup> *Id.* at 11.

and socioeconomic diversity in schools throughout Halifax County would promote student achievement. For the reasons set forth in Section III, below, this assumption is highly dubious. What is clear, on the other hand, is that HCS, WCS, and RRGSD have all shown substantial improvements across multiple measures of student achievement in recent years. These improvements were brought about not by magic bullets, but by the sustained hard work and dedication of students, parents, teachers, administrators, and school board members focused on finding solutions that work in their communities. It would be folly to risk these hard-fought gains on the hope that a new and as-yet unknown school district would achieve better results by reassigning students on the basis of race.

Like most school systems, all three school districts face serious challenges, and neither WCS nor RRGSD will be content until *all* of their respective students graduate with the knowledge and skills they need to succeed and compete in a global marketplace. Still, the notion that HCS, WCS, and RRGSD cannot achieve these goals without shuffling students from school to school is an affront to all three districts and is belied by recent data. Consider the following:

- Average End-of-Grade (“EOG”) proficiency rates in both math and reading rose for students in all three school districts during the 2008-2009 and 2009-2010 school years as compared to the years before. Although NCDPI has not yet posted overall EOG math and reading proficiency rates for the 2010-2011 school year, the results for each grade level in each school district show significant additional gains. Specifically, WCS improved on its 2009-2010 scores in 7 of 12 EOG categories<sup>100</sup>; RRGSD posted gains in 8 of 12 categories; and HCS improved in 5 of 12 areas as compared to the year before.<sup>101</sup>
- Of the 74 End-of-Course (“EOC”) proficiency rate scores posted for all three districts cumulatively since 2008-2009, 42 (or 57%) represented improvements over the previous year’s scores, and only 17 showed a decline of 5 percentage points or more as compared to the previous year.<sup>102</sup>
- After NCDPI changed the manner in which graduation rates are calculated during the 2005-2006 school year, causing a sharp drop for all three districts from graduation rates that previously exceeded 90%, all three districts posted solid gains over the next four years, culminating in graduation rates of 71.9% (HCS), 75.4% (RRGSD), and 77.1% (WCS) for 2010-2011.<sup>103</sup>

While there will always be more work to be done until *all* students achieve at the highest

---

<sup>100</sup> The categories measured are math and reading at grades 3, 4, 5, 6, 7, and 8.

<sup>101</sup> Most of HCS’s 2010-2011 declines were modest, especially when compared with previous gains. Only one of the 2010-2011 scores (for 5th grade reading) represented a decline of more than 5% from the previous year.

<sup>102</sup> EOCs are given in English I, Algebra I, Algebra II, Geometry, Biology, Chemistry, Physical Science, Physics, and Civics. Data is available on the NCDPI website for all three school districts since 2008 except for data relating to 2010-2011 Geometry EOCs, 2009-2010 and 2010-2011 Chemistry EOCs, and 2009-2010 and 2010-2011 Physics EOCs.

<sup>103</sup> All data cited in this section is available online at the NCDPI website at <http://www.ncpublicschools.org/>.

level, the trends are encouraging for all three school districts in Halifax County. Students, parents, and teachers should not be expected to gamble these hard-fought gains on the tenuous assumption that a new, larger, school district could better address the needs of students through massive student reassignments.

**F. Consolidation Would Interfere With Local Autonomy, Reduce Opportunities for Citizens to Participate in Decision-Making, Discourage Educational Experimentation and Innovation, and Create Serious Logistical Problems.**

In *Milliken v. Bradley*, the Supreme Court emphasized the central role of local autonomy in public education in America and explained why courts are extremely reluctant to order school districts to consolidate:

[T]he notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process. . . . [L]ocal control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation, and a healthy competition for educational excellence.<sup>104</sup>

The Supreme Court also emphasized the serious logistical problems associated with forced consolidation:

Entirely apart from the logistical and other serious problems attending large-scale transportation of students, the consolidation would give rise to an array of other problems in financing and operating this new school system. Some of the more obvious questions would be: What would be the status and authority of the present popularly elected school boards? Would the children of [the city district] be within the jurisdiction and operating control of a school board elected by the parents and residents of other districts? What board or boards would levy taxes for school operations in [the] districts constituting the consolidated metropolitan area? What provisions could be made for assuring substantial equality in tax levies among the . . . districts, if this were deemed requisite? What provisions would be made for financing? Would the validity of long-term bonds be jeopardized unless approved by all of the component districts as well as the State? What body would determine that portion of the curricula now left to the discretion of local school boards? Who would establish attendance zones, purchase school equipment, locate and construct new schools, and indeed attend to all the myriad day-to-day decisions that are

---

<sup>104</sup> *Milliken*, at 741-42 (internal quotation marks omitted).

necessary to school operations . . . ?<sup>105</sup>

All of these concerns militate strongly against a forced merger of HCS, WCS, and RRGSD. By eliminating their separate identities and forcing a “one size fits all” approach on three separate school districts, a forced merger would impair local autonomy and control, reduce opportunities for citizens to participate in decision-making, and undermine community support for the public schools. It would discourage experimentation, innovation, and the healthy spirit of competition that drive academic success. It would undermine the longstanding efforts of each of the three affected districts to tailor educational programming and services to the needs and desires of their respective communities. It would damage the pride and sense of community that a hundred years of shared history have created. And it would create myriad legal and logistical problems, including serious questions regarding the validity of bonds and contracts, the ownership of real and personal property, and the composition and organization of the new district’s governing board and central administration. Finally, the threat of a forced merger and the school reassignments that would follow may encourage families with means to withdraw their children from the merged district and enroll them in charter or private schools, thus increasing poverty rates within the new district and reducing ADM allotments.

### **III. CONSOLIDATION WOULD BE UNLIKELY TO IMPROVE STUDENT ACADEMIC PERFORMANCE.**

#### **A. Educational Research Suggests that Consolidation Would Not Promote Student Achievement in Halifax County.**

The Center argues that “[s]tudents in [HCS], WCS and RRGSD are lagging academically because they are being deprived of an opportunity to learn in a racially and socioeconomically diverse environment.<sup>106</sup> Although the main thrust of the Report is to urge *racial* balancing across Halifax County, “[e]ducation research has long suggested that the economic mix of a school matters more than the racial mix in determining the academic achievement of students.”<sup>107</sup> According to this body of research, “[r]acial desegregation raised the academic achievement of African-American students in some districts, not because blacks benefitted from sitting next to whites, but because low-income students do better in middle class schools.”<sup>108</sup> In places “where racial mixing also involved

---

<sup>105</sup> *Milliken*, at 743; see also *Bradley*, 462 at 1068 (noting that forced school district consolidation raises “practicalities of budgeting and finance that boggle the mind”).

<sup>106</sup> Report, p. 35.

<sup>107</sup> Richard D. Kahlenburg, *High-Poverty Schooling in America: Lessons in Second-Class Citizenship*, 85 N.C. L. Rev. 1545, 1557 (2007).

<sup>108</sup> *Id.* at 1557.



economic mixing, achievement gains were strong.”<sup>109</sup> “In comparison, no significant achievement gains were found in places . . . where low-income white students were integrated with low-income black students.”<sup>110</sup>

Research further suggests that “there is a tipping point of fifty percent, implying that the enrollment of a majority of low-income students will reduce or even eliminate the benefits related to integration.”<sup>111</sup> As Richard Kahlenburg, perhaps the leading proponent of socioeconomic diversity in schools has put it, the challenge is to “reduc[e] the number of high-poverty schools” — defined as schools “with more than 50% of students eligible for free and reduced-price lunch” — in order to allow “many more children to attend high-quality, mixed-income, public schools.”<sup>112</sup>

Assuming this research is correct, a review of socioeconomic conditions quickly reveals that these educational benefits are unobtainable in Halifax County. Based on the most current information available on the NCDPI website, 76.8% of the families of school children in three school districts — HCS, WCS, and RRGSD — applied for free or reduced price lunch in 2009-2010, and 72% of families received those benefits. Thus, the best-case scenario for comprehensive, equitable distribution of students by socioeconomic status *would not result in the creation of a single “middle class school”* and could not be expected to achieve *any* significant educational benefits.<sup>113</sup>

## **B. Consolidation and Reassignment on the Basis of Race or Socioeconomic Status Could Have a Demoralizing Effect on Poor and Minority Children.**

Underlying the Report is the pervasive assumption that poor and minority students in Halifax

---

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Aberger, Brown, Mantil, and Perkins, *Closing the Achievement Gap: The Overlooked Strategy of Socioeconomic Integration* (November 20, 2009), available at <http://a100educationalpolicy.pbworks.com/f/Closing+the+Achievement+Gap+-+Socioeconomic+Integration.pdf>.

<sup>112</sup> Kahlenburg, *supra* note 107, at 1546-47.

<sup>113</sup> When challenged by a blog commentator as to how one could expect socioeconomic diversity to promote student achievement in an area where more than 50% of students receive free or reduced price lunch, Mr. Kahlenburg responded that “the goal is not to make *all* schools represent the district average, but to begin by integrating a *subset* of schools.” See <http://takingnote.tcf.org/2011/05/the-path-to-economically-integrated-schools-a-response-to-matt-yglesias.html> (emphasis added). But to create only a “subset” of schools in Halifax County in which fewer than 50% of students receive free or reduced lunch, the new, merged school district would necessarily be required to assign other students to schools with much higher percentages of low-income students. Not only would this be inequitable, it could result in additional litigation. Indeed, the Center recently filed a civil rights complaint with the U.S. Department of Education’s Office for Civil Rights against the Wake County Public School System, in which it argued that the district’s decision to no longer consider socioeconomic status in connection student assignment violated civil rights laws because it allegedly resulted in minority students being assigned to schools with higher rates of poverty. See Complaint, available at <http://www.southerncoalition.org/documents/education/Title-VI-Complaint-WCSB-9-24-2010-FINAL.pdf>.

County are unlikely to succeed unless they are seated with sufficient numbers of White middle-class students. This sends a demoralizing message to poor and minority students, and could lead to a culture of low expectations for the majority of students in the merged district.<sup>114</sup> The governing boards of WCS and RRGSD firmly believe that *all* students are capable of high levels of achievement, whatever their race or socioeconomic status. But students will not succeed unless they are *expected* to succeed. WCS and RRGSD will never endorse any educational strategies premised on the notion that the pursuit of excellence in predominantly poor and minority school districts is fruitless.

**C. Consolidation and Reassignment on the Basis of Race or Socioeconomic Status Could Distract Attention from Educational Programming Initiatives.**

An emerging body of educational research shows that the best way to promote academic achievement for underprivileged students is to identify and replicate the strategies that have proven effective in the past. Research suggests that employing these proven, effective strategies can lead to excellent educational outcomes for students of all races, income levels, and family backgrounds.

One of the leading researchers in this area, Dr. Lawrence W. Lezotte, put it this way in his article, *Effective Schools: Past, Present, and Future*:<sup>115</sup>

The first task of the effective schools researchers was to identify existing effective schools – schools that were successful in educating all students regardless of their socioeconomic status or family background. Examples of these especially effective schools were found repeatedly, in varying locations and in both large and small communities. After identifying these schools, the task remained to identify the common characteristics among these effective schools. In other words, what philosophies, policies, and practices did these schools have in common?

Literally hundreds of research studies have confirmed that virtually all schools that have been especially effective in teaching student of *all* backgrounds and income levels share certain core attributes, which have become known as the Correlates of Effective Schools. According to Dr. Lezotte, a leading researcher in this area, the Correlates are:

---

**Instructional Leadership.** In the effective school, the principal acts as an instructional leader and effectively and persistently communicates the mission of the school to staff, parents, and students. In addition, the principal understands and applies the characteristics of instructional effectiveness in the management of the instructional program. Clearly, the

---

<sup>114</sup> Cf. *Bradley*, 462 F2d at 1063 n.3 (noting that an expert witness who testified at trial and the Congress of Racial Equality, which filed an amicus brief on appeal, agreed “that the idea of a viable racial mix in which blacks must be in the minority in order to have a good education is a racist proposal” and that merging school districts for this purpose would “be resented by the black citizens as paternalistic and patronizing”).

<sup>115</sup> Lezotte, Lawrence W., *Effective Schools: Past, Present, and Future* (2009), available at <http://www.effectiveschools.com/images/stories/brockpaper.pdf>.

role of the principal as the articulator of the mission of the school is crucial to the overall effectiveness of the school. . . . Simply put, the principal as a strong instructional leader is a necessary, but not sufficient component of an effective school.

---

**Clear and Focused Mission.** In the effective school, there is a clearly articulated mission of the school through which the staff shares an understanding of and a commitment to the school's goals, priorities, assessment procedures, and accountability. The staff in the effective school accepts responsibility for the students' learning of the essential curricular goals. . . .

---

**Safe and Orderly Environment.** In the effective school there is an orderly, purposeful, business-like atmosphere, which is free from the threat of physical harm. The school climate is not oppressive and is conducive to teaching and learning. . . . First, all the adults, but most particularly teachers, must accept that they are on duty all the time, everywhere, during school hours. . . . Second, rules must be enforced with absolute consistency across all teachers and administrators.

**Climate of High Expectations for Success.** In the effective school, there is a climate of high expectations in which the staff believes and demonstrates that all students can obtain mastery of the school's essential curriculum. They also believe that they, the staff, have the capability to help all students obtain that mastery. . . .

---

**Frequent Monitoring of Progress.** In the effective school, pupil progress over the essential objectives are measured frequently, monitored frequently, and the results of those assessments are used to improve the individual student behaviors and performances, as well as to improve the curriculum as a whole.

---

**Positive Home-School Relations.** In the effective school, parents understand and support the basic mission of the school and are given opportunities to play important roles in helping the school to achieve its mission. . . . That's a much more difficult task today because our mobile society and the increase in two-career and single-parent families, as well as the distances some children travel to school. . . .

---

**Opportunity to Learn and Student Time on Task.** In the effective school, teachers allocate a significant amount of classroom time to instruction in the essential curricular areas. For a high percentage of this time, students are actively engaged in whole-class or large group, teacher-directed, planned learning activity.

These are the drivers of academic achievement, and their implementation requires hard work, dedication, and a willingness to experiment and learn from experience. There are no short cuts or easy answers for promoting academic success. WCS and RRGSD are committed to improving teaching and learning and promoting student success by advancing these time-tested strategies. Unfortunately, the sudden emphasis on a school district consolidation proposal being advanced by a group of lawyers from Chapel Hill is currently distracting our communities from this vital task. Rather than discussing the ways we can sharpen our leadership, refine our missions, improve the safety of our schools, and raise expectations and performance levels for our students, we instead find

ourselves explaining why we should not be dissolved against our will in the hopes that some new and larger school district will be better able to meet the needs of all our students by assigning students to school on the basis of race. We hope that the information contained in this report explains why our students cannot afford the gamble the Center is proposing, so that our communities can focus their attention on the hard work we know is required to provide the best educational opportunities for our children.

### CONCLUSION

Regardless of any differences in the racial compositions of our respective school districts, the governing boards of WCS and RRGSD agree that the consolidation plan proposed by the University of North Carolina Center for Civil Rights is unwarranted, insufficiently supported by educational research, and extremely risky. We also agree that the plan would impose unacceptable costs on the citizens of Halifax County, including the loss of almost a million-and-a-half dollars annually in base allocations from the State and a substantial tax increase for most Halifax County residents. We urge all citizens in Halifax County to stand in opposition to this plan and to support the ongoing efforts of their local school districts to boost student achievement. Together, we can and will continue to build on the successes of the past and promote the best educational outcomes for *all* of our students.

Respectfully submitted, this the 6th day of September, 2011.

---

Dr. Patti Cotton, Board Chair  
Weldon City Board of Education

---

Michael J. Salanik, Board Chair  
Roanoke Rapids Graded School District Board of Education