



COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

November 18, 2020

Dear parties,

Enclosed you will find the Final Determination of the Office of Attorney General Division of Human Rights in DHR Case No.: 19-2652, *NAACP Loudoun Branch v. Loudoun County Public Schools*.

The Charging Party NAACP Loudoun Branch (“NAACP”) filed its complaint with the Division on May 22, 2019. Following an initial evaluation, the Division of Human Rights initiated a formal investigation in October 2019 into allegations of discriminatory actions, including but not limited to discriminatory practices relating to admission to the Academies of Loudoun, in violation of the Virginia Human Rights Act, Constitution of Virginia, Equal Protection Clause of the U.S. Constitution, Title IV of the Civil Rights Act of 1964 (“Title IV”), and Title VI of the Civil Rights Act of 1964 (“Title VI”).

Following a thorough, independent investigation that included interviews and extensive review of documentation and information provided by the Charging Party, Respondent, and LCPS students, families, and employees, the Office of Attorney General Division of Human Rights finds there is reasonable cause to believe that Loudoun County Public Schools’ administration of the Academies of Loudoun program resulted in a discriminatory disparate impact on Black/African-American and Latinx/Hispanic students who applied to the Academy of Engineering & Technology and the Academy of Science programs in the Fall 2018 admission cycle for enrollment in the 9th grade class of 2019-2020.

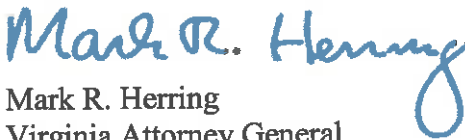
The Final Determination documents the experiences of students, families, faculty, and staff, the Respondent’s responses to the allegations, and a quantitative analysis of disparate admission rates that led to this conclusion.

Having found reasonable cause to believe that LCPS’s policies and practices resulted in a discriminatory impact on Black/African-American and Latinx/Hispanic students, the Division of Human Rights requests that the Charging Party and Respondent engage in a post-determination conciliation process in an effort to resolve this matter. The Final Determination includes reforms and commitments that the Division believes are necessary to address the discriminatory disparate

impact identified and help ensure equal opportunity for each student, as well as terms requested by the Charging Party in order to resolve this matter.

The Division of Human Rights looks forward to your prompt response to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and a distinct "R".

Mark R. Herring
Virginia Attorney General

**OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA
DIVISION OF HUMAN RIGHTS**

**NAACP Loudoun Branch
Loudoun, Virginia**

Charging Party,

v.

DHR Case No.: 19-2652

**Loudoun County Public Schools
Loudoun, Virginia**

Respondent.

FINAL DETERMINATION

I. JURISDICTION

The Virginia Human Rights Act, Virginia Code § 2.2-3900 et seq. and Virginia Code § 2.2-520 et seq., (“Act”) authorizes the Virginia Office of the Attorney General, Division of Human Rights (“Division”) to inquire into and investigate complaints alleging an unlawful discriminatory practice under Virginia or federal statutes and attempt to resolve such complaints through conciliation. The Division is also vested with the statutory authority to take the actions necessary to prevent further discrimination. The Division has jurisdiction in accordance with the Act and corresponding federal law which prohibit unlawful discriminatory practices in educational institutions.¹ Respondent Loudoun County Public Schools (“LCPS”) is the local school division for persons of school age residing in Loudoun County, Virginia. LCPS is an educational institution that receives federal funding for its public school programs.² The Charging Party NAACP Loudoun Branch (“NAACP”) filed its complaint with the Division on

¹ Section 2.2-3902 of the Code of Virginia (1950), as amended, prohibits discrimination in educational institutions and declares that “[c]onduct that violates any Virginia or federal statute or regulation governing discrimination ... is an unlawful discriminatory practice under this chapter.”

² See,

<https://www.lcps.org/Page/227391#:~:text=The%20nationwide%202020%20United%20States%20Census%20will%20begin%20March%2012%2C%202020.&text=Loudoun%20County%20receives%20more%20than,Start%2C%20teacher%20training%20and%20more.> See, <https://www.lcps.org/Page/227391#:~:text=The%20nationwide%202020%20United%20States%20Census%20will%20begin%20March%2012%2C%202020.&text=Loudoun%20County%20receives%20more%20than,Start%2C%20teacher%20training%20and%20more.>

May 22, 2019, which is within 180 days of the last occurrence of the alleged discriminatory action (March 22, 2019, the date that Academies of Loudoun admission offers were made available on the LCPS portal). The Charging Party also brought to the Division's attention a June 6, 2019, external Equity Assessment of LCPS to supplement its complaint. Accordingly, on October 3, 2019, the Division initiated an investigation into the allegations relating to the Academies of Loudoun and the incidents described in the Equity Assessment in order to ensure compliance under the Act and applicable federal statutes.

II. SUMMARY OF EVIDENCE

In its complaint, NAACP alleges that LCPS denied Black/African-American students enrolled in LCPS an equal opportunity to participate in LCPS's Academies of Loudoun and other gifted and talented programs. The NAACP also alleges that LCPS has a pattern and practice of discriminating against students and employees (including applicants) on the basis of race. Such actions would constitute violations of the Act, Constitution of Virginia, Equal Protection Clause of the U.S. Constitution, Title IV of the Civil Rights Act of 1964 ("Title IV"), and Title VI of the Civil Rights Act of 1964 ("Title VI").

The following is a summary of the evidence submitted by the parties and witnesses.

A. Charging Party's Position Statement

On May 22, 2019, NAACP alleged the following:

1. The NAACP reviewed the Academies of Loudoun's³ admissions process and concluded that Black/African-American students continue to be underrepresented in gifted and talented

³ "The mission of the Academies of Loudoun is to empower students to explore, research, collaborate, innovate, and to make meaningful contributions to the world in the fields of science, technology, engineering and mathematics. Vision: All Academies of Loudoun scholars will achieve personal success in their learning and become responsible and productive citizens. Our vision, as a school community, is to inspire our students' passion for STEM learning. Beliefs: (1) Diversity in our community makes us stronger and better equipped to work together. Representation of students from diverse backgrounds, including race/ethnicity, gender, disability, English Language Learner and socioeconomic status, and students from all geographic areas of Loudoun County who demonstrate a desire to be challenged by advanced academic coursework and collaborative research; (2) Immersion in STEM curriculum that challenges students to think critically, innovate, research, design, invent to solve real-world, contextual problems;

programs and are less likely to be identified as “high achieving,” therefore rarely enter the Academies of Loudoun admissions pipeline.

2. In support, the NAACP provided the Division with the Academies of Loudoun’s admissions information and a table summarizing Fall 2018 Academies of Loudoun applicant, finalist, and offered admission data, and 2019 Academies of Loudoun applicant and finalist data.
3. In support, the NAACP also provided the Division a copy of an undated draft correspondence prepared by the NAACP and addressed to the Superintendent of LCPS, Dr. Eric Williams (“Williams”), reporting the findings of its investigation into the Academies of Loudoun’s admissions process.
4. In its letter to Williams, the NAACP proposed recommended changes to the Academies of Loudoun admissions process.
5. Black/African-American students enrolled in LCPS continue to be denied equal access to the Academies of Loudoun.

On September 9, 2019, the NAACP alleged the following as a supplement to its complaint:

6. Students enrolled in LCPS have been denied the right to a free and equal public education on the basis of their race (Black/African-American).
7. In support, the NAACP provided the Division with a copy of a June 5, 2019 letter prepared by Williams and sent to the members of the LCPS Ad Hoc Committee on Equity along with an attachment entitled “Initial Report - Systemic Equity Assessment: A Picture of Racial Equity – Challenges and Opportunities in Loudoun County Public School District” (“Equity Assessment”).⁴
8. The Equity Assessment reported “pervasive inequities division wide” in LCPS, including the following:
 - a. A low level of racial consciousness and racial literacy;

(3) Students learn best in a setting where academic disciplines are integrated and collaboration is encouraged; and (4) Integrity and Responsibility are core principles in the pursuit of academic and personal achievement.” *See*, LCPS Academies of Loudoun webpage at <https://www.lcps.org/domain/22347>.

⁴ *See*,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCVGK644213C/\\$file/LCPS%20Equity%20Assessment_Ad%20Hoc%20on%20Equity_060619.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCVGK644213C/$file/LCPS%20Equity%20Assessment_Ad%20Hoc%20on%20Equity_060619.pdf).

- b. Discipline policies that disproportionately and negatively impact students of color, particularly Black/African-American students;
- c. Racial insults, slurs, or racially motivated violent actions toward Black/African-American, Latinx, and Muslim students; and
- d. Inequities in recruitment, hiring, and retention of diverse school staff that reflect student racial and language backgrounds.

B. Charging Party's Supplemental Assertions and Information

Soon after the Division issued its Charge of Discrimination, the NAACP provided the Division the following assertions and supplemental information:

1. The NAACP's review into the Academies of Loudoun revealed that LCPS was not practicing their admissions policy of selecting students on the basis of a "holistic review" of the students' application, standardized test scores, transcripts, teacher recommendations, and admissions assessment.
2. The admissions information sheet states that there is no single element of the admissions criteria that eliminates or disqualifies a student from admissions, and the admissions panel takes a comprehensive, holistic look at each and every applicant.
3. However, applicants were being eliminated in the first round based on one test score, the California Critical Thinking Disposition Inventory Scores.
4. Black/African-American students were denied admission into the Academies of Loudoun on the basis of one standardized test score.
5. On or around July 1, 2019, the NAACP sent Williams the correspondence referenced in Paragraph 3 and 4 of the Charging Party's Position Statement, outlining this disparity and recommending changes to the Academies of Loudoun admissions process.
6. Williams did not provide a written response to the NAACP's July 1, 2019, correspondence.
7. LCPS teachers are providing private tutorial services at private centers that prepare students for the admissions criteria of the Academies of Loudoun.
8. Admission information, including proposed changes to the admissions process, for the Academies of Loudoun.

9. Information about preparatory classes and camps, including information about LCPS teachers who prepare students for LCPS gifted and talented program testing.
10. LCPS Ad Hoc Committee on Equity Academies of Loudoun Meeting Minutes dated February 19, 2019, and Academies of Loudoun Presentation dated February 24, 2017.
11. LCPS Minority Student Achievement Advisory Committee (“MSAAC”) statement on the Equity Assessment (undated).
12. Legal and academic references relating to race discrimination, including the following:
 - A Desegregation Tool that Backfired: Magnet Schools and Classroom Segregation (Kimberly C. West, *The Yale Law Journal*, 1994).
 - Memorandum Opinion and Order, *Deonte et al., v. Board of Education for Illinois School District U-46* (August 8, 2008).
 - Chapter 28 of *The Oxford Handbook of African American Citizenship* (2012).
 - Three Part Series on Desegregating Magnet Schools (*Christian Science Monitor*, May 14, 2018).
 - U.S. Department of Education - Office of Civil Rights Data Collection (2014, 2015-2016).
 - Article entitled “Inequality in Teaching and Schooling: How Opportunity Is Rationed to Students of Color in America” (Linda Darling-Hammond, *Stanford University School of Education*, 2001).
 - Article entitled, “Adjudicating the Achievement Gap” (undated publication, with references to *The Bell Curve* [Hernnstein and Murray] and *America in Black and White* [Thernstroms]).
 - Title VI Enforcement Highlights (U.S. Department of Education - Office of Civil Rights, 2012).
13. Correspondence from LCPS students and employees sent to the NAACP alleging experiences of race-based discrimination in the school setting.⁵

⁵ See, Section D. Charging Party’s Witnesses.

C. Respondent's Supplemental Assertions and Information

In response to the Division's request for information regarding the Academies of Loudoun and the Equity Assessment, LCPS provided the following assertions and supplemental information on November 4 and November 26, 2019:

1. The Academy of Engineering & Technology ("AET") and the Academy of Science ("AOS") are the only two programs offered to ninth grade students at the Academies of Loudoun.
2. AET is an advanced four-year academic program that provides science, technology, engineering, and math pathways for students to study engineering, information technology, and entrepreneurship.
3. AOS is an advanced four-year academic program that provides students the opportunity to engage in in-depth study in math, science, and research.
4. The recruitment and outreach for AET and AOS in LCPS middle schools is extensive.
5. 2018 LCPS admissions criteria for AET and AOS.
6. AET and AOS Fall 2018 student applicant pool and students offered admission for school year 2019-2020, by race, national origin, and gender.
7. MSAAC recommendations to the Loudoun County School Board ("LCSB"), dated February 25, 2019, relating to: (1) the formation of the Ad Hoc Committee on Equity; (2) mandatory implicit bias training; and (3) policy on Equal Opportunity for Equitable Safe and Inclusive Environment ("Policy 1040").
8. LCSB meeting minutes, dated February 26, 2019, relating to the Ad Hoc Committee on Equity.
9. Charter for Ad Hoc Committee on Equity, dated February 26, 2019.
10. LCSB meeting minutes, dated March 12, 2019, relating to the Ad Hoc Committee on Equity.
11. LCSB meeting minutes, dated March 26, 2019, relating to the Ad Hoc Committee on Equity.
12. LCSB meeting minutes, dated September 24, 2019, relating to implicit bias training.
13. Information relating to "Equity in the Center" professional training at LCPS.
14. Information relating to LCPS implicit bias training and equity in hiring.
15. Information relating to implicit bias training to LCPS staff by IBIS Consulting Group.
16. Information relating to the revision of Policy 1040.

17. Williams and his leadership team are in the process of developing a comprehensive equity plan that will include action steps to address the recommendations in the Equity Assessment, and expects the plan to be completed by April 1, 2020.

D. Respondent's Position Statement

LCPS provided a response to the Division's Charge of Discrimination on December 11, 2019, through counsel. A summary of LCPS's response is provided below:

1. LCPS denies the allegation that Black/African-American students enrolled in LCPS have been denied an equal opportunity to participate in LCPS's Academies of Loudoun programs.⁶
2. LCPS is committed to ensuring that all students, including Black/African-American students, have equitable opportunities to attend the Academies of Loudoun programs.
3. LCPS operated three advanced academic programs prior to the 2018-2019 school year at three separate sites under three separate administrators. These separate programs included AET, AOS, and the Monroe Advanced Technical Academy ("MATA").
4. The arrangement of these programs changed at the beginning of the 2018-2019 school year with the inception/opening of the Academies of Loudoun in one new building.
5. The Academies of Loudoun, as established in 2018, now operates four advanced academic programs, including AET, AOS, MATA, and the Advanced Academy of Engineering & Technology ("AdvAET"). The Academies of Loudoun is in its second full year of operation.
6. The total enrollment and the demographics in each of the Academies of Loudoun programs is a result of a number of factors, including whether the student applicant meets the criteria for the program, and student interest in the program.⁷
7. LCPS reviewed Fall 2018 student applicant pool data and student applicants offered admission data disaggregated by race and national origin for AET and made the following

⁶ See, page 19 of 20 of December 11, 2019 response.

⁷ LCPS asserts that there are a number of reasons why students may not want to attend the Academies of Loudoun including lack of interest, desire of student to attend their assigned school, desire of student to attend school with their peers in their home school, interest in academic co-curricular and extracurricular offerings at their assigned school, and transportation time between the Academies of Loudoun and their assigned schools.

findings comparing the applicant pool to the school division's middle and high school enrollment:

- Asian-American students in the applicant pool were overrepresented by approximately 42%;
 - Black/African-American students in the applicant pool were underrepresented by approximately 4%;
 - Latinx/Hispanic students in the applicant pool were underrepresented by approximately 12%;
 - Multi-racial students in the applicant pool were underrepresented by approximately 3%; and
 - Caucasian students in the applicant pool were underrepresented by approximately 23%.
8. There was similar overrepresentation of Asian-American students and underrepresentation of Black/African-American and Latinx/Hispanic students in the Fall 2018 AOS applicant pool and those offered admission.
 9. Based on a review of the Fall 2018 data for AET and AOS, the disparity or underrepresentation in the applicant pool and those offered admission in the Fall 2018 of Black/African-American students compared to Black/African-American students in the school division enrollment for middle and high schools was 3-4%.
 10. The disparity or underrepresentation of Latinx/Hispanic students in the applicant pool and those offered admission was greater than that for Black/African-American students.
 11. LCPS was concerned about these disparities and took the underrepresentation of Black/African-American and Latinx/Hispanic students into account in reviewing and revising outreach/recruitment activities and the admission criteria process for the 2018-2019 school year.
 12. LCPS revised its outreach and recruitment strategies in its second year of operation to improve recruitment of underrepresented students, including Black/African-American, Latinx/Hispanic, English Language Learners, and low-income students.
 13. Revisions made to the recruitment strategies for the 2018-2019 school year included increasing the size of the admissions team with the addition of an admissions coordinator and an outreach specialist to assist principals and school leadership teams with increased capacity

to conduct more division-wide outreach and recruitment from all sixteen middle and high schools.

14. Two key responsibilities of the admission specialists include developing strategies to recruit underrepresented populations and to assist the coordinator in developing programs for underrepresented populations that generate interest in science, technology, engineering, and mathematics (“STEM”).
15. Based on its experience in the 2018-2019 school year, LCPS added an additional outreach specialist for recruitment and outreach for the 2019-2020 school year.
16. In order to raise an awareness of possible inequities and potential bias in recruiting underrepresented populations (particularly Black/African-American, Latinx/Hispanic, English Language Learners, and low-income students), the admissions team participated in professional development offered by LCPS, including the Equity in the Center Workshop and book study of *Recruiting and Retaining Culturally Different Students in Gifted Education*.
17. The Academies of Loudoun admissions team implemented the following outreach and recruitment activities this year:⁸
 - Held a number of information nights at strategic locations, dates, and times to accommodate parents’ schedules;
 - Posted information about the programs and admission process on its website, translated into Spanish and other major languages spoken by LCPS students;
 - Met with the LCPS English Language Learner supervisor to identify and discuss strategies for encouraging English Language Learner students to apply to the programs;
 - Met with the LCPS Welcome Center to provide information about the Academies of Loudoun programs, making it available in multiple languages;
 - Implemented a program called Level Up at four LCPS middle schools, a STEM enrichment program for middle school students who have been identified as having strong academic skills, are low income, and/or are underrepresented in the STEM field;

⁸ This year, recruitment and outreach for Academies of Loudoun started on August 12, 2019, and the application window closed on October 25, 2019.

- Implemented a program called PROPEL⁹ at nine LCPS elementary schools to assist in encouraging elementary aged underrepresented students, including Black/African-American and Latinx/Hispanic students, to apply for the Academies of Loudoun programs;
 - Met with counselors at middle and high schools in the summer to explain the relevant Academies of Loudoun programs so that counselors may assist with outreach and recruitment;
 - Identified middle schools that in the previous year had a low number of applicants and higher numbers of Black/African-American and Latinx/Hispanic students enrolled, as compared to other middle schools, and targeted those schools for site visits and recruitment efforts;
 - Reached out to all eighth grade Black/African-American and Latinx/Hispanic students who had not applied for AET or AOS, and who were enrolled in Algebra I or Geometry to encourage these students to apply;
 - Hosted field trips to the Academies of Loudoun for elementary and middle schools and encouraged these students to apply to AET or AOS;
 - Reached out to representatives of community and professional organizations to assist in encouraging underrepresented students, including Black/African-American, Latinx/Hispanic, English Language Learners, and low-income students, to apply to the Academies of Loudoun; and
 - Developed partnerships with these organizations to assist with the pipeline of underrepresented students.¹⁰
18. To assist in increasing the applicant pool of underrepresented students, LCPS has implemented Level Up, a STEM enrichment program at the middle school level.

⁹ The investigation revealed that PROPEL is an acronym for “Providing Rich Opportunities Plus Enrichment Learning” and was formerly referred to as “EDGE Plus.”

¹⁰ Organizations include the National Society of Black Engineers, Females of Color Underrepresented in STEM, Girls Inspired and Ready to Lead, The Diversity Council, Society of Hispanic Professional Engineers, Johns Hopkins Center for Talented Youth, and Excellent Options.

19. The LCPS revised Academies of Loudoun admissions criteria to ensure that all students, including Black/African-American, Latinx/Hispanic, English Language Learners, and low-income students, have equitable access to the Academies of Loudoun's programs.
20. The two phases of the admissions process for the AET and AOS use multiple measures to determine offers of admission, including class enrollment, standardized testing, writing assessments, letters of recommendations, and grades.
21. In phase one of the application process, students are selected as finalists based on class enrollment and two standardized tests.
22. In regard to the phase one admission criteria for the Fall 2019 application cycle for AET, LCPS replaced the requirement of the SOL used previously with the STEM Thinking Skills Assessment because it determined that the STEM assessment is more "culturally sensitive and inclusive."
23. In regard to the phase one admission criteria for the Fall 2019 application cycle for AOS, LCPS replaced the requirement of the PSAT used previously with the STEM Thinking Skills Assessment because it determined that the STEM assessment is more "culturally sensitive and inclusive."
24. In regard to phase two of the admissions criteria for the Fall 2019 application cycle for AOS and AET, a racially and ethnically diverse panel of educators, serving in different roles at LCPS, will review multiple measures of data and information for each finalist and select students for final admission offers.
25. Like with AET and AOS, a racially and ethnically diverse panel of educators who are in different roles at LCPS review the information and data of AdvAET and MATA applicants.
26. The LCSB, Williams, and his cabinet reviewed and discussed the Equity Assessment.¹¹

¹¹ Through focus group sessions with LCPS students sharing lived experiences, the Equity Assessment found the following: discipline policies and practices disproportionately negatively impact students of color, particularly African-American students; most English Language Learners, Black/African-American, Latinx, and Muslim students have experienced the sting of racial insults/slurs; there are few school-based personnel that students trust to help navigate the complexities of race. Through interviews with LCPS parents sharing lived experiences, the Equity Assessment found the following: racial incidents occur often in and around LCPS schools, making regional and national news and set the tone for the larger systems of racism within the division; parents fear for their children's safety and well-being at school and do not trust the division to support them; response to racially motivated incidents from schools and the division is slow and ineffective; there is the continued need to hire racially diverse school site

27. LCPS is committed to implementing all fourteen (14) recommendations outlined in the Equity Assessment.¹²
28. Williams sent a letter to the Ad Hoc Committee on Equity on June 5, 2019, in which he shared the Equity Assessment and stated that the assessment serves as a “call for additional action.”
29. In his letter, Williams stated that LCPS must address the findings of the Equity Assessment that indicate a low level of racial consciousness and racial literacy and reveal that people are unclear and fearful on how to participate in conversations about race and racially-charged incidents.
30. In his letter, Williams stated that “[w]e must make it clear throughout Loudoun County Public Schools that we reject this painful, racist language that encourages discrimination, hatred and violence.”

staff, particularly teachers, counselors, and front office staff. Through focus group sessions and interviews with LCPS educators, the Equity Assessment found the following: school site staff members, specifically principals and teachers, report a low level of racial consciousness and literacy. People are unclear how to participate in conversations about race, let alone respond to racially charged incidents; teachers of color see and experience the LCPS hiring process as biased; white teachers are resistant, resentful, or otherwise uncomfortable with conversations about race.

¹² (1) School administrators establish proactive measures that intervene and mitigate the impact of racial incidents experienced by students of color in order to build an inclusive culture that does not tolerate harassment; (2) create a clear discipline policy that works to address necessary changes in discipline practices across the division with input from school-based student groups to include student voice; (3) establish student affinity groups at all levels to support the social and cultural identities of students of color; (4) define diversity, equity, and inclusion and include as LCPS core beliefs; (5) establish parent affinity groups at all school levels in support of stronger partnerships and open communication between parents, students, and school administrators; (6) utilize the Equity Ad Hoc Committee once a month meetings and/or establish a parent led group to provide equity leadership and guidance and feedback concerning division plans for advancing diversity, equity, and inclusion in its programming; (7) provide specific social emotional support for students and families dealing with the traumatic impact of racism and discrimination; (8) produce and publish on the “Superintendent’s Message” page a division authored statement defining and condemning White supremacy, hate speech, hate crimes, and other racially motivated acts of violence; (9) review current and/or establish clear policies with built-in accountability for addressing racially motivated acts and speech; (10) create, repeat, and further emphasize proactive leadership measures that the N-word is not tolerated to address the student use of racial insults—name that the N-word is not tolerated by anyone in LCPS; (11) develop and socialize a shared understanding of the meaning of diversity, equity, and inclusion among educators; (12) establish a culturally responsive framework to inform curricular and instructional efforts across the division; (13) review current efforts and further establish short- and long-range action plans to address challenges related to hiring for diversity, equity, and inclusion; and (14) review current and further design opportunities for LCPS educators to engage in professional learning about color consciousness and implicit bias.

31. Since the time of Williams's letter, LCPS has taken steps to address the fourteen (14) recommendations outlined in the Equity Assessment.
32. LCSB approved a new position entitled the Director of Equity.
33. The role of the Director of Equity is to support the equity work of LCPS, including implementing the recommendations of the Equity Assessment and ensuring that diversity, inclusion, and equity are a priority for LCPS.
34. The Director of Equity is also responsible for working with school and community groups to create a stronger and more impactful equity imprint for LCPS and supporting the work of the Ad Hoc Committee on Equity.
35. Williams and his cabinet are currently developing a working document that includes the fourteen (14) recommendations of the Equity Assessment, a primary and secondary lead assigned to work on each recommendation, progress updates on action taken to address the recommendations, and the next steps to be taken.
36. Williams and his cabinet are monitoring the progress of this working document on at least a monthly basis.
37. The leads for each of the recommendations review the progress with their respective departments.
38. This working document will become part of a comprehensive equity plan.
39. Williams and his team will seek input from key groups in the local school division, including the MSAAC and the Ad Hoc Committee on Equity in developing this plan.
40. LCPS expects that a comprehensive equity plan will be completed by April 1, 2020.¹³
41. LCPS has taken affirmative steps to address the Equity Assessment findings on discipline policies and practices that disproportionality negatively impact students of color, particularly Black/African-American students.
42. The Department of Pupil Services is working collaboratively with the Department of Instruction and school-based administrators on intervention and prevention strategies to address any discipline policies and practices that may negatively impact students of color,

¹³ The investigation revealed that this comprehensive equity plan was most recently revised in September 2020. *See*, https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity_initiative_documents/Comprehensive_Equity_Plan-9_2020.pdf.

particularly Black/African-American students, including workshops, meetings, and follow-up sessions with school-based administrators. These strategies include the following:

- An equity-centered forum with school principals on reflective considerations prior to disciplinary action;
- Additional professional development to school-based administrators on positive behavior intervention and supports;
- Access to discipline data within school-based teams so that the teams can identify patterns and areas of concern and then determine resources and strategies needed to address any patterns and areas of concern found in their discipline data;
- Professional development for central office, school-based administrators, and teachers on implicit bias, privilege, microaggression, and strategies to increase equitable practices; and
- Training for teachers and school-based administrators on equitable classroom management practices.

43. LCPS has taken affirmative steps to address the Equity Assessment findings relating to students' frustration and experiences regarding being targets of racist comments and acts of violence. These steps include the following:

- Exploring the use of "restorative practices" to address student concerns;
- Offering LCPS administrators restorative practice experiences to use in their schools, including the use of restorative circles/practices with students and staff; and
- Convening of monthly meetings among the Department of Pupil Services team, Director of Student Services, Director of Diagnostic and Prevention Services, Supervisor of Student Services, School Counseling, and the Multi-Tiered System of Support to discuss equity matters and engage in race-conscious activities.

44. LCPS has taken affirmative steps to address the Equity Assessment findings on the low level of racial consciousness and literacy. These affirmative efforts include the following:

- Implementation of "Equity in the Center" professional learning, a mandatory training for LCPS employees aimed at addressing issues of race, bias, and cultural insensitivity;
- Training of LCPS employees on newly revised guidance entitled "Reflective Considerations Prior to Disciplinary Action;" and

- Professional development on restorative practices, on positive behavioral intervention and supports, and on the use of data to determine pattern and practices regarding school discipline, and strategies to address disparities regarding discipline pattern and practices.¹⁴

45. LCPS has taken affirmative steps to address the Equity Assessment findings on teachers of color who see and experience the LCPS hiring process as biased. The strategies implemented by the Human Resource Talent Development Department include the following:

- Marketing activities, including a redesign of the LCPS website to attract candidates with diverse backgrounds and enhancement of social media strategies to develop earlier and stronger connections with candidates of diverse backgrounds;
- Outreach activities, including attending job fairs at Historically Black Colleges and Universities, hosting webinars for colleges and teachers of diverse backgrounds, increasing and improving the LCPS “Grow Your Own Initiative,” and partnering with Virginia colleges for licensure routes and career switcher programs;
- Commencing a multi-year plan to present and train LCPS personnel on implicit bias training and equity in hiring;¹⁵
- Developing a training on addressing implicit bias and equity in the interview process, including considering expanding training on cultural awareness and inclusive and respectful workplaces; and
- Updating the teacher job description to ensure equity in hiring.

46. LCPS is committed to continuing to carry out Superintendent Williams’s call to action in his June 5, 2019, letter to the Ad Hoc Committee on Equity in response with the findings and recommendations in the Equity Assessment.

¹⁴ See also, Paragraph 44.

¹⁵ This four-part training, conducted in part by Montage Diversity Consultants and in part by IBIS Consulting Group, started in the 2017-2018 school year and will be ongoing.

Charging Party's Rebuttal and Supplemental Information

The Division provided the NAACP a summary of LCPS's position statement on December 18, 2019. In response, the NAACP provided the following information, assertions, and supporting documents throughout the course of the investigation:

1. In order to increase the diversity of the applicant pool for Year Three, LCPS extended the AET and AOS application deadline and targeted recruiting efforts towards Black/African-American and Latinx/Hispanic students.
2. LCPS did not notify LCPS parents of the extension.
3. During the time of the extension, LCPS pulled Black/African-American and Latinx/Hispanic students out of their class and encouraged these students to fill out an application, without prior notification to students or parents.
4. LCPS waived application fees for the students pulled out of class to apply to AET and AOS.
5. LCPS's decision to extend the application deadline and pull students out of class was a last-ditch effort to show that its recruitment efforts yielded positive results, i.e., inflate the number of Black/African-American and Latinx/Hispanic applicants.
6. The extension did not improve equal educational opportunities for Black/African-American students.
7. Students were pulled out of classes to apply, and their parents were confused about the application process; this new hope of admission and subsequent denial of an admission offer led to a negative psychological impact on the Black/African-American LCPS community.
8. LCPS maintains two separate tracks of gifted and talented programs at the elementary and middle school level: the "mainstream" gifted and talented track and an "alternate" gifted and talented track geared towards underrepresented populations.
9. Mainstream gifted programs at the elementary and middle school level include SEARCH, FUTURA, and SPECTRUM.
10. Alternate gifted and talented programs at the elementary and middle school level include PROPEL¹⁶ and Level Up.

¹⁶ While the Charging Party referred to this program as EDGE, the investigation revealed that this STEM enrichment program's name has been recently changed from EDGE plus to PROPEL (Providing Rich Opportunities Plus Enrichment Learning).

11. The mainstream track is more academically stringent than the alternate track.
12. LCPS teachers are not recommending Black/African-American children into the “mainstream” gifted and talented programs at the elementary or middle school level.
13. PROPEL and Level Up are segregated, Jim Crow programs that are separate and may not be equal.
14. PROPEL and Level Up do not contribute to an increase in the admission of Black/African-American or Latinx/Hispanic students in the Academies of Loudoun.
15. LCPS refuses to include NAACP to be part of the solution in improving the pipeline of equal opportunities for Black/African-American students to participate in gifted education programs from elementary to secondary school levels.
16. LCPS refuses to engage in outreach efforts or partnerships with resources that NAACP Loudoun Branch has provided to LCPS to assist LCPS in improving the pipeline of equal opportunities for Black/African-American students to participate in gifted education programs from elementary to secondary school levels.
17. LCPS flyer on PROPEL and Level Up programming, dated October 2019.
18. LCPS demographic data comparing general student population of gifted and talented student participation and PROPEL student population, by race and national origin (2018-2019).
19. A January 27, 2020, MSAAC email communication relating to LCPS textbook review committee concerns on racial bias in literacy programs, including the following attachments:
 - Article entitled “Comparing Reading Research to Program Design” (Student Achievement Partners, January 2020).
 - ESSA Literacy Education for All.
 - ECORI Essential Components of Reading Instruction.
 - Elementary Reading Framework Grade K-5 (LCPS, 2018-2019).
20. LCPS FY2021 Budget Reconciliation (April 28, 2020).
21. Governor’s STEM Academies and Governor’s School programs are two different programs with very different criterion.
22. The purpose of Governor’s Schools is to give gifted students academic and visual and performing arts opportunities beyond those normally available in the students’ home schools.

23. The purpose of Governor's STEM Academies are to expand options for the general student population to acquire STEM literacy and other critical skills, knowledge, and credentials that will prepare them for high-demand, high-wage, and high-skill careers in Virginia.
24. Although the Academies of Loudoun is considered a Governor's STEM Academy, LCPS has developed an admissions criterion more akin to a Governor's School program.
25. Conflating the Governor's STEM Academies of Loudoun's admission criteria to a Governor's School program has led to inequities in admission.
26. A presentation entitled, "School Board Silence Equals Consent to Racist Ideology Towards 5,900 Black Students in LCPS" (undated, no author provided).
27. The NAACP \$1000 Scholarship Criteria for High School Seniors from Historically Disadvantaged Backgrounds or Students of Color.
28. An article entitled, "History of Education in Loudoun County" (Dorsey Ford, University of Richmond Scholarship Repository, 1937).
29. An article entitled, "Desegregation in Loudoun County Public Schools," 1954-1970 (Prepared for LCPS by Evelyn C. Causey, History Matters, LLC, April 30, 2010).
30. Middleburg Charter School Application (August 13, 2013).
31. Fall 2020 AET and AOS applicant, finalist, and admissions offered data, by race and national origin.
32. An August 22, 2020, invitation to LCPS and LCSB to participate in a roundtable to be hosted by NAACP Loudoun Branch on August 25, 2020, on the topic of "Call to Action to Combat Systemic Racism," including correspondence from LCPS counsel indicating that members of LCPS and LCSB will not be in attendance.
33. An August 27, 2020, email correspondence between the President of the NAACP Loudoun Branch, LCPS Chief of Staff, and LCPS counsel relating to the LCPS apology for operating segregated schools.
34. An academic article entitled, "Investigation of the relationship between critical thinking levels and academic achievement levels of students in faculty of sports science" published in Educational Research and Reviews (Mihraiy Musa, July 2020).

35. A document entitled, “Constitutional requirements for affirmative action in higher education admissions and financial aid” (The Civil Rights Project, Harvard University, September 2002).
36. Definition of magnet school: a public school offering special instruction and programs not available elsewhere, designed to attract a more diverse student body from throughout a school district.
37. The LCPS Apology to the Black community of Loudoun County dated September 25, 2020.¹⁷
38. A September 29, 2020, invitation to LCPS and LCSB to participate in a virtual community conversation hosted by the NAACP Loudoun Branch on October 2, 2020, on the topic of “An Apology to the Black Community,” including correspondence from LCPS counsel indicating that he has advised LCSB members and LCPS administration not to attend any meeting in which the subject matter of the NAACP’s administrative complaint with the Attorney General’s Office could come up.
39. An article entitled, “Reparations are possible: They happened in Virginia” published in Pacific Standard (Peter C. Baker, July 24, 2019).¹⁸
40. Registration information relating to an October 8, 2020, webinar on “Do America’s Public Schools Owe Black People Reparations?” The description of the webinar states, “We will discuss how the racist actions in Prince Edward County, Va., have had an impact on the county’s Black residents and whether a scholarship program meant to repair the harm was effective.”¹⁹

D. Charging Party’s Witnesses

The Division collected the following information regarding the Charging Party’s witnesses:

¹⁷ See,

<https://www.lcps.org/site/default.aspx?PageType=3&DomainID=1&ModuleInstanceID=274904&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=394767&PageID=1>.

¹⁸ See, <https://psmag.com/ideas/reparations-are-possible-they-happened-in-virginia>.

¹⁹ See,

<https://event.on24.com/eventRegistration/EventLobbyServlet?target=reg20.jsp&referrer=&eventid=2636567&sessionid=1&key=B4798BFA933677F3D7C1BEB4DA461158®Tag=&sourcepage=register>.

1. From October 8, 2019, to December 22, 2019, the NAACP forwarded correspondence and written statements from over forty-five (45) individuals, including LCPS parents and current and former students, and employees alleging experiences of race-based discrimination in the school setting.
2. On March 13, 2020, the NAACP provided names and email addresses of eighteen (18) individuals who agreed to serve as witnesses supporting the NAACP's discrimination complaint, in particular, individuals who have direct knowledge relating to complaints of ongoing racial slurs/bullying.
3. On April 17, 2020, the NAACP provided the student name and supporting documentation relating to a March 5, 2020, assault on a Black/African-American student by an LCPS employee.
4. The Division corresponded with the fact witnesses identified in Paragraph 2 via electronic mail, and in two cases, via telephone interviews.
5. The testimonies provided through the written statements and interviews corroborate the findings in the Equity Assessment in regard to the allegations of pervasive inequities division-wide, particularly a low level of racial consciousness and racial literacy and lack of meaningful response to reporting racially-charged incidents/complaints.
6. Because of apparent witness concerns surrounding confidentiality and retaliation, the Division includes below a select group of pertinent narratives reported to the Division by the fact witnesses who responded to the Division's inquiry through correspondence or interview:
 - a. LCPS employees/applicants on hiring:
 - "There ha[ve] been high levels of hiring . . . new teachers in [LCPS school] and none have been Black or people of color . . . Even our substitute pool lacks the appearance of brown teachers. A lot of that is controlled by the front office staff who have demonstrated upfront racial acts towards me."
 - "There are so many people that I can think of that have been promoted or designated to assume more responsibility and have a known reputation of racist practices."
 - "I was hired in August 2016 as a [LCPS position]...I was asked not to communicate with the NAACP or any advocacy groups...[I applied for a leadership position]. I, ...a

black female...hold a master's degree and longer years of experience than [white female applicant]...did not get the position. I find it hard to believe that I was less qualified.”

- “...this past summer I [LCPS employee] applied for [two opportunities of leadership positions at LCPS]...I have been passed over. The first time this occurred, the candidate was from out of state...The second time, the candidate was internal and had no experience in the [educational programming]. In both instances, I have had more credentials and more experiences...that show my ability to lead...I believe I had no other choice than to retire...as it appears that I was not going to be allowed to be [leadership position].”
- “While I am no longer a student with LCPS, I am now a substitute...I only remember seeing two other black hires of a group of approximately thirty new hires...very rarely would I see myself represented...I have applied to ten to twenty different positions with the county, hoping to become a full-time staff member...I applied for teaching assistant, library assistant and secretary positions. All of which I was denied for, not even making it in for an interview...I know that I have the qualifications needed for the positions that I've applied for....”

b. LCPS employees and parents on discipline:

- “I am also concerned about the over discipline of brown students...[h]ow they group 5-7 boys in the 4th and 5th grade classrooms held by male teachers as if the black boys are too loud and too tall to handle by women.”
- “I was there for an incident where two students got suspended after the white student beat up a black student for not liking Trump and the black student did nothing to defend himself but was still disciplined. That incident was recorded in the [2019 equity assessment].”
- “We are a...mixed-race family that moved to Loudoun County. I am Caucasian and my [spouse] is African-American. It is obvious looking that [my child]...has African-American heritage. [He] seemed to be doing fine...until...[accounts of discipline incidents]. It's very subjective if [his] disparate discipline was due to his race...I can say that the repeated references to his size and strength were indications, as those factors do

not change the fact that he was only 6 years old ...I also find it notable that [he] had no major discipline problems in the years of prior schooling...I also know that [he] was traumatized by his time at [LCPS]...African-Americans appear to make up a very small minority in his school, especially at the administrative level, and that I can't believe he was suspended twice at just 6 years old...."

- "My daughter...was discriminated against by the [LCPS employee and principal of the school]...because she was Hispanic. She was treated differently and punished numerous times by the staff for no reason...none of the white [students] were treated the way [my daughter] was, there were numerous instances of her being treated differently and when trying to address the issues with the principal...[principal] was "accusing my daughter of having emotional problems."
- "The most recent incident...my son was pushed against a lunch table, told he looked like the donkey from Shrek and called a ni**a five times...he did not feel comfortable reporting this to the assistant principal who witnessed some type of incident and pulled him out of cafeteria...situation was investigated and...boys denied saying the ni**a."
- "I am an LCPS graduate from 2012. Every day at school just about someone or group were making racial comments to others...It was the norm of being a 'black' kid in Loudoun county schools. I even got In School Suspension after being called 'blacky chan & being told to go back to Africa' on the school bus because I poured my drink on him. Which wasn't the right thing to do either."

c. LCPS staff, students, and parents on racial slurs and racial incidents

- "The Black Student Association ... often discussed possible solutions on how they were going to get white students to stop saying ni**a because the administrations and teachers did nothing about it...[was] formed as a result of unaddressed racial incidents at the school...there were at least five situations where students were called ni**a and it was not addressed or there was no resolution with the student involved."
- "I complained last year about bus incidents my granddaughter had to listen to conversations...where other kids would use the "N" word out loud in their

conversations...The bus driver I guess can't do anything about these loud conversations using words that are racially offensive.”

- “...no one could think of the name of a Black literary author from Nigeria, they decided to call the author “N...” instead....Sometimes the kids get frustrated and just don't pursue these comments.”
- “...My sons are both at [LCPS school] as a black parent I've heard about issues concerning race and this school system for years. My sons tell me all the time about how white students use the [word] ‘n*****’ They also talk about how some of their black friends speak about racial concerns constantly as well....”
- “My son is a former student at [LCPS school]...We are both white but I felt the need to reach out when I read the article on WTOP...[during a discussion with an LCPS employee], the subject turned toward South Korean school and their graduation rate (better than US). [The LCPS employee] reply was that [South Korean] school didn't have the ‘poor, black or Latino students that Loudoun County did.’”
- “In 2015, principal of [LCPS school] made a racial joke about not being able to tell the difference between the students from China visiting and the students from orchestra.”
- “I had no intention of going to private school until a series of incidents occurred during my sophomore year...[a student] started attacking me for being Egyptian, and more importantly, for being Muslim. That is when we both started cursing at each other. When the incident was brought up to [LCPS staff], [LCPS staff] failed to recognize some of the racist and Islamophobic things that were said by that student, and only focused on how I cursed at him...The next incident was a lot more severe...[a student] verbally attacked a Muslim girl over Snapchat, just for the fact that she was Muslim...he said...I hope ...Trump deports your ... “*** you immigrant, this is my *** country”...I decided to peacefully and respectfully defend her...[the student was] planning to jump me the next day. Those threats turned out to be real...[SRO became involved and did not understand...used his weapon to intimidate me] ...I feared for my safety...This specific incident had a very strong impact not only on myself, but my entire family...my parents were worried sick....”

- “My daughter is a 3rd grader...tasked with a project on culture. The wording was “Provide information on a country your family immigrated from...” I brought this to her teacher’s attention...reminded her that African Americans were not immigrants....”
- “This letter is to request a meeting...to address a racially charged lesson plan...our son participated in a curriculum-based activity in which the underground railroad and famous slaves were topics. Imagine our shock...to also learn that our 8-year black son, was forced to reenact being a runaway slave on the underground railroad as a physical education portion of his lesson plan....”

d. LCPS staff, students, and parents on school climate:

- “I have not seen a system in place to support the students of color and I have been met with opposition in any attempts to get the administration to understand the effects of mental health and trauma.”
- “My daughter is a senior at [LCPS school]. She complains almost daily about how racist some of the students are and how she feels like an outcast. She has beautiful hair and will not wear it out at school because she feels uncomfortable and different.”
- “I am a student of LCPS from third grade through senior year of high school and have experienced many situations of discrimination...whether it was from a teacher telling me to be the janitor for the week for a classroom of all white students, or being told that I shouldn’t take honors classes although I excelled...Thankfully I have parents that would always advocate not just for me and my sister but for all students of color that needed their voice to be heard...”
- “The front office staff at [LCPS school] was notorious for treating black students with disrespect. I have witnessed them being rude to students who asked for help so much that the Black Student Association discussed taking different routes in the building to avoid being [seen] or interacting with them.”
- “I am a LC mom of four teenagers. About 6 weeks ago...I overheard one of my daughters...chatting with another student...about the treatment of two black [kids] by one of their teachers...They both have witnessed repeated the same thing...it was disturbing...and even more so because I know one of the boys...He is THE SWEETEST

most polite boy...about a week later one of my other sons...had some buddies over...talking about a teacher that treats the black kids different/worse than the non-black kids..."

- "Below are some highlights of the discrimination that occurred against my children...not selected by staff to take honors classes even though she was an honors student...We were told she just "can't do the work..."[treated disparately in grading of same answers in same assignment]...high school teacher wrote recommendation letters that described my daughter as poor, black, unmediated, child from the inner city who had nothing..." told by the teacher that she did not like their hair. She said it was nappy and that the boys looked like gorillas...."
- "I just read the article about LCPS school discriminating [against] black kids. My son experienced the same thing because of his race. As a result I requested for a class change."

e. LCPS parents gifted programming

- "[daughter] applied for [Academies of Loudoun]...of which she was denied admission...I believe she was denied an opportunity to excel and there was a really small number of African-American students admitted that year...she was treated horribly by her honors biology teacher. We believe that she was...racist...my daughter started showing [s]igns of bad anxiety...teacher destroyed her self-esteem...she was inducted into the [National Honors Society] as probably the only African American student that year..."
- "she...had extremely racist teachers like [LCPS teacher.] [LCPS teacher] told her and us that she didn't belong in an advanced math class and strongly stressed that she should drop the class...My daughter went on to prove her wrong and received an A...I later found out that these two [LCPS teachers] harassed many other African American students during those years. I reported both [LCPS teachers]...but of course blind eyes were turned. Teachers like these have been robbing our students of opportunities and must be stopped."

- “My child has proven her track with skipping out of one grade, earning numerous awards...off the chart for IQ...and standard honor roll/advanced level standardized testing...Previous principal highly recommended her to the public school gifted program but the school accidentally filed her application in the wrong place...so she will have to wait until the next open session....”
- “Last year my daughter was an 8th grader at [LCPS school]...she had averages of 99, 97, and 98 her first three quarters. We received our daughter’s course load and [were] somewhat shocked that her teacher did not recommend her for Honors English. When asked why, her response (and this was a direct quote from the school’s principal) was ‘she didn’t think she would work hard enough.’ The principal promptly followed that up with (and again, a direct quote from the principal), ‘am I in trouble?’ These teachers know exactly what they are doing yet they continue to do it anyway. They do it because no action has been taken against them.”
- “My son...has told me repeatedly that all the brown kids receive Fs and the white kids receive As. I met with his math teacher last year ... she would intentionally mark my son’s test problems wrong, when they were right. I requested a meeting with the Dean and she refused to meet with me.”
- “I am a parent of two school-aged children. Last year, I asked the Principal how many students of Black and Latino students were in the gifted program. There were zero. This year, I asked again. I receive a snarky message from the head of the gifted program. Why is it that there was not one brown student in the program in a school of several hundred.”
- “Our two older daughters were not referred to honors level English courses even though they had consistent high performance.”
- “My family was not informed of application process for [Academy of Science] and my daughter was kept in lower level groups for not articulating her thoughts. This is actually more polite in our [Asian/Pacific Islander] culture...learning center told us she was at least 3 years ahead of grade level. So we were confused about why it took until 5th grade for her to be moved up to the top groups.”

E. Respondent's Supplemental Information

In response to a request from the Division on December 18, 2019, LCPS provided, through their counsel, the following information on January 23, 2020:

1. SPECTRUM²⁰ program referral process and applicant data by race and national origin for the 2018-2019 application cycle.
2. AOS and AET data on student applicants and students offered admission by race and national origin for the 2019-2020 application cycle.
3. Portion of a working document prepared to address the recommendations of the Equity Assessment.

On June 24, 2020, LCPS provided the following information to the Division through their counsel:

4. LCPS Action Plan to Combat Systemic Racism, presented by Williams to LCSB on June 23, 2020, including proposed presentation and video of board meeting.²¹

In response to a request from the Division on February 20, 2020, LCPS, through their counsel, provided the following information to the Division on August 7, 2020:

5. LCPS Student Discipline Task Force Report of Recommendations, dated August, 2013.
6. LCPS policies related to the filing of a discrimination and harassment complaints or grievances by LCPS students and LCPS employees, including equal opportunity for equitable, safe and inclusive environment (policy 1040), equal employment opportunity (policy 7012), filing complaints (policy 8-10), and environments free from harassment, discrimination, and abuse (policy 7014).
7. LCPS school discipline policies.
8. Academies of Loudoun applicant, finalist, and admission data for 2019-2020 and 2020-2021 academic year, by race and national origin.

²⁰ The purpose of the SPECTRUM program is to meet the needs of middle school students who have been identified for gifted services. The curriculum includes business and economics, communication and culture, technology and engineering, and ethics and perspectives. Students in this program attend a class for 45 minutes a day and are involved in project-based learning, research and inquiry, and real-world problem solving.

²¹ See, <https://go.boarddocs.com/vsba/loudoun/Board.nsf/Public#>.

9. SPECTRUM and EDGE (gifted services program) applicant, finalist, and admission data for the last three academic years, by race and national origin.
10. PROPEL (elementary gifted and talented program) applicant and admission data for the last three academic years, by race and national origin.
11. Documentation of formal and informal complaints submitted by LCPS students and LCPS employees, within the last three years, alleging discrimination on the basis of race, national origin, and religion.
12. Student suspension rates for the last three years, by race and national origin.
13. 2019-2020 LCPS Fact Sheet on employee profile.
14. LCPS Employee Handbook.
15. LCPS Student Rights and Responsibilities Handbook.

On August 7, 2020, LCPS provided, through their counsel, the following information to the Division:

16. Summary of changes to the outreach, recruiting, and admissions processes that LCPS tentatively plans to implement for Academies of Loudoun admissions for the 2021-2022 school year.

In response to a request from the Division on August 4, 2020, LCPS, through their counsel, provided the following information on August 14, 2020:

17. Information about the role and authority of LCSB in approving or adopting the AOL admissions criteria.
18. Information about the role and authority of LCSB in approving or adopting the LCPS action plan.

On August 14, 2020, LCPS provided, through their counsel, the following information to the Division:

19. Detailed Action Plan to Combat Systemic Racism, presented by Williams to the LCSB at the August 11, 2020, board meeting.

In response to a request from the Division on August 18, 2020, counsel for LCPS provided the following information on August 19, 2020:

20. LCPS internal notes and updates on scope of equity work completed and in progress, in response to Equity Assessment (no dates).

In response to a request from the Division on August 26, 2020, counsel for LCPS provided the following information on August 30, 2020:

21. Written statement from Director of School Administration that clarifies prior statements made to the Division during an interview on August 26, 2020.
22. LCPS protocol for responding to racial slurs and hate speech in school, dated July 2020.
23. LCPS complaint policy and complaint form (8-10), dated September 10, 2013.
24. LCPS quarterly comments and complaint forms, 2016-2020.
25. Discipline Committee agenda and meeting minutes, dated October 23, 2019, through May 20, 2020.
26. Spreadsheet of number of LCPS student and parent complaints alleging discrimination on the basis of race, dated January 2016 through June 30, 2020.
27. Copies of email correspondence and other documentation relating to complaints alleging discrimination on the basis of race between 2018-2019.

In response to a request from the Division on August 30, 2020, LCPS, through its counsel, provided the following information on September 1, 2020:

28. Academies of Loudoun applicant, finalist, and admission data for 2018-2019 academic year, by race and national origin.

In response to a request from the Division on September 9, 2020, LCPS counsel provided the following information on September 21, 2020:

29. LCPS School Staff for the academic year 2020-2021, by race and gender.
30. Spreadsheet on Human Resource Talent Development Department Data on Race, National Origin, Religious, and Sex Discrimination Complaints for the last three years, including the date, location, allegation, one sentence finding (or statement that it is ongoing).

On September 21, 2020, LCPS provided to the Division, through counsel, the following:

31. A slide deck for the Action Plan to Combat Systemic Racism prepared for the September 22, 2020 school board meeting.

F. Respondent's Witnesses

LCPS did not identify any witnesses. The Division requested an opportunity to interview the following individuals: (1) consultants who conducted the Equity Assessment for LCPS; (2) LCPS employee(s) with direct knowledge on student and employee discrimination complaint process; and (3) LCPS employee(s) with direct knowledge on improvements being made to the discrimination complaint process in response to the Equity Assessment.

1. On August 18, 2020, the Division conducted a telephone interview with the two consultants ("equity consultants") who prepared the Equity Assessment, in the presence of LCPS counsel and outside counsel. Below is a summary of pertinent information provided:
 - The equity consultants provide schools specialized services centered on educational equity, including assessments and coaching.
 - On or around May 2017, LCPS initially invited and interviewed the equity consultants for the purpose of conducting an equity assessment of LCPS.
 - On or around January 2019, LCPS retained the equity consultants for a sum of \$391,500.
 - The equity consultants conducted a qualitative equity assessment of LCPS from January – May 2019, including interviews and focus groups with LCPS students, employees, parents, and community stakeholders.
 - The equity consultants interviewed five to six community stakeholders as part of the assessment, including the NAACP.
 - LCPS recruited the community stakeholders for interviews with the equity consultants.
 - The controversies surrounding the Academies of Loudoun is among a small number of people. This issue was not identified as a major theme (i.e. top concern) in the Equity Assessment.

- The equity consultants observed that Loudoun County is rapidly diversifying racially in a manner similar to other districts in the southern region of the United States.
 - The equity consultants observed that LCPS's racial literacy was outside the realm of average as compared to similarly situated school districts when they started their assessment; however, LCPS has quickly improved its racial literacy since the report was issued in June 2019.
 - On or around June 2019 through June 2020, the equity consultants provided LCPS ongoing coaching services based on the recommendations in the Equity Assessment.
 - On or around June 2020, the equity consultants' contract with LCPS ended.
 - The equity consultants have proposed for LCPS's consideration a new contract for services, including ongoing coaching services.
2. On August 24, 2020, the Division interviewed LCPS Director of School Administration (by telephone) in the presence of LCPS counsel and outside counsel. Below is a summary of pertinent information provided:
- a. The overall complaint system is explained in policy 8-10.²²
 - b. The Director of School Administration receives all complaints, including complaints alleging discrimination, and refers them to the appropriate avenue to address the matter depending on the type of complaint.
 - c. The overwhelming majority of complaints that the Director of School Administration receives are related to (non-special education) discipline matters, such as use of alcohol and disorderly conduct.
 - d. The Director of School Administration's primary responsibilities include review of appeals of suspension, ensuring that LCPS staff followed policy appropriately, and that students were afforded due process during the suspension appeals process.
 - e. The Director of School Administration is aware of some complaints alleging racial discrimination.

²² Neither the policy nor the complaint form includes the term discrimination, or designates "discrimination" as a category of the complaint.

- f. In case of a complaint alleging racial slurs or other race-based incidents, the Director of School Administration designates the matter to the building principal who is responsible for investigating and resolving the matter and then drafting a report.
 - g. The principal may use restorative process, mediation, or discipline to resolve race-based complaints.
 - h. In case of a complaint based on race discrimination, such as a racial slur, the LCPS staff reporting the conduct *may* include in its report that the incident was race-based, but there is no code to designate “race.”²³
 - i. The Department of Pupil Services is responsible for developing protocols on the topic of LCPS’s response to racial slurs and hate speech; however, the Director of School Administration does not have access to this information.
 - j. The Director has not been involved in any equity work relating to discipline or the complaint system in general, before or after the issuance of the Equity Assessment.
3. On August 31, 2020, the Division conducted a telephone interview of LCPS’s Assistant Superintendent for Pupil Services in the presence of LCPS counsel and outside counsel. Below is a summary of pertinent information provided:
- a. The Department of Pupil Services, the Department of Instruction, and the Department of School Administration are engaged in an interdepartmental multi-tiered process to develop a unified protocol to respond to racial incidents, slurs, and hate speech.
 - b. While the work to address such incidents has been ongoing, LCPS is adopting a more formalized protocol based on the recommendations of the Equity Assessment.
 - c. The role of the Department of Pupil Services is to provide a multi-tiered set of whole child restorative practices and support, including positive behavioral intervention, mental health, wellness, and safety supports, to ensure that the behaviors are not repeated. The support covers the areas of prevention, intervention, and wraparound services.
 - d. The role of the Department of Administration is to administer the complaint process, particularly as it relates to the code of conduct aspect of such incidents, i.e. discipline.

²³ The investigation revealed that the LCPS complaint form does not designate a category for a complaint based on allegations of discrimination.

- e. The role of the Department of Instruction is to provide oversight to the school principals and administration, ensure cultural responsiveness in investigating and reporting such incidents, and provide learning opportunities for LCPS staff.
 - f. This protocol will be reviewed through the Ad Hoc Committee on Equity and community conversations to discuss the application of the protocol in practice.
4. On September 9, 2020, the Division interviewed LCPS's Assistant Superintendent for Human Resources and Talent Development ("HRTD") by telephone in the presence of LCPS counsel and outside counsel. Below is a summary of pertinent information provided:
- a. HRTD handles discrimination and Equal Employment Opportunity complaints pursuant to policy 7014.
 - b. HRTD recently added a new position of Supervisor of Equity, Compliance, and Respectful Workplace.
 - c. In the Assistant Superintendent's nine months of employment, HRTD has received a handful of discrimination complaints, including one related to promotion, a small number of sexual harassment claims, and two complaints alleging race discrimination.
 - d. Both complaints that alleged race discrimination have been addressed by outside counsel and LCPS counsel.
 - e. In addition to investigating discrimination complaints, HRTD engages in efforts to recruit and retain a diverse workforce.
 - f. HRTD has not yet quantitatively assessed the impact of the recruitment efforts.
 - g. HRTD administers a leadership development and mentoring program for its employees.

IV. DIVISION ANALYSIS

The Act prohibits unlawful discrimination in educational institutions. Accordingly, the Division will determine whether the evidence gathered in this case establishes reasonable cause to believe that LCPS has: (1) implemented facially-neutral policies that nonetheless have a disparate impact on students on the basis of race, and/or (2) intentionally discriminated on the basis of race and national origin. "Reasonable cause" means having a reasonable ground of

belief in certain alleged facts after reviewing the evidence produced during the investigation objectively and in light of the statutory prohibitions and relevant case law.

A. Jurisdiction Under the Act

The Division has jurisdiction to determine if there is a reasonable cause to believe that the alleged discriminatory practices are a violation of the Act. It is the policy of the Commonwealth, through the Act, to safeguard all Virginians from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability in places of public accommodation, including educational institutions.²⁴ Because the Act recognizes educational institutions as places of public accommodation, educational institutions are prohibited from discriminating on the basis of any of the protected classes. In addition, conduct that violates any Virginia or federal statute or regulation governing discrimination is an unlawful discriminatory practice under the Act.²⁵ The Equal Protection Clause of the U.S. Constitution and Constitution of Virginia prohibits governmental discrimination on the basis of race, religion, or national origin.²⁶ Title VI and its implementing regulation at 34 C.F.R. Part 100 prohibit discrimination based on race, color, or national origin by educational institutions that receive federal financial assistance.²⁷ Title IV also prohibits discrimination in educational institutions on the basis of race, color, religion, or national origin. For all the reasons stated above, the Division has jurisdictional authority to investigate this complaint.

²⁴ Va. Code § 2.2-3900.

²⁵ Va. Code § 2.2-3902.

²⁶ U.S. Const. amend. XIV, §1.; Va. Const. art. I, §11.

²⁷ 42 U.S.C. § 2000d and 34 C.F.R. § 100.3.

B. Race Discrimination – Disparate Impact²⁸

It is a violation of the Act for an educational institution to discriminate on the basis of race. Here, the NAACP alleges systemic discrimination in the manner in which the Academies of Loudoun is administered. In particular, the NAACP alleges that 68 Black/African-American students were denied equal access to the Academies of Loudoun Academy of Engineering & Technology (“AET”) and the Academies of Loudoun Academy of Science (“AOS”) during the Fall 2018 application process for the 2019-2020 admissions cycle (“Year Two”)²⁹ on the basis of race. The NAACP also alleges that Black/African-American students rarely enter the Academies of Loudoun admissions pipeline because they continue to be underrepresented in elementary and middle school gifted and talented programs, and therefore are less likely to be identified as “high achieving.”

In order to state a claim of disparate impact on the basis of race, the evidence gathered during the administrative investigation must establish reasonable cause to believe that LCPS implemented a facially-neutral policy that has the unjustified effect of discriminating against students on the basis of race. In examining the application of the AET and AOS policies and practices, the Division will consider whether the policies and practices result in an adverse impact on Black/African-American students, as compared with students not in their protected class; whether the policies and practices have a reasonable relationship to an important educational goal; and even in situations where the policies and practices have a reasonable relationship to an important educational goal, whether there are comparably effective alternative

²⁸ The Division’s analysis of allegations of systemic discrimination (also referred to as disparate impact) in employment, housing, and educational institutions relies to a large extent on the three-step burden-shifting framework developed in Title VII employment cases. See, *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849 (1971); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973); *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 573 U.S. 991, 135 S. Ct. 46 (2014) (recognizing disparate impact analysis under the federal Fair Housing Act); *Elston v. Talladega Cnty. Bd of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993) (“In deciding Title VI disparate impact claims we borrow from standards formulated in Title VII disparate impact cases”) (in education). See also, 34 CFR § 100.3(b)(2)(2004) (A recipient of federal funding, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, may not, directly or through contractual or other arrangements, “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”) and OCR interpretation of disparate impact claims in OCR investigations at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

²⁹ For purposes of this investigation, “Year Two” refers to the Fall 2018 application cycle for Spring 2019 admission into 9th grade AET and AOS for the 2019-2020 school year.

policies available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected racial or ethnic group, or whether the identified justification for the policies and practice is a pretext for discrimination.

1. LCPS policies, though neutral, result in a disparate impact.

First, the evidence must demonstrate that LCPS’s administrative policies and practices relating to the Academies of Loudoun, as administered in Year Two, resulted in a disproportionately adverse impact on Black/African-American students as compared with students of other races. The evidence establishes that LCPS administered the following Academies of Loudoun admissions policy during the Fall 2017 application process for the 2018-2019 admissions cycle (“Year One”)³⁰ and during Year Two:

Admissions: Students are offered admissions through a competitive process. Students and their parents/guardians must be residents of Loudoun County at the time of their application. Students are selected on the basis of a holistic review of their application, standardized test scores, transcripts, teacher recommendations, and admissions assessments. Student motivation and a passion for STEM are some of most valuable characteristics of successful applicants. Highly motivated students who are consistent, dedicated learners have the greatest chance of success.³¹

Table A and B below outline the competitive admissions criteria and process LCPS used in Year One and Year Two:

Table A: AET and AOS Admissions Criteria for Year One and Two

2018-2019 and 2019-2020 AET Admissions Criteria	2018-2019 and 2019-2020 AOS Admissions Criteria
Successful completion of Geometry by end of 8 th grade	Successful completion of Algebra by end of 8 th grade
Review of academic record	Review of academic record
California Critical Thinking Disposition Inventory Scores (CCTDI)	CCTDI
California Critical Thinking Skills Test (CCTST-N)	CCTST-N
Standards of Learning (SOL)	PSAT

³⁰ For purposes of this investigation, “Year One” refers to the Fall 2017 application cycle for Spring 2018 admission into 9th grade AET and AOS for the 2018-2019 school year.

³¹ See, <https://www.lcps.org/cms/lib/VA01000195/Centricity/Domain/24707/ACL%20Profile%202018-19.pdf>.

Letters of recommendations	Letters of recommendations
Writing assessment	Writing assessment

Table B: AET and AOS Admissions Process for Year One and Two

2018-2019 and 2019-2020 AET and AOS Admissions Process
Phase 1 (all applicants): CCTDI and [SOL (AET) or PSAT (AOS)]
Phase 2 (finalists): CCTST-N, letters of recommendations, writing assessment
All finalists undergo a comprehensive, multi-tiered evaluation process that assesses their ability to meet the rigors of a demanding, advanced academic curriculum and the potential to be effective contributors to the program’s unique curricular experiences.
The admissions team does not have access to applicant gender, race, ethnicity, socio-economic status, special education status, or English Language Learner status at any point during the admissions process.

To assess whether the above-referenced LCPS policies and practices relating to AOS and AET had a disproportionately adverse impact on Black/African-American students in Year Two, as compared with students of other races, the Division assessed the enrollment data by race for Year One and Year Two. Table C and D below illustrate the diversity of students who applied, were offered admission, and enrolled in AET and AOS for Year One and Year Two.³²

Table C: Number of AET & AOS Applications, Offered Admission,³³ and Enrolled in Year One

Year One: 2018-2019 AET & AOS	Applications	Enrolled	Offered AET	Offered AOS
American Indian ³⁴	8	2 (25%)	1	1
Asian/Pacific Islander	1334	186 (13.94%)	223	140
Black/African-American	65	1 (1.5%)	1	0
Latinx/Hispanic	82	8 (9.8%)	7	5
Two or More	78	10	1	6
White	549	66 (12%)	72	32
Grand Total	2116	273 (12.9%)	305	184

³² Applicant and finalist data provide additional insight into the impact of recruitment policies and practices. The Division obtained the “Applications” and “Enrolled” data from LCPS; NAACP provided the Division the “Offered” data that it received from LCPS pursuant to its own FOIA request.

³³ Note that the same applicant may have been offered a spot in both AET and AOS. The Division noted minor inconsistencies in applicants offered admission and applicants enrolled.

³⁴ The Division was unable to ascertain the population count of American Indian students at LCPS. 2019 census data indicates that American Indian and Alaska Natives account for 0.5% of the population in Loudoun County. <https://www.census.gov/quickfacts/loudouncountyvirginia>.

Table D: Number of AET & AOS Applications, Offered Admission,³⁵ and Enrolled in Year Two

Year Two: 2019-2020 AET & AOS	Applications	Enrolled	Offered AET	Offered AOS
American Indian	10	0 (0%)	0	0
Asian/Pacific Islander	1406	188 (13.4%)	226	185
Black/African-American	68	5 (7.3%)	3	3
Latinx/Hispanic	85	9 (10.6%)	8	6
Two or More	70	5	5	1
White	508	76 (15%)	74	24
Grand Total	2147	283 (13.2%)	316	219

Disparate impact discrimination in the education system is often evidenced by severe disparities between various demographic groups of students. Here, a simple statistical analysis revealed evident disparities between Black/African-American and Latinx/Hispanic students as compared to White students and Asian-American students. The evidence illustrates that Black/African-American and Latinx/Hispanic students, both historically marginalized populations, were significantly underrepresented in AET and AOS enrollment for both years. In Year One, Black/African-American students represented approximately 3.07% of the applications and approximately 0.37% of enrolled students, despite constituting approximately 7% of the LCPS student population.³⁶ Correspondingly, Latinx/Hispanic students represented approximately 3.87% of the applications and 2.9% of enrolled students, despite constituting 17% of the LCPS student population. In Year Two, Black/African-American students represented 3.17% of the applications and 1.77% of enrolled students, despite constituting 7% of the LCPS student population.³⁷ Correspondingly, Latinx/Hispanic students represented 3.96% of the applications and 3.18% of enrolled students, despite constituting 18% of the LCPS student population. In sum, the quantitative evidence illustrates a disproportionate adverse impact on Black/African-American and Hispanic/Latinx students in Year One and Year Two as compared to other races.

³⁵ Note that the same applicant may have been offered a spot in both AET and AOS. The Division noted minor inconsistencies in applicants offered admission and applicants enrolled.

³⁶ See, LCPS 2018-2019 Fact Sheet at https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/4/2018%20-19%20uploaded%20documents/2018_19%20Fact%20Sheet.pdf.

³⁷ See, LCPS 2019-2020 Fact Sheet at https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/1/2019%202020%20document%20uploads/Fact%20Sheet%202019-2020_01062020.pdf.

2. LCPS's policies have a reasonable relationship to an important educational goal.

The burden now shifts to LCPS to demonstrate that the policies or practices in question have a reasonable relationship to the educational goal of the Academies of Loudoun. The investigation revealed that the predecessor to the Academies of Loudoun (called the Governor's Career and Technical Academy in Loudoun) came into fruition as part of a Governor's STEM Academy approved by the Virginia Department of Education ("VDOE").³⁸ Governor's STEM Academy programs are designed to expand options for the general student population to acquire STEM literacy and other critical skills, knowledge, and credentials that will prepare students for high-demand, high-wage, and high-skill careers in Virginia. The evidence shows that the Academies of Loudoun in its current form opened for the 2018-2019 academic year (Year One) merging three LCPS STEM programs, including AET and AOS, into one school.³⁹ The VDOE webpage designated for the Loudoun Governor's Career and Technical Academy currently states, in part, the following goals of the Academies of Loudoun:

The Academies of Loudoun will provide rigorous academic content within its career and technical instruction, concentrating on five career pathways. Academic integration and STEM curriculum expansion will enhance student learning through curriculum enhancements and targeted staff development with concentrations on integrative applications of mathematics and science....⁴⁰

In addition, LCPS asserts that the goal of the AET program is to provide academic STEM pathways for students to engage in the study of engineering, information technology, and entrepreneurship, while the purpose of the AOS program is to provide students the opportunity to deeply engage in math, science, and research.

To carry out these educational goals, LCPS asserts that it implemented admissions policies and practices to identify students who can be successful in the rigorous STEM coursework offered in the Academies of Loudoun.⁴¹ Tables A and B above summarize the AET

³⁸ See, Virginia Department of Education website at http://www.doe.virginia.gov/instruction/career_technical/gov_academies/academies/loudoun.shtml and http://www.doe.virginia.gov/instruction/career_technical/gov_academies/how_establish.shtml.

³⁹ The investigation revealed that AET was originally established in 2016 and the AOS was originally established in 2005.

⁴⁰ See, http://www.doe.virginia.gov/instruction/career_technical/gov_academies/academies/loudoun.shtml.

⁴¹ See, LCPS response to Division, dated December 11, 2019.

and AOS admission policies and practices for Year One and Year Two. Establishing competitive admissions policies and practices have a reasonable relationship to LCPS's educational goal of identifying students who can be successful in mastering the rigorous academic content provided in Academies of Loudoun program which will then empower these students to make meaningful contributions in the fields of STEM.

3. There are less discriminatory alternative policies and practices to meet LCPS's educational goals.

Because LCPS has elected to establish competitive admissions policies and practices to further the educational goals of advanced STEM literacy, the Division now must evaluate whether there are comparably effective alternative policies and practices available that would meet LCPS's educational goals with less burden or adverse impact on the disproportionately affected racial group, or whether LCPS's proffered justification is a pretext for discrimination. If the answer to either of these inquiries is yes, then there is an inference of discrimination.⁴²

LCPS concedes that it has struggled with developing an admissions criteria that identifies students who, based on the experience, professional judgement, and research of LCPS staff, can be successful in the advanced STEM coursework.⁴³ The investigation revealed that based on research, experience, and a review of data, LCPS revised the admissions criteria for the Fall 2019 AET and AOS application process for the 2020-2021 admissions cycle ("Year Three")⁴⁴ to ensure that all students, including Black/African-American students, have equitable access to these programs. The changes include: (1) replacing the SOL/PSAT with the STEM Thinking Skills Assessment; and (2) engaging a panel comprised of a racially and ethnically diverse group of LCPS employees to evaluate finalists. Tables E and F below outline LCPS's competitive admissions criteria and process for Year Three.

⁴² *Elston v. Talladega Cnty. Bd of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 573 U.S. 991, 135 S. Ct. 46 (2014); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See, also OCR interpretation of disparate impact claims at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

⁴³ See, LCPS response to Division, dated December 11, 2019.

⁴⁴ For purposes of this investigation, "Year Three" refers to the Fall 2019 application cycle for Spring 2020 admission into 9th grade AOS/AET for the 2020-2021 school year.

Table E: AET and AOS Admissions Process for Year Three

2020-2021 AET Admissions Criteria	2020-2021 AOS Admissions Criteria
Successful completion of Geometry by end of 8 th grade	Successful completion of Algebra by end of 8 th grade
Review of academic record	Review of academic record
California Critical Thinking Disposition Inventory Scores (CCTDI)	CCTDI
California Critical Thinking Skills Test (CCTST-N)	CCTST-N
STEM Thinking Skills (<i>replaced SOL</i>)	STEM Thinking Skills (<i>replaced PSAT</i>)
Letters of recommendations	Letters of recommendations
Writing Assessment	Writing Assessment

Table F: AET and AOS Admissions Process for Year Three

2020-2021 AET and AOS Admissions Process
Phase 1 (all applicants): CCTDI and STEM Thinking Skill
Phase 2 (finalists): CCTSN-N, letters of recommendations, writing assessment
All finalists go through a review of multiple measures of data and information for each student <i>by a racially and ethnically diverse panel of educators who are in different roles in LCPS.</i>
The admissions team does not have access to applicant gender, race, ethnicity, socio-economic status, special education status, or English Language Learner status at any point during the admissions process.

LCPS also asserts that it has made efforts to increase the diversity of the applicant pool. In acknowledging the underrepresentation of Black/African-American students enrolled in the Academies of Loudoun, LCPS takes the position that it has recently implemented STEM enrichment programs, including PROPEL at nine elementary schools (4th and 5th grade) starting in 2017, and Level Up at four middle schools (6th grade) starting in 2018, to assist in increasing the applicant pool for Academies of Loudoun.⁴⁵ This is only approximately 17 percent of the school system. LCPS has also increased the size of its admissions team and added additional outreach and recruitment activities aimed at addressing the disparities around underrepresented populations. Table G below illustrates the diversity of students who applied, were offered

⁴⁵ See, LCPS response to Division, dated December 11, 2019.

admission, and enrolled in AET and AOS *subsequent* to the implementation of revised outreach, recruitment, and admission policies and practices.⁴⁶

Table G. Number of AET & AOS Applications, Offered Admission,⁴⁷ and Enrolled in Year Three

Year Three: 2020-2021 AET & AOS	Applications	Enrolled	Offered AET	Offered AOS
American Indian	19	0	0	0
Asian/Pacific Islander	1611	182 (11.3%)	82	103
Black/African-American	244	10 (4.1%)	8	3
Latinx/Hispanic	452	5 (1.1%)	4	0
Two or More	107	6	4	1
White	718	72 (10%)	51	19
Grand Total	3151	275 (8.7%)	149	126

In Year Three, Black/African-American students represented approximately 7.74% of the applications and approximately 3.64% of the total enrolled students, while constituting approximately 7% of the LCPS student population. Correspondingly, Latinx/Hispanic students represented approximately 14.34 % of the applications and 1.8% of the total enrolled students, despite constituting 18% of the LCPS student population. The applicant data suggests that the revised recruitment efforts implemented in Year Three were effective at attracting all categories of populations, particularly underrepresented groups. While the evidence indicates that representation of Black/African-American students enrolled in AET and AOS increased marginally by 1.87% in Year Three, the underrepresentation of Latinx/Hispanic students appears to have *worsened*. The analysis reveals that disparities between Black/African-American and Latinx/Hispanic students as compared to White students and Asian-American students continue to persist. The evidence illustrates that Black/African-American and Latinx/Hispanic students, both historically marginalized populations, continued to be significantly underrepresented in AET and AOS enrollment for Year Three.

⁴⁶ Applicant and finalist data provide additional insight into the impact of recruitment policies and practices. The Division obtained the applicant and enrolled data from LCPS; NAACP provided the Division the “Offered” data that it received from LCPS pursuant to its own FOIA request.

⁴⁷ Note that the same applicant may have been offered a spot in both AET and AOS.

The investigation revealed that LCPS revised the admissions policies and practices again for the Fall 2020 AET and AOS application process for the 2021-2022 admissions cycle (“Year Four”).⁴⁸ The changes include: (1) replacing Geometry with Algebra as a prerequisite for AET; (2) eliminating the CCTDI and CCTST-N; (3) revising the writing assessment to focus on applicant’s motivation, perseverance, and creativity; and (4) considering the principle of geography/socio-economic equity in the selection process. Tables H and I below outline LCPS’s competitive admissions criteria and process for Year Four.⁴⁹

Table H: AET and AOS Admissions Criteria for Year Four

2021-2022 AET Admissions Criteria	2021-2022 AOS Admissions Criteria
Successful completion of <i>Algebra</i> by end of 8 th grade	Successful completion of Algebra by end of 8 th grade
Review of academic record	Review of academic record
<i>Elimination of California Critical Thinking Disposition Inventory Scores (CCTDI)</i>	<i>Elimination of CCTDI</i>
<i>Elimination of California Critical Thinking Skills Test (CCTST-N)</i>	<i>Elimination of CCTST-N</i>
STEM Thinking Skills	STEM Thinking Skills
<i>Elimination of letters of recommendations (only this year because of COVID-19 circumstances)</i>	<i>Elimination of letters of recommendations (only this year because of COVID-19 circumstances)</i>
Writing Assessment <i>revised to focus on applicant's motivation, perseverance and creativity</i> ⁵⁰	Writing Assessment <i>revised to focus on applicant's motivation, perseverance and creativity</i>

⁴⁸ For purposes of this investigation, “Year Four” refers to the Fall 2020 application cycle for Spring 2021 admission into 9th grade AOS/AET for the 2021-2022 school year.

⁴⁹ See,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BRQ3VQ08B7BB/\\$file/Academies%20of%20Loudoun%20Admissions%202020_072020.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BRQ3VQ08B7BB/$file/Academies%20of%20Loudoun%20Admissions%202020_072020.pdf). There is evidence to indicate that LCPS considered but rejected the idea of a lottery system of placement.

⁵⁰ LCPS asserts that two reviewers would score each student’s response using a rubric developed to assess motivation, persistence, problem-solving, and creativity. A third reviewer would score any student’s response if the scoring done by the two reviewers differed by more than a point. Annually, the Research Office would review the results of the scoring to promote reliability of scoring across reviewers and to promote equitable results across students with diverse backgrounds.

Table I: AET and AOS Admissions Process for Year Four

2020-2021 AET and AOS Admissions Process
<i>ONE Phase to include STEM Thinking Skills Test and Writing Assessment</i>
<i>A panel of educators with diverse backgrounds and experiences would review the profiles of each applicant by considering the scores achieved by students on the Writing Assessment and the STEM Thinking Skills Assessment to determine students to be offered admission</i>
<i>The selection process would take into consideration the principle of geography/socio-economic equity.</i>
The admissions panel does not have access to applicant gender, race, ethnicity, socio-economic status, special education status, or English Language Learner status at any point during the admissions process. ⁵¹

The evidence also establishes that LCPS has made incremental efforts at incorporating the principles of diversity, equity, and inclusion into the guiding policies of Academies of Loudoun for Year Three and Year Four. For year Three, LCPS developed a belief statement encouraging representation of students from diverse backgrounds, including race/ethnicity, gender, disability, English Language Learner, and socioeconomic status, and students from all geographic areas of Loudoun County who demonstrate a desire to be challenged by advanced academic coursework and collaborative research. For Year Four, LCPS incorporated the following language to the existing belief statement:

Diversity in our community makes us stronger and better equipped to work together. Representation of students from diverse backgrounds, including race/ethnicity, gender, disability, English [Language] Learner and socioeconomic status, and from all geographic areas and schools in LCPS enriches the STEM community and addresses a critical need in the United States.⁵²

⁵¹ See, <https://www.lcps.org/Page/225350>.

⁵² Revisions include the creation of a separate LCPS Office of Admissions Mission Statement and Goals: The LCPS and the LCPS' Office of Admissions at the Academies of Loudoun seeks to recruit and select students with an interest in STEM from diverse backgrounds, including race/ethnicity, gender, disability, English Language Learner and socioeconomic status, and students from all geographic areas of Loudoun County who demonstrate a desire to be challenged by advanced academic coursework and collaborative research. Commitment to Equity and Diversity - to uphold the LCPS Equity Statement in all aspects of admissions. Equitable Access - to ensure equitable access to the admissions process for all students, including students of all races and ethnicities, students by gender, English Language Learners, students by socioeconomic status, students with disabilities and students from all geographic areas and schools of Loudoun County.

Most significantly, on June 23, 2020, LCPS stated in its action plan to combat systemic racism that it will implement “*measures to increase the diversity of the applicant pool and the population of admitted students at the Academies of Loudoun.*”⁵³ These policy statements signal that LCPS appears to now acknowledge diversity in the Academies of Loudoun to be a compelling interest that K-12 schools have in obtaining the benefits that flow from achieving a diverse student body in the STEM programs. However, it remains unclear on how LCPS intends to translate the policy statements into practical application.

A review of the revised Academies of Loudoun recruitment and admission criteria implemented for Year Three and Year Four provides credible evidence to conclude that LCPS has at last appeared to recognize that there are, in fact, alternate policies and practices that allow LCPS to maintain competitive standards for the Academies of Loudoun while also providing greater equity and access to underrepresented groups of students. However, it failed to do so in Year Two. For this reason, the Division concludes that there is reasonable cause to believe that the LCPS admission criteria for the Academies of Loudoun disparately impacted Black/African-American and Latinx/Hispanic students in Year Two.

Moreover, the investigation revealed evidence suggesting deliberate indifference to address identified significant enrollment disparities prior to Year Three. A review of school board documents revealed that LCPS had knowledge of the disproportionality of Academies of Loudoun enrollment data *as early as May 3, 2017* (Academies of Loudoun class of 2016-2017).⁵⁴ The investigation also revealed the LCPS had knowledge of the disproportionality of Academies of Loudoun Year One enrollment data *in the midst of the Fall 2018 application period for Year Two*. In other words, LCPS was aware that only *one* Black/African-American student was offered admission (in AET) in Year One. The Academies of Loudoun Ad Hoc Committee meeting minutes for October 25, 2018, indicated that the committee reviewed Year One AET and AOS enrollment data, confirmed the disproportionality of the enrollment data, and

⁵³ See, [https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLT670905/\\$file/Detailed%20Plan%20to%20Combat%20Systemic%20Racism%20\(3\).pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLT670905/$file/Detailed%20Plan%20to%20Combat%20Systemic%20Racism%20(3).pdf).

⁵⁴ See, [https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/AQSJAT4C46DD/\\$file/Ad%20Hoc%20May%203%20Demographics.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/AQSJAT4C46DD/$file/Ad%20Hoc%20May%203%20Demographics.pdf).

referenced programs in place and plans to expand efforts to address the disparity.⁵⁵ However, there is no such evidence corroborating that a program, plan, policy, or practice was in fact adopted for the Year Two admission cycle to address the ongoing disproportionality. The investigation revealed the following timeline subsequent to the meeting on October 25, 2018:

- February 12, 2019: An Academies of Loudoun strategic action update was presented to LCSB highlighting “[r]evising admissions process to eliminate bias.”⁵⁶
- February 19, 2019: The Academies of Loudoun Ad Hoc Committee meeting minutes indicated that the committee discussed proposed changes to the AET and AOS admissions criteria designed to address “*bias and inappropriate assessments.*” The minutes included an admissions criteria table outlining proposed changes, including a proposal to replace the SOLs and PSAT with a STEM assessment designed to exclude “*cultural bias.*”
- March 4, 2019: The Academies of Loudoun Ad Hoc Committee met. The agenda and meeting minutes did not include any reference to the admission criteria. [The investigative file also indicates that March was the same period of time that the NAACP started its own review into the Academies of Loudoun admissions criteria.]
- October 30, 2019: The Academies of Loudoun Ad Hoc Committee unanimously agreed to recommend dissolution of the committee.⁵⁷
- December 11, 2019: LCPS, through its counsel, informed the Division that LCPS revised its admission criteria, including replacing SOLs and PSAT with a more culturally sensitive STEM assessment “for the first time” in the Year Three admissions cycle.

⁵⁵ See,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B5UKTE5353B9/\\$file/Enrollment%20201819%20LCPS_TJ_HS_Academies%20v5%5B1%5D.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B5UKTE5353B9/$file/Enrollment%20201819%20LCPS_TJ_HS_Academies%20v5%5B1%5D.pdf);

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B62H7L46D96F/\\$file/DRAFT%20ACL%20Minutes_10-25-18_EHedits.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B62H7L46D96F/$file/DRAFT%20ACL%20Minutes_10-25-18_EHedits.pdf).

⁵⁶ Strategic Action Update presented to LCSB on February 12, 2019. See,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B9BVR865E1F2/\\$file/2019%20Strategic%20Action%20Update_Academies%20of%20Loudoun%20\(1\).pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B9BVR865E1F2/$file/2019%20Strategic%20Action%20Update_Academies%20of%20Loudoun%20(1).pdf).

⁵⁷ [https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B9QS8R642573/\\$file/ACL%20Agenda_030419.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B9QS8R642573/$file/ACL%20Agenda_030419.pdf);
[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BC6NT6616A40/\\$file/Draft%20ACL%20Minutes_03-04-19.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BC6NT6616A40/$file/Draft%20ACL%20Minutes_03-04-19.pdf). In fact, the next time the committee met in October 2019, it unanimously agreed to recommend to LCSB the dissolution of the committee. See,
[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BJSS9T703082/\\$file/Draft%20ACL%20Minutes_103019.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BJSS9T703082/$file/Draft%20ACL%20Minutes_103019.pdf). The evidence suggests that issues pertaining to Academies of Loudoun were then moved to the LCPS Curriculum & Instruction Committee.

The evidence highlighted above demonstrates that LCPS was well aware of the significant disproportionality of Year One enrollment during the Fall 2018 application cycle (for Year Two) and recognized the need to revise the admissions process to address the disparities and bias. However, LCPS failed to adopt revised admissions criteria until the Year Three application cycle. In disregarding the overwhelming probability that similar disproportionality would likely occur in Year Two, LCPS permitted Year Two applicants to engage in an application process it knew was inherently biased and included “inappropriate assessments.” The Division is also troubled that LCPS did not adopt alternate strategies to address the identified ongoing disproportionality in Academies of Loudoun enrollment until after the NAACP initiated a review in March 2019 challenging the policies and practice of the Academies of Loudoun. For all the reasons stated above, the Division finds reasonable cause to suggest that discrimination occurred in Year Two.

~~~~~

The NAACP also alleges that Black/African-American students continue to be underrepresented in LCPS gifted and talented programs and are less likely to be identified as “high achieving” at the elementary and middle school level, and thus rarely enter the Academies of Loudoun admissions “pipeline.” While it is too early to assess the impact of the newly formed elementary and middle school level STEM enrichment programs (PROPEL and Level Up) that LCPS asserts have been implemented to increase the applicant pool of underrepresented populations for the Academies of Loudoun, the demographic data of students participating in LCPS’s primary middle school gifted and talented program (SPECTRUM) LCPS provided to the Division reveals a significant underrepresentation of Black/African-American and Latinx/Hispanic students enrolled in the gifted and talented middle school program for the past three years. In addition, the Division’s glimpse into SPECTRUM referral data by race and national origin for the 2018-2019 school year provided some evidence of similar significant disparities in SPECTRUM’s referral process on the basis of race. Table J below summarizes the number of (active and inactive) SPECTRUM program participants (grades 6-8) in the last three years by race and national origin.

**Table J. LCPS Students Enrolled in SPECTRUM**

| Spectrum Program   |                 |             |                          |            |                  |             |             |             |
|--------------------|-----------------|-------------|--------------------------|------------|------------------|-------------|-------------|-------------|
| Years              | American Indian | Asian       | Black / African-American | Hispanic   | Pacific Islander | Two or More | White       | Grand Total |
| 2017               | 7               | 1018        | 37                       | 122        | 3                | 102         | 929         | 2218        |
| 2018               | 6               | 1111        | 57                       | 149        | 2                | 122         | 940         | 2387        |
| 2019               | 9               | 1152        | 65                       | 166        | 1                | 127         | 979         | 2499        |
| <b>Grand Total</b> | <b>22</b>       | <b>3281</b> | <b>159</b>               | <b>437</b> | <b>6</b>         | <b>351</b>  | <b>2848</b> | <b>7104</b> |

Here, a simple statistical analysis revealed significant disparities between Black/African-American and Latinx/Hispanic students as compared to White students and Asian-American students. Black/African-American students represented approximately 1.7% of the SPECTRUM program participants in 2017, 2.4% of the SPECTRUM program participants in 2018, and 2.6% of the SPECTRUM program participants in 2019, despite constituting approximately 7-8% of the LCPS student population. Similarly, Latinx/Hispanic students represented approximately 5.5% of the SPECTRUM program participants in 2017, 6.2% of the SPECTRUM program participants in 2018, and 6.6% of the SPECTRUM program participants in 2019, despite constituting approximately 17-18% of the LCPS student population. These data points not only raise serious and fundamental concerns about equal opportunities to participate in middle school gifted and talented programs on the basis of race and national origin, but strongly suggest that similar significant disparities exist in LCPS's elementary gifted and talented programming, namely SEARCH (Grades K-3), FUTURA (Grades 4-5), and school-based collaborative gifted programs (Grades 4-5). It is significant to note that PROPEL (Grades 4-5) and Level Up (Grade 6) are not designated as gifted programs according to LCPS's webpage on Gifted and Talented Education.<sup>58</sup>

The NAACP also provided witness statements from Black/African-American LCPS students and parents alleging barriers to accessing academically rigorous curricula. Statements included the following prevalent themes: only standardized test scores mattered; resistance from teachers in supporting student enrollment in more rigorous academic programming on the basis

<sup>58</sup> See, <https://www.lcps.org/Page/211705>.

of race; failure to inform parents and students of opportunities for more rigorous academic programs and courses on the basis of race; limited opportunity for parent input; and lack of teacher support and mentorship in supporting Black/African-American students' sense of academic identity.<sup>59</sup> The narrative of one compelling witness is highlighted below:

Student A asserted that Student A's teacher did not recommend that Student A enroll in 6<sup>th</sup> grade Honors math despite receiving an A in 5<sup>th</sup> grade math. Student A asserted that Student A was the only Black/African-American student in Student A's math classes during middle school and was told by fellow students, "I can't believe you are in this class, it is for SMART kids." Student A was enrolled in Geometry in 8<sup>th</sup> grade and maintained straight A's in all of Student A's classes, including an A- in a high school coding course. Student A applied to AET for the 2019-2020 academic year and was eliminated in the first round of the application process based on the result of one single standardized test (CCTDI).

Student witness statements and the SPECTRUM quantitative data highlight systemic barriers Black/African-American and Latinx/Hispanic students face in equitable access to rigorous academic programs at the elementary and middle school level, notwithstanding the handful of STEM enrichment programs LCPS offers to high-achieving underrepresented students in its elementary and middle schools (i.e. PROPEL and Level Up). There is scant evidence to suggest that the thirteen STEM enrichment programs spread across over seventy elementary and middle schools are contributing to improving equal access to the pipeline of referral and admission of high-achieving underrepresented students into SPECTRUM or the Academies of Loudoun. The evidence substantiates NAACP's concerns regarding Black/African-American students' equal access to the pipeline of referral and admission into gifted and talented programs at LCPS and Academies of Loudoun. For all the reasons stated above, there is sufficient evidence to suggest that race-based disparities persist in LCPS's gifted and talented programs. In making this conclusion, the Division recognizes that an emphasis on increasing equal access to STEM enrichment programs in early years may likely play a significant role in improving equal access to rigorous academic programming in later academic years.

---

<sup>59</sup> Some of these concerns were highlighted in the Equity Assessment.

**C. Race, Religion, and National Origin Discrimination – Disparate Treatment**<sup>60</sup>

It is a violation of the Act for an educational institution to discriminate on the basis of race, national origin, or religion. Here, NAACP alleges that LCPS has a pattern and practice of engaging in unlawful discrimination against students and employees (including applicants). In support, NAACP provided The Equity Collaborative’s Initial Report on Systemic Equity Assessment: A Picture of Racial Equity, Challenges and Opportunities in Loudoun County Public School District, presented to Eric Williams, Superintendent of LCPS on June 6, 2019 (“Equity Assessment”). Based on the findings of the Equity Assessment, the Division initiated an inquiry into the incidents described in the Equity Assessment in order to ensure compliance under the Act and applicable federal statutes.

In order to state a claim of intentional discrimination on the basis of race under the Act, the evidence gathered during the administrative investigation must establish reasonable cause to believe that LCPS intentionally discriminated against students and employees (including applicants) on the basis of race, national origin, and/or religion. In examining student allegations of intentional discrimination, the Division will consider whether LCPS limited or denied educational services, benefits, or opportunities to a student or group of students of a particular race, national origin, and/or religion by treating them differently from a similarly situated student or group of students not in their protected class. In examining employee/applicant allegations of intentional discrimination, the Division will consider whether the complainant was qualified to hold or keep the employment position, whether the complainant was subjected to adverse action in the terms of employment, and whether similarly situated employees (or applicants) not in the complainant’s protected class were treated more favorably.<sup>61</sup>

Here, the investigation revealed that that on February 12, 2019, Eric Williams, Superintendent of LCPS, expressed to Loudoun County School Board (“LCSB”) the need to use an equity assessment process to begin to identify and address inequities within the local school division. Accordingly, LCPS retained a national consulting firm to conduct a division-wide

<sup>60</sup> 42 U.S.C. §§ 2000c *et seq.*; 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(a), (b)(1). *See also*, Racial Harassment/OCR Investigative Guidance at <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>; *See also*, Coverage of Religiously Identifiable Groups at [https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810\\_AAG\\_Perez\\_Letter\\_to\\_Ed\\_OCR\\_Title%20VI\\_and\\_Religiously\\_Identifiable\\_Groups.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf).

<sup>61</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973).

equity assessment in the Spring of 2019. From mid-April to May 2019, the national consulting firm conducted a series of focus group sessions and interviews at twenty-four (24) schools across the school division. The firm found that the following five salient themes emerged in its Equity Assessment.<sup>62</sup>

1. Despite efforts from the division, school site staff, specifically principals and teachers, indicate a low level of racial consciousness and racial literacy. People are unclear and fearful on how to participate in conversations about race, let alone respond to racially charged incidents;
2. Educator focus groups indicated a desire to recruit and hire diverse school staff that reflect student racial and language backgrounds;
3. Economic diversity across the county/division complicates the discussions about race, leading many people to steer the conversation away from race to focus on poverty;
4. Discipline policies and practices have a disproportionately negative impact on students of color, particularly Black/African-American students; and
5. Many English Language Learners, Black/African-American, Latinx, and Muslim students have experienced the sting of insults/slurs or violent actions based on race, religion, language, and culture.

The Equity Assessment's findings of facts raise questions of compliance under the Act and applicable federal law. The Division's concerns include possible discriminatory patterns and practices in the following areas:

1. Discipline policies and practices that have a disproportionately negative impact on students of color, particularly Black/African-American students;
2. Insults/slurs or racially motivated violent incidents based on race, religion, language, and culture, targeting English Language Learners, Black/African-American students, Latinx/Hispanic students, and Muslim students; and
3. Discriminatory recruiting, hiring, and promotion practices.

---

<sup>62</sup> See, [https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCVGK644213C/\\$file/LCPS%20Equity%20Assessment\\_Ad%20Hoc%20on%20Equity\\_060619.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCVGK644213C/$file/LCPS%20Equity%20Assessment_Ad%20Hoc%20on%20Equity_060619.pdf).

Since the Division commenced its inquiry relating to the findings of the Equity Assessment, the evidence establishes that LCPS has taken some affirmative steps to “combat systemic racism.”<sup>63</sup> The investigation revealed that combatting systemic racism meant following through with the fourteen (14) recommendations made in the Equity Assessment, and mitigating and eliminating the disparities highlighted therein.<sup>64</sup> In doing so, LCPS developed an “Action Plan to Combat Systemic Racism” and developed a working document entitled “Comprehensive Equity Plan” identifying strategic goals and action plans to mitigate and eliminate the disparities highlighted in the Equity Assessment.<sup>65</sup> The investigation revealed that the most recent revision to the LCPS Comprehensive Equity Plan was completed in September 2020.<sup>66</sup> The most recent revision to LCPS’s “Action Plan to Combat Systemic Racism” was presented to the Division on September 21, 2020.

---

<sup>63</sup> See,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLT670905/\\$file/Detailed%20Plan%20to%20Combat%20Systemic%20Racism%20\(3\).pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLT670905/$file/Detailed%20Plan%20to%20Combat%20Systemic%20Racism%20(3).pdf);  
[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLW670908/\\$file/Slide%20Deck%20Action%20Plan%20to%20Combat%20Systemic%20Racism\\_August%202011.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLW670908/$file/Slide%20Deck%20Action%20Plan%20to%20Combat%20Systemic%20Racism_August%202011.pdf).

<sup>64</sup> ((1) School administrators establish proactive measures that intervene and mitigate the impact of racial incidents experienced by students of color in order to build an inclusive culture that does not tolerate harassment; (2) create a clear discipline policy that works to address necessary changes in discipline practices across the division with input from school-based student groups to include student voice; (3) establish student affinity groups at all levels to support the social and cultural identities of students of color; (4) define diversity, equity, and inclusion and include as LCPS core beliefs; (5) establish parent affinity groups at all school levels in support of stronger partnerships and open communication between parents, students, and school administrators; (6) utilize the Equity Ad Hoc Committee once a month meetings and/or establish a parent led group to provide equity leadership and guidance and feedback concerning division plans for advancing diversity, equity, and inclusion in its programming; (7) provide specific social emotional support for students and families dealing with the traumatic impact of racism and discrimination; (8) produce and publish on the “Superintendent’s Message” page a division authored statement defining and condemning White supremacy, hate speech, hate crimes, and other racially motivated acts of violence; (9) review current and /or establish clear policies with built-in accountability for addressing racially motivated acts and speech; (10) create, repeat and further emphasize proactive leadership measures that the N-word is not tolerated to address the student use of racial insults. Name that the N-word is not tolerated by anyone in LCPS; (11) develop and socialize a shared understanding of the meaning of diversity, equity, and inclusion among educators; (12) establish a culturally responsiveness framework to inform curricular and instructional efforts across the division; (13) review current efforts and further establish short and long range action plans to address challenges related to hiring for diversity, equity, and inclusion; (14) review current and further design opportunities for LCPS educators to engage in professional learning about color consciousness and implicit bias.

<sup>65</sup> See,

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLM670900/\\$file/LCPS%20CompEquityPlanAug.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BSFQLM670900/$file/LCPS%20CompEquityPlanAug.pdf).

<sup>66</sup> See,

[https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity\\_initiative\\_documents/Comprehensive\\_Equity\\_Plan-9\\_2020.pdf](https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity_initiative_documents/Comprehensive_Equity_Plan-9_2020.pdf).

Both plans appear to include aspects that address pattern and practices relating to discipline policies and practices that have a disproportionately negative impact on students of color, insults/slurs or racially motivated violent incidents based on race, religion, and national origin, and discriminatory recruiting, hiring, and promotion practices. The plans include the following:

1. Develop measures to reduce racial/ethnicity discipline disproportionality.
2. Increase use of restorative and equitable practices to decrease discipline and office referral rates for Black/African-American and Latinx/Hispanic students.
3. Develop a protocol for responding to racial slurs and hate speech in school (policy 7560).<sup>67</sup>
4. Collect qualitative data regarding racial incidents to amplify student voices.
5. Cultivate equity literacy through professional learning and coaching to retain a diverse work force.
6. Revise hiring protocols, practices, and resources for hiring managers to include but not limited to setting forth requirements for racially diverse interview panels.
7. Identify, attract, and retain a diverse faculty and staff.
8. Ensure a racially-conscious, identity-affirming, and culturally responsive learning space for every student and employee that decreases disparities, increases opportunities and participation outcomes for rigorous learning, and dismantles barriers and interrupts the status quo for the development of stronger equitable practices.

The plans also include aspects that address equal educational opportunities for underrepresented populations in LCPS gifted and talented programming, including the Academies of Loudoun. The plans include the following:

1. Implement measures to increase the diversity of the applicant pool and the population of admitted students at the Academies of Loudoun;
2. Increase funding for PROPEL and Level Up programs; and

---

<sup>67</sup> See,

[https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity\\_initiative\\_documents/DRAFT\\_LCPS\\_Protocol\\_for\\_Responding\\_to\\_Racial\\_Slurs\\_and\\_Hate\\_Speech\\_in\\_Schools\\_2.pdf](https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity_initiative_documents/DRAFT_LCPS_Protocol_for_Responding_to_Racial_Slurs_and_Hate_Speech_in_Schools_2.pdf)

3. Create access pathways for rigorous learning opportunities for students of color and underrepresented populations at elementary and middle school levels, including by: (1) increasing enrollment in Propel, Level Up, and EDGE (Empowering Diversity in Gifted Education - designed to nurture and challenge students from historically underrepresented populations); and (2) expanding access to schools with the highest enrollment of groups that are underrepresented in the LCPS gifted and talented program.

The investigation also revealed that LCPS recently issued a formal apology to the Black community of Loudoun County on September 25, 2020, for the operation of segregated schools.<sup>68</sup> In its apology, LCPS recognized that it must continually assess the status of racial equity in the school system and correct its past transgressions as it pertains to race. A portion of the apology letter states:

LCPS must continually assess the status of racial equity in the school system and correct its past transgressions as it pertains to race. Although we recognize that we have yet to fully correct or eradicate matters of racial inequality, we hope that issuing this apology with genuine remorse is a valuable step followed by additional actions, including demonstrable policy changes as outlined in both the Comprehensive Equity Plan and the Action Plan to Combat Systemic Racism. We must pursue a bold, yet methodical, path of continuous improvement driven by a strong sense of urgency.<sup>69</sup>

The totality of the evidence establishes that LCPS is now making some effort to develop division-wide sustainable structures that promote equal opportunities for Black/African American students, Latinx/Hispanic students, and Muslim students who have experienced a pattern and practice of discriminatory treatment at LCPS. While the Division finds that LCPS is endeavoring to establish systems that eliminate the patterns and practices that led to the Division's inquiry, and to prevent such acts from happening in the future, it remains to be seen how these plans are implemented in practice, how progress is measured, and whether these

---

<sup>68</sup> See,

<https://www.lcps.org/site/default.aspx?PageType=3&DomainID=1&ModuleInstanceID=274904&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=394767&PageID=1>.

<sup>69</sup> See,

[https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity\\_initiative\\_documents/An\\_Apology\\_to\\_the\\_Black\\_Community.pdf](https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/60/equity_initiative_documents/An_Apology_to_the_Black_Community.pdf).



efforts will be effective and sufficient. Accordingly, the Division requests tangible assurances of future compliance with the Act and applicable federal laws and regulations.

## V. DETERMINATION

Based on its regulatory authority, the Division issues the following determination regarding the allegations by the NAACP and resulting investigation:

There is **REASONABLE CAUSE** to believe that Loudoun County Public Schools' administration of the Academies of Loudoun program had a discriminatory impact on Black/African-American and Latinx/Hispanic students who applied to the Academy of Engineering & Technology and the Academy of Science programs in the Fall 2018 admission cycle for enrollment in the 9<sup>th</sup> grade class of 2019-2020. Therefore, pursuant to 1 VAC 45-20-100 of the Regulations of the Division of Human Rights, we request that Loudoun County Public Schools eliminate its discriminatory practices in the manner suggested in the Division's analysis.

The Division further finds that LCPS is endeavoring to establish division-wide systems to eliminate patterns and practices of discrimination on the basis of race, national origin, and religion in its local school division and prevent such acts in the future. Therefore, pursuant to VAC 45-20-100 of the Regulations of the Division of Human Rights Division, we request that Loudoun County Public Schools assure the Division of future compliance with the Act and applicable federal laws and regulations through a Letter Agreement.

The following conciliation requests are made in order to resolve this matter:

### **NAACP Loudoun Branch's Conciliation Request:**

1. Develop equitable Academies of Loudoun admissions criteria to include the following:
  - a. Eliminate "high stakes" testing, including but not limited to the STEM Thinking Skills Assessment and Writing Assessment.

- b. Eliminate letters of recommendation as they can be biased and are only required by applicants that are selected as a finalist.
  - c. Offer admission to qualifying applicants on a random basis (i.e. merit-based lottery system); in formulating the random selection process for admission, strive towards selecting a diverse student body that is reflective of the demographics of the LCPS student population.
2. Develop a STEM based elementary after-school and summer program with a focus on African-American studies. Develop this program in partnership with Black/African-American studies experts from local academic institutions and organizations, such as Loudoun Freedom Center, NAACP Loudoun Branch, George Mason University, George Washington University, Howard University, Northern Virginia Community College, and Friends of Thomas Balch Library Black History Committee.
3. Implement after-school affinity groups for Black/African-American students at each Middle School and High School in partnership with local academic institutions and organizations, such as Loudoun Freedom Center, NAACP Loudoun Branch, George Mason University, George Washington University, Howard University, Northern Virginia Community College, and Friends of Thomas Balch Library Black History Committee.
4. Support the creation of a public charter school that prepares the next generation of leaders for careers in science, technology, engineering, art, and mathematics, with a focus on Black/African-American studies and eliminating the historical achievement gap experienced by Black/African-American students in LCPS.
5. Facilitate the process required to change the names of Hillsboro Academy and Academies of Loudoun.
6. Provide funding for the NAACP Scholarship Fund.
7. Provide funding to the NAACP Discrimination Fund used for the purpose of providing LCPS students who have experienced racially motivated incidents with resources, referrals, and payments of psychological and/or legal services needed.

8. Review and revise, as necessary, the Black/African-American history curriculum as applied throughout LCPS, including the history of Loudoun County, in partnership with academic experts in African-American studies from local educational institutions and organizations, such as George Mason University, George Washington University, Northern Virginia Community College, Howard University, and the Loudoun Freedom Center.
9. Review and revise, as necessary, the textbooks and materials used for lesson planning related to the history and experiences of Black/African-American minority groups. Include relevant stakeholders in the review process, including NAACP Loudoun Branch and academic experts in the history and experience of Black/African-Americans. The goal is to select reading materials and lesson plans that are culturally sensitive to Black/African-Americans that tend to be marginalized.
10. Develop and implement an annual equity training program to be provided to all students two times a year (September and January), through a collaborative effort between NAACP Loudoun Branch, Loudoun Freedom Center, and LCPS.
11. Partner with the NAACP Loudoun Branch, Loudoun Freedom Center, and local academic experts in the area of Black/African-American studies to provide racial literacy training initiatives for LCPS employees.
  - a. Develop avenues for providing additional coaching to teachers and staff resistant to racial literacy training.
  - b. Include bus drivers and cafeteria staff in racial literacy initiatives.
12. Implement an African-American history course developed by organizations such as Loudoun Freedom Center, NAACP Loudoun Branch, George Mason University, George Washington University, Howard University, Northern Virginia Community College, and Friends of Thomas Balch Library Black History Committee, as a high school elective by 2021.
13. Mandate African-American history as a course requirement for new teacher orientation and as part of LCPS ongoing professional development for all LCPS teachers. Develop this course in partnership with organizations such as the Loudoun Freedom Center, NAACP

Loudoun Branch, George Mason University, George Washington University, Howard University, Northern Virginia Community College, and Friends of Thomas Balch Library Black History Committee.

14. In partnership with the NAACP Loudoun Branch, facilitate the development of the following district-wide programs to support the needs of Black/African American students: mentoring, leadership development, student success summit, and outreach initiative for student-led organizations.
15. As part of the work of the LCPS Equity Committee, develop criteria to identify schools that have worked in a meaningful way on the above-identified strategies to improve racial consciousness, racial literacy, and access to challenging curriculum; and recommend that the school board designate a school that meets such criteria as a “culturally competent district.”
16. Support at the state level an extension of the existing *Brown Scholarship Fund* to include Loudoun County as Eligible Virginians who were unable to attend “integrated” public school between 1954 and 1964 during the time of Massive Resistance.<sup>70</sup>
17. Create a new Scholarship Fund for LCPS students who were unable to attend the Academies of Loudoun between 2009-2020 due to discriminatory admissions policies and practices. This fund will include support for the 153 Black/African-American and Latinx/Hispanic students who applied to the Academies of Loudoun during the Fall 2018 application cycle for admission into the 2019-2020 academic year, and the 696 Black/African-American and Latinx/Hispanic students who applied to the Academies of Loudoun during the Fall 2019 application cycle for admission into the 2020-2021 academic year.
18. Negotiate monetary payments relating to the funding aspects of the above-referenced conciliation requests.

---

<sup>70</sup> See, <http://brownscholarship.virginia.gov/committee.asp>.

19. Negotiate monetary payment to compensate for time, resources, and costs associated with NAACP Loudoun Branch's efforts to bring this matter to the attention of the Attorney General and participate in the ongoing investigation.

**Division's Request for Assurance of Compliance:**

1. LCPS will expressly agree and acknowledge that LCPS will continue to be in compliance with the obligations, terms, and conditions of the Act and applicable federal laws and statutes prohibiting unlawful discrimination.
2. LCPS will provide a written notification to school division students and parents informing them of the substance of this Assurance of Compliance.
3. Within sixty (60) days from the date of this Determination, LCPS will partner with school community stakeholders who represent voices of underrepresented populations, including the NAACP Loudoun Branch, to develop policies and procedures to increase the diversity of the applicant pool and the population of admitted students in gifted and talented education programs, including the Academies of Loudoun, SEARCH, Futura, and SPECTRUM. LCPS will enable key community stakeholders, including NAACP Loudoun Branch, to participate in the decision-making process. Policies will include conducting regular analyses of student referrals and admissions to assess whether LCPS is: (1) achieving the benefits that result from a diverse student body; and (2) ensuring equal educational opportunities on the basis of race and national origin.
4. Within sixty (60) days from the date of this Determination, LCPS will submit for the Division's review revised and updated policies and practices on ensuring nondiscrimination in student discipline. Policies will include conducting regular analyses of student discipline and assessing whether students of a particular race or national origin are more likely to receive discipline and sanctions, including harsher or longer punishments.
5. Within sixty (60) days from the date of this Determination, LCPS will submit for the Division's review revised and updated policies and practices governing racial, national origin, and religious-based discrimination and harassment. Policies will include a complaint resolution process for students seeking relief from discrimination on the basis of race,

national origin, and religion. Within thirty (30) days of Division's completion of its review of the updated anti-discrimination policies, LCPS will provide written notifications to students and parents, informing them of the updates to the policies.

6. Within sixty (60) days from the date of this Determination, LCPS will submit for the Division's review revised and updated Equal Employment Opportunity ("EEO") policies and practices governing hiring, retention, and promotion. Policies will include a complaint resolution process for employees seeking relief from discrimination and ongoing staff and management training on race, religion, and national origin discrimination consistent with Code of Virginia § 22.1-295.2.
7. During the two (2) year period that follows the execution of a Letter Agreement, and at its own expense, LCPS will identify for Division review and approval a third-party consultant to assist LCPS in monitoring, assessing, and making recommendations relating to the obligations in Paragraph 3, 4, 5, and 6 of this Letter Agreement.
8. LCPS will retain all records relating to its obligations under this Letter Agreement. During the two-year period that follows the execution of a Letter Agreement, LCPS will agree to periodic review of these records, including logs of discrimination complaints and EEO training, and analyses of discipline and Academics of Loudoun student data, by the Division upon reasonable notice.

Respectfully submitted,

DIVISION OF HUMAN RIGHTS, OFFICE  
OF THE ATTORNEY GENERAL,  
COMMONWEALTH OF VIRGINIA

DATE: Nov. 18, 2020

By: R. Thomas Payne II  
R. THOMAS PAYNE, II  
Senior Assistant Attorney General



Mark R. Herring

Attorney General of Virginia

R. Thomas Payne II (VSB No. 47272)

Division Chief & Senior Assistant Attorney General

Mona H. Siddiqui (VSB No. 46455)

Assistant Attorney General

Division of Human Rights

OFFICE OF THE ATTORNEY GENERAL

202 North 9<sup>th</sup> Street

Richmond, VA 23219

Telephone: (804) 786-2071

Facsimile: (804) 225-3294

rpayne@oag.state.va.us

**NOTICE:** The Respondent and the Charging Party are reminded that Virginia and federal law prohibit retaliation or discrimination against persons filing charges, assisting or participating in an investigation, or providing information pursuant to any proceeding, inquiry, or hearing under Title VI of the Civil Rights Act.