

BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ACTION4ASHLEY COALITION

Complainants,

v.

WINSTON-SALEM/FORSYTH COUNTY
BOARD OF EDUCATION and the
WINSTON-SALEM/FORSYTH COUNTY
SCHOOL SYSTEM

Respondents.

**COMPLAINT UNDER TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964**

This Complaint, filed by the Action4Ashley Coalition, alleges that the Winston-Salem/Forsyth County Board of Education and School System (hereinafter “WSFCS” or “District”) has violated Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin. Specifically, Complainants seek remedies for the District’s inadequate and discriminatory response to the long-term and persistent complaints from parents and school staff that mold, water leaks, excessive moisture, and poor indoor air quality at Ashley Academy (hereinafter “Ashley”), are impacting the health, safety, and education of students and teachers. By failing to ensure that all students at Ashley, an elementary school that predominantly serves students of color from households living below the poverty line, have equal access to safe and appropriate school buildings and facilities, WSFCS has discriminated against these students in violation of federal law.

Complainants ask the U.S. Department of Education’s Office for Civil Rights (“OCR”) to investigate WSFCS and require the District to take immediate and appropriate action to remedy this discrimination and afford the students at Ashley an equal opportunity to education as required by law. Specifically, Complainants ask that OCR order the District to:

- 1) Take all necessary steps to build a new facility for Ashley as soon as practicable.
- 2) Until the new facility is built, provide students and staff who experience or are at risk of experiencing symptoms connected to poor indoor air quality the opportunity to transfer to a different school.
- 3) Provide compensatory education services to students who missed school due to health problems connected to poor indoor air quality during the 2017-18 school year.
- 4) Conduct a comprehensive survey of facility conditions at all schools in the District to determine whether similar problems exist at other schools, with a particular focus on schools serving predominantly non-White or low-income students.

I. Jurisdiction

The Winston-Salem/Forsyth County School System (“WSFCS”) receives federal financial assistance and is therefore subject to the anti-discrimination prohibitions of Title VI.¹ Complainants have not filed a lawsuit raising these claims in state or federal court. This Complaint has not been investigated by another federal, state, or local civil rights agency or through the WSFCS’s internal grievance procedures. Accordingly, there are no pending proceedings concerning this matter. This Complaint is timely because students and staff experienced health issues throughout the 2017-18 school year and within the past 180 days as a result of WSFCS’s discriminatory inaction. Further, because WSFCS has failed to eliminate the facility-related hazards causing these health issues, this harm is ongoing.

II. Complainants

The Action4Ashley Coalition is a group of concerned citizens and advocacy organizations seeking justice for the students, teachers, and staff of Ashley Elementary. The Coalition consists of both individual community members and advocacy organizations including the Winston-Salem Chapter of the NAACP, Minister’s Conference of Winston-Salem and Vicinity, Local Organizing Committee Education Ministry, Coalition for Equity in Public Education, Drum Majors Alliance, The Big 4 Alumni Association, and the North Carolina Central University Alumni Association.

The Coalition was organized in response to the growing number of students and staff at Ashley who have reported health issues related to the school’s poor facility conditions, including mold, water leaks, excessive moisture, and poor indoor air quality. Despite repeated demands, the Winston-Salem/Forsyth County School District has not acted to fully address the crisis at Ashley or to ensure the learning environment provides an equal opportunity to education for all students at Ashley. Thus, the Action4Ashley Coalition is filing this Complaint with OCR on behalf of the Ashley students, who are predominantly Black and Hispanic, and who have been and continue to be harmed by the District’s intentional discrimination.

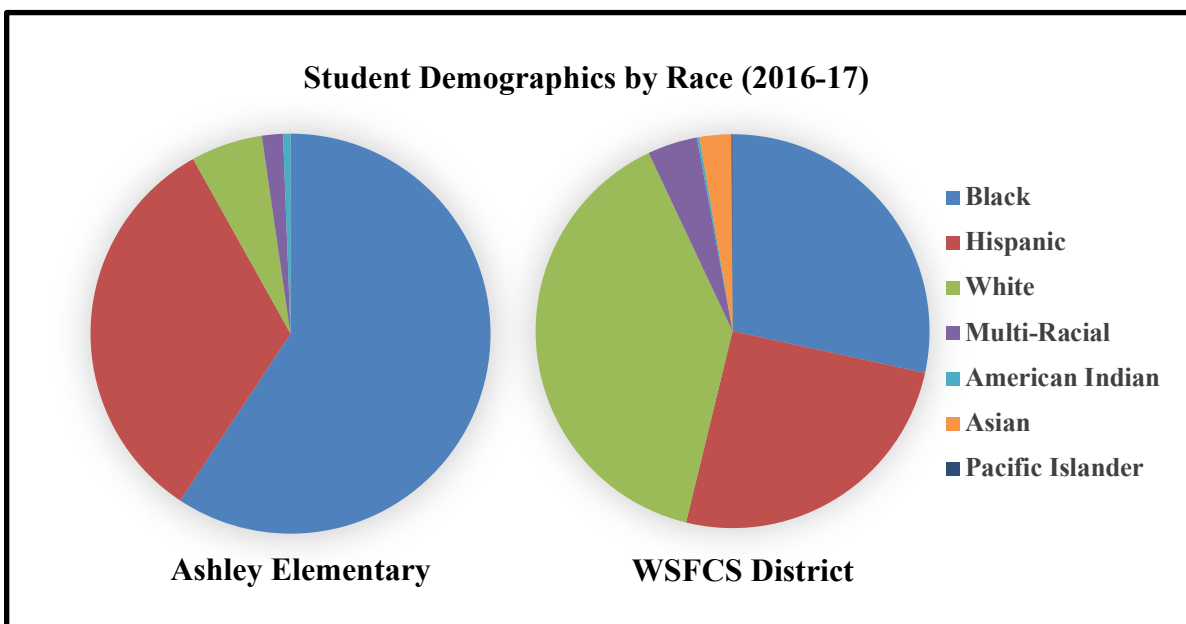
III. Factual Background

The Ashley Academy for Cultural and Global Studies (“Ashley”) is an elementary school in the Winston-Salem/Forsyth County School District (“WSFCS”) that serves predominantly Black and Hispanic students. In the 2016-2017 school year, Ashley had a total student population of 521 with 59.3% of those students identifying as Black, 32.6% identifying as Hispanic, 1.7% identifying as Multi-Racial, and .6% identifying as American Indian.² Only 30 students (or

¹ For the 2017-2018 school year, WSFCS’s budget was approximately \$756.3 million. It is anticipated WSFCS will receive approximately 56% of the budget from the state, 21% from the county, and the remaining 23% from federal or other sources. *About WS/FCS: Budget*, WINSTON-SALEM/FORSYTH CTY. SCHS., <https://www.wsfcs.k12.nc.us/Page/105059>.

² *Pupils in Membership by Race and Sex*, N.C. PUBLIC SCHOOLS, http://apps.schools.nc.gov/ords/f?p=145:220:1968888343920::NO::P220_SELECTLEA:340.

5.8%) identified as White, even though White students make up 39.2% of the District's overall population.³



Ashley also serves a disproportionately high number of students from households living below or near the federal poverty line. Ashley is a Title I school with almost 100% of the student population qualifying for free or reduced-price lunch.⁴ Although Ashley has a dedicated team of staff, with all teachers fully licensed, 37% holding advanced degrees, and 54% having more than 10 years teaching experience, students at Ashley have struggled to perform well on end-of-grade tests.⁵ Ashley received an overall grade of “F” on its 2016-17 School Report Card, the lowest grade possible. Ashley also had the lowest performance grade score of any elementary school in the District, as well as the lowest academic growth score.⁶ More than 50% of Ashley students tested “below grade level proficiency” in Math, English/Reading, and Science.⁷ Ashley also has the second lowest daily attendance percentage (92.5%) of all WSFCS elementary schools.⁸

History of Mold and Air Quality Problems at Ashley

For years, teachers, staff, and students at Ashley have experienced illness and symptoms they associate with mold exposure and indoor air quality problems.⁹ According to staff, the

³ *Id.* 2017 Racial Equity Report Card: Winston-Salem/Forsyth County Schools, YOUTH JUSTICE PROJECT, <http://youthjusticenc.org/wp-content/uploads/2016/08/2017-RERC-Forsyth1.pdf>.

⁴ Title I Schools 2017-18, N.C. PUBLIC SCHOOLS, <http://www.ncpublicschools.org/program-monitoring/titleIA/>.

⁵ *Ashley Academy for Cultural & Global Studies*, N.C. SCHOOL REPORT CARDS, <https://ncreportcards.ondemand.sas.com/src/school?school=340308&year=2017&lang=English>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Michael Bragg & Jenny Drabble, *Ashley Academy Teachers: School Building is Making Us Sick*, WINSTON-SALEM J. (Feb. 27, 2018), https://www.journalnow.com/news/local/ashley-academy-teachers-school-building-is-making-us-sick/article_23fa25c3-47d7-54a7-aa21-077061147932.html. Timothy Ramsey, *Potential Mold Issue at Ashley is*

Ashley school building, which was built in the 1960s, has persistent moisture issues leading to mold growth and poor air quality throughout the building.¹⁰ These facility conditions have led to health issues for students and staff including chronic sinus infections, headaches/migraines, itchy eyes, upper respiratory issues, and aggravation of existing allergies.¹¹

The quality of indoor air in schools is important for several reasons, including comfort, concentration, staff and student performance, and overall health.¹² Poor indoor air quality, caused by mold, bad ventilation, and the presence of excessive moisture, has been known to cause symptoms such as headaches, fatigue, trouble concentrating, and irritation of the eyes, nose, throat, and lungs.¹³ According to the Center for Disease Control, mold can cause allergy and respiratory infections, and worsens conditions such as asthma for those sensitive to it.¹⁴ Further, research has shown that the quality and condition of the physical spaces of a school are tied to student achievement and teacher retention.¹⁵ Inadequate facility conditions, such as poor ventilation or excessive dust, can exacerbate chronic health problems.¹⁶ Studies have also shown that schools with poor indoor air quality have lower daily attendance rates, and higher proportions of students failing to meet educational testing standards when compared to schools with acceptable indoor air quality.¹⁷

Data from the “North Carolina Teachers Working Conditions Survey” suggest that the facility conditions at Ashley have impacted student and teacher experience and performance. These surveys are conducted every two years and provide data concerning the working conditions at each school in WSFCS as reported by the teachers who work there.¹⁸ At Ashley,

Discussed, THE CHRONICLE (Apr. 12, 2018), <http://www.wschronicle.com/2018/04/potential-mold-issue-ashley-discussed/>.

¹⁰ *District Facility Discussion Summary*, WINSTON-SALEM/FORSYTH CTY. SCHS., <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/Domain/44/2015-16%20School%20Growth%20%20Capacity.pdf>

¹¹ Michael Bragg & Jenny Drabble, *Ashley Academy Teachers: School Building is Making Us Sick*, WINSTON-SALEM J. (Feb. 27, 2018), https://www.journalnow.com/news/local/ashley-academy-teachers-school-building-is-making-us-sick/article_23fa25c3-47d7-54a7-aa21-077061147932.html. MID-ATLANTIC ASSOCIATES INC., REPORT OF INDOOR AIR QUALITY EVALUATION: ASHLEY ACADEMY FOR CULTURAL & GLOBAL STUDIES 2 (Apr. 23, 2018), <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/Domain/1/2018%2004%2023%20Final%20Ashley%20Academy%20%20IAQ%20Report%20Mid%20Atlantic.pdf>.

¹² *Indoor Air Quality: Overview*, THE OCCUPATIONAL SAFETY AND HEALTH ADMIN., <https://www.osha.gov/SLTC/indoorairquality/>. *Student Health and Academic Performance*, ENVTL. PROTECTION AGENCY (Nov. 2012), https://www.epa.gov/sites/production/files/2014-08/documents/student_performance_findings.pdf.

¹³ *Student Health and Academic Performance*, ENVTL. PROTECTION AGENCY (Nov. 2012), https://www.epa.gov/sites/production/files/2014-08/documents/student_performance_findings.pdf.

¹⁴ *Molds in the Environment*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/mold/default.htm>.

¹⁵ *Guidance to Ensure All Students Have Equal Access to Educational Resources: Dear Colleague Letter*, U.S. DEPT. OF ED. OFFICE FOR CIVIL RIGHTS 17, October 1, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

¹⁶ *Id.*

¹⁷ *Reference Guide for Indoor Air Quality in Schools*, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/iaq-schools/reference-guide-indoor-air-quality-schools>.

¹⁸ N.C. TEACHER WORKING CONDITIONS SURVEY, <https://ncteachingconditions.org/results/report/627/174846>.

over 88% of teachers completed the survey in 2018.¹⁹ However, only 40.5% of those teachers agreed with the statement that their school environment is clean and well-maintained.²⁰ This is significantly lower than the 73% of teachers that agreed with the statement in WSFCS overall.²¹ Almost half of Ashley teachers felt their school was not a good place to work and learn. In contrast, only 16% of all WSFCS teachers felt this way about their respective schools.²²

After years of suffering the negative impacts of Ashley's poor facility conditions, a group of teachers complained to WSFCS officials about the situation in August 2017. One teacher reported that "mold was literally scraped off the classroom walls and left in a trash can."²³ In response to the complaints, WSFCS hired Trinity Environmental (hereinafter "Trinity") to conduct a mold spore evaluation at Ashley.²⁴ However, the scope of Trinity's evaluation was limited to one classroom at Ashley. Although the evaluation of the single classroom found "very low levels of indoor mold spores," the report noted that the evaluation was "limited to the time of testing." It further stated that "only a physician can relate spore exposure to health effects."

In response to staff complaints, the District also hired a contractor to clean the school's HVAC units on September 8, 2017.²⁵ Despite this cleaning, Ashley staff and students continued to experience health issues associated with poor air quality throughout the 2017-18 school year. In February of 2018, several teachers lodged a second group complaint to the District reporting the same symptoms from the Fall. As a result, a second mold spore evaluation was conducted by Trinity on February 24, 2018.²⁶ This evaluation was more expansive, but did not include the HVAC system or areas above the suspended ceiling tile system. Again, Trinity's analysis reported very low levels of indoor mold spores. However, the report noted that the evaluation was limited to the time and area tested and only a physician could relate spore exposure to health effects.

Unsatisfied with the evaluation, at least a dozen teachers attended a meeting of the WSFCS Board of Education on February 27, 2018, to voice their concerns and demand additional testing.²⁷ At the meeting, teachers complained of persistent sinus infections, itchy

¹⁹ WSFCS had an 82.88% overall participation rate. N.C. TEACHER WORKING CONDITIONS SURVEY, <https://ncteachingconditions.org/results/report/627/174846>.

²⁰ N.C. TEACHER WORKING CONDITIONS SURVEY, <https://ncteachingconditions.org/results/report/627/174846>.

²¹ *Id.*

²² *Id.*

²³ Michael Bragg & Jenny Drabble, *Ashley Academy Teachers: School Building is Making Us Sick*, WINSTON-SALEM J. (Feb. 27, 2018), https://www.journalnow.com/news/local/ashley-academy-teachers-school-building-is-making-us-sick/article_23fa25c3-47d7-54a7-aa21-077061147932.html.

²⁴ JAMES E. BUCHANAN, ENVIRONMENT ASSESSMENT: ASHLEY ELEMENTARY SCHOOL – CLASSROOM #158 (Aug. 25, 2017), <https://drive.google.com/file/d/16EwQJ8HuDROvVI-CLX6wgpPxJ-NFzT4C/view..>

²⁵ *Summer Improvements at Ashley Academy*, WINSTON-SALEM/FORSYTH CTY. SCHS., <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/Domain/1/Ashley%20Summer%20Work%20Summary.pdf>.

²⁶ JAMES E. BUCHANAN, ENVIRONMENT ASSESSMENT: ASHLEY ELEMENTARY ACADEMY 4-5 (Mar. 1, 2018), <https://drive.google.com/file/d/16EwQJ8HuDROvVI-CLX6wgpPxJ-NFzT4C/view>.

²⁷ Michael Bragg, *Teachers Who Say Ashley Academy Made Them Sick Not Surprised by Air Quality Test Results*, WINSTON-SALEM J. (Apr. 24, 2018), https://www.journalnow.com/news/local/teachers-who-say-ashley-academy-made-them-sick-not-surprised/article_03caee2e-68bd-55a9-b7af-8e4b8d4df19c.html.

eyes, and other symptoms they connected to mold and other problems with the building.²⁸ One teacher reported that more than 20 teachers at Ashley had reported health symptoms related to the building's conditions.²⁹ That teacher, who had undergone a CT scan and six rounds of antibiotics and several other tests, shared that a medical specialist told her he doesn't think she will recover until she's removed from the environment believed to be causing her illness.³⁰ At the Board meeting, another teacher stated that she had taught at the school for 10 years, and every year the same symptoms came up.³¹ She reported that many staff had been told by medical professionals that mold is causing their illnesses.³²

The District contracted with Mid-Atlantic Environmental Consulting (hereinafter "Mid-Atlantic") to conduct an indoor air quality evaluation and issue a report. Before Mid-Atlantic's findings were released, several Ashley staff members attended a meeting hosted by The Ministers' Conference of Winston-Salem and the Winston-Salem NAACP.³³ At this meeting, several teachers indicated that mold has been present at Ashley for nearly a decade and has been apparent over the years.³⁴ WSFCS Assistant Superintendent, Darrell Walker, indicated that most buildings have mold and it would be premature and disruptive to move the students to other facilities before the air quality testing had been completed.³⁵

The Mid-Atlantic report, released on April 24, 2018, revealed evidence of "extensive visible mold growth" or "remnants of growth that had been cleaned" on various components in every one of the HVAC crack cooling units that were inspected and sampled.³⁶ The report noted that even though the school had the HVAC units cleaned at the beginning of the year, the units used at Ashley are difficult to clean and a complete cleaning often cannot be achieved.³⁷ Additionally, water damage was found on every HVAC unit inspected.³⁸ Some mold growth was also observed on a bookshelf and ceiling tile in one classroom.³⁹

In their report, Mid-Atlantic made several recommendations, including the replacement of the crack cooling units that were the likely source of mold exposure.⁴⁰ In light of the Mid-Atlantic report, on May 1, the WSFCS Board approved a \$1.2 million project to replace/modify

²⁸ Michael Bragg & Jenny Drabble, *Ashley Academy Teachers: School Building is Making Us Sick*, WINSTON-SALEM J. (Feb. 27, 2018), https://www.journalnow.com/news/local/ashley-academy-teachers-school-building-is-making-us-sick/article_23fa25c3-47d7-54a7-aa21-077061147932.html.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Timothy Ramsey, *Potential Mold Issue at Ashley is Discussed*, THE CHRONICLE (Apr. 12, 2018), <http://www.wschronicle.com/2018/04/potential-mold-issue-ashley-discussed/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ MID-ATLANTIC ASSOCIATES INC., REPORT OF INDOOR AIR QUALITY EVALUATION: ASHLEY ACADEMY FOR CULTURAL & GLOBAL STUDIES 7-8 (Apr. 23, 2018), <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/Domain/1/2018%2004%2023%20Final%20Ashley%20Academy%20%20IAQ%20Report%20Mid%20Atlantic.pdf>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

HVAC units in the main building at Ashley.⁴¹ However, the Board refused to consider a new building or major renovations to address the underlying moisture problems at Ashley.

Hanes-Lowrance Incident

Three years before the Ashley crisis came to a head, WSFCS faced a similar situation in the District. In January 2015, teachers and parents of students at Hanes and Lowrance Middle Schools raised questions about air quality, after learning that the school buildings were located near a hazardous waste site.⁴² Groundwater tests showed chemical levels well above the state safety standards. However, indoor air quality testing conducted the previous year in March 2014 showed no evidence that the chemicals had vaporized – the real potential danger posed by the underground contamination.⁴³

Initially, the Board responded by contracting Mid-Atlantic to conduct new air quality testing. However, in the face of growing pressure from parents, the Board voted in February 2015 to move students from Hanes and Lowrance Middle Schools off their respective campus “as soon as practical” for the remainder of the school year.⁴⁴ This vote occurred despite the fact that no students or staff had reported any symptoms and the final report from Mid-Atlantic was not complete. The Board also acted in spite of expert testimony that the risk to students and teachers was low and there was no need to close the schools before the end of the year unless unexpected concentrations of indoor air contaminants were detected by Mid-Atlantic.⁴⁵

The final report by Mid-Atlantic stated that none of the air samples exceeded screening levels and there was no immediate risk to students. Mid-Atlantic did recommend increased vapor monitoring. Despite this report, the Board voted to keep the students off campus for the remainder of the year.⁴⁶ The Board Chair at the time stated, “I still think it was the right decision. When you have students, children...you do what’s right. You err on the side of caution.”⁴⁷ The mid-year relocation cost between 3-4 million dollars.⁴⁸

⁴¹ *Meeting Minutes*, WINSTON-SALEM/FORSYTH CTY. BD. OF EDUC. 162-64 (June 12, 2018), <https://www.wsfcs.k12.nc.us/site/handlers/filedownload.ashx?moduleinstanceid=161749&dataid=253408&FileName=06-12-2018%20BOE%20Book.pdf>.

⁴² Arika Herron and Bertrand Gutierrez, *Teachers Told Air Quality OK at Hanes Lowrance Schools*, WINSTON-SALEM J (Jan. 26, 2015), https://www.journalnow.com/news/local/teachers-told-air-quality-ok-at-hanes-lowrance-schools/article_232947d4-a5cf-11e4-9a0c-137cfbe6b06b.html.

⁴³ *Id.*

⁴⁴ Bertrand Gutierrez and Arika Herron, *Board Not Willing to Gamble With Uncertainty, Fear*, WINSTON-SALEM J (Feb. 12, 2015), https://www.journalnow.com/news/local/board-not-willing-to-gamble-with-uncertainty-fear/article_6c450fe8-b25e-11e4-8fe9-c7c366d5b633.html.

⁴⁵ *Id.*

⁴⁶ Arika Herron, *Hanes, Lowrance Middle Schools to Remain Empty*, WINSTON-SALEM J (Feb. 26, 2015), http://www.journalnow.com/news/local/hanes-lowrance-middle-schools-to-remain-empty/article_41334266-be34-11e4-bf0e-f761aec7e208.html.

⁴⁷ *Id.*

⁴⁸ LENNY SIEGEL, VAPOR ANXIETY AT THE HANES-LOWRANCE MIDDLE SCHOOL CAMPUS 9 (June, 2015), <http://www.cpeo.org/brownfields/reports/E-H/HaLo.pdf>.

Notably, both Hanes and Lowrance had a significantly higher population of White students than Ashley (44% White and 28% White compared to 5.8% White).⁴⁹ As a result, the parents and advocates urging the Board to act during the Hanes-Lowrance situation were predominantly White, while many of the parents, teachers and advocates advocating for action in the Ashley crisis are Black. Relatedly, the “wait-and-see” attitude exhibited by WSFCS in regards to concerns about Ashley is a distinct departure from the urgency shown in 2015 for the students at Hanes and Lowrance Middle Schools.



January 2015 - Parent meeting with WSFCS to discuss concerns about environment issues at Hanes and Lowrance Middle Schools. https://www.journalnow.com/gallery/hanes-lowrance-parents-meeting/collection_9f020bb8-a762-11e4-80db-cb052c09b518.html#8



February 2018 - Ashley teachers and advocates attend WSFCS Board of Education meeting to speak out about concerns with building. https://www.journalnow.com/uploaded_photos/ashley-elementary-school-board-copy/image_8399c748-9a59-556a-aa2a-3fef274b69ef.html

2016 Bond

The bond passed by voters in November 2016 provided WSFCS with \$350,000,000 to “improve the safety and capacity of [the] schools as well as improve instructional delivery.”⁵⁰ The bond project list included the building of new schools, replacing schools, adding additions to schools, renovations to several schools, safety improvements at several schools, installations of

⁴⁹ *Statistical Profile Table 10.1*, N.C. PUBLIC SCHOOLS, <http://apps.schools.nc.gov/ords/f?p=145:1>.

⁵⁰ *The 2016 WS/FCS Bond*, WINSTON-SALEM/FORSYTH CTY. SCHS., <https://www.wsfcs.k12.nc.us/Page/108605>.

cameras at all middle schools, and student safety and transportation improvements.⁵¹ Over \$50,000,000 of the bond is dedicated to building two new middle schools to relieve overcrowding at three existing middle schools.⁵² Under one of the initial bond proposals presented to the WSFCS Board in July 2015, Ashley Elementary was slated for replacement.⁵³ School officials stated in Fall 2015 that they were trying to negotiate a land deal to secure property to build a new school for Ashley.⁵⁴ However, in spring of 2016, Ashley's new building was cut from the proposed list of bond projects.⁵⁵

Of the \$350 million bond that eventually passed, a total of \$26,989,200 is being spent to build a new middle school to relieve overcrowding at Southeast Middle.⁵⁶ Southeast is not a Title I school and has a student population that is 44% White.⁵⁷ An additional \$26,989,200 is being spent to build a new middle school to relieve overcrowding at Meadowlark and Jefferson Middle Schools.⁵⁸ Meadowlark is not a Title I school and has a student population that is 71% White.⁵⁹ Jefferson is not a Title I School and has a student population that is 59% White.⁶⁰ \$93,991,525 from the bond is being spent on replacement schools for Brunson Elementary, Konnoak Elementary, Lowrance Middle, and Paisley IB Magnet.⁶¹ \$80,686,369 will be spent on renovations or additions for 8 public schools.⁶² Other projects include \$6,000,000 for stadium safety improvements at Mount Tabor High and Glenn High, \$3,500,000 for safety camera installments at all middle schools, \$5,500,000 for student safety and transportations at several schools, \$24,220,000 for classroom medical updates, and \$29,400,000 for maintenance and capital improvements.⁶³

In light of the mold and air quality crisis at Ashley, advocates have urged the Board to allocate money to build a new Ashley as soon as possible. WSFCS's Board of Education members have told members of the Action4Ashley Coalition that the District has almost

⁵¹ *2016 Bond Project List with Ashley, Inflation, and Contingency*, WINSTON-SALEM/FORSYTH CTY. SCHS. (Apr. 26, 2016),

www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/domain/37/2016%20bond/Project%20List%204.26.16.pdf.

⁵² *Id.*

⁵³ Jordan Green, *Calling BS: Ashley Elementary*, TRIAD CITY BEAT (May 24, 2018), <https://triad-city-beat.com/calling-bs-ashley-elementary/>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *2016 Bond Project List with Ashley, Inflation, and Contingency*, WINSTON-SALEM/FORSYTH CTY. SCHS. (Apr. 28, 2016), <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/domain/37/2016%20bond/Project%20List%204.26.16.pdf>.

⁵⁷ *Pupils in Membership by Race and Sex*, N.C. PUBLIC SCHOOLS, http://apps.schools.nc.gov/ords/f?p=145:220:1968888343920::NO::P220_SELECTLEA:340.

⁵⁸ *2016 Bond Project List with Ashley, Inflation, and Contingency*, WINSTON-SALEM/FORSYTH CTY. SCHS. (Apr. 28, 2016), <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/domain/37/2016%20bond/Project%20List%204.26.16.pdf>.

⁵⁹ *Pupils in Membership by Race and Sex*, N.C. PUBLIC SCHOOLS, http://apps.schools.nc.gov/ords/f?p=145:220:1968888343920::NO::P220_SELECTLEA:340.

⁶⁰ *Id.*

⁶¹ *2016 Bond Project List with Ashley, Inflation, and Contingency*, WINSTON-SALEM/FORSYTH CTY. SCHS. (Apr. 28, 2016), <https://www.wsfcs.k12.nc.us/cms/lib/NC01001395/Centricity/domain/37/2016%20bond/Project%20List%204.26.16.pdf>.

⁶² *Id.*

⁶³ *Id.*

finalized the purchase of the land where a new Ashley building could be located. Similarly, Forsyth County Commissioners have indicated that they would be supportive if the District decided to allocate money towards building a new Ashley facility. Despite this, WSFCS has refused to commit to building a new Ashley facility and has instead maintained that funding will not be made available until the next bond passes in 2024.

Broader Inequity in District

WSFSC's schools are significantly segregated by race and socio-economic class. The divide has grown steadily since the District adopted a student assignment plan in 1995 that prioritized parent choice.⁶⁴ Prior to that, students were assigned to a school without choice in order to achieve racial balance pursuant to a federal court order.⁶⁵ This meant many students were bused across the county to schools outside their own neighborhoods. Even after the court order was lifted in the 1980s, the district maintained the assignment policy for another decade.⁶⁶ However, in the late 1990s, a new student "choice" plan was phased in and the goal of integration was abandoned.⁶⁷

The result has been a stark increase in racial and socio-economic segregation in WSFCS schools. Student bodies mirror the homogenous racial and socio-economic makeup of the neighborhoods that schools pull their students from. In 2016-17, 35 of the District's schools had more than 90% of students qualify for free or reduced-price lunch while 17 had less than 35% of students qualify.⁶⁸ Overall, 62% of the District's students qualify.⁶⁹

The divide along racial and socio-economic lines is reinforced because schools with a higher percentage of poor students and students of color often post lower test scores than more diverse schools. Those schools are chosen less often and become underpopulated while the highest performing schools become over crowded. A prime example of this is Meadowlark Middle School (71% White), which in 2015 was more than 300 students over capacity.⁷⁰ However, just 10 miles down the road, Mineral Springs Middle School, a Title I school that is only 4.7% White, had space for another 150 students.⁷¹

⁶⁴ Arika Herron, *Student-assignment Plan Leaves Some Schools Overcrowded, Others Underutilized*, WINSTON-SALEM J (Jan. 11, 2015), https://www.journalnow.com/news/local/student-assignment-plan-leaves-some-schools-overcrowded-others-underutilized/article_67a9f517-afe3-5a5a-b451-5ddd5663cc68.html.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Title I Schools 2017-18, N.C. PUBLIC SCHOOLS, <http://www.ncpublicschools.org/program-monitoring/titleIA/>.

⁶⁹ Forsyth County, KIDS COUNT DATA CENTER, <https://datacenter.kidscount.org/data/tables/2239-percent-of-students-enrolled-in-free-and-reduced-lunch?loc=35&loct=10#detailed/10/5049/false/1603,1021,909/any/4682>.

⁷⁰ Arika Herron, *Student-assignment Plan Leaves Some Schools Overcrowded, Others Underutilized*, WINSTON-SALEM J (Jan. 11, 2015), https://www.journalnow.com/news/local/student-assignment-plan-leaves-some-schools-overcrowded-others-underutilized/article_67a9f517-afe3-5a5a-b451-5ddd5663cc68.html.

⁷¹ *Id.*

IV. Intentional Discrimination

Over sixty years ago, the Supreme Court declared in *Brown v. Board of Education* that education “is a right which must be made available on equal terms.”⁷² A decade later, the Civil Rights Act of 1964 was passed to further prohibit discrimination on the basis of race, color, or national origin, including in educational institutions receiving federal financial assistance (Title VI).⁷³ The requirement that schools provide students with equal educational opportunities regardless of their race, color, or national origin includes the obligation that students have equal access to educational resources such as safe and appropriate school buildings and facilities.⁷⁴

The physical spaces where children are educated are an important resource that influence the learning and development of all students. According to the U.S. Department of Education’s Office for Civil Rights, the agency responsible for enforcing Title VI, “older buildings with inadequate or poorly maintained heating, ventilation, and air condition (HVAC) systems still are more likely to house schools attended mostly by students of color, who in many instances are also low-income students.”⁷⁵ Schools with the most students of color are more likely to have poorer building conditions as compared to schools with more White students.

In many cases, the racial disparities in access to educational resources are the result of intentional discrimination in violation of Title VI. Prohibited discrimination includes any action, including the allocation of educational resources, made on the basis of race, color, or national origin. This could include acting on a racially discriminatory motive, providing educational resources only to members of select races, adopting facially neutral policies with an invidious intent to target students of certain races, or applying a facially neutral policy in a discriminatory manner.⁷⁶ Evidence of discriminatory intent can be shown through direct evidence or circumstantial evidence.⁷⁷ For example, such evidence may include the existence of racial disparities that could not otherwise be explained, a history of discriminatory conduct towards members of a certain race, or the inconsistent application of resource allocation policies to schools with different racial demographics.⁷⁸

It should be noted that when OCR investigates allegations of discrimination in resources, the comparison of those resources is ultimately designed to measure the relative allocation of equal educational opportunities for students.⁷⁹ The fact that a district is expending similar amounts of money on two schools with different racial make-ups does not necessarily disprove

⁷² *Brown v. Bd. of Educ. of Topeka* (No. 1.), 347 U.S. 483, 493 (1954).

⁷³ 42 U.S.C. § 2000d et seq. See also 34 C.F.R. Part 100 (implementing regulations).

⁷⁴ *Id.* See generally Dear Colleague Letter from Secretary Riley on Resource Equity (January 19, 2001) (citing evidence that students in school districts with higher percentages of students of color have access to fewer and lower-quality resources than students in districts with fewer students of color and summarizing the obligation under Title VI to allocate resources in a nondiscriminatory manner), available at www.ed.gov/about/offices/list/ocr/letters/colleague200101-title-vi.pdf.

⁷⁵ *Guidance to Ensure All Students Have Equal Access to Educational Resources: Dear Colleague Letter*, U.S. DEPT. OF ED. OFFICE FOR CIVIL RIGHTS 4, October 1, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

discrimination if the needs of the students at one school are such that they require more funding to access the same educational opportunities.

This Complaint is filed due to the substantial evidence that WSFCS's inadequate response to the Ashley crisis is the result of intentional discrimination based on race. Further, there are no legitimate, non-discriminatory justifications for WSFCS's actions and any that have been articulated are a pretext for discrimination.

Evidence of Intentional Discrimination

WSFCS's failure to quickly and fully address the poor facility conditions at Ashley has weighed significantly more heavily on one race than others because Ashley is a racially-identifiable school. Only 5.8% of Ashley's student population is White, with the majority of students identifying as Black (59.3%). This is significantly different than the racial make-up of the District as a whole, which is 39.2% White and only 28.4% Black. Therefore, since Ashley enrolls a disproportionate number of Black students, the challenged action bears more heavily on Black and other non-White students.

The students and staff at Ashley were allowed to languish for months, and possibly years, despite their complaints about the facility conditions and its impact on their comfort, performance, and health. Given the chronic illnesses and symptoms that many individual students and staff reported, it is likely that the poor facility conditions at Ashley could be a significant cause of the low daily attendance average. Further, considering that poor indoor air quality has been known to cause symptoms such as headache, fatigue, and decreased concentration, it should not be a surprise that students at Ashley consistently perform below grade level despite a qualified and committed teaching staff. The facility conditions have had a clear negative impact on teachers, the majority of whom reported in 2018 that the school environment was not clean or well-maintained. Further, almost half of the teaching staff did not feel that the school was a good place to work or learn. WSFCS's failure to take immediate action to remedy the conditions at Ashley has had a direct and harmful effect on the ability of students at Ashley, who are predominantly Black, to learn in a healthy environment resulting in potentially irreversible educational consequences.

The District argues that they have addressed the issue by allocating funds to repair the HVAC system. However, the repairs neither rectify past harms nor address the underlying excessive moisture and poor facility conditions that will continue to plague the Ashley school community until they are in a new building. Further, OCR has made clear that simply allocating funds does not automatically disprove discrimination, even when funding levels are equivalent to those at schools serving predominantly White children. The primary question is whether the relative allocation of resources ensures equal educational opportunities for all students regardless of race. Here, not only is the level of funding for Ashley significantly less than the amounts allocated to build or improve schools with much higher White student populations; it is also an insufficient amount to ensure equal opportunities for students at Ashley.

The District has also asserted that it would be disruptive and unnecessary to move Ashley students and staff out of the building. This is a substantial departure from the urgent action taken

by the District during past, similar issues at schools that were not predominantly Black and had higher White populations of students. In the case of the Hanes-Lowrance incident, WSFCS moved students out of the building even though no students or staff had reported health concerns, the results of testing had not been completed, and experts advised against the move. When dealing with White students and parents, the WSFCS Board felt strongly that “When you have students, children...you do what’s right. You err on the side of caution.”⁸⁰ However, that sense of caution seems to have dissipated when faced with the health concerns of Black students, parents and teachers at Ashley. Notably, the mid-year relocation of the Hanes-Lowrance students cost between 3-4 million dollars. Less than half that amount was spent to upgrade parts of the Ashley building and those upgrades did not even take place until almost a year after concerns were first brought to the attention of the District. It is clear that the Board employed significantly different procedures for handling the mold situation at Ashley than they used at Hanes-Lowrance. The only explanation for this difference is the racial make-up of the student populations.

Additional evidence of discrimination is seen in the way that the 2016 bond money has been allocated. The 2016 bond provided WSFCS with a significant amount of money for school improvements and repairs. Despite this influx of money and the immediate health crisis at Ashley, the District did not prioritize a new building for Ashley. While Districts often have to make difficult decisions when deciding how to allocate their limited resources, WSFCS is expending over \$50 million to build two new schools that will relieve overcrowding at three Whiter, more affluent schools (Jefferson, Meadowlark, Southeast). Overcrowding is a problem, but it is not more urgent than the health of students and teachers. Further, the overcrowding at many of WSFCS’s schools is a self-created problem driven by the District’s “school choice” assignment policy that fuels racial and socio-economic segregation and results in some schools being overenrolled while many schools remain under enrolled.

V. Remedies Requested

The Complainants request that OCR thoroughly investigate this Complaint and require WSFCS to take the following actions:

- 1) Take all necessary steps to build a new facility for Ashley as soon as practicable, including the allocation of funding to support the immediate construction of a new facility.
- 2) Until the new facility is built, provide students and staff who experience or are at-risk of experiencing symptoms connected to poor indoor air quality the opportunity to transfer to a different school. The District should provide transportation as needed to any students who decide to transfer.
- 3) Provide compensatory education services to students who missed school due to health problems connected to poor indoor air quality during the 2017-18 school year.
- 4) Conduct a comprehensive survey of facility conditions at all schools in the District to determine whether similar problems exist at other schools, with a particular focus on

⁸⁰ *Id.*

schools serving predominantly non-White or low-income students. If problems are found, develop an action plan to address the problems. Ensure there is parent, student, staff and community involvement in the development of any action plan.

VI. Conclusion

When all the evidence is considered, the District's inadequate and sluggish response to the Ashley crisis cannot be explained by any reason other than intentional racial discrimination. This discrimination has had an inexcusable harmful impact on students and families of color and clearly violates Title VI of the Civil Rights Act. Complainants respectfully request that OCR fully investigate these claims and require WSFCS to take immediate and appropriate action to remedy this discrimination and afford the students at Ashley an equal opportunity to education as required by law.

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Respectfully submitted:

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Winston-Salem Chapter of the NAACP

Minister's Conference of Winston-Salem and Vicinity

Coalition for Equity in Public Education

Local Organizing Committee Education Ministry

Drum Majors Alliance

The Big 4 Alumni Association

The North Carolina Central University Alumni Association