

**JEA P. STREET  
COUNCILMAN, TENTH DISTRICT**



**COUNCIL**  
October 1, 2009

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Joseph R "Beau" Biden III  
Attorney General  
State of Delaware  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE. 19801

**Re: Request for Attorney General's Advisor Opinion**

Dear Attorney General Biden,

I represent the 10<sup>th</sup> Councilmatic District of New Castle County. My District includes approximately one half of the City of Wilmington and the Rt 9 and Rt 13 Corridors outside the City of Wilmington. The suburban portion of my District includes a major portion of the former DeLaWarr School District and the predominance of the area where minority students and parents reside within the former School District.

I have attached for your consideration, information I have extrapolated from the Delaware Department of Educational School Profiles. I am gravely concerned about the information contained in the reports and I believe that minority students are being devastated by the current policies and practices of the local Districts. This is especially significant in the Colonial and Christina School Districts.

**The Colonial School District**

In the Colonial School District, children residing in the City of Wilmington are required to attend school outside of the City of Wilmington for the entire thirteen years of their public school education. They are also forced to ride past city schools within in the Christina School District (Stubbs, Bancroft, Pyle and Palmer) to schools in a non contiguous area of the District outside of the City of Wilmington. In addition, the children live closer to schools within the City of Wilmington in the Brandywine School District, (Harlen and P.S.) and the Red Clay School District, (Shortlidge and Warner).

**Hence, I am hereby requesting and Attorney Generals Advisory Opinion as to whether the assignment of children in the Colonial School District to schools**

outside of the City of Wilmington for all thirteen years of their public school education is a violation of the “Neighborhood Schools Act” see *City of Wilmington. Harlen v. Christina School District. 924A.2d 247, 254 (Del.ch. 2007).*

In *Brown vs. Board of Education* in 1954, the U.S. Supreme Court accepted the argument that segregation in schools was a violation of the Equal Protection Clause of the 14<sup>th</sup> amendment of the U.S. Constitution. For the first time, the Court looked beyond the intent to discriminate, and founded its opinion on the harmful effects on minority children that resulted from separate educational facilities. As a result of these effects, the Court declared that minorities were deprived of equal protection under the law.

Recognizing that school segregation was still a pervasive reality ten years after *Brown* had been decided, Congress enacted the Civil Rights Act of 1964 in an effort to desegregate Public Schools, specifically Title I of the (42USC s 2000d) prohibits discrimination on the basis of race, color or national origin against any student who attends a school that receives federal assistance.

Currently, children in the City of Wilmington and children from the predominately African American areas of the former DeLaWarr School District attend Eisenberg and Colwyck Elementary Schools, McCullough Middle, and Penn High School. The Delaware School profiles reflect that the schools are segregated high poverty schools (Colwyck 71% minority, 77% low income, Eisenberg 80% minority, 71% low income, McCullough Middle 74% minority, 69% low income, Penn High 63% minority, 41% low income). In addition, these four schools are under academic watch or review while several of the District’s other schools where City children and minority children from the former DeLaWarr School District do not and can not attend are rated superior or commendable. (See attachment 1).

While the school profiles do not show discipline by race, I have good cause to believe that the discipline rates are racially disparate. Regardless of the disparity, suspensions for the District for the 2008/2009 school year increased by 133% and suspensions within the Districts Middle Schools increased by 159% (see attachment 1). Assuredly, a segregated school with extraordinarily high discipline rates negatively impacts the academic achievement of the students affected by the District’s Disciplinary policies and practices.

Based upon these and the attached statistics, it is clear that the Colonial School District has intentionally brought about and maintained racial segregation in their schools

by, among other things, implementing discriminatory discipline practices and by unjustifiably failing to adopt or implement policies reasonably available to eliminate racial segregation. These practices have resulted in denying minority school children the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution. See *Brown v. Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873; *Keyes v. School Dist. No. 1*, 1973, 413 U.S. 189, 93 S.Ct. 2686, 37L.Ed.2d 548.

**It is for these reasons that I am requesting an Attorney General's Advisory Opinion as to whether forcing children from the City of Wilmington and the former DelaWarr School District to attend these segregated, high poverty schools with excessive and possible disparate discipline rates violates the equal protection clause under *Brown V. Board of Education. U.S.C.A. Const. Amend.14.***

#### **The Christina School District**

The attached reports clearly show that in the 2008/2009 school year, the District's out of suspensions increased by 106% and expulsions increased by 66% (attachment 2). In addition, 40% of the District's middle school suspensions came from Bayard Middle School; which is 95% minority and 77% low income. The report also shows that all of the District's elementary schools within the City are segregated, high poverty schools that are under academic review or academic watch. On the other hand, twelve of the Districts thirteen suburban schools are rated either superior or commendable.

Based upon these statistics, it is clear the Christina School District has intentionally brought about and maintained racial segregation in their schools by among other things, implementing discriminatory discipline practices and by unjustifiably failing to adopt or implement policies reasonably available to eliminate racial segregation. These practices have resulted in denying minority school children the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution. See *Brown v. Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873; *Keyes v. School Dist. No. 1*, 1973, 413 U.S. 189, 93 S.Ct. 2686, 37L.Ed.2d 548.

**It is for these reasons that I am requesting an Attorney General's Advisory Opinion as to whether forcing children from the City of Wilmington to attend segregated high poverty elementary and secondary schools with possible disparate discipline rates violates the equal protection clause under *Brown v. Board of education U.S.C. A. see 1954, 347 U.S. 483. 74s.C1.686, 98 L.Ed. 873; Keyes v. School Dist. No. 1, 1973, 413 U. S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d S48:***

### Charter Schools

In 1997, the State of Delaware implemented the "Charter School Act." Current Charter Schools within the City of Wilmington include:

- Eastside, 99% minority, 88% low income
- Edison, 99% minority, 91% low income
- Kumba, 97% minority, 74% low income
- Moyer, 79% minority, 82% low income
- Prestige, 98% low income
- Delaware College Preparatory Academy, 88% minority
- Charter School of Wilmington 67% white, 2% low income

Other special or Charter Schools outside the City of Wilmington that are contained within the four Districts formerly under Federal Court Supervision include:

- Odyssey, 66% white, 2% low income
- Delaware Military Academy, 86% white, 12% low income
- Newark Charter School, 73% white, 8% low income
- Pencader High, 44% white, 12% low income

The Charter School Act has resulted in segregated schools in the City of Wilmington and New Castle County. I believe that the creation of these schools has created a dual school system within the public school system that has already had to endure the educational consequences of the resegregation of the regular public schools. When it comes to School Choice options, the predominance of minority students have a **choice of attending segregated high poverty Charter Schools** within the City of Wilmington or **segregated high poverty regular public schools** in their assigned feeder patterns.

**It is for these reasons that I am requesting an Attorney General's Opinion as to whether the existing Charter Schools in and around the City of Wilmington and within the four District's formerly under Court Supervision violates the equal protection clause under Brown v. Board of Education U.S. C. A Const. Amend 14.**

### Funding Equalization

In preparation for the establishment of the four Districts in 1981 (Brandywine, Christina, Colonial and Red Clay), the State of Delaware created a funding equalization formula for the four Districts. At that time children (the predominance of which were and are African American) residing in the North East section of the City of Wilmington

known as Riverside were transferred from their attendance zones that would have been in the Brandywine School District to the Colonial School District. Given the addition of these children from a low income area and the Colonial School District's lower tax base, the other three districts were and still are required to give Colonial approximately \$1,000,000 each year. Thus, Colonial receives approximately, \$3,000,000 each year from the other three Districts'. At this point, the other three Districts have either high poverty schools and/or schools that serve low income, African American children from the City of Wilmington consistent with those served by the Colonial School District. I believe that these low income, African American and minority students and the schools they attend can and should benefit immensely from additional services that could be funded with the money the Districts are compelled to give Colonial. These funds would serve a population consistent with the population that Colonial is **supposed to serve** under the funding equalization formula. I believe that the absence of funding from the other districts adversely effects low income minority students in the other three districts that have the same needs as low income minority children served by the Colonial district.

**It is for this reason that I am requesting an Attorney General's opinion as to whether the funding equalization formula adversely affects low income children in the Brandywine, Christina and Red Clay school Districts in violation of the Equal Protection Clause.**

I thank you for your consideration as I look forward to hearing from you regarding these most important matters.

Sincerely,

  
Jea P. Street, Councilman 10<sup>th</sup> District  
New Castle County Council

Pc; The Honorable Jack Markell, Governor  
The Honorable Matthew Denn, Lieutenant Governor  
Dr. Lillian Lowery, Secretary of Education  
The Honorable James M. Baker, Mayor, City of Wilmington  
All Honorable Members of Wilmington City Council  
The Honorable Christopher Coons, County Executive  
All Honorable Members of New Castle County Council  
Dr. Mark Holodick, Superintendent, Brandywine School District  
Dr. Marcia V. Lyles, Superintendent, Christina School District  
Dr George Meney, Superintendent, Colonial School District  
Dr. Merv Daugherty, Superintendent, Red Clay Consolidated School District.