

# PURE

## Parents United for Responsible Education

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October 21, 1999

Office of Civil Rights  
U.S. Department of Education  
111 N. Canal Street, Suite 1053  
Chicago, IL 60606-7204

### Discrimination Complaint under Title VI of the Civil Rights Act of 1964

Filed by: Parents United for Responsible Education (PURE)  
407 S. Dearborn #515, Chicago IL 60605  
telephone 312/461-1994  
on behalf of parent members of our organization

Against: the Chicago Public Schools  
125 S. Clark Street  
Chicago IL 60603  
telephone 773/553-1600.

Parents United for Responsible Education (PURE) is a citywide non-profit membership organization dedicated to improving the Chicago Public Schools. PURE is a resource for public school parents, providing free information, support, training, & advocacy. While there are many groups working on school reform in Chicago, PURE has a special role in focusing on issues from the parents' point of view. PURE's membership is multiracial, multi-cultural and economically diverse.

PURE alleges ongoing discrimination by the Chicago Public Schools ("CPS") based on race, color, national origin, and sex since 1996 resulting from the discriminatory promotion policy and arbitrary waiver process CPS currently employs. These discriminatory actions have had an adverse impact on children of PURE members.

CPS falls under the jurisdiction of the Office of Civil Rights because it receives federal education funds.

Under the Policy, and despite test publisher and testing profession warnings against such use, CPS uses students' individual reading and mathematics scores from the Iowa Tests of Basic Skills ("ITBS") as a pass-fail measure for making several high-stakes decisions. On information and belief, such use of the ITBS results in educational decisions that have an adverse impact on African-American, Latino, and male students. Additionally, CPS grants waivers from the Policy in a manner that is arbitrary and capricious, when waivers are granted at all. We believe that the waiver procedures further aggravate the discriminatory impact of the Policy.

## The Wrong

The Chicago Public Schools (“CPS”) currently employs an arbitrary and discriminatory promotion policy. (A true and correct copy of the Chicago Public Schools Promotion Policy -the “Policy”- is attached as Exhibit A.) Under the Policy, and despite test publisher and testing profession warnings against such use, CPS uses students’ individual reading and mathematics scores from the Iowa Tests of Basic Skills (“ITBS”) as a pass-fail measure for each of the following decisions:

- (A) which children are eligible to graduate from eighth grade,
- (B) which children must attend summer school,
- (C) which children will be promoted from, and which children will be retained in, grades 3, 6, and 8,
- (D) which children will be sent to an eighth grade “transition center”,
- (E) which children will be allowed to progress from the “transition center” to high school; and
- (F) which children will be retained in a “transition center.”

Additionally, CPS grants waivers from the Policy in a manner that is arbitrary and capricious, when waivers are granted at all. The waiver procedures further aggravate the discriminatory impact of the Policy.

## Disparate impact

On information and belief, the above use of the ITBS results in educational decisions that have an adverse impact on African-American, Latino, and male students.

Examples of the disparate impact of the Policy may be found in the some of the data on enrollment of African-American and Latino students in the Chicago Public Schools.

- ▶ The CPS general student population includes 53.5% African-American students, 32.8% Latino students, and 10.3% white students.
- ▶ In marked contrast, the 1998 population of the “transition centers” which are made up entirely of eighth grade students 15 years old or older who did not meet the ITBS cut-off score in eighth grade or after summer school includes 71.4% African American students, 25.4% Latino students, and 2.6% white students. (Note that LEP students who are currently enrolled in transitional bilingual education are exempted from the ITBS.)
- ▶ Accordingly, the 5 to 1 ratio of African American to white students in the general school population jumps to 27 to 1 in the “transition centers”. Taking into consideration the comparative enrollments of white and African-American students in the overall school population still yields **a disparate impact ratio of more than 5:1. This is more than four times the generally-accepted 5:4 standard for demonstrating disparate impact.**
- ▶ Also accordingly, the approximately 3 to 1 ratio of Latino to white students in the general school population becomes 10 to 1 in the “transition centers”. Taking into consideration the comparative enrollments of white and Latino students in the overall school population still yields **a disparate impact ratio of more than 3:1**, again far exceeding the usual 5:4 ratio standard used to demonstrate disparate impact.

Various attempts by civic groups to acquire key public information about the CPS testing program and its impact have met with little cooperation from CPS. For example, the Chicago Lawyers' Committee for Civil Rights under Law has requested data on the CPS testing program under the Freedom of Information Act, but received an incomplete response. In July of 1999, the American Civil Liberties Union filed a FOIA request including a request for ITBS pass rate data by racial and ethnic group, but still awaits disclosure of this public information. Investigation is therefore essential.

### Violation of federal legal and civil rights principles

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Further, CPS has violated the following federal legal and civil rights principles for use of high-stakes tests in promotion decisions as recently detailed in the U.S. Department of Education guidebook, "*Taking Responsibility for Ending Social Promotion*," pp. 19-20 (May 1999) as follows:

"Professionally acceptable evidence regarding test validity and reliability: ...the test must be designed for this use and there must be evidence that it is appropriate to use the test as a sole or principal criterion." (p.19)

► **In violation of this guideline and principle**, CPS uses the Iowa Tests of Basic Skills, whose makers themselves call "inappropriate" the use of that battery of tests alone for promotion or retention decisions, to make just such decisions (see attached guidelines of Riverside Publishers).

"Consideration for disparate effects on the basis of race, national origin, or gender: when a test has a significant impact based on race, national origin, or gender, the use of the test must be educationally necessary. This means that the test must be valid and reliable for the particular purpose used and consideration must be given to whether there are any practicable alternative practices that would effectively measure the knowledge and skills the district intend to measure with less adverse impact." (p.20)

► **In violation of this guideline and principle**, CPS uses the ITBS, which is not valid and reliable for the use CPS makes of it, while alternatives are available such as use of ITBS scores in combination with other factors, as recommended by the test publisher. The CPS waiver policy could offer an alternative practice, yet the CPS waiver policy is not standard or fair and when implemented at all it is implemented in the most arbitrary and capricious manner. In addition, some principals are told that "no waivers are being given out this year," yet even then some students receive waivers.

"Equal educational opportunity for students with limited English proficiency: when school districts use tests for high-stakes purposes, LEP students must be provided with appropriate accommodations to ensure valid and reliable results such as use of an alternate test, extended time, or use of a dictionary." (p.20)

► **In violation of this guideline and principle**, LEP students in the CPS are given no accommodations.

We believe that the CPS graduation, promotion, and retention policy flies in the face of sound educational precepts regarding student retention and high-stakes use of tests, is applied in an arbitrary and capricious manner, and has an overall discriminatory effect on African-American and Latino students.

Furthermore, it is a fundamental educational principle reaffirmed by recent U.S. Department of Education reports that:

- an educational decision that will have a major impact on a test taker should not be made solely or automatically on the basis of a single test score. Other relevant information about the student's knowledge and skills should also be taken into account.  
National Research Council, *High Stakes: Testing for Tracking, Promotion, and Graduation* (Washington, D.C.: National Academy Press, 1999), p. 3.

In flagrant disregard of this fundamental principle, the Policy uses ITBS scores as a pass-fail barrier in a wide range of critical educational decisions. Such other useful information as student attendance, academic performance, and faculty recommendations are readily available. These factors are indeed considered when a student successfully exceeds the cut-off score, but then only in a negative sense; low attendance or a failing grade will also bar that student from graduation or send him or her to summer school. Stated simply, attendance and academic performance can hurt a student, but they cannot help him or her.

**The use of ITBS scores as a pass-fail barrier is not justified by any compelling educational reason, and less discriminatory alternatives are available.**

Proper consideration of other evidence of the student's academic performance including classroom participation, completion of homework, classroom quizzes and tests, report card grades, attendance, faculty recommendations, etc., which are readily available, would provide a less-discriminatory means of assessing individual student progress. Such consideration would have the effect of actually improving the quality and the caliber of high-stakes decision making, rather than weakening it. No significant monetary or resource burden would be placed on the system.

In fact, the use of the ITBS in Chicago may actually have an overall negative impact on the quality of education in CPS, and particularly the education of minority students.

**“When test use is inappropriate, especially in making high-stakes decisions about individuals, it can undermine the quality of education and equality of opportunity.** For example, the lower achievement test scores of racial and ethnic minorities and students from low-income families reflect persistent inequalities in American society and its schools, not inalterable realities about those groups of students. **The improper use of test scores can reinforce these inequalities.** This lends special urgency to the requirement that test use with high-stakes consequences for individuals be **appropriate and fair.**” (*High Stakes*, p.4)

Concerns about this policy have been raised at Chicago Board of Education meetings, with no result. Parent members of PURE have requested waivers of this CPS policy, and been denied without adequate review.

## Remedies PURE requests

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- ▶ that the Chicago Public Schools immediately terminate its policy of using test scores on the Iowa Tests of Basic Skills as stand-alone measures to decide individual student graduation, promotion, and retention;
- ▶ that the policy be revised in a speedy manner;
- ▶ that the revised policy be based on multiple, non-discriminatory measures of student learning;
- ▶ that the revised policy conform to the recommendations on pages 278-281 of the 1998 National Research Council report, "*High Stakes: Testing for Tracking, Promotion, and Graduation*" (copy attached);
- ▶ that the revised policy include a clearly-written, standard waiver provision which will be applied in a fair, non-discriminatory manner and include due process;
- ▶ that this policy revision be made public in a speedy manner in all local media and that a letter go home to every CPS parent explaining the policy change and why it was necessary, and
- ▶ other remedies as indicated by the OCR review of this complaint.

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Julie Woestehoff

date

PURE Executive Director