

COMPLAINT TO THE OFFICE FOR CIVIL RIGHTS
CONCERNING TEACHER DISTRIBUTION IN
THE PHILADELPHIA SCHOOL DISTRICT

Education Law Center
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ATTACHMENTS

1. Chester, Offenberg, and Xu, *Urban Teacher Transfer: A Four-Year Cohort Study of the School District of Philadelphia Faculty* (School District of Philadelphia, 1999)
2. University of Pennsylvania, Consortium for Policy Research in Education, *Recruiting and Retaining Teachers: Keys to Improving the Philadelphia Public Schools* (2001)
3. Philadelphia Education Fund (PEF), *Teacher Staffing in the School District of Philadelphia: A Report to the Community* (2002)
4. Neild, *Distribution of certified middle and high school teachers in the School District of Philadelphia* (2001)
5. Neild and Spiridakis, *Teachers in the School District of Philadelphia: Tables on Teacher Retention and the Distribution of Teachers' Certification Levels and Experience in the District by School Type, Poverty Level, and School Racial Composition* (2003)
6. Research for Action, *Once and For All: Placing a Highly Qualified Teacher in Every Philadelphia Classroom* (2003).
7. Research for Democracy charts and map (2003)
8. Campaign for Human Capital, *The Three R's, Retention, Recruitment, and Renewal: A Blueprint for Action* (2003)

I. INTRODUCTION AND OVERVIEW

The problem. This complaint concerns disparities in the instructional resources provided to minority and non-minority students in the Philadelphia School District – specifically, certified and experienced teachers and the funds needed to support them.

Like all Philadelphia School District students, the minority students who are the focus of this complaint find themselves in a grossly underresourced system. Because the funding for Philadelphia public schools is so much less than that in surrounding areas, the District operates larger classes, pays lower salaries, and has poorer facilities than schools in the suburbs. Attracting and retaining qualified teachers is a particularly difficult problem for the District, in part for these reasons. As a consequence of all of these factors, overall student achievement is low, and the majority of Philadelphia children emerge from school without the skills that they need in order to compete with their suburban peers.¹

However, Philadelphia schools are not all created equal, and the students at issue in this complaint find themselves at a *double* disadvantage. That disadvantage lies in the fact that qualified and skilled teachers – the most crucial “input” in the District’s instructional program – are inequitably distributed *within* the system, with more qualified, more experienced teachers going to the city’s lower-minority, lower-poverty schools.

In 2002-03, for example, 16.7% of teachers in middle schools in the District were not fully certified. This problem is serious in itself; but what makes matters worse is the fact that the pain is not distributed equally. Rather, in middle schools in which 90% of the students are of color, only 79.8% of the teachers are certified. By contrast, in schools serving fewer (50-89%) children of color, a considerably higher percentage of teachers (89.1%) are certified; and in schools in which the majority of students are white, virtually *all* of the teachers (98.6%) are certified.²

¹ See, e.g., Research for Democracy, a project of the Eastern Pennsylvania Organizing Project and Temple University, *A Right to Know* (2002), p. 37-38. Regarding inequities in Pennsylvania’s school finance system, see, e.g., Education Week, *Quality Counts 2003* (awarding Pennsylvania a grade of D-).

² Research for Action, *Once and For All: Placing a Highly Qualified Teacher in Every Philadelphia Classroom* (2003) (Attachment 6) at p. 26, Table 18.

This is, moreover, just one facet of the problem. There are also serious disparities in students' access to *experienced* teachers: children of color and poor children are much likelier than others to have teachers with minimal experience. And *turnover rates*, which reflect a school's capacity to maintain a stable faculty and build a coherent instructional program, show similar disparities: the higher the minority student population of the school, the higher the turnover.

Disparities also appear in the *funds* allocated for teacher salaries. This is because the District's practice is to allocate to each school whatever funds are necessary to pay the teachers who choose to teach in that school. Since, on average, the teachers at schools with higher numbers of white students are more experienced, the amounts spent on teacher salaries in these schools are greater. By contrast, in high-minority schools, less money is allocated for teacher salaries.³

The cause. These disparities result in large part from the District's teacher assignment system. Under that system, central office administrators and principals do not, as a general matter, decide which teachers will be assigned to which schools (though there are exceptions to this general rule). Instead, as vacancies become available, teachers apply for the positions that interest them; and an elaborate set of seniority rules, most or all of which are embodied in the District's contract with the Philadelphia Federation of Teachers, dictates who will go where.

The effect of this system is that, over time, certified and experienced teachers gravitate toward schools serving fewer minority and poor students. By maintaining this system in its present form, we contend, the District is in violation of Title VI of the Civil Rights Act of 1964 and implementing regulations.

We recognize that certification and experience do not, in every case, correlate with good teaching. There are some excellent teachers who lack certification or experience, and some inadequate teachers who have both. But in general, as the state and federal government have recognized by statute, certification is a prerequisite for a highly qualified public school teacher. Thus, access to a certified teacher is, we maintain, a "benefit" within the meaning of Title VI, and should be made available on equal terms. We make similar arguments concerning teacher experience, faculty stability, and funding for teacher salaries.

³ This situation is masked by a budgetary fiction in use in the District: in calculating the teacher salary component of each school's budget, the District uses an average salary figure rather than the actual amounts paid to the teachers in that school.

As we note below, the District has recently begun a “Campaign for Human Capital” aimed at improving its teacher recruitment and retention. Already, that effort is showing some results in terms of strengthening the pool of available teachers. What the effort does not do is address the distribution problem – although the team of District personnel and other stakeholders involved in the Campaign have candidly stated, “We must stop placing the least qualified teachers in the lowest performing schools.”⁴ Unless this teacher gap is addressed head-on, it will persist even if the overall supply of teachers is increased.

We do not argue here that the District’s teacher assignment system must be completely replaced. Some aspects of the current system may be necessary if the District is to be able to attract and retain qualified teachers. But it does not follow that the *entire* system now in place is “educationally necessary” within the meaning of Title VI. We believe that the District can and must put together some combination of remedial measures – for example, stronger voluntary incentives, modifications to the assignment rules, and other steps – that will result in a reasonably equitable distribution of teachers.

II. LEGAL FRAMEWORK

Title VI, 42 USC § 2000d, provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.⁵

Implementing regulations, 34 CFR § 104.4, state:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

⁴ School District of Philadelphia, Campaign for Human Capital, *The Three R’s, Retention, Recruitment, and Renewal: A Blueprint for Action* (2003) (Attachment 8), at p. 6.

⁵ The District is a recipient of federal assistance.

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;...

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;...

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program....

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in 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....

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination....

Thus, Title VI and implementing regulations prohibit the District from denying any service or benefit to students on the basis of race, color, or national origin; providing these students with services or benefits that are different from those provided to others; or restricting these students in their enjoyment of any advantages made available to other students. Further, the District may not, “directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect” of producing such results.

OCR has developed guidelines for applying these rules to issues of “intradistrict school resource comparability.” See U. S. Department of Education, Office for Civil Rights, *Interdistrict Resource Comparability: Investigative Resources*. In this area, as in others, OCR uses a three-part analysis:

1. The Prima Facie Case: Is there a facially race-neutral policy or practice that has a disproportionate, adverse effect on students of a particular race or national origin? Is there evidence of a causal connection between the challenged policy or practice and the disproportionate, adverse impact?
2. If so, is the policy or practice educationally necessary: is there a substantial, legitimate educational justification for it?
3. If so, is there an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the recipient's educational objectives?

Id. at 5, 7 (citing *Elston v. Talledega County Board of Education*, 997 F.2d 1394 (CA 11 1993)). OCR has recognized that the “assignment of ... less qualified teachers” may constitute a denial of equal educational resources.⁶

We are aware of several cases in which OCR has examined these issues. For example:

- In *Omaha Public Schools*, Docket No. 07991320 (Resolution Agreement, 11/30/2001), OCR entered into an agreement that “the District will adopt professional staff assignment, reassignment and transfer policies so that the average teaching experience and level of education of school faculties in elementary schools with disproportionately high enrollment of black students are comparable on average to the district-wide averages for elementary schools.”
- In *Huntsville (AL) City Schools*, Compliance Review #04-98-5029, OCR's investigation revealed that certain schools identified as predominantly African-American had a higher percentage of inexperienced teachers, and higher turnover rates, than predominantly white or “balanced” schools. By letter of April 16, 2002, OCR identified this as a Title VI concern and, apparently, entered into a resolution agreement.⁷

⁶ Moreover, a showing that students have unequal opportunity is enough to trigger the Title VI analysis; it is not necessary to show that, because of the inequities, students also achieve at disparate levels. *Intradistrict Resource Comparability* at p. 7-8 (“[i]f resources are unequal based on race, OCR is not required to also prove that disparities in test scores, drop-out rates and other student outcomes are caused by disparities in specific resources”).

⁷ We do not have a copy of the agreement.

- In *Syracuse (NY) City School District*, Case No. 02-01-1109 (letter of March 17, 2003), OCR found a “significant resource difference” in the provision of permanently certified teachers. OCR entered into an agreement providing that the district would “identify appropriate measures facilitating a more equitable assignment of provisionally certified teachers” and report back to OCR.⁸

Finally, the provisions of the No Child Left Behind Act of 2001 reinforce the “resource equity” requirements of Title VI. Under NCLB, the District must “ensure, through incentives for voluntary transfers [of teachers], the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates by unqualified, out-of-field, or inexperienced teachers.” 20 USC § 6312(c)(1)(L).⁹ Thus, NCLB calls for an analysis similar to that required under Title VI, and for remedial action when disparities are found.

III. ANALYSIS

A. The District’s teacher assignment practices have a disproportionate, adverse impact on students of color and poor students

1. How the District assigns teachers

Philadelphia’s teacher assignment process is governed largely by the rules of the collective bargaining agreement with the Philadelphia Federation of Teachers. The current collective bargaining agreement, which runs through August 2004, is available at <http://www.pft.org/contract/contract2000.html>. We attempt a very brief summary of the teacher assignment rules here. While we have left out many details and exceptions, we believe that this outline gives the general picture.

⁸ We assume that the agreement refers to “provisionally” certified teachers because a more equitable distribution of that group would automatically result in a more equitable distribution of permanently-certified teachers. We have not yet been able to obtain the district’s report back to OCR.

⁹ A parallel requirement applies to the State, which must spell out, in its state plan, “specific steps that the State educational agency will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and the measures that the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such steps.” 20 USC §6311 (b)(8)(C).

- When a new teacher enters the system, the District has broad latitude to determine where he or she will be assigned. Even at this stage, however, teacher choice comes into play, in that candidates are ranked according to their performance in an interview and on various other measures and those with the highest scores – *i.e.*, those considered most desirable by the District – are given first choice at selecting from available vacancies.¹⁰
- Once in the system, a teacher begins to acquire both “system” and “location” seniority. System seniority reflects the length of time that he or she has served as an appointed employee” of the District. Location seniority reflects the teacher’s length of service in the current placement. (For an involuntarily transferred teacher, location seniority also includes the time spent at the previous work location.) Contract, Article IX, § A.
- As the teacher acquires seniority, the teacher gains more and more control over where he or she will teach. This is because, as positions open up around the system, the teacher can apply to transfer to them. In these “voluntary transfer” situations, the teacher receives preference based upon his or her system seniority, location seniority, or some combination. Moreover, even in situations involving “involuntary transfers,” *e.g.*, when a teacher is no longer needed at his or her current school, the teacher receives a seniority-based preference in choosing the school to which he or she will go. Thus, in general, teachers with greater seniority have a greater chance of transferring to schools of their choice. Contract, Article XVIII, § C.
- There are some exceptions to the seniority rules. For example, if a proposed transfer would result in a racial imbalance among the staff at the receiving school, the transfer is not permitted; the teacher must then go to his or her next choice.
- Another exception to the seniority rules arises in cases of “school-based”, or “site-based,” selection. If two-thirds of the employees at a school have given their approval, the school may adopt procedures for site-based selection of teachers. A school-based committee then screens applicants for teaching positions, and the principal makes the final selection. Seniority-based preferences do not apply in these situations, unless two teachers equally meet the criteria established for the position. Currently, however, only 43 of the District’s approximately 250 schools have opted for school-based selection.

¹⁰ Attachment 6 at p. 27.

In summary, under the District’s system, teachers gain increasing control over their assignment within the system as their seniority increases.

2. Disparities resulting from the District’s assignment system

Over the past ten years, it has been repeatedly documented – in court findings, reports by District staff, and reports by other researchers using District data – that schools serving higher numbers of poor and minority students also have higher numbers of uncertified teachers, higher numbers of inexperienced teachers, and higher teacher turnover. We discuss some of these reports below, in chronological order.

a. Commonwealth Court of Pennsylvania

In 1994, the Commonwealth Court of Pennsylvania held hearings in an enforcement proceeding in the Philadelphia desegregation case. The Court received evidence about conditions in “racially isolated” schools, *i.e.*, schools with especially high proportions of minority students. The Court concluded:

The least experienced teachers are employed in racially isolated minority schools which face the highest rate of teacher turnover; the best qualified of the newly hired teachers work in white or desegregated schools rather than serve in racially isolated minority schools and the most experienced teachers generally work in the northwest or northeast areas. The racially isolated minority schools also experience fewer substitutes and the highest percentage of non-certified substitutes. High teacher turnover in racially isolated minority schools has existed within the School District for many years yet no system-wide mandates are in place to correct this condition.

PA Human Relations Commission v. School District of Philadelphia, 638 A.2d 304, 318 (Commw. Ct. 1994).¹¹

Obviously, apart from the observation that “no system-wide mandates are in place” to correct the imbalance, this finding does not address the causes of the disparities. However, as the next section explains, this question was addressed in a report issued several years later by the District itself.

¹¹ Although other aspects of this case have been litigated further, this particular finding has never been challenged or overturned.

b. *School District study on teacher transfers*

In 1999, the School District issued a report on a study of teacher transfers among schools. Chester, Offenber, and Xu, *Urban Teacher Transfer: A Four-Year Cohort Study of the School District of Philadelphia Faculty* (School District of Philadelphia, 1999) (Attachment 1).

The report begins by describing the District's policies concerning teacher transfers, which appear to have been largely similar to those in effect today. According to the study, involuntary transfers, which are initiated by the administration, occurred primarily in situations in which the student enrollment at a school decreased. In these situations, the study reported, teachers were offered the opportunity to transfer to a new school in order of system seniority. Voluntary transfers occurred when a teacher asks to fill a vacant position in another school. In these cases, selection was in order of "building seniority," or what the current contract terms "location seniority."

The authors of the study then examined data concerning teacher transfers, both voluntary and involuntary, during the period from 1991 to 1998. The authors concluded that:

Both voluntary and involuntary transfer processes resulted in the movement of teachers to schools that are higher performing, have less poverty, and have fewer minority students than the schools from [should be "to"] which the teachers were previously assigned. ... Transferees moved to schools that had on average about 12 percentage points fewer low-income children and about 12 percentage points more white children.¹²

As a result, the authors concluded:

Clearly, teacher transfers in Philadelphia result in fewer experienced teachers and higher faculty instability in the schools that serve the poorest, most minority, and lowest achieving students.¹³

¹² Attachment 1 at p. 10 (emphasis added).

¹³ *Id.* at p. 13.

c. *Consortium for Policy Research in Education*

In 2001, the Consortium for Policy Research in Education (CPRE) at the University of Pennsylvania issued a report (Attachment 2) entitled *Recruiting and Retaining Teachers: Keys to Improving the Philadelphia Public Schools*.¹⁴ Among CPRE's conclusions was the following:

Teacher quality – as measured by certification status, qualifications, and years of experience – is unequally distributed across the School District of Philadelphia. Our analysis confirms the findings of other studies: *poor and minority students are the least likely to be taught by experienced, well-qualified teachers. Poor and minority students are also more likely to attend schools with the highest teacher turnover*.¹⁵

Among the data provided by CPRE was a table entitled “Comparing Teacher Experience, Education and Certification Variables in High-Poverty/High-Minority Schools with Low-Poverty/Low-Minority Schools, 1998-1999”.¹⁶ The table shows that at the elementary level, 7% of the teachers in high-minority schools were *first-year* teachers, as opposed to only 3% in the low-minority schools. Twenty-eight percent of the teachers in high-minority schools had five or fewer years of teaching experience, compared with 7% in low-minority schools.

Conversely, at the high-minority schools, only 34% of teachers had 20 or more years of experience; the figure for low-minority schools was 69%. At the high-minority schools, 68% of teachers had a master's degree; at low-minority schools, the figure was 85%. Disparities were also noted at the middle and high school levels.

In examining the reasons for the disparities, CPRE noted some factors pertaining especially to middle schools, as well as some broader factors.

Our discussion in the preceding sections of this report suggests a number of complex and inter-related reasons for the unequal distribution of teachers in Philadelphia. There is an overall shortage of teachers willing to work in middle schools. [Dr. Elizabeth] Useem identifies several possible reasons for this. First, because of the shortage of training programs for middle school teachers, very

¹⁴ This report was one of a series of reports issued by CPRE and its partner, Research for Action, evaluating the success of the District's “Children Achieving” initiative.

¹⁵ Attachment 2 at p. x (emphasis added).

¹⁶ *Id.* at p. 44, Table 11.

few teachers are adequately prepared to teach at this level, and teachers who are not well prepared are more likely to leave. Second, because there are not enough teachers trained or willing to teach in middle schools, teachers are often assigned to middle schools who do not want to be there. Ingersoll's research has shown that job dissatisfaction is a major source of teacher turnover. Useem found that almost half of the newly-hired Philadelphia seventh and eighth grade teachers she surveyed were unhappy with their grade placement.

Several factors contribute to the higher rates of teacher turnover, lower rates of experienced faculty, and lower percentages of teachers with master's or higher degrees in schools with greater numbers of low-income and minority students. In addition to teacher turnover and the other reasons pertaining to middle schools, we have discussed a number of other contributing factors. First, District data show that when teachers are eligible to transfer, they typically leave schools serving poorer and minority students with lower levels of achievement. Furthermore, the analysis by Offenber and Xu suggests that *the District's voluntary and involuntary transfer policies directly or indirectly exacerbate teacher turnover and result in greater proportions of less experienced teachers in the abandoned schools*. Ingersoll shows that there are other school-level factors contributing to teacher turnover: teachers leave schools with lower salaries, greater student discipline problems, and little faculty input into school decision-making.¹⁷

d. *Neild/PEF reports, 2001/2002*

In 2002, the Philadelphia Education Fund (PEF) issued *Teacher Staffing in the School District of Philadelphia: A Report to the Community* (Attachment 3). The report was based on a study by Dr. Ruth Curran Neild of the University of Pennsylvania, *Distribution of certified middle and high school teachers in the School District of Philadelphia* (2001) (Attachment 4).

PEF and Neild grouped the city's high schools into four poverty quartiles. The schools in the first quartile, Q1, had the lowest-poverty students; Q4 had the highest. A similar division was made at the middle school level. Figures were then provided for each quartile of schools concerning the proportion of the faculty that was certified; the level of experience of the faculty; and the level of turnover.

¹⁷ *Id.* at p. 45 (emphasis added).

Certification. The study categorized teachers as certified if they had *any* certification (regardless of whether they were actually teaching in their certification area). At the high school level, the proportions of certified teachers for each quartile of schools were, for school year 1999-00:¹⁸

Q1 (lowest poverty)	95%
Q2	89%
Q3	90%
Q4 (highest poverty)	88%

The disparities were even more pronounced in certain subject areas. For example, of those teachers who were teaching foreign language, mathematics, and science, the percentage holding teaching certificates in those areas were:¹⁹

	<u>Language</u>	<u>Math</u>	<u>Science</u>
Q1	85%	93%	92%
Q2	74%	88%	67%
Q3	76%	85%	74%
Q4	73%	81%	72%

Thus, students in the highest-poverty schools were much less likely than students in low-poverty schools to have a certified teacher in the areas of foreign language, math, and science.

At the middle school level, the certification figures were:²⁰

Q1 (lowest poverty)	91%
Q2	84%
Q3	81%
Q4 (highest poverty)	76%

Again, it appears, students in high-poverty schools are much less likely to have a certified teacher than their peers in lower-poverty schools. Moreover, these disparities were shown to be increasing over time.²¹

¹⁸ Attachment 4 at p. 2, Table 1.

¹⁹ Attachment 4 at p. 8, Table 7; Attachment 3 at p. 6 (chart).

²⁰ Attachment 4 at p. 4, Table 3; Attachment 3 at p. 9 (graph).

²¹ *Id.*

Turnover. Disparities were also documented in the area of staff turnover. The following figures, for example, indicate the percentage of 1999-00 teachers who were new to the school within the previous two years.²²

	<u>High schools</u>	<u>Middle schools</u>
Q1	31%	34%
Q2	40%	44%
Q3	32%	40%
Q4	41%	46%

Experience. Figures were also reported on the extent of teachers' experience, as measured by their length of service in the district. The median years of service were as follows:²³

	<u>High schools</u>	<u>Middle schools</u>
Q1	24	12.8
Q2	20	7
Q3	19	6
Q4	13	7

Combined effect. Combining some of these findings, the Philadelphia Education Fund report points out that, at the nine highest-poverty high schools, 41% of staff were new to the school in the last two years (as opposed to 31% in the ten lowest-poverty high schools); the teachers had an average of 13 years of experience (compared with 24 years in the lowest-poverty schools); and the percentages of teachers in the areas of foreign languages, mathematics, and science who were not certified were 27%, 17%, and 27% (compared to 16%, 7%, and 8% in the lowest-poverty schools).²⁴

It is true that the disparities in this study were disaggregated by poverty level rather than race. However, the highest-poverty schools also have the highest proportions of students of color. In any event, a subsequent Neild/PEF study, discussed below, disaggregates the figures by race.

²² Attachment 4 at p. 10, Tables 8, 9; Attachment 3 at p. 5 (chart).

²³ Attachment 4 at p. 12, Tables 10, 11.

²⁴ Attachment 3 at p. 7.

e. *Neild/PEF report, 2003*

Further documentation is found in *Teachers in the School District of Philadelphia: Tables on Teacher Retention and the Distribution of Teachers' Certification Levels and Experience in the District by School Type, Poverty Level, and School Racial Composition*, a 2003 report by Dr. Ruth Curran Neild of the University of Pennsylvania and Kurt Spiridakis of PEF (Attachment 5).

This report presents updated figures on teacher certification, retention and years of experience by school poverty level. These figures tend to confirm the findings in the earlier Neild/PEF reports – and also to indicate, again, that the disparities are growing.

In addition, the report documents teacher certification levels in relation to minority composition of the student body. For example, in 2002, in high schools with 90-100% students of color, only 88% of the teachers were certified; the figure for schools with 11-50% students of color was 96%. The disparity was even greater at the middle school level: in schools with 90-100% students of color, 81% of the teachers were certified, while in schools with 11-50% students of color, the figure was 99%.²⁵

Here again, moreover, the disparities are growing. In 1999, for example, 87% of the teachers in highest-minority middle schools were certified, as compared to 99% of those at low-minority middle schools. This gap was significant, but notably smaller than the 81%-99% gap identified in 2002.²⁶

f. *Research for Action report*

The most recent and comprehensive report on this issue, *Once and For All: Placing a Highly Qualified Teacher in Every Philadelphia Classroom*, was published by Research for Action, a non-profit research organization, in the fall of 2003 (Attachment 6).

The RFA study again found that inexperienced and uncertified teachers are more likely to be found in high-poverty schools. The authors noted:

It is not uncommon for 20 percent of the staff at the highest-poverty middle schools to have experienced less than a full year of teaching

²⁵ Attachment 5 at p. 8, Tables 16, 17.

²⁶ *Id.*

in the district. Their “senior” colleagues may only have a few years’ more experience than the newcomers. The concentration of new teachers in particular schools presents an enormous challenge for mentoring efforts: there are simply not enough veteran teachers to go around....²⁷

The authors also addressed the causes of the disparities, and noted:

These disparities in teacher experience occur in part because of school transfer rules that provide the first pick of jobs to teachers with the most seniority. A School District of Philadelphia study concluded that the general pattern is for teachers to transfer from higher-poverty schools to those with lower-poverty. The longer a teacher is employed by the system, the more opportunities arise to transfer to a lower-poverty school.²⁸

The RFA study also provided some statistics on racial disparities. These statistics are found at Tables 17 and 18, which are reproduced below.²⁹

Percent minority	N (02-03)	1999-00	2000-01	2001-02	2002-03
<50%	1467	98.3%	97.1%	95.7%	95.8%
50%-89%	3375	95.5%	93.3%	92.2%	90.8%
90% +	6874	91.3%	87.9%	86.7%	85.6%
Total	12052*	93.3%	90.6%	89.4%	88.5%

*Numbers may not add up because teachers can be listed in the database without an accompanying school.

²⁷ Attachment 6 at p. 24.

²⁸ *Id.*

²⁹ Attachment 6 at p. 26.

**Table 18: Teacher certification by school percent minority
for middle schools, fall 1999 to fall 2002**

Percent minority	N (02-03)	1999-00	2000-01	2001-02	2002-03
<50%	70	97.2%	97.1%	95.7%	98.6%
50%-89%	603	94.3%	92.6%	91.3%	89.1%
90% +	1298	83.5%	79.0%	79.6%	79.8%
Total	1971	87.1%	83.5%	83.6%	83.3%

Thus, in the most heavily minority schools, only 85.6% of teachers are certified, as compared to 95.8% in schools with less than 50% minority students. And this racial disparity is especially great in middle schools – 79.8% as compared to 98.6%, a difference of nearly 19 percentage points.

g. *“Your Schools, Your Money”*

The Pennsylvania Department of Education maintains a database entitled “Your Schools, Your Money.”³⁰ This database provides, among other data, the average years of service for teachers in every Pennsylvania school, as well as the average salary (which tends to reflect length of teaching experience).

We were unable to do a systematic comparison of this data with information on the racial composition of the schools. However, it appears that, if this were done, the data would be in line with that presented in the studies discussed above.

Moreover, this database shows, for each school, both the average teacher salary and the average expenditure per student on teacher salaries. Because lower-minority schools tend to have more experienced, higher-salaried teachers, the expenditure per student on teacher salaries in these schools can be much higher than that in higher-minority schools.

For example, in the Wilson Middle School, a relatively low-minority school, the average teacher salary is \$52,580, and the average expenditure per student on teacher salaries is \$3,872. At the Gillespie Middle School, by contrast, a high-minority school, the average salary is \$41,918, and the average expenditure per student is \$3,371 – approximately \$500 *per student* less than at Wilson.

³⁰ The database is available online at www.yourschoolsyourmoney.ed.state.pa.us.

h. *Research for Democracy's analyses*

Research for Democracy, a project of the Eastern Pennsylvania Organizing Project and Temple University, has analyzed School District data from January, 2003, concerning the distribution of teachers in the District. These analyses confirm the disparities discussed above, including the fact that significantly more money is spent on teacher salaries for the average white student than for the average African-American or Latino student, as shown by the following chart.³¹

Teaching resources available to the average student by race
Philadelphia Elementary Schools 2003-04 School Year

	Black Student	Latino Student	White Student
% of teachers uncertified	9.1	12.4	5.4
% of teachers with less than 3 years experience	16.7	18.9	10.1
Average teacher salary	\$48,505	\$47,422	\$52,861
Spending per child	\$3,831	\$4,023	\$4,415

In addition, Research for Democracy has prepared a series of charts and a map that provide further detail on these issues (Attachment 7).

i. *Recent data from PA Department of Education*

Additional data is available from the Pennsylvania Department of Education (PDE), which recently posted the percentage of “highly qualified” (as defined by No Child Left Behind) teachers in each school in the state.³² These figures are not correlated with poverty levels or percentage of minority students (although we assume PDE could provide that information). However, a casual reading of the charts yields the following information for three higher-minority and three lower-minority middle schools:

³¹ Figures developed by Research for Democracy, 2003, based on a School District teacher data file from January 13, 2003.

³² http://www.teaching.state.pa.us/teaching/lib/teaching/HQ_by_AUN_by_Building.pdf.

<u>Higher % minority schools</u>	<u>% highly qualified teachers</u>
Gillespie	82.8
Sayre	75.7
Stoddart-Fleisher	76.2
<u>Lower % minority schools</u>	<u>% highly qualified teachers</u>
Baldi	96.8
Labrum	100.0
Thomas	96.4

3. District responses to the problem

In November 2002, CEO Paul Vallas convened a group to address critical staffing issues, including teacher recruitment and retention. The group, known as the Campaign for Human Capital, issued its report, *The Three R's, Retention, Recruitment, and Renewal: A Blueprint for Action*, in February 2003 (Attachment 8). The report sets out an impressive array of proposals designed to address recruitment and retention problems, and the District has been actively working to implement many of these proposals. Skilled staff have been hired to support this initiative, and significant resources are being spent – with positive results – in advertising and recruitment campaigns and in improving the District’s processes for teacher hiring and support.

As we noted earlier, the report also acknowledges the problem discussed in this complaint (“We must stop placing the least qualified teachers in the lowest performing schools”).³³ However, the report offers no substantive plans concerning this problem, other than a proposal to expand “site selection” procedures at some future date, subject to negotiations with the Philadelphia Federation of Teachers.³⁴

Thus, while the District’s Campaign for Human Capital may succeed in increasing the overall supply of teachers, it is not aimed at the distribution problem discussed here. As a result, even if the teaching force is strengthened overall, the distribution problem is likely to persist. Indeed, it is possible that the distribution problem will actually impede the District’s recruitment and retention efforts; so long as large numbers of new teachers are concentrated in low-income schools

³³ Attachment 8 at p. 6.

³⁴ *Ibid.* at p. 6, 17.

with high concentrations of inexperienced and uncertified staff, turnover is likely to continue to be high.

In a few areas, to be sure, the District has implemented incentives that actually target higher-poverty, higher-minority schools. For example, it is reported that, in a small number of schools with low student performance and high staff turnover, the District has paid teachers a \$2,000 annual bonus.³⁵ As we understand it, however, these targeted incentives are extremely limited – and clearly they have not been enough to make a significant dent on the disparities.

B. These disparities make a *prima facie* case under Title VI

These studies and reports show clearly that the District’s teacher assignment system operates in such a way that students in high-minority schools are likelier, as compared with their peers in lower-minority, lower-poverty schools, to have teachers who are uncertified and less experienced. Students in high-minority schools are also likelier to experience high teacher turnover. In addition, less funding is made available to pay teachers at schools serving high numbers of minority students.

Clearly, access to certified teachers is a “benefit” within the meaning of Title VI and its implementing regulations. Certification requirements are, by definition, Pennsylvania’s minimum competency requirements for public school teachers. If, as is the case in Philadelphia, students of color are disproportionately taught by uncertified teachers, those students are being denied a benefit – minimally qualified teachers – extended to others.

As for experience, the research indicates that inexperienced teachers tend to be less effective than more experienced teachers, at least up to the five-year mark.³⁶ Accordingly, at least as a general rule, students who are instructed by inexperienced teachers are at a disadvantage as compared to peers whose teachers do have experience.

With regard to faculty turnover, it seems self-evident that high levels of faculty instability make it difficult to operate an effective school. The District’s own 1999 study takes exactly that view:

Teacher turnover and faculty instability impedes school effectiveness by diminishing organizational continuity and

³⁵ Attachment 6 at p. 37.

³⁶ Attachment 2 at p. 35.

compromising the quality of the teaching force. Instability and turnover mean that school capacity-building initiatives (e.g., planning and implementing programs; inservice teacher training) must constantly be restarted as teachers who are new to the school replace those who left. Higher turnover rates are associated with lower school achievement.³⁷

Here again, then, students of color are at a disadvantage in relation to their majority peers.

We recognize, of course, that we are talking here only about general patterns. Certainly some teachers who are uncertified or inexperienced are, nevertheless, excellent at what they do. Conversely, some teachers with appropriate certificates and many years of experience are less than effective. Overall, however, it can fairly be said that being taught by a certified teacher is a benefit. Similar statements can be made with regard to teacher experience and faculty stability.

In addition, having access to additional dollars for teacher salaries is a benefit – and that is, as we have noted, exactly what students in lower-minority, higher-income, schools in Philadelphia do have. This is not to say that, in any specific case, a higher salary necessarily translates into better teaching. Rather, the point is that when, for a certain group of students (in Philadelphia, white students), more money is being made available for teacher salaries, that group of students has the opportunity to be taught by more experienced teachers. Conversely, when less money is made available for teacher salaries for African-American and Latino students, those children have less opportunity to be taught by experienced teachers. This places the latter students at a disadvantage.

For these reasons, the requirements of a *prima facie* case under Title VI have been satisfied.

³⁷ Attachment 1 at p. 1 (citations omitted).

C. The existing system of teacher assignment is not educationally necessary

Once a *prima facie* case has been made, the next step in the Title VI analysis is to determine whether the practices that cause a challenged disparity are educationally necessary. On this issue, the burden is on the recipient. We think it unlikely that the District can show that the current system, under which most teacher movement is governed by teacher choice and seniority rules, is – in its entirety – educationally necessary.

At the same time, we recognize that the District may be able to show that *some* aspects of the current system do, in fact, meet this standard. It may be, for example, that without some promise of benefits resulting from seniority, teachers would have insufficient reason to come to or stay in the system. It does not follow, however, that *all* aspects of the sweeping seniority system currently in place are educationally necessary. While we leave the proof to the District, we believe that it will not be able to make a legally adequate showing on this point, at least with respect to the current system.

In this regard, although we do not have exhaustive data on the experience of other cities, it seems significant that many are managing to operate with seniority arrangements that are less sweeping than Philadelphia's. For example:

- To address inequities in teacher distribution, the Charlotte-Mecklenburg school system adopted a plan under which, for 2003-04, existing teachers were not permitted to transfer *into* certain schools that already had high percentages of qualified personnel. Instead, vacancies in these 26 schools were to be filled by new teachers.
- New York City limits the number of transfers *out* of a school in a given year, thus – presumably – reducing turnover and the loss of experienced teachers to more favored schools.
- In Pittsburgh, all schools operate on a “site selection” model, in which teachers are hired by school teams. The school teams have the freedom to select among internal candidates (*i.e.*, teachers already in the system) and new applicants.
- Similarly, in Denver, teacher transfers are not based on seniority, but are subject to the approval of school-based Personnel Committees.

D. Even if the entire current system were educationally necessary, the District could take additional measures that would result in a less disparate impact

Our position is that the District could modify the seniority rules in such a way as to reduce the disparate impact at issue here, while not significantly impairing the District's educational mission. In addition, there are steps that the District could take to alleviate the effects of those rules on poor and minority students. By taking these steps, the District could create "an "alternative policy or practice that would result in a lesser disparate impact," thereby satisfying the third prong of the Title VI analysis.

Devising an actual plan in this regard is a job, we believe, for the District, with active input and participation from other interested groups. We do not attempt to do the job here. However, we can suggest some possible elements of any such plan.

- *Incentives.* The District could develop a program of effective incentives aimed at attracting certified and experienced teachers to, and retaining them in, high-poverty, high-minority schools. These could include financial as well as other incentives, such as special mentoring and professional development opportunities, smaller class sizes, and other supports.
- *Site-based selection.* The District could expand its "site selection" program, which permits participating schools to select among applicants for teaching positions. Site selection may help make the school more attractive to teachers seeking positions. Site selection also allows a school to reject less qualified applicants (although, admittedly, that option is useful only if there are more qualified applicants in the pool).
- *Transfer rules.* The District could, through its collective bargaining agreement, modify its transfer rules, *e.g.*, by not allowing transfers that would result in a school's having more than its fair share of uncertified and inexperienced teachers; and/or by limiting the numbers of transfers into or out of a school in any one year.
- *Budgeting.* The District could budget differently, allocating a fixed amount per child to each school and then permitting the school to "buy" teachers within the limit of its budget. This would be a change from the current practice, which is to make the teacher

assignments first and then send the school whatever funds are needed to pay for them. Such a change would compel schools to accept a mix of certified and uncertified, and experienced and inexperienced, teachers.

- *Compensatory strategies.* The District could target additional resources, such as extra intern teachers, to disadvantaged schools. (Some measures of this sort are already in place.) Of course, we contend that compensatory strategies are not enough – i.e., that they must be combined with measures that actually help to equalize the distribution of certified and experienced teachers.

Again, we do not maintain that any one of these approaches is necessarily compelled by Title VI, or that any specific combination of measures is required. Our point is that the District must devise a package of approaches that makes sense to it, to its teachers, and to its family and student population. Unless this occurs, these long-standing inequities will persist.

We appreciate OCR's attention to this Complaint.