

**James P. Scanlan**  
**Attorney at Law**  
**1527 30<sup>th</sup> Street, NW**  
**Washington, D.C. 20007**  
**jps@jpscanlan.com**

September 9, 2018

This copy of the letter does not include the attachments (letters to Minnesota Department of Human Rights dated May 14, 2018 and August 27, 2018)

## **ELECTRONICALLY TRANSMITTED**

Michael Muñoz, Superintendent  
Members of the Rochester School Board  
Rochester Public Schools  
617 7<sup>th</sup> Street, SW  
Rochester, MN 55902

Re: The Minnesota Department of Human Rights' Mistaken Belief That Generally Reducing Public School Discipline Rates Will Tend to Reduce, Rather Than Increase, (a) Relative Racial Differences in Discipline Rates and (b) the Proportion African Americans Make Up of Disciplined Students

Dear Superintendent Muñoz and Members of the Rochester Board of Education:

According to a September 6, 2018 *MPR News* [article](#),<sup>1</sup> Rochester Public Schools (RPS) recently entered into an agreement with the Minnesota Department of Human Rights (MDHR) aimed at addressing racial disparities in discipline that MDHR identified at RPS. I have been following actions of MDHR regarding discipline disparities in Minnesota public schools in recent months. And I have noted that, as in numerous other jurisdictions, those actions are based on the belief that generally reducing adverse discipline outcomes like suspensions and expulsions will tend to reduce (a) relative (percentage) racial differences in discipline rates and (b) the proportion African Americans make up of students who are disciplined.

Attached are my letters to MDHR dated [May 14, 2018](#), and [August 27, 2018](#), explaining that exactly the opposite is the case. That is, generally reducing adverse discipline outcomes, tends to increase, not reduce, both (a) and (b). Attached to the letters to MDHR are materials explaining the issue to the U.S. Commission on Civil Rights and the U.S. Departments of Education, Health and Human Services, and Justice, as well as the Maryland State Department of Education.

---

<sup>1</sup> To facilitate consideration of issues raised in documents such as this I include links to referenced materials in electronic copies of the documents. Such copies are available by means of the [Measurement Letters](#) page of jpscanlan.com. If the online version of the letter is amended, such fact will be noted on the first page of that version.

The letters also address the obligation of MDHR to understand this issue and to explain to the public and school administrators, especially administrators in districts with which MDHR has negotiated, or is negotiating, agreements regarding discipline disparities, that MDHR's understanding of the effects of policies on measures of racial disparity was incorrect. See especially pages 3-4 of the August 27, 2018 letter.

In fairness to MDHR, I note that the agency's mistaken understanding of the effects of policies on measures of racial disparity in school discipline and other adverse outcomes is widespread among many entities and individuals of seeming expertise. And, though MDHR now has reason to recognize that the understanding underlying its actions was incorrect, the agency may not yet understand the issue. Thus, I suggest that by directly raising the issue with MDHR, RPS can both address the problem it faces in complying with an agreement based on an understanding of the effects of modifications of policies on measures of racial disparity that is the opposite of reality and expedite MDHR's coming to understand the matter.

The materials attached to the letters to MDHR should make the matter quite clear to any high school mathematics teacher who reads them carefully. A fairly succinct treatment of the statistical issue with regard to a related misperception about racial disparities in Minnesota may be found in my commentary "[It's easy to misunderstand gaps and mistake good fortune for a crisis](#)," *Minneapolis Star Tribune* (Feb. 8, 2014), and a complete treatment of the subject may be found in the September 2014 [methods workshop](#) I gave at the Minnesota Population Center and Division of Epidemiology and Community Health of the School of Public Health of the University of Minnesota.

Short treatments of the subject with a specific focus on misperceptions about public school discipline disparities may be found in my "[Discipline disparities in Md. Schools](#),"<sup>2</sup> *Daily Record* (June 21, 2018), "[Things government doesn't know about racial disparities](#)," *The Hill* (Jan. 28, 2014), "[The Paradox of Lowering Standards](#)," *Baltimore Sun* (Aug. 5, 2013), and "[Misunderstanding of Statistics Leads to Misguided Law Enforcement Policies](#)," *Amstat News* (Dec. 2012). Much longer discussions of the failure of persons analyzing demographic differences to understand the ways measures of such differences tend to be affected by the prevalence of an outcome, which give substantial attention to misperceptions regarding demographic differences in public school discipline outcomes, may be found in my [Comments for Commission on Evidence-Based Policymaking](#) (Nov. 14, 2016), and my "[Race and Mortality Revisited](#)," *Society* (July/Aug. 2014).<sup>3</sup>

---

<sup>2</sup> A subscription may be required to read the item on the publication's website. A free copy may be found here: <http://jpscanlan.com/disciplinedisparities/oaklanddisparities.html>.

<sup>3</sup> See also pages 3-4 of my [Comments for the Commission on Evidence-Based Policymaking](#) (Nov. 28, 2016) (a follow-up to the November 14, 2016 comments).

Michael Muñoz, Superintendent  
Members of the Rochester School Board  
September 9, 2018  
Page 3

I intend to continue to attempt to educate MDHR on this subject, while also addressing the issues with Minnesota school districts that have reached or may reach agreements with MDHR regarding discipline disparities issues. Assuming I do that, I may send copies of the communications to RPS.

Sincerely,

**/s/ James P. Scanlan**

James P. Scanlan

Attachments

cc: Kevin Lindsey, Commissioner  
Rowzat Shipchandler, Deputy Commissioner  
Minnesota Department of Human Rights