



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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**REGION V**  
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NORTH DAKOTA  
WISCONSIN

September 9, 2015

Mr. Michael Muñoz  
Superintendent  
Rochester Public Schools  
615 7th Street SW  
Rochester, MN 55902

Re: OCR Docket # 05-10-5003

Dear Mr. Muñoz:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at the Rochester Public Schools (District) by the U.S. Department of Education (Department), Office for Civil Rights (OCR), pursuant to OCR's enforcement authority under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d – 2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

OCR's review examined the District's disciplinary policies and practices and, specifically, whether the District discriminates against black students by disciplining them more frequently and more harshly than similarly-situated white students. The review examined whether the District suspended, expelled and/or referred black students to law enforcement authorities more frequently than similarly-situated white students. Finally, OCR considered whether the District maintains disciplinary policies and procedures that have an unjustified disparate impact on black students.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into an Agreement signed on September 1, 2015, that commits the District to specific actions to address the issues under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

**Applicable Regulations and Legal Standards**

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b). The regulation, at 34 C.F.R. § 100.3(a), states in relevant part that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. The regulation, at 34 C.F.R. § 100.3(b)(1)(i)-(vi) further states, in

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relevant part, that a recipient may not, on the basis of race, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a different manner than that provided persons of other races; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently from persons of other races in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or deny an individual an opportunity to participate in a program through the provision of services or otherwise or afford an individual an opportunity to do so which is different from that afforded persons of other races under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also provides, in relevant part, that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race.

OCR investigates alleged discrimination in the application of student discipline consistent with federal statutory authority, the Department's regulations, policies and pertinent case law. Disciplinary policies and practices can result in unlawful discrimination based on race in two ways: first, if students are intentionally subject to *different treatment* on account of their race; second, even if a policy is neutral on its face but has a disproportionate and unjustified *effect* on student(s) of a particular race, referred to as *disparate impact*.

#### Different Treatment

Title VI prohibits districts from intentionally disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly-situated students of different races are disciplined differently for the same offense, discrimination is one explanation for the different treatment. Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly-situated student. Additionally, a district's adoption of a facially neutral policy with an invidious intent to target certain races is prohibited intentional discrimination.

Title VI protects students from discrimination on the part of entities with which the district exercises some control over, whether through contract or some other arrangement. This includes contracts or arrangements for another entity to be responsible for aspects of a district's student safety or student discipline program. Schools cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, "contract" law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular discipline incident or series of incidents.

### Disparate Impact

In addition to different treatment of students based on race, districts violate Federal law when they evenhandedly implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as “disparate impact.” In determining whether a facially neutral student discipline policy has an unlawful disparate impact on the basis of race, OCR engages in the following three-part inquiry:

- 1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races?
- 2) Is the discipline policy necessary to meet an important educational goal?
- 3) Even in situations where a district can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative discipline policies available that would meet the district’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the district’s proffered justification a pretext for discrimination?

### Summary of Review

During the investigation, OCR reviewed information provided by the District regarding its student enrollment, student discipline records, and discipline policies and procedures. OCR also reviewed publicly available information on the District’s website and information obtained from the Rochester Police Department (“local police”). OCR conducted two onsite investigations at the District and interviewed administrators. The information below focuses on the 2013-2014 school year, which was the most recent school year for which the District provided OCR with complete discipline data, and also describes changes that the District has made to its discipline policies, procedures and practices since OCR began its investigation.

### Overview of the District

The District is located in Rochester, Minnesota. It serves students in pre-kindergarten through 12<sup>th</sup> grade. The District has 16 elementary schools, one K-8 school, 4 middle schools, 3 high schools, the Rochester Alternative Learning Center and Phoenix Academy (a school for special education students “with intense mental health and behavioral needs”), and Career and Technical Education Center at Heintz, a career and technical education center for students from the area.

During the 2013-2014 school year, 16,889 students were enrolled in the District. Black students comprised 2,308, or 13.7%, of the District’s enrollment. White students were 11,063, or 65.5%, of the students enrolled in the District, and students of other races were 3,518, or 20.8%, of the students enrolled in the District.

## **Discipline Policies, Practices and Procedures**

OCR reviewed the District's discipline policies and procedures, which have undergone a number of changes since OCR began its review in 2010. Most notably, the District fully implemented its positive behavior intervention system approach (PBIS), which is reflected in recent handbooks and the current District discipline policy, in the 2014-15 school year. The District's PBIS model incorporates a number of restorative justice methods, including peer mediation, peer/faculty mentoring programs, restitution, and other non-disciplinary interventions to be considered and employed as appropriate in lieu of traditional disciplinary methods, including exclusionary discipline. These methods were not in place District-wide at the time OCR began the compliance review or during the 2013-14 school year, which (as noted above) is the most recent school year for which the District provided OCR with complete discipline data. In 2013-14, the Student School Board added discipline as an agenda topic for the monthly meetings. Among the Student School Board's specific foci are the reactions to, perceptions of, and concerns regarding the District's discipline policies and practices on the part of District students. Finally, the District entered into a new contract in July 2015 with the City of Rochester that included a provision specifically prohibiting the police liaison officers from "recommending or determining student discipline or in investigating incidents of student discipline which do not involve potential criminal activity."

The District's current discipline policies are set forth in Board Policy 506, available on the District's website.<sup>1</sup> The policies apply to all students in grades K -12.<sup>2</sup> The discipline policy states:

Although this policy emphasizes the development of self-discipline, it is recognized that there are instances when it will be necessary to administer disciplinary measures. The position of the school district is that a fair and equitable district-wide student discipline policy will contribute to the quality of the student's educational experience.

The discipline policy includes a Student Code of Conduct (Code) that applies to all District buildings, grounds and property; school-sponsored activities or trips; school bus stops; school buses, school vehicles, school contracted vehicles, or any other vehicles approved for District purposes; the area of entrance or departure from school premises or events; and all school-related functions. The Code also applies to any student whose conduct at any time or in any place interferes with or obstructs the mission or operations of the District or the safety or welfare of the student, other students or employees.

OCR's review of the specific types of misconduct subjected to discipline revealed misbehaviors bearing subjective labels such as classroom disruption, hallway disturbance, disrespect to staff, insubordination, disorderly behavior, defiance, disruption, and "other." The Code lists 43 examples of unacceptable behaviors, including the following behaviors that include subjective

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<sup>1</sup> <http://www.boarddocs.com/mn/rps535/Board.nsf/Public>

<sup>2</sup> The discipline policy does not apply to students enrolled in the District's early childhood program. The District (through counsel) represented to OCR that it does not suspend or expel pre-kindergarten students.

terminology: Behavior 19, “Acts disruptive of the educational process, including, but not limited to, disobedience, disruptive or disrespectful behavior, defiance of authority, cheating, insolence, insubordination, failure to identify oneself”; Behavior 33, “Impertinent or disrespectful language toward teachers or other School District personnel”; and Behavior 43, “Other acts, as determined by the School District, which are disruptive of the educational process or dangerous or detrimental to the student or other students...or which otherwise interferes [sic] with or obstruct the mission or operations of the School District or the safety or welfare of students or employees.”

The discipline policy also includes the types and ranges of disciplinary sanctions that may be imposed for violations of the Code. The policy says, “The general policy of the School District is to utilize progressive discipline to the extent reasonable and appropriate based upon the specific facts and circumstances of student misconduct. The specific form of discipline chosen in a particular case is solely within the discretion of the School District.” The policy does not mandate suspension or expulsion for any particular offenses, although a separate District policy on weapons (Board Policy 501) mandates immediate out-of-school suspension for possession of a weapon.

Among the possible sanctions listed in the discipline policy are verbal warning, conference with teacher, principal, counselor or other School District personnel, parent or guardian contact or conference, removal from class, in-school suspension (during which students receive educational services), detention or restriction of privileges, loss of school privileges, financial restitution, referral to law enforcement or other appropriate authorities, out-of-school suspension, Saturday school, expulsion, or exclusion. The policy defines expulsion as “a School Board action to prohibit an enrolled student from further attendance for up to twelve (12) months from the date the student is expelled” and exclusion as “an action taken by the School Board to prevent enrollment or re-enrollment of a student for a period that will not extend beyond the school year.”

The policy defines “dismissal” as “the denial of the current educational program to any student, including exclusion, expulsion and suspension.” The policy defines suspension as “an action by the school administration, under rules promulgated by the School Board, prohibiting a student from attending school for a period of no more than ten (10) school days; provided, however, if a suspension is longer than five (5) school days, the suspending administrator will provide the Assistant Superintendent with a reason for the longer term of suspension.”

The policy says the District will “not deny due process or equal protection of the law to any students involved in a dismissal proceeding which may result in suspension, expulsion or exclusion” or “dismiss any student without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property.”

The discipline policy says a student may be suspended or expelled on any of the following grounds:

- Willful violation of any reasonable School Board regulation, including those found in the discipline policy;
- Willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
- Willful conduct that endangers the student or other students, or surrounding persons, including District employees, or property of the school.

The policy says the District will have an informal administrative conference with the student before the suspension, “except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference will take place as soon as practicable following the suspension.” At the informal administrative conference, a school administrator will notify the student of the grounds for the suspension and provide an explanation of the evidence school personnel have concerning the incident. The student may then present the student’s version of what transpired. A separate administrative conference is required for each period of suspension.

The policy says, “A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the Minnesota Pupil Fair Dismissal Act ... shall be personally served on the student at or before the time the suspension is to take effect and upon the student’s parent or guardian by mail within forty-eight (48) hours of the conference.” This notice provision applies only to out-of-school suspensions.

The policy specifies that no student can be expelled or excluded without a hearing unless the right to a hearing is waived in writing by the student and parent or guardian. The policy says the hearings will be conducted by an independent hearing officer designated by the District and that students and parents have the right to present evidence and testimony. The decision to expel or exclude a student may be appealed to the Minnesota Commissioner of Education.

The discipline policy requires the District to maintain “complete and accurate student discipline records.” The District advised OCR that it electronically stores discipline records on two computer systems.

Board Policy 507 prohibits employees from engaging in corporal punishment of students. Corporal punishment is defined as “conduct involving hitting or spanking a person with or without an object, or unreasonable physical force that causes bodily harm or substantial emotional harm.” The policy also says, “A teacher or school principal may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another. Other School District employees, school bus drivers, or other agents of a School District may use reasonable force when necessary under the circumstances to restrain a student or prevent bodily harm or death to another.”

No District policy or practice prohibits a student who has been involved in the justice system from reenrolling in school after the term of their exclusion (which could be up to a year). OCR's investigation revealed no evidence that such students have been denied reenrollment and District officials advised OCR that the District has meetings with students and parents to discuss strategies for successful transition back into the school environment.

The District informed OCR it fully implemented its PBIS discipline policy at all District schools in the 2014-15 school year. According to the District, PBIS is "a systems approach to creating and maintaining positive school climates where teachers can teach and students can learn. PBIS is evidence-based and emphasizes preventing school discipline problems." According to the District's Student Behavior Handbook<sup>3</sup>, PBIS is guided by the following principles:

- Identify a tiered system of interventions to address the behavioral needs of all students.
- Use data on student behavior to make decisions on appropriate interventions.
- Arrange the classroom and school environment in a manner that prevents the occurrence of inappropriate behaviors.
- Regularly collect behavioral data and continuously monitor student progress.
- Use scientifically proven approaches to improve behavior for all students.
- Model, teach and support positive social skills and peer relationships.

The District's Student Behavior Handbook says, and testimony from administrators and OCR's data review confirmed, minor behaviors are dealt with by the teacher and handled in the classroom and major behaviors are referred to the office and must be handled by administrators.

A review of the data revealed that the District's policies and procedures with respect to student discipline, including those pertaining to suspension, expulsion, and law enforcement referrals, are facially neutral with respect to race, color, or national origin.

The City of Rochester (through its Police Department) assigned School/Police Liaison Officers (PLOs) to provide policing services at several schools. The services were provided at three District high schools (Century, John Marshall, and Mayo) and four District middle schools (John Adams, Willow Creek, Kellogg, and Friedell) pursuant to a 1996 contract between the District and the City of Rochester. The District renegotiated and modified the contract with the City of Rochester on July 20, 2015.

Pursuant to the 1996 contract with the City of Rochester, the District was responsible for paying all costs for the PLO program including prorated salaries and benefits owed to PLOs. The District paid the funds to the City of Rochester based on the percentage of time the PLOs are assigned to District schools.

The contract stated that the PLOs would operate under the direct administration and supervision of the Rochester Police Department (RPD). Additionally, the contract indicated that the PLOs would work in cooperation with school administrators towards achieving mutually agreed upon goals.

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<sup>3</sup>[http://www.rochester.k12.mn.us/UserFiles/Servers/Server\\_3083669/File/STUDENT%20BEHAVIOR%20HANDBOOK%20%20PDF%208.13.12.pdf](http://www.rochester.k12.mn.us/UserFiles/Servers/Server_3083669/File/STUDENT%20BEHAVIOR%20HANDBOOK%20%20PDF%208.13.12.pdf)

The District asserts that the PLOs do not have authority within District schools to impose disciplinary sanctions, although OCR's investigation found some evidence that PLOs worked with school administrators on issues that were not traditional police matters e.g., tardiness. The school administrators do not have authority to direct the PLOs to take action against a student, e.g., detain or remove the student from school.

The District reported that the PLOs monitor potential criminal activity at the assigned schools. Under the terms of the 1996 contract, the PLOs' duties included, in part:

- Meeting regularly with student-personnel teams of the school and serving as a resource person on law enforcement procedures, imparting knowledge of families, neighborhoods, individuals, statistics, and trends when requested;
- Inspecting the school area, grounds and property, being watchful for loiterers and suspicious persons or automobiles, frequently visiting high-delinquency areas for law violators, and observing matters conflicting with the best interests of the students;
- Organizing law enforcement or related educational programs within the framework of existing programs in the school;
- Conducting investigations within the school and surrounding community, both criminal and other, as deemed necessary by the local police or between the local police and school personnel by mutual agreement;
- Investigating cases as assigned by the local police; and
- Serving in the normal police officer capacity to protect life, limb and property, to prevent crime, to recover stolen and lost property, and to apprehend and prosecute offenders, orienting activities toward rehabilitation and correction.

The District's responsibilities under the 1996 contract included:

- Organizing and assigning school personnel to a pupil-personnel team to work and meet with the PLO;
- Providing guidance and assistance to the PLO through the principals, teachers and administrative staff and student body;
- Requiring its principals to coordinate the efforts of the PLO within the schools; and
- Providing clerical help, other assistance, supplies and materials to the PLO as needed within any school at which he or she is working in his or her capacity.

Under the July 2015 contract negotiated between the District and the City of Rochester, four full-time police officers and one police sergeant are to be assigned to perform PLO duties, with one officer each stationed at three District high schools (Century, John Marshall, and Mayo), and one middle school (John Adams), and one officer splitting time between Phoenix Academy and the Rochester Alternative Learning Center. The Contract says, "Although stationed at a particular school, each PLO is expected to perform PLO duties at the District's other schools, as needed."

The new contract is more specific than the 1996 contract as to the PLOs' duty stations, the PLOs' duties, employment status and relationship with the District. The 1996 contract included language suggesting that the school principals coordinated the PLOs' efforts within the schools but said that the PLOs did not have disciplinary authority within the school. The 2015 contract



states that school and District administrators will provide guidance and assistance to the PLOs, clarifies that the PLOs are under the full control of the City of Rochester (through the local police) and states, under the heading of “Prohibited Actions,” PLOs “may not participate in recommending or determining student discipline or in investigating incidents of student discipline which do not involve potential criminal activity.”

OCR obtained data from the District regarding discipline of students at all K-12 schools. Specifically, OCR examined discipline data provided by the District for the 2013-2014 and 2011-2012 school years. The data contained the following information regarding each disciplinary incident: name of the student, name of the school, race, gender, disability status, and grade of the student, date of the infraction, location of the incident, offense type, and discipline administered. The 2013-2014 data identified 14 different types of actions taken in response to misconduct, including in-school suspension, out-of-school suspension, bus suspension, detention, contact with parents, restitution, and community service. The data for both school years did not indicate that corporal punishment was used in any of the incidents.

Disciplinary data showed that, in the 2013-2014 school year, black students were the subject of 4,706, or 39.2%, of the 12,016 disciplinary incidents in the District.<sup>4</sup> Black students received 599, or 42.6%, of the 1,407 in-school suspensions. Further, black students received 313, or 41.2%, of the 760 out-of-school suspensions. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students of 13.7% (2,308 students), black students were disproportionately represented to a statistically significant degree in the proportion of students who were disciplined, the proportion of students who were suspended out-of-school, and the proportion of students who were suspended in-school.

The seven categories of discipline with the highest prevalence on the 2013-2014 spreadsheet included Physical Aggression, Fighting, Inappropriate Language, two categories related to attendance (Skipping and Tardiness), and two categories that are subjective in nature (Defiance and Disruption). These two subjective categories represented 3,509 of the disciplinary incidents, and black students were the subject of 1,480, or 42.2%, of these incidents. Penalties for these categories of offense ranged from a conference to a five-day out-of-school suspension, and black students received 44.8% of the out-of-school suspensions in these categories of misconduct.

With regard to black male students in particular, the data showed that 9,052 disciplinary incidents in the 2013-2014 school year involved male students, and that 3,503, or 38.7%, of these incidents involved black male students. Data further showed that male students received 577 out-of-school suspensions, and that black male students received 232, or 40.2%, of these out-of-school suspensions and that male students received 1,077 in-school suspensions and that black male students received 453, or 42.1%, of these in-school suspensions. As black male students represented 1,179 of 8,696 male students enrolled in the District, or 13.6%, the data showed that black male students were disproportionately represented to a statistically significant degree in the

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<sup>4</sup> The data included 92 disciplinary incidents for which the race of the student was not listed; OCR excluded these from the counts in this paragraph and the three immediately below. OCR determined that, given the large number of disciplinary incidents in the 2013-2014 school year (over 12,000), the cited racial disparities would remain statistically significant, regardless of the race students cited in the 92 disciplinary incidents. In addition, as noted below, the Agreement signed by the District requires it to include the race of the students disciplined as part of its recordkeeping system.

proportion of male students who were disciplined, suspended out-of-school, and suspended in-school during the 2013-2014 school year.

With regard to black female students in particular, the data showed that 2,964 disciplinary incidents in the 2013-2014 school year involved female students, and that 1,203, or 40.6%, of these incidents involved black female students. Data further showed that female students received 183 out-of-school suspensions, and that black female students received 81, or 44.3%, of these out-of-school suspensions and that female students received 330 in-school suspensions and that black female students received 146, or 44.2%, of these in-school suspensions. As black female students represented 1,129 of 8,193 female students enrolled in the District, or 13.8%, the data showed that black female students were disproportionately represented to a statistically significant degree in the proportion of female students who were disciplined, suspended out-of-school, and suspended in-school during the 2013-2014 school year.

For the 2011-2012 school year, disciplinary data similarly showed that black students were disproportionately represented to a statistically significant degree in the proportions of students who were disciplined, and who were suspended in-school and out-of-school in each middle and high school in the District. Black students represented 12.5% of the enrolled students, but were the subject of 5,089, or 34.9%, of the 14,569 disciplinary incidents in the District, and received 780, or 40.0%, of the 1,948 in-school suspensions and 388, or 43.2%, of the 898 out-of-school suspensions.

The District expelled six students in 2013-2014: three white students, two black students, and one multi-racial student; the District expelled five students in 2011-2012: three white students, and two black students.

With respect to law enforcement, the District advised OCR that it did not maintain data on police referrals that were made by District schools. Accordingly, OCR contacted the local police and obtained reports compiled by the local police documenting calls received by the local police from District schools during the 2011-2012 school year. The data showed that black students were the subject of approximately 50% of police referrals made by District personnel, that approximately one-third of the police referrals involved disorderly conduct citations, and that black students were the subject of nearly three-fourths of the referrals involving disorderly conduct citations.

In addition to the discipline sanctions outlined above, when compared with their enrollment proportion, black students were disproportionately given other discipline sanctions, including detentions, parent contact, restitution, and lunchroom suspensions; the only four sanctions listed for which black students were not disproportionately sanctioned were sanctions given on fewer than 12 occasions (as compared to 3,641 detentions and 2003 lunchroom suspensions). Data also showed that, compared with their enrollment proportions, black students were disproportionately sanctioned for 46 of the 50 types of misconduct<sup>5</sup>, including misconduct that could be characterized as subjective, such as insubordination, disrespect, and disorderly behavior. The

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<sup>5</sup> The four types of misconduct for which black students were not disproportionately sanctioned were hazing, cyber bullying, parking violations, and tobacco violations.

data also showed that black students were disproportionately disciplined compared with their enrollment proportions at every middle and high school in the District.

While District policies permit but do not mandate out-of-school suspensions for truancy, the data provided by the District indicated that in the 2013-2014 school year, 168 students, 60 (35.7%) of whom are black, were suspended in-school or out-of-school for truancy, described by the District as “skipping.” A total of 636 students, 212 (33.3%) of whom are black, were sanctioned for skipping during the 2013-2014 school year, with the most frequent sanctions being detentions, in-school suspensions, and conferences. The disparity between the proportion of black students suspended for skipping as compared to the proportion of all students who were penalized for skipping was not statistically significant.

In addition, while District policies permit but do not mandate suspensions for minor offenses such as dress code violations, the spreadsheet indicated that in 2013-2014, the District gave 2 suspensions, 1 to a black student, for dress code violations and 23 suspensions, 11 to black students, for violations coded as “Tech”; the 2013-2014 spreadsheet did not indicate a separate violation category for cell phone violations.

### **Conclusion**

Prior to the conclusion of OCR’s investigation and compliance determinations under Title VI, and before OCR had evaluated whether, for example, the disparities in imposition in discipline were or were not legally justified, the District expressed interest in voluntarily resolving the review with an Agreement. Accordingly, OCR is not making compliance determinations under Title VI. On September 1, 2015, the District signed the enclosed Agreement that is designed, when fully implemented, to resolve the issues in the compliance review. The provisions of the Agreement are aligned with OCR’s compliance concerns regarding the specific civil rights issues examined in the review.

The Agreement requires the District to take steps to ensure that students of all races are treated in a non-discriminatory manner in the area of discipline. The Agreement specifically notes the District’s commitment to working with students who exhibit behavioral problems to help them remain in their educational program.

Pursuant to the Agreement, the District will designate an employee to serve as the District’s Discipline Supervisor to review data and disciplinary records to identify areas of concern and report his/her findings to a District administrator. The District also has identified District administrators who will address complaints from parents, guardians, students, and others regarding matters related to its disciplinary policies. The District will also consult with at least one expert (either within or outside of the District) or organization with expertise in non-discriminatory discipline practices, including research-based strategies, to provide the District implementation strategies for meeting its goal of ensuring that discipline is appropriate and applied in a nondiscriminatory manner to all students regardless of race.

Further, the Agreement requires the District to comprehensively assess the implementation of its discipline policies, procedures and practices annually to ensure that these are being effectively

implemented in a nondiscriminatory manner. The assessment will be based in part on information collected pursuant to Agreement requirements that the District:

- collect and evaluate data regarding referrals for student discipline and the imposition of disciplinary sanctions at all District schools, including the race of students subjected to discipline; and
- instruct the established PBIS team at each school to discuss and make recommendations on the equitable implementation of discipline policies, practices, and procedures and to identify steps the District could take to improve student behavior, improve student engagement in the educational program, and promote a safe educational environment.

The Agreement requires the District, beginning with the 2015-2016 school year, to annually evaluate whether it is implementing its student discipline policies, practices and procedures in a non-discriminatory manner, including reviewing discipline referrals and penalties imposed to determine whether black students are being referred to administrators more frequently than similarly-situated students of other races who engage in similar conduct and whether black students are being dismissed by administrators more than similarly-situated students of other races who engage in similar conduct, examining whether certain teachers refer disproportionately high numbers of students of a particular race for discipline and whether certain administrators are disproportionately responsible for dismissing students of a particular race, examining whether all students are consistently referred for similar misbehaviors without regard to race, examining whether penalties imposed are consistent with the penalties specified in the Student Behavior Handbook, and, if a racial disparity exists in the discipline of students, examining the root cause(s) and identifying appropriate corrective actions necessary. The Agreement also requires review of reports to law enforcement to determine whether the conduct of black students is being reported to law enforcement more frequently than similarly-situated students of other races.

At the conclusion of each school year, the District will consider whether changes to its discipline policies, practices, or procedures are warranted based on its evaluation of the District-wide student discipline data and the other data gathered as a result of the Agreement and will submit to OCR for review and approval any proposed changes and the rationale for the changes.

The Agreement also requires the District to review and revise its Student Behavior Handbook in accordance with the Agreement, taking into account any recommendations or suggestions made by its consulting expert, PBIS teams, parents and guardians, and Student School Board, and to submit proposed changes OCR for review and approval prior to implementation.

The Agreement requires the revised Student Behavior Handbook to include clear definitions, categories, and procedures for staff to follow when making disciplinary referrals and for building administrators to follow in deciding whether to impose exclusionary discipline (including whether to report a student to law enforcement) and to eliminate, to the maximum extent possible, vague, subjective or undefined offense categories that require a high degree of subjectivity and individual discretion (e.g., disrespectful behavior, insubordination, disruptive behavior). The Handbook is to explain policies in an easily understood manner, including what is expected of students under those policies and must include definitions of misconduct that are clear and objective and a range of penalties for each infraction that are proportionate to the type

of misconduct and the criteria for selection within this range. The Agreement also requires that the revised Student Behavior Handbook contain an explanation of the role of PLOs and appropriate due process standards for all students disciplined under the District's student discipline policies, practices and procedures, including a description of the key elements of the discipline process. The District will also make the Student Behavior Handbook available in languages other than English.

Finally, the Agreement requires that the District take the following additional steps:

- require teaching and support staff to employ a range of corrective measures before referring a student to administrative personnel except in limited circumstances involving safety or disruption to the educational environment;
- limit the role of the PLOs to investigating crimes or potential crimes, not include PLOs in recommending or determining student discipline, and make training available to PLOs assigned to buildings in the District to emphasize the District's obligations under Title VI, the appropriate role of a PLO, the circumstances under which administrators may request assistance from or make a report to a PLO, and expectations regarding the equitable treatment of all students (as noted above, the District recently completed negotiations with the City of Rochester and included a provision in the new contract prohibiting PLOs from participating in recommending or determining student discipline);
- ensure that it has in place a system of supports, such as mentoring or counseling, to assist students who display behavior problems;
- provide annual training programs on discipline to District personnel and students, and make informational programs on the District's discipline policies and procedures and an updated Student Behavior Handbook available to parents and guardians on the District website;
- continue to hold a monthly Student School Board meeting during regular school hours that includes middle school and high school students and specifically provides the opportunity for students to discuss any concerns relating to the District's discipline policies;
- review every recorded instance in which a student's conduct was reported to law enforcement and consider whether each report was appropriate under the circumstances present at the time and consistent with the treatment of similarly-situated students who engaged in similar conduct. If the District determines the referral was inappropriate, the District will provide written notice that the referral was inappropriate to law enforcement and cooperate with the student in any action the student or his/her parent initiates to expunge the student's record.
- establish uniform standards for the content of student discipline files at all District schools and requires maintenance of detailed data including identification of disciplined students by race;
- place a link on its PBIS website to OCR's Civil Rights Data Collection data for the District and a link to updated data concerning referrals for discipline, suspensions, expulsions, and referrals to law enforcement, disaggregated by race, school and grade level, and the most frequent reasons leading to discipline involving suspension or expulsion;

- examine how disciplinary referrals occurring at each school compare to those at other District schools and, if the data suggest black students are disproportionately suspended or expelled or are disciplined more harshly than similarly-situated students of other races, explore possible causes for the disproportion and consider steps that can be taken to eliminate the disproportion to the maximum extent possible, and if the data show no disproportion, examine steps that are being taken at the school, which might be adopted as “best practices” at those schools where disproportion exists;
- conduct meetings with teachers at each school to discuss the discipline data collected, including examining how discipline referrals at the school compare to those at other District schools and, if applicable, reminding teachers of resources that are available to assist them in addressing and managing classroom behavior; and
- collect data on an annual basis regarding disciplinary referrals, suspensions, expulsions, and law enforcement referrals.

Based on the commitments the District has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. OCR will monitor the District’s implementation of the Agreement. All plans, policies and procedures that are developing during the monitoring are subject to OCR review and approval. The District has agreed to provide data and other information demonstrating implementation of the Agreement in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR’s determination in an individual OCR compliance review. It is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. Michael Waldspurger, counsel for the District, as well as Karla Bolleson, Executive Director of Student Services, and Karl Bakken, Assistant Director of Student Services. If you have any questions, please contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

/s/

Adele Rapport  
Director

Enclosure

cc: Mr. Michael Waldspurger, Esq.