



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 14, 2012

Freeman Williams, Ed.D.
Superintendent
Christina School District
Drew Educational Support Center
600 North Lombard Street
Wilmington, DE 19801

Re: Case No. 03-10-5001
Christina School District

Dear Dr. Williams:

This is to inform you of the resolution of this compliance review of the Christina School District initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on March 19, 2010 under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100.

Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the U.S. Department of Education (the Department). As a recipient, the Christina School District (District) is subject to the provisions of Title VI.

Title VI and its implementing regulation require that a school's disciplinary policies and practices be applied to students without regard to a student's race. This compliance review investigated the District's discipline policies and practices and specifically whether the District discriminates against African American students by disciplining them more frequently and more harshly on the basis of race than similarly-situated white students.

In conducting this review of the District's discipline policies and practices, OCR examined the District's written policies and procedures, reviewed data, including individual student disciplinary records, from 27 District schools, and conducted interviews with District administrators, teachers, counselors, school resource officers, support staff, and community members.

Based on our investigation, we conclude that the District has violated Title VI. Our investigation identified examples where African American students engaging in virtually identical behavior to

white students were punished more harshly than white students (who had the same or worse disciplinary history). A statistical analysis of all students referred for discipline for the first time, based on the District's own records and categorizations, found that African Americans were at least twice as likely to receive a suspension (either an in-school suspension (ISS) or an out-of-school suspension (OSS)) than white students for violations of similar severity. Moreover, African Americans experiencing their first referral were over three times more likely than white students to have the suspension be OSS, rather than ISS. For students whose first disciplinary referral was for *Inappropriate Behavior*, African American students were nearly seven times more likely to receive OSS than white students.

OCR's investigation also revealed that the District permitted decision-makers to apply penalties in excess of the provisions outlined in the *Student Code of Conduct* (Code), and that the imposition of higher penalties was most prevalent for the highly subjective violations and disproportionately fell on African American students (compared to similarly-situated white students referred for the same violation).

These consistent and significant disparities also existed with regard to the threshold matter of disciplinary referrals. For example, in 2010-2011, African American students were 1.98 times more likely than white students to be referred for a first offense. African American students were twice as likely as white students to be referred for *Inappropriate Behavior* for their first disciplinary referral in 2009-10 and almost twice as likely in 2010-11. Also, at every school level, and in every year examined, the disparities in disciplinary referrals between African American students and white students were statistically significant.

The extraordinary disparities in referrals for disciplinary action and to law enforcement, and the extraordinary disparities in the imposition of penalties, combined with the examples of individual African American students who received harsher discipline than similarly-situated white students, are sufficient to establish different treatment on the basis of race.

OCR notes that, during the course of this investigation, the District initiated steps to support the strategies and goals reflected in the Resolution Agreement. These include: strengthening the implementation of the Positive Behavior Support program; hiring personnel to assist in developing behavior modification plans and classroom management training; engaging parents and community members in the process of revising the Code; and working with the Delaware Department of Education to make improvements in the eSchool system. We also note a number of positive statistical trends reflected in the data over the three-year period under investigation, including reductions in the numbers of students referred for discipline, receiving ISS and OSS, or being expelled.¹

¹ There was a 14.2% reduction in the total number of ISS assignments between 2008-09 and 2010-11 (from 7,689 to 6,597), and the proportion of ISS assigned to African American students decreased from 66.5% to 66.0%. There was a 42.8% reduction in the total number of OSS assignments between 2008-09 and 2010-11 (from 9,451 to 5,403), and the proportion of suspensions assigned to African American students decreased from 75.3% to 72.9%. The total number of students expelled from school by the District fell from 84 to 15 (83%) between the 2008-09 and 2010-11 school years. In the 2010-11 school year, the difference in the rate at which African

The District agreed to enter into a Resolution Agreement in order to address OCR’s findings.

I. LEGAL AUTHORITY

OCR investigates alleged discrimination in the application of student discipline consistent with federal statutory authority, the Department’s regulations, 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 (commonly referred to as “different treatment”), and second, even if a policy is neutral on its face but has a disproportionate and unjustified *effect* on student(s) of a particular race (commonly referred to as “disparate impact”).

For different treatment, absent direct proof of intentional discrimination based on race, OCR asks the following questions to determine whether different treatment has occurred in the school disciplinary context:

- (1) Did the school treat a student or group of students differently than a similarly-situated student or group of students of another race in the disciplinary process, and thereby limit or deny the student(s) educational services, benefits, or opportunities? If so,
- (2) Did the school have any legitimate, non-discriminatory reason for its actions? If so,
- (3) Was the reason given a pretext for discrimination?

See, e.g., U.S. Department of Justice, Title VI Legal Manual 44-46 (Jan. 11, 2001); and U.S. Department of Education, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11,448 (Mar. 10, 1994). *See also McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

For disparate impact, discrimination occurs if a race neutral policy adversely affects students in a racially disproportionate manner, and the school district cannot demonstrate that the policy substantially furthers a substantial legitimate educational justification.² Even in situations where a school can demonstrate that a policy has a substantial legitimate educational justification, OCR would still find a violation of Title VI, if there are alternatives available that would comparably meet the school’s educational goal with less of an adverse racial impact.

For both different treatment and disparate impact, statistics alone are not sufficient to establish a violation of Title VI, but significant statistical disparities can be evidence of a violation.

American students were expelled compared to white students was not statistically significant.

²*See Elston v. Talladega County Board of Education*, 997 F.2d 1394 (11th Cir. 1993) (there must be an “educational necessity” for the challenged program, practice or procedure); Title VI Manual at 51.

II. FINDINGS OF FACT

A. Background

The District is the largest in the state of Delaware. The boundaries of the Christina School District include the city of Newark, the southeastern section of the city of Wilmington, the towns of Christiana and Glasgow, and the township of Bear.

The 2010-11 District enrollment was 17,149 students, of which 7,148 students were African American (41.7%), 5,954 students (34.7%) were White, 2,920 students (17%) were Hispanic, and 1,127 students (6.6%) were listed as Other.

The 27 District schools included in this review are:

- Eighteen elementary schools (grades K – 5): Bancroft, Brader, Brookside, Downes, Elbert-Palmer, Gallaher, Jones, Keene, Leasure, Maclary, Marshall, McVey, Porter Road, Pulaski, Smith, Stubbs, West Park Place and Wilson;
- Four middle schools (grades 6 – 8): Bayard, Gauger-Cobbs, Shue-Medill and Kirk;
- Three high schools (grades 9 – 12): Christiana, Newark and Glasgow; and
- Two alternative schools: Douglass Alternative School and Sara Pyle Academy.

Thirteen elementary schools (Brader, Brookside, Downes, Gallaher, Jones, Keene, Leasure, Maclary, Marshall, McVey, Smith, West Park Place, Wilson), three middle schools (Gauger-Combs, Kirk, Shue-Medill), and three high schools (Christiana, Glasgow, Newark) are located in the city of Newark. Four elementary schools (Bancroft, Elbert-Palmer, Pulaski, Stubbs), one middle school (Bayard), and two alternative schools (Sara Pyle Academy, Douglass) are located in the city of Wilmington. One elementary school (Porter Road) is located in the township of Bear.

B. The District's System of Discipline

1. Written Policies

The District publishes its Code, and distributes the current version in hard copy to every student at the beginning of the school year. The Code is also available on the District's website. The District reported that the Board of Education requires the District to annually review the Code and revise it as needed. Staff, parents, and community members are invited to participate and provide input at meetings held around the District. Through this process, the Code has been revised in each of the last three school years, 2008-09, 2009-10 and 2010-11. We refer to these as the 2008 Code, 2009 Code and 2010 Code, respectively.³

³ Although in most areas impacting this review the three Codes are substantially similar, a brief description of any relevant differences or revisions year to year is included in the analysis below.

The Code is the District’s primary form of notice to students and parents of the expected behavior and of the potential consequences should a student fail to adhere to the expected behavior. At the beginning of each school year, students are asked to discuss the Code with their parents. Students and parents are expected to provide a written acknowledgement that they have received a copy of the Code.

The 2010 Code lists 46 violations for students in grades 6 to 12.⁴ The violations were largely the same as in the 2008 and 2009 Codes and, as in previous years, were grouped under one of three “categories” or “levels.” Category I violations are those the District determined were the least serious, and include violations such as *Abusive Language (student-to-student)*, *Inappropriate Behavior*, and *Unauthorized Use of Electronics*. Category II violations are more serious, and include violations such as *Abusive Language (student-to-staff)*, *Academic Cheating*, and *Fighting*. Category III violations are the most serious, including violations like *Arson*, *Distribution of Drugs and/or Alcohol or Paraphernalia*, and *Rape or Attempted Rape*.⁵ Each violation was followed by a progression of optional, recommended, and required penalties or other consequences pertaining to the misconduct. See Chart A for a list of the violations in the 2010 Code, by offense category.

The following statements in all three Codes provided notice to parents and students of the District’s discretion to increase penalties⁶:

This document is not all-inclusive nor does it restrict the Christina School District and/or Board of Education’s authority to take actions that are appropriate to maintain a safe and orderly educational environment.

The Student Code of Conduct is not all-inclusive, and a student committing an act of misconduct not listed may be subject to the authority of the principal or designee. Serious or excessive behavior that necessitates a more severe disciplinary action than that which is listed shall be subject to the discretionary authority of the principal and the Superintendent. This may include a recommendation for expulsion. [Emphasis added.]

Some violations are not clearly defined in the Code. For example, *Inappropriate Behavior* is defined as “Language, gestures, or actions that incite, produce distractions or disruptions, or seriously interfere with effective functioning of the teacher, another student, class or any school activity.” As discussed in more detail below, this definition is subject to wide interpretation. Similarly, there are instances where the Code does not clearly identify the sanctions that may be imposed for a particular offense or a violation. The 2010 Code lists consequences as “optional,” “required” or “recommended,” but some consequences have no

⁴ There are 43 violations defined for younger students. The discussion herein focuses on older students, generally grades 6-12.

⁵ We noted that out of 184 teachers asked by OCR to explain the differences among the offense category levels, 20 did not know or were unable to do so.

⁶ These statements are found in the Introduction to the Code, which is approximately an 80-page document.

heading at all, which the District stated meant they were required. As for the meaning of “recommended,” District administrators told OCR that these consequences should be imposed. However, the data did not show a consistent pattern of following that guidance. Based on this, OCR finds that “recommended” consequences in the 2010 Code were not clearly stated and neither was it clear that consequences with no heading were required.

The District’s Supervisor of School Climate and Discipline, who is responsible for oversight of disciplinary issues, informed OCR that she conducts a Code training course for administrators at the beginning of each school year. She reported that principals were previously required to provide Code training for teachers, but this was discontinued. When asked whether they received training on the Code, 72 out of the 189 teachers whom OCR interviewed indicated that they had no Code training. Of the teachers who were asked whether they received any kind of discipline training, 56 out of 89 responded that none was provided.

2. **Disciplinary Referral Practices and Recordkeeping**

The 2010 Code stated in general terms that, except in emergencies, teachers were expected to use reasonable behavior management techniques in the classroom prior to referring misconduct to an administrator for disciplinary action. In interviews, most teachers indicated that they handled Category I violations themselves by using classroom management techniques -- such as giving a student “a look”, providing warnings, redirecting, reiterating expectations, staying in close proximity to the student, or moving the student’s seat -- rather than referring the student to an administrator for discipline. When students were referred for discipline, District staff generally filled out paper forms reflecting the referral. Upon receiving the referral, building administrators were responsible for identifying the specific Code provision violated and assigning the appropriate disciplinary action. The incident and outcome were then recorded in an electronic information and records management system known as eSchoolPLUS (eSchool). The eSchool system is intended to store the District’s student records, including all instances of discipline. All school districts in Delaware use eSchool, which, among other purposes, is designed to support the collection of data on school crimes.

On some referral forms and on all notice letters there was a statement that the student was given a chance to present his/her side of the story. However, of the 1600 discipline files that OCR reviewed, fewer than half indicated that the student was actually given this opportunity before the penalty was assigned and carried out. OCR also observed that the intent of a misbehaving student⁷ could mitigate or increase the severity of the penalty (although the Code was silent on this). Additionally, some of the plainly stated required penalties were treated by administrators as non-mandatory, including those requiring expulsion, notification of police or filing criminal charges.

⁷ OCR found that some referral forms collected information on the “possible motivation” behind a student’s behavior, including whether the behavior was motivated by the student seeking attention from peers or staff or by an ongoing conflict.

While referral forms have a space provided to record any contact with a parent or guardian, we found that this space was mostly left blank.⁸ Some referral forms included notations that parents were contacted, but there was little or no documentation of the information given to the parent; many other telephone records left it unclear whether actual contact with a parent was accomplished. For example, some forms had only a parent or guardian's name and telephone number and nothing more, or else the "phone" or "parent contact" boxes were checked off. Some forms indicated that a message was left for the parent or guardian. Other forms noted that contact was made, usually with a handwritten notation such as "parent contacted" or "spoke with mom" and nothing more. We also found referral forms with the box "E-mail" checked off or the notation of "e-mail" written on it, but none of the discipline files included the copy of an e-mail to the parent. On rare occasions the notation recorded the parent's reaction, not what was said to the parent.

Furthermore, as many as half of the violations defined in the Code lacked a corresponding match in eSchool's preset dropdown menus for entering disciplinary data. Although the District had developed a cross-reference to guide employees in choosing an eSchool approximate for the actual Code violation, it did not resolve all consistency problems because a single eSchool code could still be used for different Code violations. The District maintained that employees were also instructed to record the District Code violation in the comment field, but this was not always done. Thus, the District often did not make or record an official determination of the specific Code provision violated. We also noted various other inconsistencies in disciplinary recordkeeping among the files reviewed, *e.g.*, documentation was missing from the file; the student received a penalty for conduct not enumerated in the Code; the penalty assigned and/or the initial referral itself was not recorded in eSchool; or the conduct described did not fit the definition of the violation noted in the record.

C. Data Analysis

Methodology

OCR investigated the District's administration of discipline, including both a statistical analysis of its records and a review of the contents of hundreds of paper files:

OCR reviewed all of the District's electronic records of disciplinary referrals from the 2008-09, 2009-10, and 2010-11 school years in order to determine whether there were statistically significant disparities in referrals and in the imposition of penalties based on race.

OCR also reviewed over 1600 disciplinary referrals, including corresponding paper files and eSchool records, made during the 2009-10 school year to identify instances of individual students subjected to different treatment on the basis of race.

⁸ The District did not require that parents receive formal written notice of all discipline until the 2010-11 school year.

OCR reviewed 2009-10 and 2010-11 school year data in order to compare the treatment of African American and white students referred for similar violations at the time of the student's first disciplinary referral of the school year.

Finally, OCR analyzed the penalties that were assigned for five high-incidence violations in each of the three years to determine whether there were statistically significant differences by race in the distribution of penalties (from least severe to most severe) assigned for those violations. For example, OCR isolated the number of students referred, by race, for a first offense of *Inappropriate Behavior* and compared the severity of penalty received. A similar analysis was conducted of students referred for a second and third offense.

Analysis

Disparities in Disciplinary Referrals

During the three years under review, African American students comprised 43.6% (2008-09); 43.4% (2009-10); and 41.7% (2010-11) of the total enrollment of the 27 schools. However, while African American students constitute less than half of the enrollment, the vast majority of referrals entered in the eSchool system each year (68.4% in 2008-09; 67.1% in 2009-10; 65.5% in 2010-11) were for African American students. In comparison, white students constituted 36.8% (2008-09), 36.2% (2009-10), and 34.7% (2010-11) of enrollments, and 20.7% (2008-09 and 2009-10) and 20.1% (2010-11) of disciplinary referrals. When breaking this data down to the number of individual students by race, African American students constituted 60.6% of all students referred for discipline at least once in 2008-09; 60% in 2009-10; and 58.2% in 2010-11. White students comprised 26.1% of individual students referred for discipline at least once in 2008-09, 25% in 2009-10, and 24.7% in 2010-11. For all three years, the results are statistically significant.

OCR also analyzed students referred for discipline at least once by school level and found statistically significant disparities in each of the 2008-09, 2009-10, and 2010-11 school years, and at all school levels.

African American students were twice as likely as white students to be referred for *Inappropriate Behavior* for their first disciplinary referral in 2009-10 and almost twice as likely in 2010-11.

Disparities in Disciplinary Penalties

a. In-School Suspensions (ISS)

The disparity between African American students' representation in the enrollment population and those receiving ISS was statistically significant for all three school years reviewed. The proportion of ISS assigned to African American students was 66.5% in 2008-09 and 66.0% in

2010-11; the proportion of ISS assigned to white students was 23.8% in 2008-09 and 19.4% in 2010-11. The percentage of African Americans among those assigned ISS at least once remained constant at 63.7% from 2008-09 to 2010-11. The percentage of white students among those assigned ISS at least once decreased from 25.3% in 2008-09 to 20.8% in 2010-11.

OCR also analyzed the number of students assigned ISS at least once by school level. Overall, the disproportionate representation of African American students who were assigned ISS was statistically significant when compared to white students in the 2008-09, 2009-10, and 2010-11 school years, and at each school level.

OCR conducted an additional analysis of ISS comparing, by race, students referred for disciplinary action to students in that group who received ISS at least once. African American students were disproportionately assigned ISS to a statistically significant degree when compared to white students for all three school years District-wide and at each school level, except at the middle school and high school levels in 2009-10.

b. Out-of-School Suspensions (OSS)

i. OSS for all Violations

The disparity between the number and proportion of African American students receiving out of school suspension (OSS) for any violation was statistically significant for all three school years reviewed. The proportion of suspensions assigned to African American students was 75.3% in 2008-09, 73.2% in 2009-10, and 72.9% in 2010-11; the proportion assigned to white students was 14.6% in 2008-09, 21.9% in 2009-10, and 13.9% in 2010-11. The percentage of African Americans among those suspended for any violation was 69.5% in 2008-09, 68.9% in 2009-10, and 68.6% in 2010-11. Of individual students suspended for any violation, the percentage who were white students was 19.5% in 2008-09, 19.3% in 2009-10, and 17.1% in 2010-11.

At each school level, the disproportionate representation of African American students who were assigned OSS at least once was statistically significant when compared to white students in each of the 2008-09, 2009-10, and 2010-11 school years. The percentage (approx. 80%) of African American students who were assigned OSS at the elementary school level was particularly high.

OCR conducted an additional analysis of OSS comparing, by race, students referred for disciplinary action to students in that group who received OSS at least once. African American students were disproportionately assigned OSS to a statistically significant degree when compared to white students in all three school years District-wide, and at each school level.

ii. OSS for a Category I Violation

The Codes for all three school years stated that OSS did not apply to any Category I violation except *Trespassing*. However, the data show that OSS was assigned for conduct labeled as

Category I violations other than *Trespassing* in many instances.⁹ The disparity between African American students and white students who received OSS for a Category I violation was statistically significant. For example, in 2010-11 2,444 (58.9%) of the students referred for a Category I violation were African American; in that same school year, African American students comprised 680 (70.9%) of 959 students who were referred for a Category I and were assigned OSS on at least one occasion. Over the three-year period, the number of African American students assigned OSS at least once for a Category I violation declined. However, the percentage of such instances involving African American students remained static at around 71%. The disparity between African American students and white students who were referred for a Category I violation that resulted in an OSS was statistically significant in each of the 2008-09, 2009-10, and 2010-11 school years.

OCR also analyzed the number of students referred at least once for a Category I violation that resulted in OSS, by school level. The disparity that exists between African American students and white students who were referred for Category I violations and received OSS was statistically significant at the elementary and middle school levels in each of the 2008-09, 2009-10 and 2010-11 school years and at the high school level in the 2008-09 and 2010-11 school years.

iii. OSS for an Inappropriate Behavior Violation

As discussed in detail below, *Inappropriate Behavior* was the most common violation for which African American students were referred in all three data years reviewed. *Inappropriate Behavior* is a Category I violation, and is defined in the Code as “Language, gestures, or actions that incite, produce distractions or disruptions, or seriously interfere with effective functioning of the teacher, another student, class or any school activity. This does not include severe insubordination, a separate Level II offense.”¹⁰

None of the Codes for the three school years listed OSS as a consequence for any conduct labeled as *Inappropriate Behavior*; however, the District did assign OSS for it in many instances. OCR analyzed the number of students who were referred at least once for *Inappropriate Behavior* and the number who received an OSS at least once for *Inappropriate Behavior*, to determine whether the disparity between African American students and white students who received OSS for *Inappropriate Behavior* was statistically significant. For example, 1,491 (61.1%) of the 2,442 students referred for *Inappropriate Behavior* in 2010-11 were African American. However, of the 304 students who were given an OSS at least once as a result of such a referral, 227 (74.7%) were African American. Between 2008-09 and 2010-11, there was

⁹ For grades 6-12, the 2010 Code required OSS for most Category II violations as of the *third* offense, whereas in the 2009 and 2008 Codes OSS was mandatory for most Category II violations as of the *first* offense.

¹⁰ OCR notes that while there is no violation labeled “severe insubordination” in the Code or as a choice in the eSchool data, the Code does include a Category I violation called *Insubordination* and a Category II violation called *Defiance* that is defined as “serious insubordination ... (student to administrator)”. *Defiance of School Authority* was a choice in the eSchool system during the three years of data reviewed, whereas *Insubordination* was not. Due to the District’s efforts, *Insubordination* was added to eSchool for the 2012-13 school year.

a significant decrease in the number of African American students who were referred for *Inappropriate Behavior* and given OSS on at least one occasion as well as a slight decrease in the percentage of such instances involving African American students. Overall, however, the disparity between African American students and white students who were referred for *Inappropriate Behavior* and received an OSS remained statistically significant in each of the 2008-09, 2009-10, and 2010-11 school years.

OCR also analyzed, by school level, the number of students receiving OSS at least once as a result of a referral for an *Inappropriate Behavior* violation. The disparity between African American students and white students who were referred for *Inappropriate Behavior* and received OSS was statistically significant at the elementary and middle school levels in each of the 2008-09, 2009-10 and 2010-11 school years and at the high school level only in the 2008-09 school year. Of particular note is the high percentage (in excess of 80%) of African American students at the elementary school level assigned OSS for *Inappropriate Behavior* in all three years.

Students and parents had no notice, other than the general language in the Code reserving the right of discretion for the District that the violation *Inappropriate Behavior* could result in OSS. When OCR discussed with the District this disproportionality and its practice of giving students penalties harsher than the Code required under Category I, the Supervisor of Climate and Discipline acknowledged that *Inappropriate Behavior* had become a “broad category . . . which encompasses a wide range of offenses including Levels I through III.” As shown by the evidence noted above, the District’s use of *Inappropriate Behavior* as a catch-all violation affected African American students in particular.

c. Expulsions

Although African American students were disproportionately expelled at a statistically significant rate when compared to white students in 2008-09, the difference was not statistically significant in either 2009-10 or 2010-11.¹¹

d. Referrals to Law Enforcement

The District maintains agreements with the Wilmington Police Department, Delaware State Police, and the Newark Police Department through which the District receives the services of a school resource officer (SRO) in all middle, high schools and alternative schools. These SROs are trained police officers. The SROs are responsible for maintaining a safe and secure school

¹¹ Under Delaware’s previous “zero tolerance” law, the District had been required to expel students for certain conduct. In June 2009, the law was amended and school districts gained discretion in expulsion decisions. That year, the District took steps to end mandatory expulsions, as permitted by the change in the law. For example, with regard to Category III violations, the 2010 Code recommended expulsion for the first offense of five particular violations and made it optional for all other violations; for the second offense, expulsion was recommended but still not required. In the 2008 and 2009 Codes, expulsion had been required with regard to certain Category III violations, even on the first offense.

environment, crime prevention, being a positive role model and mentor, and investigating crimes that occur on school property. According to the District's data submission and administrator interviews, SROs are generally not involved in the school discipline process.

OCR analyzed the total number of referrals that resulted in police notifications, as well as the number of individual students for whom a referral resulted in a police notification. For all three school years reviewed, African American students were disproportionately referred to police to a statistically significant degree. The overall number of disciplinary referrals in which police were notified fell from 407 to 264 between the 2008-09 and 2009-10 school years, and increased to 275 in 2010-11.¹² However, the percentage of police referrals that involved African American students rose: 66.3% involved African American students in 2008-09, 70.8% in 2009-10, and 69.5% in 2010-11. Thus, while there was an overall reduction in the number of referrals of African American students which resulted in police notification, there was a slight increase in the percentage of African American student referrals resulting in police notification.

OCR also reviewed data on the number of students referred to law enforcement at each school level. The representation of African American students referred to the police was statistically significant when compared to white students at the elementary school level in the 2008-09 school year and at the middle and high school level in each of the three school years.

OCR conducted an additional analysis of referrals to law enforcement comparing, by race, students referred for disciplinary action to students in that group who were referred to law enforcement at least once. District-wide, African American students were disproportionately referred to law enforcement to a statistically significant degree when compared to white students during the 2009-10 and 2010-11 school years. By school level, the comparison was statistically significant at the elementary school level in 2008-09, the middle school level in 2009-10, and at the high school level in 2010-11.

Individual Examples of Different Treatment

OCR examined individual incidents of discipline at the District's schools, including reviews of disciplinary files, and identified individual examples of different treatment.

Examples of different treatment were found at the elementary, middle and high school levels. The examples covered a wide range of conduct, including cutting class, smoking, using foul language, engaging in unsafe horseplay during science lab, pulling fire alarms, aggressively touching another student or a teacher, making a bomb threat, and having a box cutter or small knife. Provided below are a few specific examples. The violations were identified in the District's eSchool discipline database.

¹² In the 2010 Code, for Category II violations, for grades 6-12, police notification was required for only one violation, *Threatening Behavior to Staff*, on the first and second offenses, and for *Threatening Behavior to Staff* and *Threatening Behavior to Student* on the third offense. In contrast, the 2008 and 2009 Codes required police notification for several more Category II violations on the first and second offenses. Category III violations for grades 3 and up nearly always require police notification for all years.

- An African American kindergartner was assigned a five-day OSS for the violation of *Fire Alarm Incident*. The disciplinary record notes that the student pulled the alarm. Similarly, an 11th grade African American student was assigned a five-day OSS for the violation of *Fire Alarm Incident*. The disciplinary record notes that the student pulled the covering of the fire alarm, causing it to go off. In contrast, a 9th grade white student was disciplined for banging on a fire alarm cover, which set off the fire alarm. The violation was identified as *Inappropriate Behavior: Safety Violation* and the student was assigned a one-day OSS. None of the three students had a prior disciplinary history.
- An African American student and a white student (both 9th graders) whose prior disciplinary histories were substantially similar engaged in a fight and were disciplined for the violation of *Fighting*. This was the African American student's only offense of *Fighting*, and the white student's second offense of *Fighting*. The African American student was assigned a five-day OSS, while the white student was assigned a two-day OSS.
- An African American student and a white student (both 11th graders) were, on separate occasions, disciplined for the violation of *Tobacco Possession and/or Use*. The African American student had no prior disciplinary history, while the white student had been referred for smoking twice before. The African American student received a one-day OSS, while the white student received a detention.
- An African American student and a white student (both 11th graders) were, on separate occasions, disciplined for the violation of *Inappropriate Behavior: Disrespect to Staff Member*. Both students used abusive language towards a teacher. Neither student had a prior disciplinary history. The African American student, however, received a one-day OSS, while the white student received a one-day ISS. The same administrator administered the penalties in both incidents.
- An African American student and a white student were disciplined for violation of the offense of *Defiance of School Authority*. The comment field noted that the African American student refused a hall monitor's request to take his hat off and was taken to the office by the monitor where he refused a request by an administrator to remove his hat. The student had incurred six disciplinary referrals for other offenses prior to this incident. The comment field for the white student noted that the student was asked four times to remove his hat and refused all requests. The white student had incurred ten disciplinary referrals for other offenses prior to this incident. The African American student received a one-day OSS, while the white student was assigned a detention.
- An African American student and a white student were disciplined for the violation of *Unauthorized Use of Electronic Devices*. The African American student was assigned a one-day OSS, while the white student received detention. Neither student had a prior disciplinary history.

Different Treatment in the Imposition of Penalties for First-Time Referrals

OCR analyzed 2009-10 and 2010-11 school year data to compare the treatment of African American and white students referred for similar violations at the time of a student's first disciplinary referral of the school year. In conducting this analysis, we identified the first disciplinary referral made for African American and white students in each school year and identified the specific violation for which the referral was made. The analysis was focused solely on referrals where there was clear alignment between a violation identified in the District's Code of Conduct and the corresponding eSchool coding for that violation.

As a result of this analysis, OCR found that African American students were more likely than white students to receive either an in-school suspension (ISS) or an out-of-school suspension (OSS) when the first disciplinary referral was for a Category I violation; this difference was statistically significant. Specifically, the analysis revealed that:

- African American students were more than twice as likely as white students to receive a suspension (ISS or OSS) for their first disciplinary referral in 2009-10 and 2010-11.
- African American students were over three times more likely than white students to receive OSS for their first disciplinary referral in 2009-10 and 2010-11.

African American students were also more likely than white students to receive OSS when the first disciplinary referral was for *Inappropriate Behavior*. Specifically, the analysis revealed that:

- African American students were three times more likely than white students to receive a suspension (ISS or OSS) in 2009-10 and more than twice as likely in 2010-11.
- African American students were more than five times more likely than white students to receive an OSS in 2009-10 and almost seven times more likely in 2010-11.

Disparities in Disciplinary Penalties for High-Incidence Violations

OCR identified the top violations listed in eSchool for which African American students were referred for discipline: *Inappropriate Behavior*, *Defiance of School Authority*, *Disruption of the Educational Process* and *Tardiness: Late to Class*. The data indicate that *Inappropriate Behavior* was by far the most common conduct for which all students were referred. Among all referrals, *Inappropriate Behavior* violations increased between 2008-09 and 2010-11. Noteworthy constants in the list were *Inappropriate Behavior* and *Defiance of School Authority*, two violations that require subjective interpretation.

OCR analyzed the penalties assigned and compared the data concerning African American students and white students to determine whether African American students were penalized with OSS more severely compared to white students.¹³

¹³For example, OCR isolated the number of students referred, by race, for a first offense of *Inappropriate Behavior* and compared the severity of penalty received (e.g., ISS, OSS). A similar analysis was conducted of students referred for a second and third offense.

Listed below for each year and each offense are the violations where the penalties received by African American students were statistically significant when compared to white students. However, only the data for the violation that showed the greatest variance in OSS between African American and white students are presented.

In 2008-09, African American students were more harshly penalized compared to white students:

- For first offenses of: *Inappropriate Behavior; Defiance of School Authority; Disruption of the Educational Process; and Tardiness: Late to Class*

African American students were 74.2% of the students who incurred a first offense of *Disruption of the Educational Process*, but 86.3% of the students who received OSS for their first offense of *Disruption of the Educational Process*. In comparison, white students were 14.8% of the students who incurred a first offense of *Disruption of the Educational Process*, but only 4.5% of the students who received OSS for the first offense of *Disruption of Educational Process*.

- For second offenses of: *Disruption of the Educational Process; Tardiness: Late to Class*

African American students were 75.6% of the students who incurred a second offense of *Disruption of the Educational Process* but 88.3% of the students who received OSS for their second offense of *Disruption of the Educational Process*. In comparison, white students were 14.3% of the students who incurred a second offense of *Disruption of the Educational Process*, but only 1.9% of the students who received OSS for the second offense of *Disruption of the Educational Process*.

- For third offenses of: *Disruption of the Educational Process*

African American students were 72.8% of the students who incurred a third offense of *Disruption of the Educational Process*, but 91.3% of the students who received OSS for their third offense. In comparison, white students were 17.5% of the students who incurred a third offense of *Disruption of the Educational Process*, but 0% of the students who received OSS for a third offense of *Disruption of the Educational Process*.

In 2009-10, African American students were more harshly penalized compared to white students:

- For first offenses of: *Inappropriate Behavior; Defiance of School Authority*

African American students were 64.9% of the students who incurred a first offense of *Inappropriate Behavior*, but 80% of the students who received OSS for their first offense of *Inappropriate Behavior*. In comparison, white students were 22.1% of the students who incurred a first offense of *Inappropriate Behavior*, but only 9.8% of the students who received OSS for the first offense of *Inappropriate Behavior*.

- For second offenses of: *Inappropriate Behavior*

African American students were 68.9% of the students who incurred a second offense of *Inappropriate Behavior*, but 82% of the students who received OSS for their second offense of *Inappropriate Behavior*. In comparison, white students were 20.3% of the students who incurred a second offense of *Inappropriate Behavior*, but only 10.2% of the students who received OSS for the second offense of *Inappropriate Behavior*.

- For third offenses of: *Defiance of School Authority*

African American students were 73% of the students who incurred a third offense of *Defiance of School Authority*, but 77% of the students who received OSS for their third offense of *Defiance of School Authority*. In comparison, white students were 17% of the students who incurred a third offense of *Defiance of School Authority*, but 14% of the students who received OSS for their third offense of *Defiance of School Authority*.

In 2010-11, African American students were more harshly penalized compared to white students:

- For first offenses of: *Inappropriate Behavior*

African American students were 61% of the students who incurred a first offense of *Inappropriate Behavior*, but 77.7% of the students who received OSS for their first offense of *Inappropriate Behavior*. In comparison, white students were 23.5% of the students who incurred a first offense of *Inappropriate Behavior*, but only 7.4% of the students who received OSS for their first offense of *Inappropriate Behavior*.

- For second offenses of: There were no statistically significant violations in this category.

- For third offenses of: *Inappropriate Behavior*

African American students were 62.9% of the students who incurred a third offense of *Inappropriate Behavior*, but 86% of the students who received OSS for their third offense of *Inappropriate Behavior*. In comparison, white students were 22.3% of the students who incurred a third offense of *Inappropriate Behavior*, but only 4% of the students who received OSS for their third offense of *Inappropriate Behavior*.

As reflected above, OCR analyzed the racial breakdown of students referred for a first offense of *Inappropriate Behavior* and, of those same students, the percentage receiving OSS as a result of that referral. Over the three school years of this review, African American students were more likely and white students were less likely, to a statistically significant degree, to receive the more severe penalty of OSS for a first offense. It is of particular concern to OCR given that,

under the Code of Conduct, OSS was not a required penalty for any offense of *Inappropriate Behavior* in any of the three years.

In general, the evidence revealed statistically significant disparities occurred less often for violations that were objective in nature. For example, the analysis did not reveal statistically significant differences in penalty assignment in *Skipping Class* in any year where that violation was part of the top five.

The evidence further revealed that schools located in the city of Wilmington, DE (Bancroft ES, Elbert-Palmer ES, Stubbs ES, Pulaski ES, and Bayard MS), accounted for a significant portion of the harsher penalty assignments made for the highly subjective categories of *Inappropriate Behavior* and *Disruption of the Educational Process*. During the 2008-09 school year, 321 OSS were assigned District-wide for first offenses of *Inappropriate Behavior*. Three city schools (Elbert-Palmer ES, Stubbs ES, and Bayard MS), whose combined enrollment was 7.5% of the total District enrollment, accounted for 196 of the 321 OSS assigned (or 61%) of them. During that same year, there were 263 OSS assigned for first offenses of *Disruption of the Educational Process*. The same city schools accounted for 188 (or 71%) of them. During the 2009-10 school year, four city schools (Bancroft ES, Elbert-Palmer ES, Stubbs ES, and Bayard MS), whose combined enrollment was 9.5% of the total District enrollment, accounted for 114 out of 239 (or 47.6%) total OSS given for the first offense of *Inappropriate Behavior*. During the 2010-11 school year, three city schools (Elbert-Palmer ES, Stubbs ES, and Bayard MS), whose combined enrollment was 8.3% of the total District enrollment, accounted for 101 out of 152 (or 66.4%) total OSS assigned for the first offense of *Inappropriate Behavior*.¹⁴ The African American enrollment of four of these five schools is among the highest in the District (the enrollment of African American students in Pulaski ES is slightly below the District average). Even in those schools where the enrollment is almost exclusively African American--where there are few or no white students--African American students are excluded, at extraordinarily high rates, from the benefits of the educational program.

III. LEGAL ANALYSIS

It is each school district's responsibility to ensure that its disciplinary policies, procedures, and practices are administered in a manner that does not result in discrimination on the basis of race, in violation of Title VI.

The illustrative evidence revealed that African American students were disciplined more harshly than similarly-situated white students, in violation of Title VI.¹⁵ The instances of different treatment of African American students that were identified by OCR at elementary, middle and

¹⁴ Note that the **total** number of OSS assignments for each school year was considerably higher: 9,451 in 2008-09; 6,195 in 2009-10; 5,403 in 2010-11.

¹⁵ OCR's application of the theory of different treatment in this matter does not preclude analysis of the evidence pursuant to the theory of disparate impact. However, because OCR found sufficient evidence to support a finding of violation of Title VI with respect to different treatment, it is unnecessary to conduct further analysis pursuant to the second applicable theory.

high schools in the District indicate that disciplinary policies and practices have not been applied consistently, without regard to race. Furthermore, the District has not provided legitimate, non-discriminatory reasons for the harsher treatment of African American students than similarly-situated white students.

In addition to the examples of different treatment of African American students found by OCR, African American students were disproportionately referred for discipline, suspended, and referred to law enforcement compared to white students to a statistically significant degree. Furthermore, during the course of the three school years under review, African American students were referred in high numbers for violations that are subjective in nature, including *Inappropriate Behavior*, *Defiance of School Authority*, and *Disruption of the Education Process*. With regard to the violation of *Inappropriate Behavior*, OCR found that staff used a range of vague definitions when making such a referral, including “calling out,” “bothering another student,” “horseplay,” and “can be anything.”

The District’s policies and practices afforded decision-makers broad discretion in interpreting and applying provisions of the Code, including applying penalties in excess of the provisions outlined in the Code, which contributed to the resulting disparities. The evidence also showed that the District failed to ensure that all staff received training on the Code. Even where there was guidance, administrators did not follow it consistently. The evidence revealed that the imposition of penalties in excess of those authorized was most prevalent for the highly subjective violations and disproportionately fell on African American students.

IV. SUMMARY AND CONCLUSIONS

Based on this investigation, OCR concludes that the District discriminates against African American students by disciplining them more frequently and more harshly than similarly-situated white students, in violation of Title VI.

In order to address the compliance issues identified above, the District entered into a Resolution Agreement with OCR (attached). When fully implemented, the Resolution Agreement will address these issues. OCR will monitor the District’s implementation of the Resolution Agreement to ensure the District’s compliance with Title VI. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement.

This letter sets forth OCR’s determination in an individual case. This letter 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.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to

protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR appreciates the courtesy and cooperation shown by your staff during the investigation and resolution of this case. We thank you and all District administrators and staff who worked with OCR throughout the course of this review. If you have any questions or concerns, please contact Program Manager Joseph Mahoney at (215) 656-8564.

Very truly yours,

Wendella P. Fox
Director
Philadelphia Office

Enclosure

CHART A – Infractions listed in 2010 code

Offense Category I (12)	Offense Category II (22)	Offense Category III (12)
Abusive Language (student-to-student) Class Cutting Forgery Gambling Inappropriate Behavior Inappropriate Bus Behavior Insubordination Lateness to class* Leaving School without Authorization Student Presence in Any Prohibited School Area Trespassing Unauthorized Use of Electronics	Abusive Language (Student to Staff) Academic Cheating Breaking and Entering Bullying Careless or Reckless Behavior Defiance Criminal Mischief/Vandalism Failure to Attend Saturday School/Detention* Fighting Inappropriate Item/Material Inappropriate Sexual Behavior Instigation Offensive touching (Student to Student) Reckless Burning Reckless Driving* Sexual Harassment Smoking/Possession of Tobacco/Tobacco Products Tampering with any Fire Safety Device Theft/Possession/Transfer of Stolen Goods Theft Using Coercion Threatening Behavior to Staff Threatening Behavior to Student	Arson Assault on Staff Assault on Student Attorney General's Report (Juvenile Arrest Warrant and Complaint) Dangerous Instrument(s) Possession/Concealment/Sale Weapon(s)/ Deadly Weapon(s) Possession/ Concealment/Sale Distribution of Drugs and/or Alcohol and/or Paraphernalia Use and/or Possession of Drugs and/or Alcohol and/or Paraphernalia Offensive Touching to Staff Rape or Attempted Rape Robbery Threat to the Orderly School Process
* Only Applicable to Students in Grades 6-12		