



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
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February 28, 2014

Ms. Mary Ann Gemmill
Superintendent
Christian County Public Schools
200 Glass Ave.
Hopkinsville, Kentucky 42240

Re: Case No. 03-11-5002
Christian County Public Schools

Dear Ms. Gemmill:

This is to inform you of the resolution of this compliance review of the Christian County Public Schools (the District) initiated by the U.S. Department of Education, Office for Civil Rights (OCR), 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 of such assistance, the 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.

This letter summarizes the applicable legal standards, the data and information obtained during the review, and how the review was resolved.

Legal Authority

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 that no person shall, on the grounds 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. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the

grounds of race, color or national origin, 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; 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 in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides 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, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

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 schools 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 can be the only reasonable 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 school’s adoption of a facially-neutral policy with an invidious intent to target certain races is prohibited intentional discrimination.

Title VI also protects students even if a school contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school’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, schools 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.”¹ 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?²
- 3) Even in situations where a school 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 school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school’s proffered justification a pretext for discrimination?

Overview of the District

The District is located in southwestern Kentucky. It comprises ten elementary schools (grades k-5), three middle schools (grades 6-8), two high schools (grades 9-12), and four schools that serve other functions, such as alternative and adult education. During the 2012-13 school year, the District enrolled 8,763 students, of whom 4,935 (or 56%) were white and 2,945 (34%) were African American. Of the students enrolled in the District’s Gifted and Talented Program, 14.1% were African American and 78.2% were white; 18.7% of the students enrolled in Algebra I were African American, while 68.9% were white; 11.8 % of the students enrolled in Calculus were African American, and 64.7% were white.

Summary of Review

The District was notified of this review by letter dated March 9, 2011. In June 2011, after receipt and review of preliminary data, OCR conducted an onsite visit during which an opening conference was held with key District administrators. In addition, the OCR staff member visited each school in the District to meet with administrators and gather additional information about discipline processes and discipline recording-keeping. OCR was provided data comprising all disciplinary referrals made (approximately 71,000) and sanctions imposed during the 2008-2009, to 2011-2012 school years. OCR also reviewed other documentation, including the 2008, 2010 and 2013 versions of the District’s Code of Acceptable Behavior (Code). The 2013 Code was published in August 2013 for implementation in the 2013-2014 school year. Although OCR

¹ Recipients of Federal financial assistance are prohibited from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals or a particular race, color, or national origin.” 34 C.F.R. § 100.3(b)(2); *see also* 28 C.F.R. § 42.104(b)(2).

² *See Elston v. Talladega County Bd. Of Educ.*, 997 F.2d 1394 (11th Cir. 1993).

analyzed the provisions of the 2013 Code and noted any changes therein with respect to the pertinent provisions of the 2010 Code, it has not reviewed any discipline data that have been generated since its publication in August 2013; OCR had no opportunity to evaluate the 2013 Code as implemented because OCR had substantially completed its investigation and initiated negotiations with the District to resolve this compliance review by the time the 2013 Code was published.

OCR conducted other site visits for the purpose of interviewing District staff members involved in discipline (including administrators, teachers, guidance counselors, and youth and family service coordinators) and to review copies of available 2010-11 disciplinary referral forms (from a sample of students) in all middle and high schools, and two elementary schools. These documents were reviewed by OCR in conjunction with the 2010-11 electronic discipline referral data in order to identify cases of different treatment.

For school years 2008-2009 through 2011-2012, the District’s enrollment was as follows:

Table 1 - Enrollment, by race and school level					
	African American		White		Total Students
2008-09	#	%	#	%	
Elem.	1,605	33.0%	2,856	58.8%	4,860
Mid.	695	36.2%	1,129	58.7%	1,922
High	747	34.0%	1,336	60.9%	2,195
Other	89	47.1%	91	48.1%	189
Total	3,136	34.2%	5,412	59.0%	9,166
2009-10					
Elem.	1,584	32.7%	2,815	58.1%	4,844
Mid.	677	35.2%	1,133	58.9%	1,922
High	774	34.9%	1,338	60.3%	2,218
Other	69	43.7%	82	51.9%	158
Total	3,104	34.0%	5,368	58.7%	9,142
2010-11					
Elem.	1,547	31.7%	2,829	58.0%	4,875
Mid.	662	34.8%	1,110	58.3%	1,904
High	821	36.3%	1,328	58.7%	2,261
Other	85	52.1%	76	46.6%	163
Total	3,115	33.8%	5,343	58.1%	9,203
2011-12					
Elem.	1,517	29.9%	2,908	57.3%	5,076
Mid.	670	35.6%	1,053	55.9%	1,883
High	841	36.8%	1,313	57.4%	2,286
Other	68	47.9%	69	48.6%	142
Total	3,096	33.0%	5,343	56.9%	9,387

Commonwealth Requirements

Section 158.148 of the Kentucky Revised Statutes (KRS), requires each school district to develop disciplinary procedures and to formulate a code of acceptable behavior and to update it every two years. The KRS require that a district's code contain standards that describe the type of behavior expected from students and the consequences of failing to obey the standards. The KRS also set forth how criminal violations are to be handled, including a zero tolerance provision (mandatory expulsion) for bringing a weapon or a destructive device to school.

The District's 2010 Code

The 2010 Code has separate consequence charts or matrices for the elementary school and middle/high school levels. Each violation is followed by possible sanctions for that violation. The possible sanctions that are listed are: in-school discipline; parent/guardian conference; suspension; alternative placement (middle/high school only); and expulsion. While the possible actions are arrayed progressively, virtually every sanction, including expulsion, is an available option for each discipline violation.

Types of Disciplinary Sanctions

"In-school Discipline" is defined by the 2010 Code as an alternative to penalties that take the student out of school (e.g., out-of-school suspension (OSS)) and expulsion). Depending upon the school, Isolated Classroom Environment (ICE) and Help/SAFE room assignments are the District's two types of in-school discipline. ICE, or in-school suspension, is used primarily in middle and high schools; students assigned to ICE are expected to complete their school work and there is a staff member available to assist them in doing so. However, academic services (i.e., instruction in subject matter areas) are not available to students who receive ICE assignments. Help/SAFE room assignments are more often used at the elementary and middle school levels. Students assigned to Help/SAFE room are supervised by monitors who are responsible for making sure that the students work on tasks that they bring with them to the Help/SAFE room. The monitors do not provide the instructional services that are provided in the students' regular classrooms.

"Suspension" is defined by the 2010 Code as an out-of-school (OSS) suspension. The Code states that expulsion is given if there is clear and convincing evidence that the student is a threat to safety. Although corporal punishment was permitted by the 2008 version of the Code, the 2010 Code eliminated corporal punishment as a sanction³.

Referral Policies and Procedure

The 2010 Code does not specifically describe the process by which a disciplinary referral is made. District staff informed OCR that nothing in District policy requires that a referral be made in writing, but that disciplinary referrals are typically made in writing using a paper referral form. In case of emergency, however, the referral can be initiated by a phone call to the Principal's

³ Corporal punishment is likewise not permitted under the 2013 Code.

office. A written report must follow-up such a call. When a written disciplinary referral is made by a teacher or other staff member, the Principal receives the referral. According to the Code, sanction determinations can be carried out by the Principal or his designee (another administrator), who is, most of the time, the Assistant Principal. Once a sanction has been imposed based on the referral, information about the referral and the disciplinary outcome is entered by the Principal, Assistant Principal, or staff (such as clerical) who are designated to enter the information into the District's record management system, Infinite Campus (IC). The District informed OCR, and OCR confirmed through its investigation, that referrals where no sanction is imposed are also recorded in the IC.

The District does not have a uniform referral form for discipline incidents. Each school has developed one or more of its own referral forms. Consequently, OCR noted wide variety in the manner in which the forms document information and the types of information that is required. Some schools use separate forms for minor and major misbehaviors; other schools use forms that request a description of interventions attempted prior to the office referral being made. All forms have some section to indicate whether parent contact was made. In addition to these referral forms, the District employs a uniform "School Bus Incident Report," which documents behavioral incidents that occur on a school bus.

School Resource Officers (SROs) and Local Law Enforcement

The District contracts with the City of Hopkinsville and the Christian County Sheriff's department to provide SRO presence at each elementary, middle and high school in the District and at the Christian County Alternative School and the Day Treatment Center⁴.

Under the 2010 Code and the 2013 Code, and as required by Commonwealth law, the Principal has a duty to report the following acts to local law enforcement which occur on school property or in the course of a school function: assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, damage to the property, and situations when behavior creates a safety issue on the bus. Also, administrators, teachers, or other staff are required to report acts that they have reasonable cause to believe that it would constitute a misdemeanor or violation offense that relates to the following: carrying, possession, or use of a deadly weapon; use, possession, or sale of controlled substances; or any felony offense under state law. Staff also have an obligation to report knowledge of students who are victims of felony offenses or abuse and neglect.

The District's 2013 Code

As noted above, the 2013 Code was published in August 2013⁵. In terms of *Types of Disciplinary Sanctions, Referral Policies and Procedure* and *School Resource Officers (SROs) and Local Law*

⁴ The Day Treatment Center is a court-ordered community-based treatment/educational program placement in a school setting that is operated by the Kentucky Department of Juvenile Justice. Some District staff provide services (e.g., special education services) at the Center.

⁵ Notwithstanding the KRS requirement that districts update their Codes every two years, there is no evidence that the District updated its 2010 Code in 2012. The only published update of the 2010 Code is the 2013 Code.

Enforcement, the 2013 Code is the same as the 2010 Code. OCR notes that the 2013 Code contains the following addenda to and revisions of the 2010 Code:

1. Unlike the 2010 Code, the 2013 Code contains a chart entitled “Expected Student Behaviors”, that emphasizes the importance of making positive behavior choices (e.g., attending school regularly, doing schoolwork neatly and completely, remaining on school grounds unless given permission to leave, not bringing tobacco, alcohol, other drugs or weapons to school) and how these positive behavior choices relate to showing respect for self, others, the learning process, and property.
2. Unlike the 2010 Code, the 2013 Code contains a section entitled, “Getting Help With A Problem”, that provides students with information on how and where they can seek assistance in the school setting with the following problems or issues: school, personal, group, extracurricular, academic, cyber-bullying, sexting, and other social networking/media issues.
3. The 2013 Code removed the following 2010 Code provision from the Discipline Process outline: “In addition to those actions specifically provided in this Code of Acceptable Behavior, the superintendent, principal, other administrator, teacher, or any other school personnel shall have the right to take any action which is then reasonably necessary to carry out or to prevent interference with the educational function of which he/she is in charge.”
4. The 2013 Code expanded the description of drug use/possession/sale to list the specific types of prohibited drugs.
5. The 2013 Code added a column to the disciplinary consequence matrix to show which violations the school is required to report to law enforcement. They are (All School Levels): Assault (1-4), Arson, Bomb Threat, Burglary, Criminal Homicide, Deadly Weapon, Forgery, Under the Influence, various sale/use/possession of drugs violations, possession/use of bomb/explosives, possession of gun/firearms, Sex Assault, Sex Misconduct, and Vandalism. Robbery and Statutory Rape apply to MS and HS level only.
6. Regarding the placement of students who commit expellable offenses in alternative programs, the 2013 Code, unlike the 2010 Code, provides that students will receive educational services: “If the Board of Education determines that the student should be expelled, *the Board of Education will then provide or assure that educational services are provided to the student in an appropriate program or setting*, unless the Board had determined on the record, supported by clear and convincing evidence, that the expelled student poses a threat to the safety of other students or school staff and cannot be placed into a state funded program.”

Students who are placed into an alternative program receive six hours of instructional time per day⁶.

Disciplinary Recordkeeping

Since the 2007-08 school year, the District has utilized and maintained the electronic information and records management system, IC, which is able to store the District's student records, including all referrals for disciplinary action. The IC system has a comment field that can be used for the purpose of describing the student's behavior, or other important notes or observations about the referral. A copy of the referral form is kept for the paper file (typically in the Principal's office), and a copy is provided to the teacher so that the teacher is informed of the outcome. A copy of the written recommendation (detention, suspension, etc.) is also kept in the file. Expulsion summary files are maintained at the District's Central Office. There is no set length of time for keeping paper copies of disciplinary documentation. In interviews, staff responses regarding the length of time copies are kept ranged from three to seven years, or in some cases, as long as the student is enrolled in the school.

The IC system can generate reports about discipline, disaggregated by race. The IC system is also used by the District in reporting Safe Schools data. The District does not, however, routinely make general discipline data information by race available to the public on its website.

Staff Training Related to Discipline

The District's Central Office staff reported to OCR that the District has provided training on the Positive Behavioral Intervention and Support (PBIS) model as well as training on the Conversation, Help, Activity, Movement, Participation, Success (CHAMPS) classroom management program model. The District also reported that all principals review the Code with their staff at the beginning of the school year. While the Code is disseminated to students at the beginning to the school year, it is the students' responsibility to certify that they delivered a copy of the Code to their parent/guardians. The District has no other formal mechanism for communication with parents/guardians about the Code and its requirements and expectations for student behavior.

Current Programs to Address Discipline Concerns

School administrators informed OCR that most middle and elementary schools utilize strategies from the CHAMPS model of classroom management, which, according to District administrators, has components that are similar to PBIS. District administrators observed that CHAMPS supports the PBIS model by offering schools a comprehensive set of strategies that are classroom-based, and which mesh with the broader PBIS system.

OCR also noted that the District has been working with local law enforcement on juvenile justice issues and, pursuant to the 2013 Code, the Board recently adopted and implemented new

⁶ This amount of daily instructional time meets the requirements of the Commonwealth of Kentucky.

alternative placement programs for students who have committed expellable offenses like possession of firearms or deadly weapons. Entitled *Project Succeed*, students who have committed expellable offenses are provided Commonwealth-required six hours of instructional services per day, using a combination of virtual learning and teacher-delivered instruction. *Project Succeed* also provides students with guidance and therapeutic counseling services and group community service activities. Assignment to the alternative placement program is made by the Principal, Assistant Principal or designee and is not appealable.

Areas of Concern Identified by OCR

A. 2010 Code:

1. The 2010 Code did not specifically describe the process by which a disciplinary referral is made.
2. In many instances, the 2010 Code did not clearly explain what is expected nor did it provide a clear statement of the potential consequences for a particular violation. OCR noted that fewer than 20 violations were defined or explained in the Code itself. Some violations were only partially defined. Many violations, even ones that appear to be derived from standards for criminal conduct, are treated as if they were self-explanatory. Significantly, violations that entail the subjective exercise of discretion on the part of the referring teacher or administrator, such as Disorderly Conduct, Deliberate Classroom Disruption, and Failure to Follow Directions, also were not defined in the 2010 Code. As the majority of the violations in the Code were undefined, unexplained or only partially defined/explained, OCR concludes that students and their parents and guardians do not have adequate notice of the specific behavior(s) that may result in the imposition of discipline. In addition, the District had no safeguards in place to ensure that discretion is exercised by referring teachers and other staff in a non-discriminatory manner.
3. The 2010 Code had separate consequence charts or matrices for the elementary school and middle/high school levels. Each violation was followed by possible sanctions for that violation. While the possible actions were arrayed progressively, virtually every sanction, including expulsion, was an available option for the vast majority of violations. OCR is concerned that this gives administrators extremely wide discretion in determining what consequence or penalty is appropriate.

B. 2013 Code:

1. The 2013 Code, like the 2010 Code, did not specifically describe the process by which a disciplinary referral is made.
2. The 2013 Code defines, in a newly added Glossary, the following violations that were not defined in the 2010 Code: Arson, Assault, Bullying, Burglary, Cheating, Dangerous Instrument, Deadly Weapon, Fight, Sexual Assault, Sexual Misconduct, Tardiness, Truant. However, the remaining 61 violations in the Code, including the violations that entail the exercise of discretion in their interpretation (e.g., Disorderly Conduct, Failure to Follow Directives, Deliberate Classroom Disruption, Profanity/Vulgarity),

remain undefined in the 2013 Code. Accordingly, OCR remains concerned that students and their parents and guardians do not have adequate notice that

3. The 2013 Code, like the 2010 Code, also has separate consequence charts or matrices for the elementary school and middle/high school levels. Each violation is followed by possible sanctions for that violation. While the possible actions were arrayed progressively, virtually every sanction, including expulsion, was an available option for the vast majority of violations. OCR is concerned that this continues to give administrators wide discretion in determining what consequence or penalty is appropriate and fails to give students and parents adequate notice of the consequences for particular violations.

C. Referrals and Imposition of Sanctions:

Referrals

Although the number of students referred for discipline at least once during the school year dropped from 3,756 in 2008-09 to 3,332 in 2011-12 (an 11.2% reduction), the proportion of students referred at least once who were African American *increased* (from 45% to 48.3%).

Table 2 - Students referred for discipline, at least once					
	African American		White		Total Students
	#	%	#	%	
2008-09					
Elem.	344	50.2%	309	45.1%	
Mid.	644	44.1%	736	50.4%	
High	687	43.4%	819	51.7%	
Other	15	55.6%	12	44.4%	
Total	1,690	45.0%	1,876	49.9%	3,756
2009-10					
Elem.	332	48.6%	304	44.5%	
Mid.	510	47.7%	498	46.6%	
High	609	48.9%	580	46.6%	
Other	2	25.0%	5	62.5%	
Total	1,453	48.4%	1,387	46.2%	3,005
2010-11					
Elem.	332	48.8%	289	42.5%	
Mid.	497	46.4%	505	47.2%	
High	598	50.3%	545	45.8%	
Other	17	34.0%	30	60.0%	
Total	1,444	48.3%	1,369	45.8%	2,990
2011-12					
Elem.	427	47.4%	390	43.3%	
Mid.	488	49.1%	426	42.9%	
High	691	48.2%	669	46.7%	
Other	2	66.7%	0	0.0%	
Total	1608	48.3%	1,485	44.6%	3,332

The disproportionate over-representation of African American students who were referred

for discipline at least once is statistically significant⁷ when compared to white students in each of the 2008-09, 2009-10, 2010-11, and 2011-12 school years at the elementary, middle and high school levels. In addition, OCR noted disproportionate rates of referral for discipline for certain infractions that involve the exercise of discretion and that were not defined in the Code: Deliberate Classroom Disruption, Disorderly Conduct, Failure to Follow Directives:

Deliberate Classroom Disruption:

2008-2009: African American students were 2.5 times more likely than white students to be referred;

2009-2010: African American students were 2.6 times more likely than white students to be referred;

2010-2011: African American students were 2.7 times more likely than white students to be referred.

Disorderly Conduct:

2008-2009: African American students were 2.9 times more likely than white students to be referred;

2009-2010: African American students were 2.7 times more likely than white students to be referred;

2010-2011: African American students were 2.6 times more likely than white students to be referred.

Failure to Follow Directives:

2008-2009: African American students were 2.4 times more likely than white students to be referred;

2009-2010: African American students were 2.7 times more likely than white students to be referred;

2010-2011: African American students were 2.6 times more likely than white student to be referred.

SRO Referrals

Over the course of the 2008-2009, 2009-2010, and 2010-2011 school years, the number of referrals that involved SROs⁸ ranged from a high of 72 to a low of 32, totaling 138 for the three-year period. During the 2008-09 school year, of 72 referrals in which an SRO was involved, 55 (or 76.4%) were for African American students. By the 2010-2011 school year, this percentage decreased to 64.7% (or 22 out of 34 referrals). However, the disproportionate representation of African American students whose referral involved the SRO was statistically significant when compared to white students in each of the 2008-2009, 2009-2010, and 2010-2011 school years. In 2010-2011, African American students were 1.8 times more likely than white students to be referred to an SRO. Of the 138 referrals noted

⁷ The fact that the over-representation of African American students is “statistically significant” indicates that the degree of over-representation is so large that it is not likely to be due to chance, and that some causative agency is involved.

⁸ SRO involvement is not a separate field in the District’s database, but can be identified in a comment field. OCR notes this as a concern because records of referrals to an SRO are not clearly identified and may be incomplete.

above, 96 received the following sanctions: three resulted in alternative placement, 38 resulted in Help/SAFE room assignment, four resulted in ICE placement, 13 resulted in OSS, and 38 resulted in referral to the county Juvenile Officer.⁹ Over the three-year period, four of the 138 referrals resulted in arrests (all in 2008-2009); all of the students arrested were African American. Also of concern are the 38 referrals to the county Juvenile Officer, as such referrals, whether they resulted in sanctions or not, may place students directly into the juvenile justice system.

Help/SAFE room assignments

Although there was an increase in the total number of Help/SAFE room assignments over the four-year period, there was a decrease in the proportion of African American students assigned to Help/SAFE at least once (54.1% to 49.6%). However, based upon testing to determine statistical significance, the disproportionate over-representation of African American students who were assigned Help/SAFE room at least once was statistically significant at each respective school level when compared to white students in each of the 2008-09, 2009-10, 2010-11, and 2011-12 school years.

	African American		White		Total Students
	#	%	#	%	
2008-09					
Elem.	223	53.3%	174	41.6%	
Mid.	118	55.7%	78	36.8%	
Total	341	54.1%	252	40.0%	630
2009-10					
Elem.	171	48.0%	160	44.9%	
Mid.	110	53.1%	80	38.6%	
Total	281	49.9%	240	42.6%	563
2010-11					
Elem.	163	49.1%	145	43.7%	
Mid.	126	52.7%	97	40.6%	
Total	289	50.6%	242	42.4%	571
2011-12					
Elem.	183	45.4%	183	45.4%	
Mid.	144	56.3%	91	35.5%	
Total	327	49.6%	274	41.6%	659

Isolated Classroom Environment (ICE) assignments

While there was a 3.9% decrease (from 4,082 to 3,919) in the total number of ICE assignments over the four-year period from the 2008-2009 school year to the 2011-12 school year, the proportion of African American students sent to ICE at least once during each of the four years under review exceed the proportion of African American students enrolled in the District. By the 2011-12 school year the proportion of African American

⁹ The remaining 42 referrals received less severe sanctions, including conferences with parents and teachers, detention, and verbal reprimands.

students sent to ICE exceeded the proportion of enrollment of African American students by 21.9 percentage points.

Table 4 - Students assigned ICE (at least once)					
	African American		White		Total Students
2008-09	#	%	#	%	
Elem.	26	66.7%	12	30.8%	
Mid.	232	57.7%	156	38.8%	
High	445	54.1%	348	42.3%	
Total	703	55.6%	516	40.8%	1,263
2009-10					
Elem.	10	66.7%	5	33.3%	
Mid.	219	54.6%	168	41.9%	
High	443	53.6%	353	42.7%	
Total	672	54.1%	526	42.4%	1,242
2010-11					
Elem.	21	60.0%	11	31.4%	
Mid.	244	53.4%	191	41.8%	
High	438	55.9%	321	40.9%	
Total	703	55.1%	523	41.0%	1,276
2011-12					
Elem.	65	67.0%	24	24.7%	
Mid.	231	52.3%	172	38.9%	
High	424	54.9%	320	41.4%	
Total	720	54.9%	516	39.3%	1,312

The disproportionate over-representation of African American students who were assigned ICE at least once was also statistically significant when compared to white students in each of the 2008-09, 2009-10, 2010-11, and 2011-12 school years at the elementary, middle, and high school levels. OCR notes that although the disparity has decreased slightly at the middle and high school levels, the number of African American students affected has increased over the four-year period and the percentage of African American students affected is disturbingly high at the elementary school level. The high percentage rates and numbers of African American students who are assigned to ICE raises concerns that in a district where the majority of the students are white, African American students are assigned to ICE classrooms where they constitute the majority of students and where they do not have access to the full range of instructional resources.

Of further concern is the fact that African American students were more likely than white students to be assigned ICE when their first disciplinary referral was for violations that are not defined in the Code and that entail the exercise of discretion in their interpretation. Specifically, the analysis revealed:

Deliberate Classroom Disruption

2008-2009: African American students were 2.8 times more likely than white students to receive ICE;

2009-2010: African American students were 2.3 times more likely than white students to receive ICE;
2010-2011: African American students were 2.1 times more likely than white students to receive ICE.

Disorderly Conduct

2008-2009: African American students were 3.4 times more likely than white students to receive ICE;
2009-2010: African American students were 2.6 times more likely than white students to receive ICE;
2010-2011: African American students were 1.7 times more likely than white students to receive ICE.

Failure to Follow Directives

2008-2009: African American students were 3.5 times more likely than white students to receive ICE;
2010-2011: African American students were 2.8 times more likely than white students to receive ICE.

Profanity/Vulgarity

2010-2011: African American students were 2.1 times more likely than white students to receive ICE.

While the likelihood of African American students receiving ICE decreased, African American students had disproportionate rates of imposition of ICE for all of the infractions.

Out-of-school suspensions (OSS)

Although there was a 24.7% reduction (from 760 to 572) in the total number of students assigned OSS at least once over the four-year period from 2008-2009 to 2011-2012, and a small decrease (from 56.2% to 53.8%) in the proportion of OSS assigned to African American students, the disproportionate over-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, 2010-11, and 2011-12 school years at the middle and high school levels, although the disparity has decreased over that time period. The disparity at the elementary school level was statistically significant in the 2008-09, 2009-10 and 2011-2012 school years, but not statistically significant in the 2010-11 school year.

Table 5 - Students assigned OSS (at least once)					
	African American		White		Total Students
	#	%	#	%	
2008-09					
Elem.	32	50.0%	30	46.9%	
Mid.	165	57.5%	112	39.0%	
High	226	56.4%	162	40.4%	
Other	4	50.0%	4	50.0%	
Total	427	56.2%	308	40.5%	760
2009-10					
Elem.	20	46.5%	17	39.5%	
Mid.	173	61.6%	96	34.2%	
High	200	59.5%	124	36.9%	
Other	11	64.7%	5	29.4%	
Total	404	59.7%	242	35.7%	677
2010-11					
Elem.	23	44.2%	25	48.1%	
Mid.	123	59.4%	75	36.2%	
High	202	56.1%	137	38.1%	
Other	5	55.6%	3	33.3%	
Total	353	56.2%	240	38.2%	628
2011-12					
Elem.	26	40.6%	26	40.6%	
Mid.	125	54.3%	88	38.3%	
High	148	55.6%	106	39.8%	
Other	9	75.0%	2	16.7%	
Total	308	53.8%	222	38.8%	572

Of particular note is the fact that in the 2010-2011 school year, African American students were more likely than white students to received OSS when their first disciplinary referral was for the following types of violations that entail the exercise of discretion in their interpretation:

Disorderly Conduct

2010-2011: African American students were 10.3 times more likely than white students to receive OSS.

Profanity/Vulgarity

2010-2011: African American students were 3.4 times more likely than white students to receive OSS.

Expulsions

Expulsion is rarely assigned as a penalty in the District. For the four-year period from 2008-2009 to 2011-2012, the District expelled a total of twelve students. Nevertheless, when the District took the extreme step of expelling students, African American students received the

majority of expulsions: eight (66%) of the twelve students who were expelled were African American.

D. Evaluation and Monitoring

Although District officials were aware of the higher rates of referrals for discipline and imposition of sanctions for African American students, no safeguards were in place to ensure that discretion was exercised in a nondiscriminatory manner. In addition, the District had no system for monitoring and evaluating its disciplinary policies and practices to ensure that they were nondiscriminatory.

E. Recordkeeping

The District's student data management system, IC, can generate reports about discipline, disaggregated by race. IC is also used by the District in reporting Safe Schools data. The District does not, however, routinely make general discipline data information by race available to the public on its website.

F. Examples of Different Treatment

OCR examined individual incidents of discipline at the District's schools during the 2010-11 school year, which included a review of disciplinary files, and identified individual examples of different treatment. These incidents were found at the elementary, middle and high school levels, and covered a wide range of conduct, including *Disorderly Conduct*, *Fighting*, *Leaving Class without Permission*, *Profanity/Vulgarity*, *Simple Assault*, and *Use of Tobacco Smoking*. Examples include:

High school level

An African American 12th grader was assigned 5-day OSS for *Disorderly Conduct*. In comparison, a white 11th grader was assigned a 1-day ICE for *Disorderly Conduct*. The African American student had four previous disciplinary referrals (none of which were for *Disorderly Conduct*), while the white student had 12 previous disciplinary referrals (none of which were for *Disorderly Conduct*).

An African American 10th grader was assigned 1-day OSS for *Skipping School*. In comparison, a white 12th grader was assigned a Conference with the Principal for *Skipping School*. The African American student had 19 previous disciplinary referrals while the white student had 28 previous disciplinary referrals.

In addition, OCR notes that it would be difficult for the District to demonstrate how excluding a student from attending school in response to the student's efforts to avoid school meets an important education goal.

Middle school level

An African American 7th grader was assigned a 2-day OSS for *Fighting*. In contrast, a white 6th grader was assigned 1-day ICE for *Fighting*. The African American student had only one previous disciplinary referral (not for *Fighting*). The white student had eight previous disciplinary referrals (none were for *Fighting*).

An African American 7th grader was assigned 1-day OSS for *Failure to Attend Saturday School*. In comparison, a white 7th grader was assigned three days of ICE for *Failure to Attend Saturday School*. The African American student had eight previous disciplinary referrals, while the white student had 20 previous disciplinary referrals.

Elementary school level

An African American kindergartner was assigned one day of ICE for *Harassment*. In comparison, a white 2nd grader was assigned a Conference with the Principal for *Harassment*. Comments note that both students choked other students leaving red marks on their necks. The white student had also struck the other student three times while holding the student in a headlock and kicked a chair when addressed by a staff member. This was the African American student's first disciplinary referral, while the white student had 15 previous disciplinary referrals (none were designated "*Harassment*").

After OCR had completed a substantial portion of this investigation, the District requested to resolve the review and has submitted a comprehensive Agreement to OCR that addresses the root causes of the over-representation of African American students at all levels of the disciplinary process (referral through imposition of sanctions) and ensures the fair and equitable administration of disciplinary policies and practices for all students. Although OCR has identified a number of concerns regarding the District's policies and practices in the administration of discipline, OCR has not completed the further investigation and analysis that would be required to make a finding under both the different treatment theory and the disparate impact theory.

Resolution Agreement

Through the Resolution Agreement (Agreement), the District commits to take specific actions to ensure that all students have an equal opportunity to learn in school. Provisions in the Agreement are intended to ensure that the District implements fair and equitable discipline policies and practices and creates an environment where all students feel safe and welcome. In addition, the District commits to provide teachers and administrators with the tools and training to support positive student behavior, thereby providing a range of options to prevent and address misconduct and ensure that the District's disciplinary policies and practices are administered in a nondiscriminatory manner.

Specifically, the Agreement requires that the District:

Ensure to the maximum extent possible that misbehavior is addressed in a manner that does not require removal from school.

Collaborate with experts on research-based strategies designed to prevent discrimination in the implementation of school discipline.

Provide students who engage in disruptive behaviors with support services designed to decrease behavioral difficulties;

Review and revise disciplinary policies, and implement disciplinary practices that will effectively promote the fair and equitable administration of discipline.

Conduct a comprehensive review of SRO interventions and practices annually to assess their effectiveness and identify any changes that should be made to ensure that they align with the goals and objectives set forth in the Agreement.

Provide staff training on evidence-based techniques on classroom management and de-escalation approaches; information on how to administer discipline fairly and equitably; resources for staff who are having difficulty with classroom management; resources for students to assist them in developing self-management skills; recognizing and reinforcing positive student behavior; and the importance of ensuring, to the maximum extent possible, that misbehavior is addressed in a manner that does not require removal from the educational program.

Provide staff training that includes detailed explanations of the discipline code; the definitions of offense categories; the specific manner in which progressive disciplinary consequences will be employed and, if applicable, the circumstances under which deviations from established policies may be justified; the documentation that must be used by all District staff who make disciplinary referrals or impose disciplinary sanctions.

Provide student training that emphasizes not only the consequences and procedures associated with non-compliance with the disciplinary code, but also provides guidance and information regarding appropriate behavioral standards, including resources to assist in developing self-management skills.

Develop an informational program to be offered to the parents and guardians of all District students that explains disciplinary policies in an easily understood manner, what is expected of students under those policies and the District's efforts in achieving fair discipline of all students. The program will provide parents and guardians the opportunity to raise concerns or suggestions regarding the improvement of the District's disciplinary policies, including any issues in connection with fairness and non-discrimination.

Provide notice to parents and guardians about the availability of all sources of information regarding discipline, contact information for the District's Discipline Supervisor and the District office administrator, and the right to file complaints regarding the implementation of discipline policies.

Conduct an annual survey of students, staff, community members and parents regarding school safety, fairness, clarity of rules and behavioral expectations.

Provide the public with data concerning referrals for discipline, Help/SAFE room and ICE assignments, out of school suspensions, expulsions, and referrals to law enforcement, including the most frequent reasons leading to exclusionary discipline and other factors determined by the District and/or the Consultant.

Conduct an annual forum that provides students with an opportunity to discuss with faculty and administrators any matters relating to discipline, including non-discrimination, and provide their input for any improvements in the District's discipline policies.

Establish uniform standards for the content of student discipline files at all District schools, to ensure that the District keeps accurate and complete records of all discipline incidents, including those that do not result in the imposition of disciplinary sanctions.

Require each school principal to meet at the conclusion of each semester with the teachers at his/her school to discuss strategies for teaching, encouraging and reinforcing positive student behavior that do not require engagement with the discipline system and to discuss the discipline of students for that semester. In addition, if disproportionalities in referral are evident, explore the reasons for the disproportion and examine potential solutions. Where teachers have been successful in managing student discipline at the classroom level, share "best practices" with other teachers and schools.

Establish a Discipline Review Team for the purpose of randomly reviewing a percentage of the disciplinary actions taken at each District school on an ongoing basis to ensure that the actions taken were non-discriminatory and consistent with the District's student discipline policies and practices.

Based on the commitments the District has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information to demonstrate implementation of the Agreement, in a timely manner and in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's discipline policies and practices are administered in a nondiscriminatory manner. OCR may conduct additional visits and may 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.

This letter sets forth OCR's determination in an OCR compliance review. 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 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 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,

/s/

Wendella P. Fox
Director
Philadelphia Office

Enclosure

cc: Jack N. Lackey, Jr., Esq.