



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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January 31, 2018

Dr. Darienne Driver  
Superintendent  
Milwaukee Public Schools  
5225 West Vilet Street  
Milwaukee, Wisconsin 53208

OCR Case No. 05-14-5003

Dear Dr. Driver:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at the Milwaukee Public Schools (District) by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on June 30, 2014. The compliance review examined whether the District discriminates against black students on the basis of race by disciplining them more frequently and more harshly than similarly-situated white students. This letter is to notify you of the resolution of the compliance review.

OCR initiated an investigation into the following legal issues:

- Whether the District discriminates against black students by disciplining them more frequently and more harshly than similarly-situated white students and thereby limiting or denying the students educational services, benefits, or opportunities.
- Whether the District maintains disciplinary policies and procedures that affect black students in a racially disproportionate manner that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race.

OCR conducted this review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI and its implementing regulation.

During its investigation, OCR reviewed data obtained from the District and conducted multiple on-sites to seventeen District schools. At elementary schools, OCR interviewed the principal and/or another administrator designated by the principal to handle discipline issues

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at the schools. At each middle and high school, OCR interviewed the principals and deans of students who are responsible for discipline issues in the middle and high schools. OCR also interviewed teachers at District elementary, middle and high schools and conducted focus groups of students in grades 5 through 12. OCR also reviewed 586 student discipline files district-wide.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the issues of the compliance review. Discussions between OCR and the District resulted in the District's execution of the enclosed resolution agreement (Resolution Agreement) on December 28, 2017, which, when fully implemented, will resolve the issue of this review. This letter presents the applicable legal standards and provides a summary of the information gathered during the review and how the review was resolved.

### **APPLICABLE LEGAL STANDARDS**

The standards for determining compliance with Title VI are set forth in the Title VI regulation at 34 C.F.R. § 100.3(a) and (b). The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color, or national origin under any program or activity by a recipient of Federal financial assistance from the Department.

The Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(1)(i)-(vi), provides that a recipient may not, directly or through contractual or other arrangements, 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 is provided in a different manner from that provided to others under the program; 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 advantage or privilege or other benefits of its programs; treat an individual differently in determining whether he or she satisfies any requirement in order to be provided any service or benefit under the program; 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 also specifies, at 34 C.F.R. § 100.3(b)(2), that a recipient may not use criteria or methods of administration which have the effect of subjecting individuals to discrimination based on race, color or national origin.

Title VI prohibits intentionally disciplining students differently on the basis of race, color or national origin. In determining whether a recipient subjected a student to discrimination on the basis of race, color, or national origin, absent direct evidence of discrimination, OCR considers whether the recipient treated similarly-situated students differently on the basis of race, color, or national origin. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated a student in a manner that is inconsistent with its established policies, practices and procedures and whether there is other evidence of discrimination based on race, color, or national origin.

To determine whether a school district's disciplinary process has an unlawful disparate impact on the basis of race, color or national origin, OCR examines: (1) whether a discipline policy that is neutral on its face has an adverse impact on students of a particular race, color or national origin; (2) whether the policy is necessary to meet an important educational goal; and (3) if so, whether there is a comparably effective alternative policy or practice that would meet the district's stated educational goal with less of a burden or adverse impact on the disproportionately affected group.

## **STATEMENT OF FACTS**

### ***Background***

The District is the largest public school district in Wisconsin. There currently are 150 schools including traditional elementary, middle and high schools as well as charter schools, non-traditional and alternative high schools in the District.

The District was selected for this Title VI discipline proactive review based on data from the Civil Rights Data Collection (CRDC) which showed disproportionate rates of exclusionary discipline for black students compared to other students.

According to the 2011-12 CRDC data there were 80,098 students enrolled in Milwaukee Public Schools (MPS): 11,325 (14.1%) are white, 45,020 (56.2%) are black, 18,872 (23.6%) are Hispanic, 4,235 (5.3%) are Asian, and 646 (0.8%) are other races.

The 2011-12 CRDC data showed that black students were overrepresented in the categories of in-school suspension (ISS), out-of-school suspensions (OSS) and expulsions. Specifically, black students represented 83.5% (597) of the 715 students receiving ISS, a 27.3 percentage point disparity between student enrollment and in-school suspensions; 82.4% (14,543) of the 17,640 students receiving OSS, a 26.2 percentage point disparity, and 84.7% (311) of the 367 students expelled, a 28.5 percentage point disparity.

According to CRDC data for the 2013-14 school year, although black students comprised 55.1% of the student enrollment in 2013-14, black students represented 83% (1078) of the 1298 students receiving ISS, a 27.9 percentage point disparity between student enrollment and in-school suspensions; 79.28% (8483) of the 10,699 students receiving OSS, a 24.8 percentage point disparity and, 83.2% (309) of the 371 students expelled (371), a 28.1 percentage point disparity between student enrollment and expulsions.

### ***OCR's Investigation to Date***

During its investigation to date, OCR reviewed data from the District and conducted on-site interviews of many District administrators and teachers at the elementary, middle school and high school levels. In addition, OCR conducted group interviews of students at the middle school and high school levels. OCR obtained information regarding: the District's disciplinary policies and procedures; how staff apply the District's disciplinary policies and procedures and staff training on disciplinary matters; how the District self-monitors its discipline rates; and the District's discipline rates.

### ***MPS Policies and Procedures***

During its investigation OCR reviewed the District’s discrimination policies and procedures and its discipline policies, procedures and practices (as written and as implemented). The discussion below describes the policies and procedures that were in effect during the time period of the review and which are currently in effect.

#### Discrimination Policies and Procedures

The District’s Nondiscrimination Notice, published in the Parent/Student Handbook on Rights, Responsibilities, and Discipline<sup>1</sup> (Handbook), states that “no person may be denied admission, participation or be discriminated against in any curricular, extracurricular, student service, recreational, or other program or activity based on ...race, color, national origin, ancestry ...”

The complaint procedure outlined in Administrative Policy 8.01 states that students may submit written complaints of discrimination on all protected bases to the designated school official and includes appropriate contact information. The complaint procedures indicate that the school will acknowledge receipt of the complaint within 45 days. Upon receipt of the written complaint, the school will convene a committee consisting of the Superintendent or designee, the Executive Director of the Office of Family and Student Services or designee, and the Chief of the Office of School Administration Services or designee to complete the investigation. A written determination will be issued to the complainant within 90 days of receipt of the complaint. Appeals may be made directly to the State Superintendent within 30 days of notice of written determination or the complainant may contact OCR.

#### Discipline Policies and Procedures

The District’s Discipline procedures are outlined in the Handbook. At the beginning of the school year, all parents are expected to sign and date the acknowledgement of receipt of the Handbook. OCR reviewed the District’s discipline policies and procedures and spoke with school-level administrators, teachers and students about the District’s discipline practices. The discipline policies and Student Code of Conduct were last revised in August 2014 and remain in place for the 2017-18 school year.

#### Administrative Policy

The District’s Bylaws and Policies pertaining to Student Conduct<sup>2</sup> (Administrative Policy 8.17) state:

- (1) The Board believes that student rights should be recognized and respected. It also believes that every right carries with it certain responsibilities. Students have the right to a quality education and the responsibility to put forth their best efforts during the educational process. Students should expect school personnel to be qualified in

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<sup>1</sup><http://mps.milwaukee.k12.wi.us/MPS-English/SUPT/Family--Student-Services/rights-responsibilities-english-handbook.pdf>

<sup>2</sup>[http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative\\_Policy\\_08\\_17.pdf](http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative_Policy_08_17.pdf)

- providing that education. Students have the responsibility to respect the rights of other students and all persons involved in the education process.
- (2) If all rights and responsibilities of all individuals are clearly understood, the elements of respect and cooperation shall result in the harmonious and constructive education of the student.
  - (3) If the policy guidelines adopted by the Board are to be successful, it must be understood that school officials, teachers, and aides have the authority to interpret and apply them in a given situation. Students must obey any interpretation, subject to an appeal.

The Bylaws and Policies concerning student discipline<sup>3</sup> (Administrative Policy 8.19) state:

- (1) Students may freely assemble and associate with others, subject to reasonable rules regarding time and place; however, a gathering of students may not interfere with the educational process or the orderly operation of the school.
- (2) Individual schools may establish reasonable rules governing student conduct. These rules should be easily available to students in their schools either by providing students with a copy of the school rules or by posting the rules on the school bulletin board. Students shall be notified of any changes in school rules.
- (3) The Board shall expect penalties for the violation of school rules to be consistently applied on the basis of the seriousness of the offense and the prior record of the student.

Administrative Policy 8.28(a)<sup>4</sup> provides that “the involuntary transfer of students from one school to another or to a behavior reassignment school for disciplinary reasons will normally be utilized only after all intermediate methods have been exhausted or when a breach of discipline is of a such a severe nature that the student’s continued attendance in school would be detrimental to the child, other members of the student body, or building staff. These intermediate methods should include, but are not limited to, parent-teacher conferences, referral to the school’s social worker or psychologist, parent-teacher-administration conferences, suspensions, and new assignment within building.”

Administrative Policy 8.31<sup>5</sup> provides that:

- (a) in accordance with state statutes, a student may be suspended by school administrator for not more than five days if the administrator finds that:
  - (1) The student is guilty of violating a Board policy or school rule; or
  - (2) While at school or under supervision of a school authority, the student endangered the property, health, or safety of others; or
  - (3) The student knowingly conveyed a threat or false information concerning an attempt or alleged attempt to destroy any school property by means of explosives; or

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<sup>3</sup> [http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative\\_Policy\\_08\\_19.pdf](http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative_Policy_08_19.pdf)

<sup>4</sup> [http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Procedures/Chapter-08/Administrative\\_Procedure\\_08\\_28.pdf](http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Procedures/Chapter-08/Administrative_Procedure_08_28.pdf)

<sup>5</sup> [http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative\\_Policy\\_08\\_31.pdf](http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative_Policy_08_31.pdf)

- (4) The student engaged in conduct, while not under the supervision of a school authority, that endangered the property, health, or safety of others at the school or under the supervision of a school authority; and
- (5) The suspension is reasonably justified.
- (b) The five-day suspension should be used only when the incident is so severe that it must be referred to the Division of Parent and Student Services for a hearing.
- (c) Before being suspended from school, the student shall be informed of the reason for the suspension and given a chance to respond. After the student's readmission to school, he or she shall be allowed to take any quarterly, semester, or grading-period examinations missed during the suspension period.

Administrative Policy 8.32<sup>6</sup> provides that a student may be expelled from school by the Board or by an Independent Hearing Officer (IHO) or if the Board or the IHO finds that:

- (a) the student is guilty of repeated refusal or neglect to obey Board or school rules; or
- (b) the student knowingly conveyed, ..., any threat or false information concerning an attempt ... being made to destroy any school property by means of explosive; or
- (c) the student engaged in conduct, while at school or while under the supervision of a school authority, which endangered the property, health, or safety of others, or at school under the supervision of a school authority; or
- (d) the student, while not at school or under the supervision of school authority, engaged in conduct which endangered the property, health, or safety of others, or at school under the supervision of a school authority; or
- (e) the student endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled; or
- (f) the student who is at least 16 years old repeatedly engaged in conduct, while at school or while under the supervision of a school authority, that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or an activity supervised by a school authority, and that such conduct does not constitute grounds for expulsion under sec. 120.13(1)(c), and the interest of the school demands the student's expulsion; or
- (g) the student shall be expelled from school for not less than one year whenever the Board or IHO finds that the student, while at school or while under the supervision of a school authority, possessed a firearm as defined in 18 U.S.C. § 921(a)(3).

Administrative Policy 8.28 provides that students should be disciplined according to the four disciplinary action levels that are fully described in the Handbook Handbook for all students: Level 1 - conference/intervention (phone call, letter, detentions); Level 2 - suspension (up to a three- day OSS); Level 3 - referral to the Department of Student Services (conference, expulsion recommendation) and Level 4 - expulsion recommendation (up to a fifteen-15 day OSS, expulsion hearing).

### Student Code of Conduct

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<sup>6</sup> [http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative\\_Policy\\_08\\_32.pdf](http://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative_Policy_08_32.pdf)

The Handbook outlines the Student Code of Conduct and states the goal of school discipline is “to have all students function successfully in their educational and social environments, as well as to protect the school community and public property. The District assesses conferences and detentions (as opposed to exclusionary discipline) for Level 1 offenses, such as excessive tardies and/or absenteeism. The Handbook lists specific behaviors that are grounds for more substantial sanctions, such as ISS and OSS or expulsion including:

- Possession of personal property prohibited by school rules, otherwise disruptive to the teaching and learning of others such as food, beverages, laser pointer and electronic devices and communication devices;
- Engaging in behavior or conduct that is disruptive to the learning of their fellow students; engaging in unruly behavior, that interferes with the ability of the teacher to effectively teach, such as leaving the classroom learning environment without permission from a staff member in charge and failing to comply with proper and authorized directions or instructions of a staff member;
- Confronting staff argumentatively, throwing objects, refusing to follow directions, or making loud noises;
- Behavior that disrupts the educational process of others by misconduct that recurs on a regular basis over a period of time;
- All gang activities;
- Use of language, either written or spoken, or conduct or gestures that are obscene, lewd, profane, or sexually suggestive.
- Disturbing others by pestering, tormenting or threatening;
- Unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal conduct or communication of sexual nature;
- Physical confrontation, including but not limited to, pushing and shoving and/or exchange of physical blows;
- Remaining around or lingering about a school building without a lawful purpose or particular purpose for being there;
- An attempt or a threat to physically harm another person with the apparent present ability to do so where the victim has reasonable fear or apprehension of immediate bodily harm;
- Behaving in a violent or seriously inappropriate manner that disrupts the educational process;
- Taking property from a person by force or threat of aggression;
- Intentional bodily contact for sexual gratification or pleasure;
- Possessing, using or having under one’s control, or threatening with a gun (pistol, BB, pellet, rifle, starter replica, or toy gun), or any other object that by the way it is used is capable of inflicting bodily harm;
- Using any tobacco product by a student;
- Possessing, using, or having under one’s control any substances, materials, or related paraphernalia that are dangerous to health or safety, or that disrupt the educational process.

Due process suspension procedures are provided in the Handbook in accordance with Administrative Policy 8.28. Parents may appeal a suspension to the building principal. If the parent is dissatisfied with that decision, they may appeal to the District’s Department of

Student Services. Administrative Policy 8.32 outlines the hearing procedures for expulsions which include the right of representation by legal counsel or any other person of the student or parent's choice.

### Positive Behavioral Interventions and Supports

The District implements Positive Behavioral Interventions and Supports (PBIS) District-wide. PBIS emphasizes four integrated elements: 1) data for decision-making, 2) measurable outcomes supported and evaluated by data, 3) practices with evidence that these positive outcomes are achievable, and 4) systems that efficiently and effectively support implementation of these practices. The District requires schools to use “Be Safe, Be Respectful, and Be Responsible” as their school-wide expectations. Administrators and teachers at all schools indicated PBIS is used at their schools.

According to the District, the behavior expectations are systematically taught and demonstrated on a schedule through behavior lesson plans, also known as Cool Tools, developed by a team at each school. Using PBIS, staff frequently recognize or reward students who meet the staff's expectations of engaging in proper behavior. Schools often use some type of “ticket” as part of a token-economy system where students can earn a reward. Rewards may be individualized or classroom-based and may vary from school to school. Middle and high schools are encouraged to have a student advisory group to help identify which rewards best meet students' needs. Staff and students confirmed to OCR that a reward system is in place at their school and indicated that it is a useful tool to recognize and encourage positive behavior.

To deal with problem behavior in schools, the PBIS framework allows school staff to decide what constitutes minor misbehavior (behavior managed in the classroom) versus what constitutes major misbehavior (behavior managed in the office). The school staff develops and outlines these categories of behaviors into a T-Chart. The T-Chart displays which behaviors should be handled at the classroom level by the teacher and which should be referred to the office for an administrator to address. OCR observed examples of T-charts at some of the schools visited. Teacher managed behaviors include: profanity directed to other students; gum chewing; homework issues; no supplies; non-compliance; lying; cheating; leaving class without permission. Administrator or office managed behaviors include: vandalism; illegal substances; pervasive defiance; weapons; profanity directed to adults; major disruptions; verbal or physical intimidation; harassment; fighting that could result in injury.

Tier 1 supports are offered to students to help them reach the behavior expectations of the school. Tier 2 interventions are designed to provide intensive or targeted support to students who are not responding to Tier 1 supports. Students may be identified for Tier 3 interventions because they failed to respond to Tier 1 or 2 interventions and supports, or may be referred by a teacher, parent, or self. For each Tier 3 intervention, an individualized team is developed, which may include the following individuals: a school psychologist, a social worker, teachers, administrators, counselors, assistants, community members, i.e., a therapist, mentor, parole officer, and parents. One middle school teacher OCR interviewed indicated that at her school the PBIS Tier 1 committee meets monthly to review office referrals and discuss consistency and equity in discipline. Many administrators and teachers interviewed stated

they believed that the use of PBIS has positively affected student behavior, resulting in a reduction in the use of exclusionary discipline. OCR has not yet confirmed the implementation and effectiveness of the various tier interventions and supports.

**MPS' Application of its Discipline Policies and Procedures**

OCR interviewed staff at the selected schools regarding the District's disciplinary policies and procedures as applied and the training staff and students receive on handling disciplinary matters including District policies and procedures. All witnesses stated students are informed of the discipline rules at the beginning of the year. Most teachers stated that in addition to reviewing the student handbook in class, they post the school and class rules in the classroom. Witnesses stated that teachers are permitted to implement in-class consequences without an office referral and that typically teachers are expected to progress through in-class consequences prior to referring a student to the office. In-class consequences can range from conferences with students, phone calls home, to after school detention. Information obtained from witnesses indicated a lack of consistency in recording in-class consequences. Classroom consequences were recorded in a variety of ways and one witness indicated that in-class consequences, including calling parents, are not documented.

In addition, the witnesses indicated a lack of consistency as to what behaviors warranted an immediate referral to the office. Most teachers cited a physical altercation or possession of drugs or weapons as an automatic referral to the office. When a student displayed unruly behavior in the classroom, most teachers sent the student into the hallway but did not keep a record of that type of discipline. One high school teacher interviewed (Teacher A) estimated that each semester he sends at least one student to the office for excessive disruption or not listening, but he does not believe any student had been suspended. Some teachers interviewed expressed that they felt pressured by the administration to handle all discipline within the classroom and that they were judged harshly if they referred a student to the office. Teacher B, a high school teacher, reported that during the 2014-15 school year he sent approximately six students to the office for profanity, disrespectful behavior and/or leaving the classroom without permission. Teacher B stated he would send a student out to the hallway, sometimes for the entire class, for a minor disruption. Teacher B acknowledged to OCR that he does not maintain records regarding classroom discipline. One middle school teacher (Teacher C) stated that at the beginning of the 2015-16 school year, the principal told staff that the Superintendent did not want schools to suspend young students. According to Teacher C, the principal said that he took this statement to mean that unless a student exhibits extreme behavior, has weapons or physically assaults someone, teachers should not send students to the office. This same teacher stated if a student misbehaves, rather than send a student to the office he will send the student to another class of the same grade.

When asked if students were disciplined for being tardy, District staff provided inconsistent answers. Some teachers indicated students can be referred to the office for being tardy an excessive number of times while other teachers felt they could not discipline students for tardiness. One high school teacher (Teacher D) indicated that in her classroom when a student has been tardy on 3 occasions, she will issue a detention. However, Teacher D does not record the detention in the District's online student information system, Infinite Campus.

An administrator at a District high school stated that during the 2012-13 school year, the Superintendent reviewed the discipline statistics and found the number of suspensions to be “unacceptable.” The administrator said his staff reviewed the school’s discipline data and found a pattern that most discipline referrals were given between 10:00 a.m. and 12:00 p.m. Based on this observation, the school added additional lunch periods to reduce the number of students in the cafeteria at one time and reduced the length of class periods so students were not in class for such long periods of time. The administrator said the school’s overall suspensions were reduced drastically and he attributes the reduction to the changes made in scheduling.

Many teachers interviewed by OCR expressed concern that the District administration did not consistently handle the discipline of students with chronic behavior issues, although they did not suggest that the inconsistency was race-based. One high school teacher (Teacher E) reported that she had not witnessed unfair discipline based on race. However, Teacher E declined to comment when asked if she believed there is a disparity in discipline referrals for black and white students.

### ***Monitoring of Discipline Rates***

At the onset of this investigation, the District informed OCR that it has focused on a multi-faceted approach to improve school climate, reduce suspensions, and address disproportionate disciplinary actions. Specifically, the District highlighted the Code of School/Classroom Conduct and Discipline Chart which shows the range of sanctions that could be imposed for different types of misconduct. This chart was published in the 2014-15 Student Handbook. The District indicated it hoped to provide consistency in the applications of sanctions for student misconduct by highlighting the different types of misconduct and the range of disciplinary action that were allowed under the Student Code of Conduct.

The District stated that it has, through PBIS and other efforts, worked to reduce suspensions for non-violent behaviors that are better addressed with other interventions. The District asserted that in monitoring the discipline data, it has noted that since the 2007-08 school year, the number OSS’s have decreased among all racial groups. The District has observed through its monitoring of data that the decreased rate overall has not eliminated the disproportionate rate of discipline, and that additional efforts need to be made in that regard.

### ***Staff and Administrators Training***

OCR learned from interviews with teachers that not all teachers have received training on the implementation of the District’s Student Code of Conduct. Some teachers indicated that at the beginning of the each school year, staff review the written discipline policies and procedures but do not discuss the policies, procedures or practices in depth.

The majority of the teachers interviewed by OCR indicated the District had not provided training on diversity or cultural awareness. The amount and type of training staff and administrators received varied greatly across the District as well as within the same school. Many teachers reported that the only diversity or cultural awareness training they received was training they sought on their own initiative outside of the District. OCR did not identify a specific District training program that was required or provided to administrators or staff.

Teacher C stated he has not had any cultural awareness training or training on diversity. Teacher C stated that he does not believe there is a disparity in discipline. He opined that the disproportionate number of black students receiving discipline is because they do not follow the rules.

### ***Student Input***

During group interviews students reported the Student Code of Conduct and school rules had been adequately explained to them, but said that they felt discipline was inconsistently applied by staff and administrators at the middle school and high school level. For example, high school students reported teachers did not consistently impose the rule prohibiting use of personal headphones or ear buds during the school day or use of a personal cell phone during class. Students reported feeling that personal favoritism, not race, was the reason for the different application of the rules. Many of the students reported they or their classmates had been sent out to the hallway during the class period when the teacher felt that the student was being disruptive. At some schools, students reported that black students were disciplined more harshly than white students and were removed from class for minor infractions, while white students who engaged in similar behavior were not removed or disciplined. At another school, students reported that teachers seem to communicate more harshly with black students than they do with white students. At other schools, students reported that the discipline was imposed fairly on students of all races.

### ***District Discipline Data***

OCR's investigation to date has examined the District's discipline policies for the 2013-14 and the 2014-15 school years, along with student discipline data from the 2013-14 and 2014-15 school years. In selecting the specific schools for interviews and data analysis, OCR looked at the enrollment and discipline numbers from the 2013-14 school year provided by the District for each of the District's elementary schools, middle schools, and high school. For each student disciplinary file requested, OCR reviewed and analyzed, to the extent data was available, the following information: the student's school, race, and grade; the date and type of infraction; the staff person who referred the student; the location of the incident; and the discipline imposed, along with starting and ending dates of the disciplinary action taken.

An analysis of 2014-15 school year data provided by the District during the investigation revealed that, compared with the enrollment proportion of black students, black students were disproportionately represented to a statistically significant degree in the proportion of students who were disciplined, as well as the proportion of students who received ISS, the proportion of students who received an OSS, the proportion of students who were referred to law enforcement, and the proportion of students who were expelled. Compared with the data from 2011-12 prior to the initiation of OCR's compliance review, in 2014-15, the disparity between enrollment and discipline of black students has increased in ISS, and decreased slightly in OSS and expulsions.

OCR specifically analyzed the disciplinary records provided by the District for the 2013-14 and 2014-15 school years to determine whether there were instances in which black and white students were treated differently for similar incidents. OCR noted, during its review, a

disparity in discipline exists within the same school and between schools within the District. The District's discipline records often fail to identify the District administrator who issued the discipline, making it difficult to determine whether there is a specific administrator who is contributing to the disparate discipline. Additionally, some of the District's discipline records do not provide a description of the misconduct or grade level of the student, making it difficult to analyze whether the discipline was properly coded, properly issued or consistent among or between the schools.

Notwithstanding the data maintenance deficiencies noted above, OCR was able to identify over the two school years analyzed, over one hundred incidents at the District's schools where black students were expelled, while similarly-situated white students were suspended for similar misconduct, (e.g., theft, fighting, battery, possession of a weapon other than a gun). OCR also identified numerous incidents where black students received harsher discipline than white students for similarly coded misconduct. These instances included a white student given a one-day OSS for possession of illegal drugs and a black student given three-day OSS for the same infraction; a black student given a five-day OSS for gang activity and a white student given a three-day OSS for disorderly conduct that was annotated as gang activity; two students were disciplined for acts of vandalism, shattering glass doors, the black student received three-day OSS and the white student received one-day OSS; two students cited for cell phone use and chronic disruption, the black student received a one-day OSS and the white student received a warning and counseling; a black student received a five-day OSS for chronic disorder and extreme profanity and a white student received a three-day OSS for chronic disorder, profanity and threats to staff. OCR has not yet obtained the District's explanation/ justification for the apparent different treatment.

## **SUMMARY OF INVESTIGATION AND RESOLUTION**

### **Resolution and Conclusion**

During its investigation to date, OCR identified a number of concerns, including, for example, significantly higher OSS and expulsion rates for black students; a lack of consistency regarding under what circumstances students are to be referred for discipline; a lack of training for staff on the District's discipline policies and procedures; a lack of criteria for when staff may remove a student from a classroom and send the student to the office; and a lack of or incomplete documentation regarding individual disciplinary incidents to ensure students engaging in similar behavior are disciplined consistently.

OCR's analysis of 2013-14 and 2014-15 school years revealed that black students were disproportionately disciplined for incidents in several categories of misconduct that are subjective in nature, including chronic disruption or violation of school rules and disorderly conduct. In addition, OCR found evidence that the discipline code is applied differently at different schools across the District for the same type of behavior; some schools suspended students while others did not. Also, the discipline referral process was not the same across the district. However, OCR found similar penalties given for similar infractions amongst the District's high schools.

The District's discipline policies and procedures do not limit the use of OSS and expulsions to the most severe disciplinary infractions that threaten school safety or to those

circumstances where mandated by Federal or State law. In addition, the District subjects students to exclusionary discipline for subjective discipline categories that have not been clearly defined. The evidence also did not demonstrate that the District has in place effective safeguards to monitor the exercise of discretion in referrals and imposition of sanctions to ensure it is nondiscriminatory. In addition, OCR identified several instances where black students were given more severe disciplinary sanctions than white students who appear to be similarly situated.

The evidence demonstrated that the District has attempted to make improvements and/or use “best practices” in the administration of discipline, including through its use of restorative justice and PBIS, its consultation with experts, and its policy to provide educational services during suspension. The District advised OCR that it provided in-service training sessions for staff throughout the time period of OCR’s review; for example, during the investigation the District reported providing an in-service training session in 2016 on addressing discipline in the classroom. The evidence indicated that the District has begun the process of monitoring its discipline rates and while it has reduced the overall number of OSS across racial groups, it has not decreased the disproportionate rate of OSS for black students.

As noted above, before OCR completed its investigation, the District expressed interest in resolving the complaint through Section 302 of OCR’s Case Processing Manual. On December 29, 2017, the District signed the enclosed Agreement to resolve the Title VI issues raised in this compliance review.

The Agreement requires the District to take specific steps, including designating an employee(s) responsible for ensuring that the implementation of the District’s policies concerning discipline is fair and equitable, and addressing any racial discrimination complaints regarding the implementation of the District’s disciplinary policies; ensuring staff have a variety of corrective measures to employ before referring a student for discipline; creating a plan to achieve the District’s goal of ensuring that discipline referrals and sanctions are appropriately and equitably applied to all students regardless of race; reviewing and revising the District’s student discipline policies, practices and procedures; developing and implementing a system or revising its current system for collecting and reviewing the District’s discipline data; and training District administrators and staff on relevant procedures and policies, as well as evidence-based techniques on classroom management and de-escalation approaches. In addition, the District agreed to establish student committees at each middle and high school to allow students to discuss the implementation of discipline policies and procedures. Also, the District will establish working groups of staff, administrators and parents at each District school to make recommendations to the District regarding the effectiveness of the District’s discipline policies, procedures and practices. The District also agreed to provide informational programs for parents and guardians of students to explain the District’s discipline process.

OCR will monitor implementation of the Agreement. The District agreed to provide data and other information to OCR demonstrating implementation of the Agreement in a timely manner. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI and its implementing regulation, 34 C.F.R. § 100.3, which was at issue in the compliance 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 and its implementing regulation, 34 C.F.R. § 100.3.

Should the District fail to fully implement the agreement, then OCR will take appropriate action to ensure the District's compliance with Title VI. Accordingly, if the District fails to implement the agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

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

OCR appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. If you have questions about this letter, you may contact Dawn Matthias at 312-730-1593 or [dawn.matthias@ed.gov](mailto:dawn.matthias@ed.gov).

Sincerely,

Adele Rapport  
Regional Director

Enclosure