



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
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TEXAS

July 31, 2018

Dr. Charles E. Dupre, Superintendent
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, TX 77479

Re: OCR Docket 06-12-5001

Dear Dr. Dupre:

This letter is to advise you of the resolution of the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, of the Fort Bend Independent School District (FBISD or the District), Sugar Land, Texas. The review was initiated on May 14, 2012, to determine whether the FBISD discriminates against African-American students by disciplining them more frequently and more harshly than other similarly situated students in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department of Education. The FBISD is a recipient of Federal financial assistance from the Department and, therefore, OCR had jurisdictional authority to conduct this compliance review pursuant to Title VI and its implementing regulations.

This letter summarizes the legal standard applicable to the review, the information gathered during the review, and how the review was resolved.

Legal Standard

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 ground 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, under any program to which the regulation applies, may not, on the ground of race, color or national origin, deny an individual any service or benefit; 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; restrict an individual in the enjoyment of any benefits; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit; or, deny an individual an opportunity to participate or provide an

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opportunity to participate that is different from that afforded others. 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.

Title VI prohibits school districts from disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited discrimination. When similarly situated students of different races are disciplined differently for the same offense, discrimination may be the only reasonable explanation for the different treatment. Absent direct evidence that a district discriminates on the basis of race, OCR generally applies a three-step disparate treatment analysis. First, OCR determines whether the facts support a *prima facie* case of discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a district treated one or more students of one race differently than one or more similarly situated students of a different race. Second, if a *prima facie* case of different treatment is established, OCR determines whether the district had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. Third, if one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR determines whether the district's asserted reasons for its actions are pretext for race discrimination. Ultimately, the weight of the evidence must support a finding that actual discrimination occurred.

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. For example, a school's adoption of a facially neutral policy with an invidious intent to target certain races is prohibited intentional discrimination. 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.

Overview of the District

A. Campuses

The FBISD is the seventh-largest district in the state of Texas. The FBISD is located in Fort Bend County, just southwest of Houston, Texas. While the District's administrative offices are located in Sugar Land, Texas, a suburb of Houston, the District encompasses a large geographical area and enrolls students from the following cities: Houston, Sugar Land, Missouri City, Richmond, Fresno, Meadows Place, and Rosharon. At the time that OCR initiated this review, the FBISD enrolled students in pre-kindergarten through 12th grade at a total of 74 campuses, including 11 high schools, 14 middle schools, and 45 elementary campuses.¹ The District's remaining four campuses are "specialized" campuses: two alternative learning centers – the Ferndell Henry Center for Learning (Ferndell Henry) and the M.R. Wood Center for Learning (M.R. Wood) – as well as the Technical Education Center and the Progressive High

¹During the 2010-11 school year, which was the first year for which OCR requested enrollment and disciplinary data from the District, the total number of middle schools was 13. During the 2011-12 school year, an additional middle school, Bowie Middle School, began operating.

School. The FBISD also enrolls students at a JJAEP called the Fort Bend County Alternative Education Center, although this unit is operated by Fort Bend County and not the District. Enrollment data provided by the FBISD reveals that the Fort Bend County Alternative Education Center and Ferndell Henry enroll students from grades 6 through 12, while M.R. Wood enrolls students from all grade levels, including elementary-level students. While OCR has provided District enrollment information below which includes these alternative campuses, for purposes of this review, OCR focused its analysis on the District’s 70 traditional campuses.

During OCR’s investigation of this review, OCR visited select campuses to interview students, recordkeeping personnel, and school resource officers (SROs). These campuses are referred to as the “Onsite Campuses.”² OCR also identified campuses for more targeted review of disciplinary practices and disciplinary referral data, identified in this letter as the “Target Campuses.”³

B. Enrollment Demographics

Because this review was initiated at the conclusion of the 2011-12 school year, OCR requested and received campus-specific enrollment and disciplinary data for the following three full school years: 2010-11, 2011-12, and 2012-13. Accordingly, unless specifically noted otherwise, the in-depth discussion of disciplinary policies and referral information is culled from data obtained from the FBISD for these three school years. Figure 1 illustrates the FBISD’s demographics during these three school years. The category “other” combines American Indian/Alaskan Native students, Native Hawaiian/Pacific Islander students, and students identifying as two or more races.

Figure 1
Overview of District Enrollment When Review Initiated

School Year	Black/African-American	White	Hispanic/Latino	Asian	Other	TOTAL
2010-11	21,348 (31%)	14,891 (22%)	16,812 (24%)	15,506 (23%)	270	68,827
2011-12	20,476 (29%)	13,490 (19%)	18,794 (27%)	15,201 (22%)	2,045 (3%)	70,006
2012-13	20,398 (29%)	13,293 (19%)	18,365 (26%)	15,581 (23%)	2,045 (3%)	69,682

The FBISD has reported increasing enrollment since the time OCR initiated this review. For the 2014-15 school year, the FBISD reported an increased enrollment to 76,201 students, and enrollment increased to a total of 77,019 for the 2015-16 school year.⁴ See Figure 2.

² The “Onsite Campuses” were: Sugar Land Middle School, Quail Valley Middle School, First Colony Middle School, Stephen F. Austin High School, Dulles High School, William B. Travis High School, the Ferndell Henry Center for Learning, and the M.R. Wood Center for Learning.

³ The “Target Campuses” were” Sugar Land Middle School, Quail Valley Middle School, James Bowie Middle School, Billy Baines Middle School, Dulles Middle School, Ridge Point High School, Dulles High School, William B. Travis High School, and Lawrence Elkins High School.

⁴ 2014-15 enrollment information was taken from the FBISD’s website, at <http://www.fortbendisid.com/Page/1240> (last visited June 3, 2015). 2015-16 enrollment information was taken from the District’s PEIMS data, which is available on the TEA website, at https://rptsvr1.tea.texas.gov/adhocrpt/Disciplinary_Data_Products/DAG_Summaries/Download_DAG_District_Summaries.html (last visited July 26, 2017).

Figure 2
Updated District Enrollment

School Year	Black/African-American	White	Hispanic/Latino	Asian	Other	TOTAL
2014-15	21,735 (29%)	14,480 (19%)	19,266 (25%)	18,149 (24%)	2,571 (3%)	76,201
2015-16	22,158 (29%)	13,225 (17%)	20,470 (27%)	18,650 (24%)	2,516 (3%)	77,019

Information Gathered to Date

A. Discipline Policies and Procedures

The FBISD maintains a Student/Parent Handbook that governs all students from grades prekindergarten through twelfth grade. When OCR initiated this review, the FBISD maintained a Student/Parent Handbook which included the District's Student Code of Conduct (Code). As discussed in further detail below, the FBISD now maintains a Code that is separate from the Student/Parent Handbook, a change which the FBISD initiated for the 2014-15 school year. Because OCR's detailed review of individual discipline incidents emphasized the 2010-11 and 2011-12 school years, OCR has summarized the discipline policies, procedures, and practices which were in place during these school years below. OCR has also reviewed the most recently-available Code to determine whether the FBISD has made significant changes in its policies and procedures, as discussed further below.

Impact of Texas State Law

Texas state law mandates referral of students to a DAEP and/or expulsion for certain offenses, as outlined in Chapter 37 of the Texas Education Code. The Texas Legislature has amended state law to provide that, beginning in the 2013-14 school year, the issuance of Class C Misdemeanor tickets for school discipline without the filing of a formal complaint in the criminal justice system is prohibited (Texas Legislature passed Senate Bill 393, taking effect on September 1, 2013). Also, state law has been changed to prohibit students from being charged with disrupting class on campus (Texas Legislature passed Senate Bill 1114, which took effect on September 1, 2013).⁵ The FBISD notifies students and parents/guardians of the impact of Texas state law in its discipline practices in Student/Parent Handbooks and/or Student Codes of Conduct, as discussed further below.

2010-11 Student/Parent Handbook

In 2010-11, the Student/Parent Handbook notified students and parents of expectations for behavior on District buses. Misconduct on school buses would result in punishment in accordance with the Code. Punishment was progressive in nature, ranging from a warning for the first referral to suspension from bus privileges. A chart regarding the appropriate punishment

⁵ Additional information regarding the changes in Texas state law with regard to the issuance of class C misdemeanors to public school students can be found in the article *School Officers Can No Longer Issue On-Campus Citations*, The Texas Tribune, Aug. 29, 2013, available at <http://www.texastribune.org/2013/08/29/class-disruption-cases-head-principals-office-not/> (last visited August 10, 2016).

for bus infractions was published in the Student/Parent Handbook, and provided ranges of punishment based on school level (PK-grade 5 and grades 6-12) and number of referrals. Referral for a fifth time, regardless of grade level, resulted in a bus suspension for the remainder of the school year. The Student/Parent Handbook also provided that “severe” infractions might result in immediate bus suspension, but no definitions or examples of severe infractions were provided.

2010-11 Student Code of Conduct

Section II of the 2010-11 Student/Parent Handbook was the District’s Code. While brief descriptions of punishable conduct were provided, “offenses” for purposes of determining punishment were not classified and defined. Rather, the Code separated offenses into the following general categories:

- Disregard for Authority (e.g., failure to comply with directives, tardiness, leaving school grounds without permission, etc.)
- Mistreatment of Others (e.g., using profanity, fighting, harassment)
- Property offenses (e.g., vandalism, theft)
- Possession or Use of Prohibited Items (e.g., fireworks, weapons, tobacco, etc.)
- Possession or Use of Telecommunications Devices
- Illegal, Prescription, and Over-the-Counter Drugs
- Misuse of Computers and the Internet
- Safety Transgressions (e.g., false alarms, threats)
- Miscellaneous Offenses (e.g., dress code violations, academic dishonesty)

The Code also contained a discussion of the FBISD’s “Discipline Management Techniques”; however, the Code did not “tie” any specific penalties to any offenses listed. While the FBISD listed examples of conduct that would be in violation of the Student Code of Conduct, the offenses were not ranked by severity, nor were examples of the range of appropriate penalties noted with regard to any specific offense. Rather, the introductory paragraph under “Discipline Management Techniques” included the following language:

Discipline techniques are designed to improve student conduct, as well as encourage students to act responsibly and understand the consequences of their decisions. Disciplinary actions will draw on the professional judgment of teachers and administrators and on a range of discipline management techniques. Techniques will be correlated to the seriousness of the offense, the student’s age as well as grade level, the student’s frequency of misbehavior, the student’s attitude/intent, the effect of the misconduct on the school learning environment, the student’s disability that substantially impairs the student’s capacity to appreciate the wrongfulness of the student’s conduct, and any statutory requirements.

Because of the many factors involved, discipline for a particular offense may bring into consideration varying techniques and responses, unless otherwise mandated by law.

The 2010-11 Code also listed possible penalties, including, but not limited to, the following examples:

- Verbal correction
- Cooling-off time or “time-out”
- Confiscation of items
- Behavioral contracts
- Parent-teacher conferences
- Saturday school
- Detention
- Assignment of school duties (such as cleaning or picking up litter)
- Student referral to the office or another teacher’s classroom
- In-school suspension
- Out-of-school suspension
- Placement in a District DAEP
- Placement and/or expulsion in an alternative educational setting
- Expulsion
- Referral to an outside agency or legal authority for criminal prosecution in addition to disciplinary measures taken by the District

The 2010-11 Code did not provide specific information regarding when students may be referred to law enforcement. The only information provided was a notification to students and parents/guardians that school administrators “have a mandatory duty to report certain criminal conduct to law enforcement,” with cites to various provisions of the Texas Government Code, the Texas Education Code, and Texas Penal Code. In such cases, the Code provided that the FBISD Police Department would be contacted by the campus principal or his/her designee. The FBISD did not permit the use of corporal punishment. (*See* 2010-11 Student/Parent Handbook, at pp. 44-45)

The 2010-11 Code provided that a teacher or administrator could remove a student from class for any behavior which violated the Code, and provided a distinction between a “routine referral,” which is initiated by a classroom teacher, and a “formal removal,” where a teacher or administrator removes a student from the classroom for any conduct which violates the Code. A “routine referral” refers to a teacher sending a student to the principal’s office as a discipline management technique, after which the principal may employ additional discipline management techniques as appropriate. The Code provided that a teacher could initiate the formal removal process if the student’s behavior had been documented by the teacher over time as repeatedly interfering with the teacher’s ability to teach, or if the specific conduct at the time was so unruly or disruptive that the teacher could not teach and the other students in the classroom could not learn.

The 2010-11 Code stated that a student could be suspended for any behavior listed as a general conduct violation. In addition, students could be subject to suspension, DAEP,⁶ or expulsion, for

⁶ The Code refers to “District Alternative DAEP,” but this appears simply to be another way of referring to DAEP.

offenses listed as general conduct violations, DAEP offenses, or expellable offenses. Stated differently, the Code provided administrators the discretion to order students to a lesser penalty of suspension for those violations for which DAEP or expulsion was a possible penalty, but not a mandatory penalty. The Code provided that, in deciding whether to order suspension, the District would consider the following: self-defense, intent or lack of intent, the student's disciplinary history, and disability status. The Code notified students and parents that, in accordance with Texas state law, a student may not be suspended for more than three days per behavior violation. Accordingly, while the number of days a student was suspended would have been determined by the administrator, it could not have exceeded more than three school days at a time.

The Code also provided that, in accordance with state law, the following offenses could have warranted removal to the DAEP: involvement in a public school fraternity, sorority, or gang; involvement in criminal street gang activity; criminal mischief not punishable as a felony; or, conduct punishable as a felony occurring off-campus. Referral to the DAEP was mandatory for certain offenses, which were listed (e.g., terroristic threat, assault).

Finally, the Code identified offenses for which expulsion was either discretionary or mandatory under state law. A student could have been expelled for conduct such as assault in retaliation against a school employee or volunteer; criminal mischief punishable as a felony; or sexual assault or aggravated robbery, regardless of where the conduct occurred. Expulsion was mandatory for certain serious offenses occurring on school grounds or at school-sponsored events, including, but not limited to: bringing a firearm to school; committing aggravated assault (as defined under state law), arson, murder, indecency with a child, or aggravated robbery; or behavior punishable as a felony that involves the possession or use of drugs or alcohol.

2011-12 and 2012-13 Student/Parent Handbooks and Codes of Conduct

The 2011-12 Student/Parent Handbook did not change the Code. In the 2012-13 Student/Parent Handbook, the FBISD revised its section on bus misconduct to provide more detail regarding the types of misbehavior that would warrant withdrawal of bus privileges, and defined the misconduct by level ranging from Level I through Level IV. Consequences were then tied to a specific level of offense, and mandated a specific punishment as opposed to a range of punishments (i.e., "1 day bus suspension"). The 2012-13 Code did not change from the 2010-11 and 2011-12 versions.

Discipline Reference Card

In addition to the Code, the District maintains a document entitled "Discipline Offense and Action Codes" (hereafter referred to as the "Discipline Reference Card") that is used to assist administrators at each FBISD campus in determining the appropriate disciplinary sanction for different violations. OCR reviewed the Discipline Reference Card for the 2010-11 and 2011-12 school years, the years for which OCR reviewed specific disciplinary referral data. OCR also reviewed the 2012-13 Discipline Reference Card to review any changes made by the FBISD to this reference tool. OCR's review revealed no significant differences among any of the versions of the Discipline Reference Card.

During the three above-referenced school years, the FBISD Discipline Reference Card separated offenses by offense categories. The categories were separated further into “Non-PEIMS Reportable Violations” and “PEIMS Reportable Violations.”⁷ In addition, a range of appropriate penalties was provided for every offense possible under the District’s Student Code of Conduct. The Discipline Reference Card also noted those penalties for which DAEP placement or expulsion was either discretionary or mandatory under state law. Aside from noting the range of appropriate penalties for each offense, a column on the far right of the card provided administrators with guidance regarding the appropriate procedure to be followed when assigning discipline. In this column, there was also a note that stated, “Law enforcement involvement when appropriate,” identifying the following offenses as appropriate for law enforcement involvement: possession of cigarettes/tobacco; fighting/mutual combat; coercion/extortion; disruptive behavior; possession/sale of illegal drugs; look alike weapon; possession of unidentified over-the-counter medicine; robbery/theft; sexual misconduct; and weapons possession. Again, as noted above, the Discipline Reference Card was not published to students or parents/guardians, but only FBISD staff with responsibility for assigning disciplinary sanctions.

Target Campus Disciplinary Policies and Procedures

Many of the Target Campuses also maintained policies and procedures intended to supplement the district-wide Student/Parent Handbook and Code (supplements). For example, during the 2011-12 school year (a year for which OCR reviewed individual disciplinary incidents), Billy Baines Middle School, Dulles High School, Dulles Middle School, Elkins High School, Quail Valley Middle School, Sugar Land Middle School, and William B. Travis High School all published a supplement to the District Student/Parent Handbook which was distributed to students and parents/guardians. These supplements contained information regarding policies and procedures in place at specific campuses, and gave students information regarding possible disciplinary referrals, but the information in the supplements varied. For example, the 2011-12 supplement for William B. Travis High School informed students that refusal to give up a cell phone would be considered insubordination, which would result in a one to three-day suspension from school. The 2011-12 Dulles High School supplement notified students that, in the event they participated in a fight, they would receive a three-day suspension, a citation from a police officer, and possible placement in the DAEP. In addition, the supplement informed students that if they left campus without permission, they would receive a minimum of two days ISS. The supplement also discussed the penalties for profanity, and informed students regarding the location of the SRO office on campus as well as the SRO’s role on campus.

In contrast to the above-discussed supplements, the 2011-12 Dulles Middle School supplement included a section entitled “Explanation of Discipline Actions,” but did not identify any specific violations for which a specific penalty would be given. Rather, the supplement provided detail regarding the campus’s and District’s policies and procedures with regard to detention, ISS, suspension (out of school), and DAEP placement. Notably, this supplement made clear that suspensions *cannot* be appealed.

⁷ The TEA collects discipline data from Texas school districts through its Public Education Information Management System, or “PEIMS.”

In addition to the student/parent supplements, some FBISD Target Campuses also provided additional Faculty Handbooks for their staff. Additional information regarding discipline policies and procedures was communicated to staff in these handbooks, but the publications revealed variations across the District. Some handbooks indicated that discipline records were to be maintained in both electronic and paper form. The XX – phrase redacted – XX stated that “each teacher will be expected to handle most cases of discipline that arise in the classroom.” The handbook explained to teachers how to input a disciplinary referral in to the District’s electronic recordkeeping system (Skyward), but also clearly stated that a “hard copy of the infraction and the action taken will be placed in the student’s discipline file.” The handbook also provided a small list of examples of infractions designated as “Level I” and “Level II” and stated that Level II offenses and above are to be reported in Skyward. Examples of Level I offenses that would be managed in the classroom were horseplay, disruptive noises, and sleeping in class. Finally, the XX – phrase redacted – XX indicated that teachers could assign detention (AM, PM, or Saturday detention) or Sparkle Duty (i.e., clean-up duty). Thus, it appears that there may have been some minor offenses for which a referral in Skyward would not be made, at least at XX – to end of sentence redacted - XX.

The XX – phrase redacted – XX instructed staff that referrals should be made in the Skyward system after a teacher has had a student conference and parent contact. At XXXX, the XX – phrase redacted – XX revealed that staff had the authority to assign detention to students on their own initiative, including AM, PM, and lunch detentions. Moreover, prior to initiating an office referral for a student, staff members at XXXX XXXX XXXX were required to document their approaches to manage a student’s behavior on the student’s Level I Discipline Documentation Form, which staff were also required to maintain on file. If a student continued to misbehave, XXXX XXXX XXXX procedures provided that staff should initiate a referral to administration by using the District’s Discipline Referral Form on Skyward. The XXXX XXXX XXXX Faculty Handbook further revealed that the campus had instituted the CHAMPS discipline management initiative (discussed further at Section VIII.F.) as of the 2011-12 school year.

The 2011-12 Faculty Handbook at XXXX XXXX XXXX instructed staff that all office referrals must be preceded by a discipline notice, which was to include the student’s name, date, time of incident, name of teacher referring the student, location, school name, and name and grade of the subject the student was in. The handbook provided that the Discipline Notice Form was always to be signed by the Assistant Principal after the disciplinary action had been taken, and a copy provided to the referring teacher in their mailbox.

Publication of Policies and Procedures

The FBISD reported to OCR that disciplinary policies and procedures are communicated to staff, students, and parents/guardians through the Student/Parent Handbook, FBISD Board of Trustees (Board) policy, the District’s website, and campus Faculty Handbooks. Interviews with students revealed that at least some campuses provided paper copies of the Student/Parent Handbook and the Code to their students at the beginning of each school year. Teacher questionnaire responses revealed that Faculty Handbooks were provided at in-service training prior to the beginning of the school year. The District Student/Parent Handbook and Code is also available online. The District also publishes all policies, which include anti-discrimination and grievance procedures,

online. The Student/Parent Handbook includes information regarding the District’s appeal procedures for disciplinary placements, and provides a link to the policy online.

2016-17 Student/Parent Handbook and Student Code of Conduct

OCR also reviewed the District’s Student/Parent Handbook and Code for the most recently-completed school year, the 2016-17 school year, to determine whether the FBISD has made changes to its discipline policies and procedures since OCR initiated this review.⁸ During the 2016-17 school year, the FBISD published its Code separately from the Student/Parent Handbook. The Student/Parent Handbook was 100 pages in length, and provided information to students and their parents/guardians on FBISD policy regarding a number of matters, including, but not limited to, attendance rules, student vaccinations, parent/guardian access to student records, nondiscrimination and sexual harassment policies, services for students with disabilities, etc. The Student/Parent Handbook also contained detailed information regarding the District dress code, including providing specific examples of attire or grooming which is not permitted (e.g., no clothing with profanity, no attire that is “distracting”), but did not provide any information regarding the disciplinary penalties for students violating the dress code. The Student/Parent Handbook notified students that “disruptions of school operations” may constitute a misdemeanor offense, and provided examples of conduct which would constitute a disruption as provided for under Texas state law, for example, “disruption of classes.” As described by the Student/Parent Handbook, a disruption of class could include making loud noises. Aside from notifying students and their parents/guardians that this behavior could constitute a misdemeanor offense under Texas state law, the Student/Parent Handbook did not provide more detailed information regarding the FBISD’s discipline practices. Rather, the Student/Parent Handbook referred students and parents/guardians to the FBISD Code, which the Student/Parent Handbook stated provided information regarding the circumstances under which a student may be removed from the classroom. (*See* 2016-17 Student/Parent Handbook, at page 83.)

OCR also reviewed the 2016-17 Code. The 2016-17 Code was changed from the versions for which OCR reviewed disciplinary data from the FBISD. For one, information regarding discipline for misconduct on FBISD buses was communicated in the Code as opposed to the Student/Parent Handbook. Appendix A to the Code provided examples of bus infractions, identified by level (i.e., Level I infraction through Level IV infraction), and also contained a chart outlining the penalties for bus infractions, with the most severe penalty being a 15-day bus suspension for secondary students (defined as grades six through twelve) found to have engaged in a Level IV infraction for a second or third time (Level IV infractions included, for example, assault of a student or driver).

As revealed by OCR’s review of the 2016-17 Code, the FBISD assigned a “Campus Behavior Coordinator” (CBC) for each of its campuses during the 2016-17 school year. The CBC maintained a list of the CBCs for each FBISD campus on its website and in the Student/Parent Handbook. The CBC was responsible for maintaining student discipline, and could be the campus Principal or other administrator as selected by the Principal.

⁸ Links to PDF copies of the 2016-17 Student/Parent Handbook and Student Code of Conduct can be found on the FBISD’s website, at <https://www.fortbendisd.com/Page/947> (last visited July 19, 2017).

The 2016-17 Code contained a list of discipline management techniques similar to previous versions, providing examples of possible disciplinary measures the FBISD may take in response to a Code violation, including ISS, OSS, DAEP, and expulsion. The Code also provided a list of “General Types of Prohibited Conduct,” and provided that misconduct identified in the list of prohibited behaviors would result in the FBISD assigning one or more “Discipline Management Techniques.” Like previous versions of the Code, the Code separated discipline offenses into categories such as “Misconduct Involving Others” and “Safety/Disruption,” but did not separate the examples of misconduct into “levels” which would indicate which offenses may be considered more serious than others, other than indicating which offenses could warrant DAEP or expulsion, as outlined further below. Examples of prohibited behaviors included, but were not limited to, horseplay, fighting, derogatory statements, other conduct that could cause bodily injury, and engaging in misbehavior that substantially disrupts or materially interferes with school activities. Further, the FBISD provided definitions of some misconduct, e.g., fighting, bullying, and harassment, in its “Definitions” section of the Code. The FBISD did not define every Code violation, nor did the FBISD indicate which Code violations could potentially result in specific discipline management techniques (again, aside from providing some further guidance with regard to DAEP and expulsion).

OCR notes that, in previous versions of the Code, referral to law enforcement was provided as an example of a Discipline Management Technique. In the 2016-17 Code, however, this language was removed. During its investigation, OCR was able to review the 2014-15 Discipline Reference Card, and notes that this version of the card removed all guidance provided to administrators regarding when to notify law enforcement of any specific behavior infraction.

The 2016-17 Code continued to distinguish between “ordinary” teacher removals, in which a teacher sent a student to the CBC or other administrator’s office for engaging in behavior which violated the Code, and the CBC or other administrator assigned the appropriate discipline management technique to address the behavior; and a “formal” teacher removal, in which a teacher removed a student from the classroom for repeated or substantial disruptions of the classroom.⁹ When a teacher formally removed a student from the classroom for a Code violation, the CBC could place the Student in another classroom, ISS, OSS, or DAEP. In accordance with the Code, the FBISD scheduled a conference with the student and parent/guardian within three days of a formal removal, after which the CBC or administrator would assign an appropriate consequence.

While the 2016-17 Code included specific sections regarding ISS and OSS separately, these sections merely stated that “[s]tudents may be placed in ISS for any misconduct listed in any category” of the Code, and that “[s]tudents may be suspended from school for any misconduct listed in any category” of the Code, respectively. The Code also provided that, in determining whether to order OSS, the District would consider self-defense, lack of intent, a student’s disciplinary history, and the student’s disability status, if applicable.

⁹ Previous versions of the Code used the terminology “routine referral” as opposed to “ordinary removal,” to refer to situations wherein a student was referred to an administrator by the classroom teacher.

Similar to previous versions of the Code, the 2016-17 Code continued to inform students and parents/guardians of those offenses which would result in mandatory DAEP placement, discretionary DAEP placement, or expulsion. The Code explained that, in determining whether to order DAEP placement (either mandatory or discretionary) or expulsion, the FBISD considered self-defense, intent, disciplinary history, and a student’s disability status.

Examples of conduct warranting a mandatory DAEP placement included engaging in conduct punishable as a felony, assault resulting in bodily injury, issuing a terroristic threat, and gang activity. The 2016-17 Code also provided examples of conduct which could warrant a DAEP placement (i.e., “discretionary DAEP placement”), including the following: possessing marijuana, certain “serious” offenses, e.g., “continued/repeated PEIMS reportable violations” and profanity/obscene gestures toward a teacher. Examples of conduct mandating expulsion included bringing a firearm to school and aggravated assault and sexual assault, as defined in the Texas Penal Code. Reasons for discretionary expulsion included engaging in documented “serious misbehavior” (defined in the Code) while placed at a DAEP, committing an assault resulting in bodily injury to a school employee, or selling, giving, or delivering marijuana or other controlled substances. The Code defined “serious misbehavior” to include deliberate violent behavior posing a direct threat to others, or public lewdness, indecent exposure, or harassment of a student or FBISD employee as defined in the Texas Penal Code.

B. Role of Law Enforcement

The District employs specially trained individuals assigned to the FBISD Police Department as SROs. Because SROs are directly employed by the FBISD, the SRO duties are not governed by any Memoranda of Understanding or other agreements with local police departments.¹⁰ Rather, SRO duties are outlined in FBISD policy, which authorizes SROs to perform the following functions:

1. Enforce the provisions of the Texas Education Code and Texas Penal Code;
2. Provide police services at school campuses and school-sponsored events;
3. Enforce general and criminal laws of the State of Texas within the jurisdiction of the District;
4. Investigate (or cause to be investigated) criminal offenses that occur within the jurisdiction of the District;
5. Perform all duties of licensed peace officers as outlined in the Texas Code of Criminal Procedure;
6. Assist in providing traffic control at athletic events, school openings or closings, or other times deemed necessary;
7. Enforce regulations for and on District school buses, which shall be considered extensions of the classroom and subject to jurisdiction by District peace officers; and
8. Where appropriate, coordinate and interface with other law enforcement agencies in the enforcement of the provisions of this Board policy.

¹⁰ FBISD policy dictates that the FBISD Police Department is to enter into a memorandum of understanding with local police departments with which it has overlapping jurisdiction, however, in order to outline communication and coordination efforts.

The FBISD assigns SROs to all campuses, including elementary school. The 2010-11 and 2011-12 organizational charts of the FBISD Police Department identified 48 assigned officers, with at least one SRO assigned to each secondary campus within the District. The organizational charts indicated that some high schools had two SROs assigned (e.g., Elkins and Bush), and that SROs were also assigned responsibility for elementary school campuses located in the same area as the secondary campus to which the SRO was assigned.

The FBISD reported that all persons employed by the District as SROs have met or exceeded the minimum training requirements as set forth by the Texas Commission on Law Enforcement. All FBISD SROs complete an additional 40 to 80 hours in school-based law enforcement training. Each campus also completes a Police-Campus Relationship Initiative form that details the expectations for the SRO.

Teacher questionnaires at the Target Campuses revealed that many teachers were unsure of the SRO's role on their campus. The administrators responding to questionnaires seemed to have a better understanding of the SRO's role on their campus, but only some administrators reported that SROs meet with District personnel to discuss the SRO's role.

C. Recordkeeping Procedures

The District uses Skyward, an electronic student information system. The program is one of two vendors preferred by the TEA. Teachers and/or designated personnel make electronic discipline referrals within Skyward. Then, administrators are responsible for reviewing the referral and taking appropriate measures by electronically classifying the offense and assigning the appropriate sanction.

OCR staff spoke with XXXX individuals from the District's Enterprise Applications, Support, Training, and Reporting Department ("EASTR") during its onsite visit. The EASTR personnel are responsible for training campus personnel regarding how to use the District's electronic recordkeeping system, including how to input disciplinary records into the system, but are not responsible for training administrators regarding the appropriate level of punishment for any offense or to determine how specific offenses should be classified. Rather, the "coding" of particular disciplinary offenses is completed by the administrator, who also determines the appropriate punishment for the infraction.

For minor Code infractions for which there is no removal of a student from the classroom, the FBISD has a "local code" that identifies the specific infraction. These are 2-letter alphabetical codes; for example, "Horseplay" is coded as "HP" in the District's system. These minor violations are then grouped together and coded using the number, "21," which refers to a general Code violation.

Some discipline information is required to be reported to the TEA through its Public Education Information Management System (PEIMS). When a student is removed from the classroom for a disciplinary action, this is reported to TEA via the District's PEIMS report, and thus the action is considered a "reportable offense." These "reportable offenses" are given a PEIMS code, which is a 2-digit numerical code.

According to XXXX XXXX, no written record is created when staff makes a disciplinary referral; rather, the District’s disciplinary referrals are maintained electronically, through Skyward. XXXX XXXX could not say precisely how long the records are maintained, but stated that the records are maintained in accordance with the FBISD’s records retention policy, which they believe provides for records retention of seven years for this data.

XXXX XXXX demonstrated for OCR personnel how the Skyward system is used by teachers and administrators involved in the disciplinary referral process. XXXX XXXX logged in to the system as “teacher.” When logged in to the system as a teacher, a list of the teacher’s current students is provided in the Skyward system, along with a tab along the left hand side of the screen which permits the teacher to take certain actions regarding students, including submitting a disciplinary referral. Teachers making a disciplinary referral can only provide information regarding the date and time of the incident, as well as add comments regarding the incident in a comment box. The only code that can be entered under the offense section by a teacher is “teacher referral.” Teachers then hit the “Save” button, and the referral is automatically sent to the administrator responsible for handling discipline for the referred student. XXXX XXXX explained that, until an administrator acts on a referral, the teachers can edit or delete the referral.

When an administrator logs in to the Skyward system, the system will show “Teacher Referral” under the Offenses tab, which notifies the administrator that a disciplinary referral is queued for action. When an administrator dismisses a referral, it shows up in the “Offense Description” tab as “Dismissed.” Once an administrator clicks on the “Offense” button, there is a prepopulated list of offenses from which the administrator can choose to classify the offense. Next, there is an “Action” link which automatically populates with available actions that can be taken for the selected offense code. For example, if the student’s offense was “Horseplay,” two available options are “Counseling” or “Warning.” XXXX XXXX explained that there would not be an option for expulsion for Horseplay, as this is not an available punishment for this coded offense. If an administrator suspends a student out of school, they must also provide an “ordered date” and “return date” in Skyward.

In addition to Skyward, some FBISD campuses may also continue to maintain paper records of disciplinary referrals, contrary to the report of XXXX XXXX. For example, as noted above, the Faculty Handbooks for XXXX XXXX XXXX and XXXX XXXX XXXX specifically referenced paper disciplinary records to be maintained by classroom teachers, while the Faculty Handbook for XXXX XXXX XXXX provided that teachers should initiate referrals in the Skyward system. Moreover, some teachers reported to OCR in their questionnaire responses that they would generate paperwork if they referred a student for discipline from their classroom.

D. Interviews and Questionnaire Responses

Students

OCR spoke with approximately XXXX students at the Onsite Campuses. The majority of students at both traditional campuses and the alternative centers reported that they were familiar with the Code which students reported is distributed at orientation and is available online. When questioned regarding whether the District clearly communicates the behavioral infractions that can result in suspensions or DAEP referrals, most students responded yes, but there were some

students at every campus who felt that this information was not clearly communicated. Some students reported that some students are suspended, while others receive DAEP for the same types of offenses. A majority of students reported that they were not familiar with the FBISD’s complaint or grievance procedures.

Most students reported that classroom teachers also have their own discipline management plan and/or discipline procedures. Students reported being made aware of these classroom procedures by the teacher at the beginning of the school year. Students reported that teachers have the capability to punish students with detention or “Sparkle” duty. Some students reported that teachers also have the ability to administer ISS.

The majority of students reported that they felt that both teachers and administrators at their campuses administered discipline fairly and did not refer students for discipline or administer discipline sanctions differently on the basis of race. Student groups at the District’s alternative centers were more likely to believe that discipline at their home campuses was not administered fairly, and that African-American and Hispanic/Latino students were more likely to receive disciplinary referrals. Some students reported examples of incidents wherein they felt African-American students were treated more harshly with regard to discipline, for example, the following:

- **XXXX XXXX XXXX** – Two different students provided examples of groups of students talking, but only the African-American students were referred for discipline. Another African-American student reported to OCR that after an announcement to put away electronic devices, he was required to put away his cell phone, but a non-African-American student was not told to put away his laptop.
- **XXXX XXXX XXXX** – One student (XXXX) assigned to XXXX XXXX XXXX reported that, at his home campus of XXXX XXXX XXXX, African-American female students are referred for dress code violations often, while other students can “get away with it.” Other students at XXXX XXXX XXXX also reported that African-American girls are punished for wearing yoga pants, while other girls can wear yoga pants, specifically, “thin” girls, without being punished.
- **XXXX XXXX XXXX** – Students reported that African-American students receive more referrals for dress code violations than other students.
- **XXXX XXXX XXXX** – Students reported an incident wherein two white students were talking, but an African-American student was “blamed.”

OCR also questioned the students regarding their familiarity with the SRO assigned to their campuses. Most students reported to OCR that their familiarity with the SRO came through personal observation, and most students reported having a positive opinion of the SRO. Some students reported that they were informed about the SRO’s role on campus during a program/training at their campus.

Students provided the following examples of when students would be arrested or receive citations on campus: possession of weapons and/or drugs; truancy; fighting; or disrupting class. Most students reported that SROs are not involved in discipline.

School Resource Officers

SROs interviewed by OCR reported that their responsibilities on campus are to enforce the criminal laws and to be “visible” during lunch and in the hallways between classes. SROs reported that they are generally assigned to a specific campus, and may also work at school-sponsored events, such as athletic events. Sometimes, SROs are called to campuses other than their assigned campuses.

SROs reported that they are not involved in student discipline. SROs do have the authority to refer students to administrators for discipline if they personally see the student engaging in behavior which they know is a violation of the Student Code of Conduct (e.g., leaving campus; fighting). OCR received inconsistent information from SROs regarding paperwork; some SROs reported that no paperwork is generated when they refer a student to administration for discipline, while other SROs reported that if the situation warrants a written record, then they may assist with documenting the incident.

SROs reported that they have the authority to arrest students and/or issue citations. SROs explained that students could receive a citation for conduct such as theft or fighting. A student may be arrested for possession of drugs or prohibited weapons, or for committing an assault. OCR obtained copies of citations issued by SROs for the 2010-11 and 2011-12 school years, which recorded the race/ethnicity of the students cited. Aside from the citations themselves, however, the FBISD does not currently “track” or record whether a student is referred to law enforcement, and does not otherwise maintain data regarding the race or ethnicity of students who are cited by an SRO.

Although some students reported that SROs can escort students from classrooms, the SROs reported that teachers cannot refer students to them for discipline and they do not enter classrooms. Instead, all referrals go to the administrator, who then makes a determination of whether law enforcement should be involved due to the criminal nature of the offense. SROs reported that they would only involve themselves in an active fight.

SROs meet with the campus administrators at the beginning of each school year to discuss how they can best work together. SROs act under the supervision of the Chief of Police for the FBISD Police Department, and not the administrators at the campuses to which they are assigned. SROs also receive training from the District regarding interaction with the public and with students. In addition, SROs receive outside training with regard to school-based law enforcement specifically.

Teachers

OCR issued questionnaires to teachers at the Target Campuses, and conducted two telephone interviews with teachers who indicated that they preferred to provide their responses via telephone interview. With regard to discipline policies and procedures, most teachers explained the procedures in a manner that is consistent with OCR’s review of the written procedures. Teachers explained that they deal with lower-level (i.e., Level I) infractions in the classroom, but will make a referral in Skyward if the behavior is persistent or serious enough to be above a Level I infraction.

With regard to the types of discipline that teachers have the authority to impose, most teachers reported that they will hold conferences, make parent contact, assign detention, and assign clean-up duty. Some teachers noted that they also have the authority to assign ISS, and a few teachers noted the use of the District's "CHAMPS"¹¹ program in their classroom for positive behavior management strategies. One teacher noted that, with regard to Level I infractions that are to be managed in the classroom and thus not submitted in Skyward, teachers are to fill out a Level I discipline form to maintain for their own personal records.

If a referral to an administrator is made, the teacher simply writes a description of the conduct in Skyward. Once the referral is made, the assigned administrator (typically a grade-level principal) will meet with the student and assign the appropriate discipline in accordance with the Code. When a discipline referral is made, the teacher is responsible for making parent contact prior to the referral being made to the assigned disciplinarian. The majority of teachers reported that discipline policies and procedures are the same across all FBISD campuses.

OCR's questionnaire included questions regarding consistency in the application of the District's policies and procedures. OCR received varying responses from FBISD teachers regarding these issues. With regard to the administration of disciplinary penalties, one teacher noted that, with regard to dress code violations, students may be permitted to change in to their gym clothes or call home for a change of clothes. If the dress code violation cannot be resolved in this manner, then the student must spend the day in ISS. Some teachers reported that discipline is not the same for all students because it depends on the grade-level principal to which the student is assigned. According to FBISD teachers, some principals enforce discipline, and others do not. OCR received responses from multiple teachers indicating that disciplinary consequences may vary and that the District's policies are not uniformly administered. Some teachers reported that they believe penalties vary based on the race or ethnicity of the student involved. 4% of respondents, a total of XXXX teachers, responded that they had witnessed unfair treatment of students on the basis of race in the administration of discipline. One teacher interviewed by OCR also reported this belief. 11% of teachers responded that they did believe there was a disparity in the referral of African-American students for discipline compared to students of other races.

A number of teachers stated that they had not received training on the District's disciplinary policies and procedures. Most who responded that they did receive training indicated that the training was provided by their campus administrators at the beginning of the school year. Many teachers noted that they received CHAMPS training annually.

Finally, with regard to discipline records, most teachers reported that discipline files are maintained electronically through the Skyward program. Some teachers reported maintaining

¹¹ "CHAMPS" is an acronym for "Conversation, Help, Assignments, Movement, and Participation," and refers to a positive approach to classroom management which has been implemented in the FBISD. CHAMPS is a District-wide initiative intended to assist FBISD teachers to establish clear expectations and fair responses to student behavior. The FBISD reported to OCR that, at the conclusion of the 2010-11 school year, which was the third year of CHAMPS implementation in the District, 71 of the District's 74 campuses had received CHAMPS training, and disciplinary referrals overall at every school level had decreased.

their own personal files in their classroom. OCR received conflicting information regarding the submission of classroom discipline records to administration, with 63% of teachers reporting that they do submit documentation of classroom discipline imposed to administration, and 37% responding that they do not. 32% of respondents indicated that they do not keep a log of classroom discipline at all.

Administrators

Administrators reported to OCR that they receive training annually from the Department of Student Affairs, and that campus administrators also provide annual training to their staff regarding discipline policies and procedures. Administrators reported that they follow the Code of Conduct in the administration of discipline, as well as a Board-approved District Management Plan.¹² Administrators also referenced the CHAMPS program. Some administrators also reported receiving an “Administrative Guide to Effective School Discipline,” which provides a range of appropriate consequences for each offense. Administrators informed OCR that there is discretion permitted with regard to the appropriate sanction to administer for a Code violation. Administrators reported to OCR that, while all campuses within the FBISD use the same discipline policies and procedures, they may be interpreted differently by campus, which can lead to perceived inconsistencies.

Administrators confirmed that Level I offenses are managed by classroom teachers. While some teachers choose to keep a log of classroom discipline, this information is not reviewed by administrators. Teachers have discretion to determine the appropriate penalty for an offense, including imposing sanctions such as warnings, parent notifications, or detention, and also can determine whether the conduct will result in a student receiving an office referral; for example, if a student has a cell phone in class, the teacher can choose to tell the student to put the phone away, confiscate the phone and return it at the end of the class period, or confiscate the phone and turn it in to the office.

Most administrators reported that discipline records are maintained electronically in Skyward; however, some administrators also reported that the records are maintained in the District’s records retention center or elsewhere on campus or at another site within the FBISD. Administrators reported that discipline records are maintained for at least three years.

XXXX administrators reported that African-American students are referred for discipline more often than students of other races. As explained by one administrator, the reasons for this could be the perception of some staff; specifically, that staff may perceive African-American students to be more aggressive. Thus, according to this administrator, a classroom disruption from an African-American student may be more likely to result in confrontation with staff and, therefore, removal from instruction. Another administrator reported that teachers may be quicker to write up an African-American student than a student of another race, mostly because of a lack of understanding of African-American culture and methods and tone of communication. A third

¹² Based on the descriptions given, it appears that CHAMPS is the District Management Plan referenced by some individuals.

administrator reported the belief that the difference in referral rates is due to a lack of understanding and proper relationship between students and their teachers.

E. Overview of Discipline of African-American Students

OCR’s review revealed that, while African-American students in the FBISD comprised on average approximately 30% of the enrollment in the District, they represented more than half of the student population receiving ISS, OSS, DAEP, and expulsions. The figures below illustrate the overall numbers of African-American students receiving ISS, OSS, DAEP, and expulsions during the 2012-13 school year (the most recent year for which OCR received detailed disciplinary data from the FBISD) relative to African-American enrollment at each school level (i.e., elementary, middle, and high school).

**Figure 3
2012-13 In-School Suspensions by School Level**

	African-American Students Suspended	African-American Student Enrollment	White Students Suspended	White Student Enrollment	Chi-Square
Elementary Schools	702	9150	134	5883	180.893 (statistically significant)
Middle Schools	1422	4293	887	3010	10.766 (statistically significant)
High Schools	1806	6852	315	4385	640.702 (statistically significant)

**Figure 4
2012-13 Out-of-School Suspensions by School Level**

	African-American Students Suspended	African-American Student Enrollment	White Students Suspended	White Student Enrollment	Chi-square
Elementary Schools	852	9150	208	5883	181.385 (statistically significant)
Middle Schools	863	4293	117	3010	399.045 (statistically significant)
High Schools	1229	6852	171	4385	481.747 (statistically significant)

**Figure 5
2012-13 DAEP Placements by School Level**

	African-American Students Referred	African-American Student Enrollment	White Students Referred	White Student Enrollment	Chi-Square
Elementary Schools	17	9150	0	5883	n/a ¹³
Middle Schools	150	4293	13	3010	74.636 (statistically significant)
High Schools	210	6852	39	4385	57.398 (statistically significant)

¹³ Statistical analysis could not be performed, as no white students received a DAEP referral.

Figure 6
2012-13 Expulsions by School Level

	African-American Students Expelled	African-American Student Enrollment	White Students Expelled	White Student Enrollment	Chi-Square
Elementary Schools	8	9150	1	5883	n/a ¹⁴
Middle Schools	8	4293	2	3010	n/a
High Schools	18	6852	7	4385	.857 (not statistically significant)

OCR also obtained PEIMS data from the TEA, which shows the number of African-American and white students enrolled in the District, as well as the number of African-American and white students receiving ISS, OSS, DAEP, and expulsions. OCR obtained PEIMS data for the 2013-14, 2014-15, and 2015-16 school years. This data shows that African-American students continue to be subjected to exclusionary discipline at a greater rate than their white peers, and that the difference is statistically significant.¹⁵ See Figures 7 through 9.

Figure 7
2013-14 Statistical Analysis of Exclusionary Discipline – Overall

	African-American Students	African-American Student Enrollment	White Students	White Student Enrollment	Chi-Square
In-school Suspensions	3,816	22,203	680	13,711	1156.072 (statistically significant)
Out-of-School Suspensions	2658	22,203	310	13,711	1052.990 (statistically significant)
DAEP Referrals	496	22,203	71	13,711	159.552 (statistically significant)
Expulsions	40	22,203	N/A ¹⁶	13,711	N/A

Figure 8
2014-15 Statistical Analysis of Exclusionary Discipline – Overall

	African-American Students	African-American Student Enrollment	White Students	White Student Enrollment	Chi-Square
In-school Suspensions	2,458	22,060	474	13,462	640.239 (statistically significant)
Out-of-School Suspensions	2,113	22,060	417	13,462	529.835 (statistically significant)
DAEP Referrals	431	22,060	68	13,462	125.627 (significant)
Expulsions	37	22,060	N/A	13,462	N/A

¹⁴ Accurate statistical analysis could not be performed due to an insufficient number of students who were expelled at any school level during the 2012-13 school year. While OCR computed the chi-square for expulsions at the high school level, the small number of expulsions when compared to the sample size makes the test less likely to be accurate.

¹⁵ While African-American students are also expelled at higher rates than students of other races, the numbers of students receiving expulsions are so low that meaningful statistical analysis cannot be performed.

¹⁶ The TEA does not provide a number of students receiving a disciplinary sanction if the number is greater than 0 but less than five. Accordingly, while the data reflects that at least one White student was expelled during the 2013-14 school year, OCR is unable to ascertain the exact number of White students expelled during this school year.

Figure 9
2015-16 Statistical Analysis of Exclusionary Discipline – Overall

	African-American Students	African-American Student Enrollment	White Students	White Student Enrollment	Chi-Square
In-school suspensions	1,794	22,158	320	13,225	474.078 (statistically significant)
Out-of-school suspensions	1,796	22,158	173	13,225	726.854 (statistically significant)
DAEP Referrals	427	22,158	56	13,225	142.858 (statistically significant)
Expulsions	24	22,158	N/A	13,225	N/A

For the 2015-16 school year, 8.1% of African-American students received at least one ISS referral, while 2.42% of white students received at least one ISS referral. Thus, African-American students had nearly 4 times the risk of receiving at least one ISS compared to white students. With regard to OSS, 8.1% of African-American students were suspended out of school at least once, while only 1.31% of white students received at least one OSS, meaning that African-American students had 6 times the risk of receiving at least one OSS compared to white students.

F. Review of Specific Disciplinary Incidents at Target Campuses

The FBISD provided to OCR, in Excel spreadsheet format, the following information regarding all 58,430 disciplinary referrals from the Target Campuses for the 2010-11 and 2011-12 school years:

- a. The student's name, identification number; race/ethnicity, sex, and grade level at the time of the referral;
- b. Information regarding the student's disability status, English learner status, and whether the student qualified for free and reduced lunch;
- c. The date of the referral;
- d. The specific offense(s) for which the referral was made;
- e. The referring staff member;
- f. The location of the offense;
- g. The specific offense for which the student was punished and the penalty/sanction imposed;
- h. The date the penalty/sanction was imposed;
- i. The length of the penalty/sanction;
- j. Identity of the individual assigning the sanction; and
- k. Where available, notes or comments regarding the description of the incident and/or the discipline imposed.

As a preliminary matter, OCR notes that much of the disciplinary referral information submitted by the FBISD in response to OCR's request did not contain any textual description describing the underlying incident, or administrator comments regarding the justification for the discipline imposed. As this information was culled from the FBISD's Skyward system, it appears that some teachers and/or administrators may be more dutiful in completing the comment boxes provided in this system than others.

OCR conducted a detailed analysis of the information included in the District-provided spreadsheets. First, OCR organized the information provided by the District so that each student's disciplinary history was viewed by the date of the referral, which enabled OCR to narrow its focus to the first disciplinary referral of each student for each school year.

OCR then identified the top five offenses at each Target Campus for both the 2010-11 and 2011-12 school years for which African-American students were referred for discipline, so that OCR would have a sufficient number of students to compare. After OCR identified the top five offenses at each campus, OCR eliminated from consideration for further review those offenses which were deemed "objective" in nature. By way of example, although "truancy" was almost always a top offense for which students received a disciplinary referral, OCR did not review the penalties imposed for this offense due to the objective nature of the offense and, therefore, similarities in the penalties imposed.¹⁷

For the top five offenses at each campus, OCR analyzed the discipline given to African-American students as compared to White students when referred for the same offense for the first time in the identified school year. OCR also sought to identify whether particular administrators at the Target Campuses were responsible for giving different punishments to students of different races. While OCR did identify some examples wherein an African-American student received a lesser penalty than other students referred for the same infraction, overall, African-American students were more likely than White students to receive a disciplinary referral and, when referred, to receive a greater penalty than White students for a first disciplinary referral of the same offense. Listed below are some highlights of OCR's findings when reviewing the Target Campuses' disciplinary referrals for the 2010-11 and 2011-12 school years:

- **XXXX XXXX XXXX, Insubordination (2011-12)** – African-American students had 2 times the risk of being referred for "Insubordination" compared to white students (20% of African-American students were referred for Insubordination at least once, compared to 10% of White students). Moreover, African-American students had 2.5 times the risk of receiving detention for a first referral of Insubordination compared to white students, the harshest penalty imposed for this infraction. Moreover, 7 of the 21 African-American students referred to one administrator received detention; 0 of the 8 white students referred to the same administrator received detention. Similarly, of the 26 African-American students referred to a second administrator, 9 received the harshest penalty of detention; in contrast, only 3 of the 30 white students referred to the same administrator received detention.
- **XXXX XXXX XXXX, Dress Code (2011-12)** – African-American students referred for dress code violations had 1.9 times the risk of receiving ISS as a result of the referral compared to white students. Further, of the 6 ISS issued by a particular administrator, 100% were given to African-American students, and this administrator did not issue any orders of ISS to white students. Specifically, of the 29 African-American students

¹⁷ The FBISD previously brought criminal charges against students found to have engaged in truancy as defined under Texas law. In April 2015, however, the FBISD announced that it was suspending its truancy procedures to conduct an investigation regarding potential racial disparities with regard to truancy charges filed against students by the District. *See School truancy cases halted After criticism, Fort Bend ISD suspends bringing criminal charges*, Houston Chronicle, Apr. 28, 2015.

referred to this administrator, 6 received the harshest penalty of ISS; 0 of the 9 white students referred to this administrator received ISS.

- **XXXX XXXX XXXX, Disruptive Behavior (2010-11)** – African-American students had 4 times the risk of being referred for “Disruptive Behavior” compared to white students. Of the 25 students receiving a referral for disruptive behavior, 19 (75%) were African-American. This offense resulted in a wide range of punishment from a simple conference to OSS. Only one administrator issued OSS for a first offense of Disruptive Behavior; however, both students who received OSS from this administrator were African-American.
- **XXXX XXXX XXXX, Derogatory Statement (2011-12)** – Only two students were referred for “Derogatory Statement” during this school year, one African-American and one white. The students were referred to the same administrator. While the African-American student received one day ISS and one day OSS, the white student only received a conference, with a notation that the student “will think before he speaks next time.”
- **XXXX XXXX XXXX, Profanity (2011-12)** – A total of ten students received disciplinary referrals for profanity. Of these ten students, seven were African-American. Only one African-American received OSS, while all other students received ISS except one white student, who only received a student conference and a note that states that the student “needs to make better choices with his language.”
- **XXXX XXXX XXXX, Tardy (2011-12)** – A total of 67 students were referred to a particular administrator for a first offense of “Tardy.” Only one of the 13 white students referred to this administrator received the harshest punishment of detention. In contrast, 6 of the 17 African-American students received detention. White students were more likely to receive only a warning or a conference as opposed to detention.
- **XXXX XXXX XXXX, Disruptive Behavior (2010-11)** – African-American students had 5 times the risk of being referred for “Disruptive Behavior” compared to white students. Of the four out-of-school suspensions issued for a first offense of “Disruptive Behavior,” all were to African-American students. Three of the four out-of-school suspensions to African-American students were issued by the same administrator.
- **XXXX XXXX XXXX, Fighting (2010-11)** – Pursuant to District policy at the time, the offense of “Fighting” should have resulted in OSS. But of the 15 students referred for this offense, one student received more favorable treatment than District policy permitted. This student, who was white, received only one day of ISS. The 14 other students who were referred for “Fighting” during this school year (including four African-American students and one other white student), received OSS.

OCR also conducted a preliminary review of other disciplinary referral data for offenses other than those described above for which students received the harshest penalties of OSS, DAEP, or expulsion. OCR’s review revealed that students received exclusionary discipline for offenses such as “Serious Offense,” “Felony off campus,” “Robbery/Theft/Stealing,” “Use/Exhibit/Possess Weapon,” “Assault,” etc. Only a small number of students received such referrals in any given school year at each of the campuses reviewed, making comparison of offenses given to students of different races for the same offense difficult. For example, during the 2010-11 school year at XXXX XXXX XXXX, three students were referred for discipline for assault on a non-employee. Two of these students were African-American, and one student was Asian. All three students received a DAEP placement as a result of the referral, which was the discipline required by the Code in effect during this school year.

OCR Concerns

Discipline Policies and Procedures

OCR's investigation revealed that the FBISD's Code of Conduct is vague, and contains definitions for only a select handful of disciplinary infractions. Moreover, while the Code informs students and parents/guardians of offenses which may warrant a DAEP placement or expulsion (including those offenses for which DAEP or expulsion is mandatory in accordance with Texas state law), the Code does not otherwise separate infractions and discipline management techniques into categories or levels to indicate which offenses are considered more severe by the FBISD and, therefore, may warrant a more severe discipline management technique. Further, OCR's investigation found that, while administrators have access to a Discipline Reference Card to assist in the assignment of disciplinary penalties, the card provides a guide as to appropriate penalties, but does not define or provide examples of disciplinary infractions. Therefore, it is up to an administrator's discretion to determine not only how to classify a disciplinary offense, but also to determine the appropriate disciplinary sanction based on this classification. The amount of discretion the FBISD affords to administrators to both define student misbehavior and impose disciplinary sanctions could be a contributing factor to the differences in discipline rates among students of different racial groups as revealed by OCR's review. OCR understands that it is not possible to provide a definition for every conceivable disciplinary infraction and, further, that student misconduct which may appear similar may indeed warrant vastly different punishments when other circumstances are considered (e.g., student's disciplinary history, setting where conduct occurred). It is OCR's concern, however, that the lack of more precise policies, when combined with the amount of discretion provided to FBISD administrators (in particular without specific guidance as to how that discretion should be used), could be resulting in students of different races receiving vastly different punishments for similar disciplinary infractions.

Recordkeeping

OCR's investigation revealed that the FBISD does not currently record any data reflecting that a student has been referred to law enforcement authorities. Specifically, the FBISD does not appear to maintain any documentation of incidents wherein students were referred to law enforcement aside from the actual citation and/or incident report generated. The FBISD reported to OCR that the FBISD Police Department does not track the race or ethnicity of students ticketed by SROs. The FBISD provided copies of the citations issued to students during the 2010-11 and 2011-12 school years. The race/ethnicity of the student receiving a citation was noted on the citation itself; however, OCR's investigation indicated that this was the only manner in which such information was recorded by the FBISD. OCR's concern is that the FBISD's failure to track this data contributes to its failure to review the data and determine whether students of some races are more likely to receive referrals to law enforcement than students of other races.

OCR's investigation also revealed concerns that there are inconsistencies between FBISD campuses with regard to the manner in which discipline referrals are recorded and maintained. OCR's review of Faculty Handbooks provided to staff at the Target Campuses revealed that

some campuses instruct their staff to maintain paper disciplinary referrals; however, some FBISD employees reported to OCR that no paper records are created. Moreover, OCR's investigation revealed that teachers have the authority to assign discipline within their classrooms for certain lower-level offenses without making a disciplinary referral in the Skyward system. Only some teachers reported that they maintain their own records of classroom discipline, or that information regarding classroom discipline is communicated to administrators. While the lack of similar recordkeeping procedures across campuses is not in and of itself a concern, OCR notes that FBISD policy requires that administrators assigning discipline consider the disciplinary history of a student when determining the appropriate sanction. The failure of FBISD administrators to receive information regarding any previous classroom discipline administered to a student therefore appears to contradict what FBISD policy anticipates, and also could be a contributing factor to students of different races receiving different disciplinary consequences even when they are referred to administration for similar misconduct. Further, OCR's investigation revealed that the information contained in Skyward is not consistent for all disciplinary referrals (specifically, the comment boxes are not consistently utilized, and some referrals contained no descriptive information). When an administrator is not provided with a written description of an incident, this could also lead to difference in treatment between students of different races who have engaged in similar misconduct. Finally, an administrator's failure to provide comments regarding his or her justification for the discipline imposed makes FBISD's review of disciplinary referral data to ensure consistency more challenging.

“Coding” of Disciplinary Offenses

OCR's investigation also revealed concerns that students could receive different penalties for similar misconduct due to the manner in which the behavior is classified or “coded” in the FBISD's Skyward system. By way of example, while “Assault” pursuant to the Code requires a DAEP referral and “Fighting/Mutual Combat” requires OSS, “Horseplay” and “Scuffling” are minor, non-PEIMS reportable infractions that could result in a range of lesser penalties such as student conference or detention. Without additional information from the FBISD, OCR is unable to determine whether students of different races who engaged in similar conduct received different sanctions because they were “coded” as engaging in different conduct. In sum, OCR has concerns that, as written and when viewed together, the District's policies and procedures (including the Code, campus-specific supplements, and the Discipline Reference Card) provide for a range of different penalties for student behavior which could be substantially similar.

Discipline of African-American Students

African-American students were overrepresented to a statistically significant degree in the population of students receiving exclusionary discipline in the FBISD for each school year for which OCR analyzed the FBISD's disciplinary data. The detailed disciplinary incident information reviewed by OCR revealed concerns that African-American students were more likely than their white peers to receive disciplinary referrals and, when referred, to receive harsher penalties than their white peers for referrals of the same nature. For the most recent year for which OCR reviewed the FBISD's discipline numbers – the 2015-16 school year – African-American students had 4 times the risk of receiving ISS, and 6 times the risk of receiving OSS compared to white students.

Resolution

Prior to the conclusion of OCR's investigation, the FBISD expressed an interest in resolving the compliance review with a resolution agreement. OCR determined that resolution of this compliance review is appropriate. Accordingly, the parties negotiated an agreement and OCR did not make a compliance determination under Title VI regarding the issue under investigation, i.e., whether the FBISD discriminates against African-American students in the administration of discipline in violation of Title VI. On July 26, 2018, the FBISD voluntarily submitted the enclosed resolution agreement (Agreement).

In the Agreement, the FBISD commits to taking measures to ensure compliance with Title VI. To resolve the issue under investigation, the FBISD has agreed to take the following actions:

1. Designate a team of administrators who will annually review the FBISD's disciplinary data to determine whether revisions to the District's existing policies and procedures are necessary.
2. If determined necessary, submit proposed revisions of its policies and procedures to the FBISD's Board of Trustees for review. The revisions will include standards for disciplinary referrals that include clear definitions and procedures for staff to follow when making disciplinary referrals.
3. Develop a training program for all staff charged with imposing student discipline to be conducted annually prior to each school year that includes, among other subjects, explanations of definitions of offense categories as provided for in the Code of Conduct and that documentation must be used by all staff who make disciplinary referrals or impose disciplinary sanctions.
4. Develop a recordkeeping system that establishes uniform standards for the documentation of disciplinary referrals.
5. At the conclusion of the 2018-19 school year, evaluate all discipline data gathered and analyze the data to determine whether the District is implementing its disciplinary policies, practices, and procedures in a non-discriminatory manner at each District school.

Conclusion

OCR will monitor implementation of the Agreement. If the FBISD 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 should not be interpreted to address the FBISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement

of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that FBISD may not harass, coerce, intimidate, or discriminate against any individual because he or she participated in this compliance review. If this should occur, an individual may file a complaint alleging such harassment or intimidation.

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, it 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 cooperation and assistance of the FBISD in coordinating the compliance review activities. If you have any questions or concerns regarding this letter, please contact Rachel E. Caum, Attorney, at (214) 661-9632, or at rachel.caum@ed.gov, or Paul Edward Coxe, Supervisory Attorney/Team Leader, at (214) 661-9608, or at paul.coxe@ed.gov.

Sincerely,

Taylor D. August, Director
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement

cc: XXXX XXXX, General Counsel (*email only*)