



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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SAN FRANCISCO, CA 94105

September 27, 2012

Dr. Anthony Smith  
Superintendent  
Oakland Unified School District  
1025 Second Ave. Room 301  
Oakland, CA 94606

In reply, please refer to case no. 09-12-5001.

Dear Superintendent Smith:

On May 11, 2012, the U.S. Department of Education, Office for Civil Rights (OCR) initiated a compliance review of the Oakland Unified School District under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d et seq (Title VI). OCR commenced an examination of whether the District subjects African American students to discrimination on the basis of race by disciplining them more frequently and more harshly than similarly situated White students.

Title VI and the Department implementing regulation, 34 C.F.R. Part 100, prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance from the Department. The District is a recipient of such assistance and is subject to requirements of Title VI and the regulation.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into an agreement which commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. §100.3(a) and (b). The regulation, at 34 C.F.R. §100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining

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continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

***The administration of student discipline can result in unlawful discrimination based on race in two ways: first, if students are subject to different treatment based on their race, and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race.***

### **Different Treatment**

***Title VI prohibits schools from intentionally disciplining students differently based on race.<sup>1</sup> Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly-situated students of different races are disciplined differently for the same offense, discrimination can be the only reasonable explanation for the different treatment. Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly-situated student. Additionally, a school's adoption of a facially-neutral policy with an invidious intent to target certain races is prohibited intentional discrimination.***

***Title VI also protects students even if a school contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school's student safety or student discipline program.<sup>2</sup> Schools cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, "contract" law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.***

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

### **Disparate Impact**

***In addition to different treatment of students based on race, schools violate Federal law when they evenhandedly implement facially neutral policies or practices that were not adopted in order to discriminate but their implementation nonetheless has an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as "disparate impact."***

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<sup>1</sup> 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(a),(b)(1).

<sup>2</sup> 34 C.F.R. § 100.3(b)(1), (2).

***Facially neutral student discipline policies that result in an adverse impact on students of a particular race will be evaluated against the disparate impact standard to ensure that they are not discriminatory. In examining the application of a facially neutral student discipline policy, OCR will engage in the following three-part inquiry.***

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

Overview of the District

The Oakland Unified School District is located in Oakland, California. The District’s schools are organized into three regions each consisting of preschool/kindergarten through 8<sup>th</sup> grade level schools, a high school network, and an Office of School Transformation.

During the 2011-2012 school year, the District enrolled 36,811 students. The following shows the racial/ethnic composition of the District’s student enrollment for 2011-2012<sup>3</sup>:

District Enrollment 2011-2012

Hispanic or Latino of Any Race	37.3%[13,744]
African American, Not Hispanic	31.8%[11,695]
White, not Hispanic	10.4%[3,812]
Asian, Not Hispanic	15.0%[5,546]
Filipino, Not Hispanic	1.0%[370]
Pacific Islander, Not Hispanic	1.3%[470]
American Indian or Alaska Native, Not Hispanic	0.5%[191]
Not Reported	2.7%[983]

Summary of Review

OCR reviewed the District’s June 15, 2011 “Community Schools, Thriving Students” Strategic Plan<sup>4</sup> and accompanying initiatives, as well a study released May 29, 2012 by Urban Strategies

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<sup>3</sup> Source: 2011-2012 OUSD End of Year Enrollment Count

<sup>4</sup> In June 2010 the District’s Superintendent engaged a wide range of community stakeholders through several task forces in the year-long development of a strategic five-year plan titled “Community Schools, Thriving Students.” The plan

Council and the District on suspensions of African American males in the District. OCR also reviewed the 2009-2010 OCR Civil Rights Data Collection (CRDC) data on student discipline as well as electronic student discipline data provided by the District for the 2011-2012 school year. Further, OCR reviewed the District's discipline policies and procedures and school site responses to a questionnaire on site-specific policies and practices related to student discipline, which included inquiries regarding referrals, interventions and suspensions, as well as record-keeping practices and frequency of review of discipline data.

***Additionally, OCR conducted site visits to seven schools to interview principals and review files. OCR selected five schools for on-site visits based on the size of the White student population and the total number of suspensions at the schools during the 2010-2011 school year. OCR visited two other District schools to review innovative discipline practices being implemented at these sites. OCR also interviewed District-level administrators involved in the creation of positive school environments and providing technical assistance on behavior interventions and alternatives to punitive discipline.***

#### **Areas of Concern Identified by OCR**

- Since 1999, the “risk ratio (RR)” for African American students receiving out-of-school suspension (OSS) has increased:
  - In 1998-1999 [District data], African American students composed 53% of the total student enrollment and 75% of all students who received OSS [RR: 1.42];
  - In 2009-2010 [CRDC data], African American students composed 33.2% of the total student enrollment and 63.5% of all students who received OSS [RR: 1.91]; and 51% of the students who were expelled. White students composed 7.9% of the total student enrollment and 2.3% of the students who received OSS, and 2.8% of the students who were expelled.
  - In 2011-2012 [District data], African American students composed 31.8% of the total student enrollment and 63% of all students who received OSS [RR: 1.98], and 61% of the students who were expelled, more than double the percentage of their enrollment in the District. White students composed 10.4% of the total student enrollment and 2% of the students who received OSS; no White students were expelled.
  
- The District publically released the following data about the impact of its exclusionary discipline practices in the recent past:<sup>5</sup>
  - Consistent with the previous four years, 18% of African American male students enrolled were suspended one or more times in 2009-2010.

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committed the District to transforming each of its schools into a “Full-Service Community School” that provides for academic and skill development; health, safety and social services; youth and community development; and parent and community engagement. The plan identifies the needs of African American students as a major focus of the District's efforts to provide equal educational opportunity. The District is entering into its second year of Strategic Plan implementation to coordinate, align and leverage its resources to meet its goals.

<sup>5</sup> See <http://thrivingstudents.org>

- In 2009-2010, African American male students were five times more likely than White male students to be suspended one or more times.
  - The disparity in suspension rates between African American males and their White male peers in 2010-2011 has not changed over the past six school years.
  - In 2010-2011, African American male students comprised 17% of the District student population and 42% of students suspended.
  - In 2010-2011, nearly one in ten African American males in elementary school, one in three in middle school, and one in five in high school received a suspension.
  - In 2010-2011, three suspension offenses – disruption-defiance of authority (38%), causing-attempting-threatening injury (28%), and obscenity-profanity-vulgarity (9%) – accounted for 75% of suspensions of African American male students.
  - In 2009-2010, the average grade point average for African American male students in grades six through twelve who were suspended one or more times was lower than for African American male students who have never been suspended.
  - In 2010-2011, African American male students were suspended for a combined total of 5,869 days.
- The District has begun several initiatives as part of its strategic plan to address inequities in the use of student discipline including strategies aligned with a Response to Intervention (RTI) framework. The RTI framework tailors academic and behavioral interventions and services based on identification of student need and evaluation of the effectiveness of the intervention. RTI supports students through data analysis, problem solving, instruction and intervention. The RTI framework is a three-tiered approach with increasing levels of intervention from Tier 1 to 3. Specific District initiatives within the RTI framework include Positive Behavioral Intervention and Support (PBIS) strategies, Restorative Justice (RJ) practices, and Manhood Development classes.<sup>6</sup> However, full and consistent implementation of PBIS, RJ and Manhood Development classes is not yet taking place at all school sites

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<sup>6</sup> Positive Behavioral Intervention and Support (PBIS) is a nationally recognized strategy for shifting school culture from punitive to culturally responsive and positively reinforcing. Students and staff collaborate in targeted school-wide positive behavioral expectations which are culturally informed and positively reinforced throughout the school day. Minor and major disciplinary infractions are clearly specified as well as associated interventions designed to teach, re-teach, and reinforce the skills needed to meet positive expectations. Nationwide data on schools implementing PBIS indicate an average of 50% reduction in disciplinary events.

Restorative Justice (RJ) is a set of principles and practices designed to build community and respond to student misconduct, with the goals of repairing harm and restoring relationships between those impacted. The District's RJ program pilots a three-tiered RTI model of prevention/ intervention/ supported reentry in response to conflict/harm. The RJ program works to lower the rate of suspension and expulsion with the goal of eliminating racially disproportionate discipline practices.

The District's Manhood Development classes are offered at several sites either during or after school. The classes develop leadership skills and assist students in navigating their way through school. Preliminary data analysis conducted by the District indicates that students who participate in the Manhood Development classes improve their attendance and have fewer suspensions.

identified by the District as needing these strategies to address disparate student discipline practices.

- Board regulations do not integrate or provide guidelines on implementing preventative strategies, interventions and alternatives for exclusionary discipline that the District is promoting.
- Board policy and regulations do not require that interventions must be attempted prior to referring a student for discipline.
- The District's policy on suspension and expulsion does not describe the type of behaviors that constitute the highly discretionary category of "defiance and disruption," the primary disciplinary offense category for which African American students are disciplined. District witnesses stated that the level of discretion involved in identifying misbehavior as disruptive or defiant results in inconsistent practices among staff and allows for the possibility of cultural misinterpretation of behavior and bias to play a role in the discipline decision-making process. District witnesses further indicated that such misunderstanding between staff and student may lead to an escalation in the student's behavior which then creates a situation that will be dealt with punitively.
- There are inaccuracies in the District's discipline data.
- Based on information obtained from District and school administrator interviews and responses to the OCR survey, school sites vary in their understanding of and practice regarding the District's discipline data collection system which leads to inaccuracies and unreliability in the data.
- The District's discipline data collection system does not have a usable interface that allows sites to input data on the use of positive behavior interventions or restorative practices used to address misbehavior. Additionally, the data collection system does not contain metrics for determining whether interventions, alternatives to suspension, or cross-departmental initiatives were effective in addressing student misbehavior.

This review was resolved prior to making any findings of fact. Consequently, OCR has made no determination of liability under either the different treatment theory or the disparate impact theory.

#### Agreement to Resolve

***Pursuant to the Agreement, the District commits to take specific actions to address the disproportionate discipline of African American students. Initiatives in the Agreement are targeted to create positive school climates based on an RTI framework that have the effect of increasing academic achievement and learning for all students, while decreasing use of exclusionary disciplinary measures***

***– particularly with respect to African American students. To ensure that these measures are effectively implemented at the school sites, the Agreement provides for expert consultation on research based methods for preventing discrimination against African American students; specialized professional development for administrators, teachers, and staff on effectively implementing the RTI-based initiatives and utilizing effective alternatives to suspensions and expulsions; and outreach to students, parents, and community stakeholders to ensure that they have an opportunity to participate in assessing and improving the District’s ability to provide a safe school environment and engage all students in its education program.***

***The Agreement requires the District to take specific steps to:***

- Immediately expand the number of elementary, middle and high schools that will implement programs to address disproportionality with respect to discipline.
- Retain a Lead Project Manager to oversee implementation of the Agreement, and identify an expert consultant who will be responsible, in part, for managing communications and establishing systems to evaluate implementation of the Agreement.
- Revise the District’s discipline policies.
- Review the District’s climate surveys, develop school-based student/staff discipline discussion forums, and develop an informational program for parents and guardians to explain discipline policies and to provide an opportunity for parents and guardians to raise concerns and offer suggestions.
- Develop an action plan that will target reductions in the overall use of student suspensions to benefit all students in the District, including African American students, Latino students and students receiving special education services.
- Provide a framework for schools to review their discipline data and identification of student and teacher needs for support.
- Minimize the use of exclusionary discipline and ensure that all students are engaged, rather than excluded, from the District’s education program.
- Ensure that preventative strategies, interventions, and coordination of support services are attempted prior to referring a student out of the classroom.
- Ensure that schools are implementing strategies aligned with RTI with fidelity and are utilizing restorative discipline practices that eliminate racial inequities.
- Develop targeted support services for African American students and accompanying professional development and coaching for school administrators and staff.
- Improve its data collection.

***The District will focus immediate attention on all middle schools and high schools and the elementary schools with the highest disproportionality in the overall use of suspensions and suspensions by race.***

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

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

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

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We would like to thank all the District and site administrators and staff who provided information and assistance to OCR throughout the course of the review. If you have any questions about this letter, please contact James Wood, Team Leader, at (415) 486-5555, [james.m.wood@ed.gov](mailto:james.m.wood@ed.gov).

Sincerely,

/s/

Arthur Zeidman  
Director, OCR San Francisco

Enclosure

cc: Jacqueline Minor, General Counsel