



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA  
SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

August 24, 2016

Dr. Cathy Nichols-Washer  
Superintendent  
Lodi Unified School District  
1305 E. Vine Street  
Lodi, California, 95240

(In reply, please refer to case number 09-13-1314.)

Dear Superintendent Nichols-Washer:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint, which was filed against the Lodi Unified School District (District) on May 13, 2013. The Complainant alleged that the District discriminated against the high school Student (Student A) based on race (African American).<sup>1</sup> Specifically, the Complainant alleged that in two incidents (Incidents 1 and 2) involving Student A and a white student (Student B), Student A was suspended and disciplined more harshly than Student B. The complaint alleged that Student B in Incidents 1 and 2 and Student C in Incident 3 called Student A racial epithets within a period of 16 school days and that the District failed to respond appropriately consistent with District policy and offer Student A any supports or services.

OCR investigated whether the District:

1. Disciplined Student A differently than Student B who allegedly engaged in similar conduct when the students were involved in Incidents 1 and 2;
2. Failed to respond appropriately and effectively to notice of the alleged harassment of Student A by Student B in Incidents 1 and 2 and Student C in Incident 3; and,
3. Discriminated against African-American students in discipline District-wide by (a) subjecting African-American students in the District to discipline policies and practices which, while facially neutral, have an unlawful disparate impact; and (b) treating African-American students differently and more harshly in discipline.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. part 100. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

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<sup>1</sup> OCR notified the District of Student A's identity previously. Therefore, OCR is withholding Student A's identity from this letter to protect Student A's privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

### Summary of Investigation and Findings

The District covers schools in North Stockton, Lodi, and several surrounding communities in the Central Valley of California. It has 49 school sites, including 33 elementary, seven middle, four comprehensive, and two continuation high schools. According to data provided by the District for the 2014-15 school year, Latino/Hispanic students accounted for the largest portion of students, at 39.0%, while white students were 28.5%, Asian students were 18.2%, African-American students were 7.9%, students of two or more races were 3.4%, American Indian or Alaskan Native students were 2.3%, and Native Hawaiian or Pacific Islander students were .7% of the District's students.<sup>2</sup>

To investigate the complaint, OCR reviewed four years of District discipline data, information and hundreds of pages of documents provided by the Complainant and District, and conducted interviews, as described below.

- From the 2013-14 to the 2015-16 school year, OCR conducted 39 total in-person and telephonic interviews with District and site administrators, teachers, school security officers, and students and also interviewed Student A and the Complainant.
- OCR analyzed anti-discrimination and discipline District Board policies and regulations in place during the 2012-13 through 2015-16 school-years; District Student Conduct Code (District Conduct Code) policies in place during the 2011-12 through 2015-16 school-years; nine site discipline policies, also called discipline rubrics or matrices herein, which set forth types of offenses, definitions of offenses, and consequences for such offenses.
- OCR reviewed the School Resource Officer (SRO) Memoranda of Understanding (MOUs) in place during the 2012-13 through 2015-16 school-years.
- OCR reviewed two years of District school climate reports (2013-14 and 2010-11) and conducted a teacher survey at Delta Sierra Middle School (2014-15).
- OCR conducted an extensive analysis of the District's enrollment and discipline data from the 2011-12 to 2014-15 school-years, including reviewing over 85,000 discipline incidents in the District, as well as school discipline data for the 2011-12 through 2014-15 schools years for the school the Student attended.
- OCR analyzed discipline data the District reported in the Civil Rights Data Collection (CRDC) for 2009-10, 2011-12, and 2013-14 and to the California Department of Education (CDE) in the 2012-13 school year.
- OCR reviewed information provided by the District from June 2013 through March 2016 regarding its efforts to review and modify some of its disciplinary policies and practices.

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<sup>2</sup> This data reflects demographic data provided by the District to OCR for this review. OCR notes that the data provided by the District for 2014-15 reflects higher total enrollment than prior years for each racial group. This does not include District adult or associated non-public schools.

OCR focused more intensively on middle and high schools for the District-wide investigation and conducted site visits at these schools because during the year when Student A was suspended (2012-13), while students in middle and high schools accounted for approximately 45% of the District's enrollment, they made up over 80% of the students referred for discipline.

In addition to the high school attended by Student A, OCR focused on two other high schools because they had the two highest total enrollment and percentages for African-American students among the District's four high comprehensive high schools. In 2012-13, over 73% of the high school students attending a comprehensive high school in the District attended one of the three schools where OCR conducted a more intensive review, almost 94% of African-American students attending a comprehensive high school in the District attended one of these schools, and 88% of the disciplinary referrals for District students at a comprehensive high school occurred at one of these three schools.<sup>3</sup>

OCR focused on two particular middle schools based on demographics and discipline rates. One middle school had the highest African-American enrollment percentage among comprehensive schools (25.77%), and high discipline rates; it accounted for 19.15% of middle school discipline incidents, despite making up just 10.24% of middle school enrollment. As a comparator, the other middle school chosen had one of the lowest African-American enrollment rates (0.75%), one of the higher white enrollment rates (27.09%), and more proportionate overall discipline rates; it accounted for 19.71% of middle school enrollment, and 22.37% of middle school discipline incidents. The student population at both schools had high and comparable poverty rates of 68.25% and 68.84%.

The District requested to enter into a Resolution Agreement Reached During Investigation (resolution agreement) pursuant to section 302 of OCR's Case Processing Manual (CPM), prior to the completion of OCR's investigation.<sup>4</sup> OCR determined that a section 302 resolution agreement was appropriate for issues 1, 2, and 3(b), because OCR had not completed its investigation, but the facts gathered to date raised compliance concerns. However, with respect to issue 3(a) and based on OCR's investigation, including the 2014-15 discipline and demographic data for the District and the 2015-16 District Conduct Code, Board Policies and Administrative Regulations, OCR determined that the evidence obtained established a violation of Title VI during the school years of 2011-12 through 2014-15. While the District's Administrative Regulation 5144, and the local discipline policies created by the regulation, were facially neutral, they had a disparate impact on African-American students with respect discipline and were not necessary to meet the District's educational goals.

The legal standards, facts gathered, and reasons for OCR's determinations are summarized further below. In order to address the violation found and compliance concerns identified by OCR and to ensure equal educational opportunities for African-American students, the District has agreed to a series of actions described in the attached resolution agreement.

### **Legal Standards**

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b).

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<sup>3</sup> The fourth comprehensive school (Tokay High) enrolled 26.4% of high school students in the District attending a comprehensive high school. Tokay High's African-American student enrollment was 6.2%, and 12.1% of disciplinary referrals among the four comprehensive high schools occurred at the school.

<sup>4</sup> The CPM is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrspm.html>.

### Different Treatment in Student Discipline

The Title VI regulation at 34 C.F.R. §100.3(b)(1) (i), (ii), and (v) prohibits recipients from, on the basis of race, color or national origin, denying students any service or benefit provided under the program; providing services or benefits that are different from or provided in a different manner from services or benefits provided to other students; and restricting students in the enjoyment of any privilege or advantage enjoyed by others. School districts violate Federal law where they intentionally discipline students differently based on race.

### Peer to Peer Harassment on the Basis of Race

The Title VI 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. School districts are responsible under Title VI and its implementing regulation at 34 C.F.R. § 100.3(a) and (b) for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

A district violates Title VI and the regulations if the evidence shows that: (1) the alleged harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by the district; (2) the district had actual or constructive notice of the harassment; and (3) the district failed to take appropriate, prompt, and effective responsive action to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.<sup>5</sup>

Once the district has notice of harassment, the responsibility to take appropriate and effective action is the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. The district is not responsible for the actions of the student, but rather for its own discrimination in failing to respond adequately, if such discrimination occurs. The response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. Other actions may be necessary to repair the educational environment, such as special training and dissemination of new policies designed to communicate that the district does not tolerate harassment.

### Disparate Impact in Student Discipline

The Title VI regulation at 34 C.F.R. § 100.3(b)(2) states that a recipient, in determining the types of services, facilities or other benefits to be provided, or the situations in which such services or benefits will be provided, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color or

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<sup>5</sup> For further explanation, please see the 1994 Investigative Guidance entitled, "Racial Incidents and Harassment Against Students at Educational Institutions," Part X, Federal Register, Vol. 59, No. 47, March 10, 1994, 11448-11454.

national origin. School districts violate Federal law where facially neutral disciplinary policies and practices, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race.

***Issue 1: Whether the District disciplined Student A differently than Student B who allegedly engaged in similar conduct when the students were involved in Incidents 1 and 2.***

### Facts

#### *Incidents 1 and 2 (January 2013)*

The complaint alleged that Student A, who is African American, was disciplined more harshly than a white student (Student B) who engaged in similar conduct when the students were involved in Incidents 1 and 2. The incidents at issue occurred in January 2013. Incident 1 occurred on the afternoon of January XX, 2013, after XXXXX practice. Student A and Student B, who were both members of the team, got into an argument. According to witnesses and both Student A and B, during the argument, Student B called Student A, a “nigger.” Witness reports and Student A’s own statements indicate that Student A got very angry at being called this racial epithet and challenged Student B to a fight, but neither Student engaged in any physical contact.

Both Student A and Student B acknowledge that on the evening of Incident 1, they texted each other about fighting the next day. Student A sent several texts expressing how angry he was and in one text he reminded Student B that he had called him a “nigger.” Student B texted Student A to remind him that fighting him (or beating him up) at school could ruin Student A’s future, and that Student A was XX and should be careful because he could end up in jail. Student A and B continued to text messages back and forth. In one message, Student B said that Student A looked “retarded” during Incident 1.

Incident 2 occurred the next morning, on January XX, 2013. According to the records provided by the District, Student A, upon seeing Student B in the hallway, hit Student B in the face and body several times. Student B did not fight back and another student helped separate them. The District took statements from the two students involved, and one other witness. Student A stated that Student B called him a “nigger” again in the hallway prior to the fight. Student B denied calling Student A a “nigger” a second time. The one student witness interviewed by the District did not confirm hearing the statement. School administrators said they could not identify other witnesses who were in the hallway at the time. A teacher stated to OCR that Student B may have had some redness on his face but she noted that Student B seemed emotionally distraught and sent Student B to the office.

According to information from the District, Student B initially told the administrator investigating (Administrator 1) that he did not know why Student A hit him. However, after Student A was called into the office and gave his explanation for what happened, Administrator 1 questioned Student B again and Student B admitted to using the epithet.<sup>6</sup>

#### *Discipline of the Students*

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<sup>6</sup> The administrators OCR interviewed had a discipline case load, and each was assigned to discipline referred students based on the last name of the students.

The School disciplined both students for violating California Education Code Section 48900(k), which prohibits disruption or willful defiance. The School also disciplined Student A for violating California Education Code Sections 48900(a)(1) for causing physical injury to another person, and 48900(a)(2) for willfully using force or violence against another person, except in self-defense.<sup>7</sup> The School also disciplined Student B for violating Section 48900.4, which prohibits “intentionally engag[ing] in harassment, threats, or intimidation, directed against ... pupils severe enough to disrupt class work, create substantial disorder and invading the rights of ... pupils by creating an intimidating or hostile education environment.”

Although Student A and Student B were cited for different offenses, the District policy (District Conduct Code)<sup>8</sup> categorized violations of state education code sections 48900(a)(1), 48900(a)(2), and 48900.4 as the same level of severity, Level Two. According to the District Conduct Code for the 2012-13 school year, which was when the incidents occurred, both students faced a minimum and maximum of five day suspension for their actions. In addition to suspension, according to the District Conduct Code, Student A’s offenses also carried additional consequences of a “no fighting contract,” and a 45 day “social probation.” According to the District Conduct Code, a student on social probation was “prohibited from attending or participating in school extra-curricular activities”<sup>9</sup> and the School’s document regarding “Expectations of Student-Athletes” stated further that “[a]thletes [placed on social probation would] be removed from the athletic team for the remainder of the season and [could] not participate in another sport until the current season end[ed], which include[d] any post-season games or tournaments.” Student B’s behavior according to the District Conduct Code did not require social probation or a no fighting contract, but did require a parent conference. The District Conduct Code also required a law enforcement notification as a minimum punishment for Student A’s offense and as a maximum punishment for Student B’s offense.

Although the District Conduct Code categorized the students’ behavior similarly in terms of level of severity (Level Two) and for imposition of suspension days and a parent conference, the School discipline rubric had a different minimum and maximum suspension for Student B’s offense. The School’s discipline rubric, which included a description of different types of offenses for which a student could be disciplined and listed the possible range of discipline actions for each offense, was labeled “confidential” but permitted by Administrative Regulation 5144, which is discussed further herein.<sup>10</sup> It allowed for either a possible suspension or a one to three day suspension for Student B, while it required a five day suspension and law enforcement notification for Student A. It did not require social probation or a no fighting contract for Student A’s offense.

Based on these two different policies, the School disciplined Student A generally consistent with the District Conduct Code, issuing a five day out-of-school suspension, a citation from the SRO, 45 days of social probation, a no fighting contract, and the School contacted Student A’s parent. Due to his placement on social probation, Student A was prohibited from participating on XXX XXXXX team or in

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<sup>7</sup> As discussed further herein, California law establishes the offenses for which students can and cannot be suspended, defines these offenses, establishes the maximum number of days of suspension, and otherwise sets forth the parameters under which students in the state can be disciplined, including the due process protections that apply in the discipline process.

<sup>8</sup> Lodi Unified School District, K-12, Student Conduct Code.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Unlike the District Conduct Code, it was not shared with students or parents, although its development and use was authorized by Administrative Regulation 5144.

other XXXXXX XXXX extracurricular activities for 45 school days – until April X, 2013. Student A’s father reported that Student A was devastated by his inability to XXX XXXXX.

In contrast, the School disciplined Student B consistent with the School discipline rubric, issuing a three day out-of-school suspension. The School did not hold a parent conference for Student B.

On approximately January XX, 2013, the Complainant dis-enrolled Student A from the District.<sup>11</sup>

The School administrators gave OCR differing answers as to whether they use the District Conduct Code or School discipline rubric in administering discipline. The two School administrators charged with administering discipline at the School had not received training on school discipline, and did not share a common understanding of requirements and language in the conflicting documents. For example, Administrator 1 who disciplined Student A told OCR that there was no discretion to give Student A a consequence that was less than the minimum listed on the District Conduct Code or School discipline rubric, even if there were mitigating circumstances (such as here, that Student B used a racial epithet, and Student A had no prior discipline incidents that school year).

In contrast, Administrator 2 who disciplined Student B told OCR that there was discretion to give a consequence below the published District Conduct Code minimum for Student B’s offense, and that she exercised this discretion by giving Student B three days of suspension, rather than five, as required by the District Conduct Code. Administrator 2 explained the consideration of mitigating factors such as that this was Student B’s first discipline incident of the year, and that Student B reported that the Students regularly called each other “nigga,” so Student B claimed Student A overreacted when he called him a “nigger.” (Student A denied that the boys used the term “nigga” with each other previously.) The School principal told OCR that the School did not have discretion to reduce either student’s consequences below the mandatory minimum days of suspension included in the District’s Conduct Code for Level Two offenses.

### Analysis

To determine whether a school district has discriminated against a student on the basis of race in the discipline process in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3(a) and (b)(1), OCR looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances, and whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. To find a violation, the preponderance of the evidence must establish that the school district’s actions were based on the student’s race.

Here, the Complainant alleged that Students A and B were disciplined differently for engaging in the same conduct. When determining whether an offense is comparable, OCR considers how the District categorizes the offense in policy with respect to severity and consequences. In evaluating whether offenses are comparable, OCR also reviews any mitigating or distinguishing facts, i.e., in this case, Student A assaulted Student B who did not fight back; and immediately prior to Student A assaulting

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<sup>11</sup> The Parent attempted to dis-enroll the Student on January XX, 2013, but was not permitted to do so until after Student A’s five day suspension was over, on January XX, 2013. The Parent enrolled Student A in another school district and he XXXXXXXXXX XXXX X XXXX XXXXXX in that school district.

Student B may possibly have called Student A a racial epithet. Thus, OCR concluded the Complainant's characterization that the Students were engaged in the same conduct was not accurate.

With respect to the District's treatment of the offenses, the District Conduct Code classified the offenses of Student A and B as similarly severe with respect to required suspension days, five, and Level Two severity. However, for Student A's offense, physical assault, the District Conduct Code also required social probation, law enforcement notification, and a no fighting contract. The School discipline rubric categorized Student A's behavior as more severe than Student B's behavior. Under the School discipline rubric, Student A's offense required five days of suspension, while Student B's behavior provided for either a possible suspension or between one and three days of suspension. The School applied the consequences in the School discipline rubric, which were more lenient than the District Conduct Code, with respect to Student B's behavior while applying the maximum consequences in the District Conduct Code (except recommendation for expulsion), which were harsher, with respect to Student A's behavior.

Prior to OCR completing its investigation regarding Issue 1, the District expressed its willingness to enter into a resolution agreement to resolve the compliance concerns raised by this allegation. OCR determined that it is appropriate to resolve the allegations with the attached resolution agreement. However, the facts gathered to date raised concerns regarding the District's use in the same set of Incidents of the harsher District Conduct Code for Student A who is African-American and the more lenient School discipline rubric for Student B who is white. In order for OCR to complete its investigation of Issue 1, it would have to take additional investigative steps, including, but not limited to, conducting additional interviews and reviewing School and District student discipline files to determine the manner in which similarly situated students were disciplined.<sup>12</sup>

***Issue 2: Whether the District failed to respond appropriately and effectively to notice of the alleged harassment of Student A by Student B in Incidents 1 and 2 and Student C in Incident 3.***

In analyzing claims of harassment under Title VI, OCR considers the totality of the circumstances to determine whether a hostile environment has been created.

#### Facts

##### *Additional Incident of Racial Epithet Being Used – Incident 3 (December 2012)*

Approximately XXXXXXX school days prior to Incidents 1 and 2, on or about December XX, 2012, Student C called Student A, "such a nigger." According to the District's records and OCR's investigation, the incident happened in Student A's XXXXX XXXXXX class in front of five to 10 other students. The Student reported the racial epithet to an administrator, who called Student C to the office. Student C admitted to using the epithet and the School suspended Student C for two days.

Student A's parent raised a concern with OCR that the School did not offer or provide Student A with support or other any other services after Incident 1, 2, or 3. According to Student A's parent, Student A was "emotionally and physically devastated about the incident," and the weekend following the

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<sup>12</sup> Although OCR conducted statistical analysis regarding deviations from District discipline policies based on race which are discussed below, OCR would have to review individual case files to make a determinations with respect to Issue 1.



December XX, 2012, incident, Student A broke down crying, explaining, "I was just called a nigger and everyone at school keeps on bringing it up.... ."

#### *District Policies and Practices Regarding Racial Harassment*

The primary board policy prohibiting discrimination and harassment based on race, in place at the time of Incidents 1, 2, and 3 (Board Policy 5145.3), designated the Assistant Superintendent of Facility Planning as the Coordinator to handle complaints and stated that "[a]ny student or school employee who observes an incident of discrimination or harassment should report the incident to the Coordinator or principal, whether or not the victim files a complaint." Upon receiving a complaint of discrimination or harassment, the Coordinator was required to immediately investigate the complaint in accordance with site-level grievance procedures specified in Administrative Regulation 5145.7. Pursuant to Administrative Regulation 5145.7, site staff were required to report racial and other harassment to the site nondiscrimination coordinator or principal within 24 hours of the incident.<sup>13</sup> The coordinator or principal was responsible for initiating an investigation within five days, interviewing the students involved, explaining the grievance process, allowing students to identify relevant witnesses, conducting the investigation, and discussing the actions "sought by the [impacted] student in response." Interim measures could be considered. A written report was to be issued to the complaining and accused students, their parents, and the superintendent or designee within approximately 30 days.

School site administrators could not describe to OCR how its complaint process for discrimination is carried out under the Administrative Regulation 5145.7, and they were unfamiliar with the steps they should take if they had knowledge of race discrimination, to implement the District's policy. Here, the School did not, as a matter of practice, follow the District's anti-discrimination and harassment policy. The Student reported the racial epithets directed at him on December XX, 2012, and again on January XX, 2013. However, OCR found no evidence that school administrators reported the December XX incident to either the Principal or nondiscrimination coordinator. In addition, OCR found no evidence that site administrators reported the January XX incident to the nondiscrimination coordinator. Neither District nor School staff issued a written report of findings, or otherwise took steps as required by the District policy in response to either incident. The Principal was unaware of Administrative Regulation 5145.7 and the requirements, and no one from the School or District talked to Student A about the actions "sought by [him] in response" to determine how to remedy the effects of the incidents involving racial epithets.

#### *School Student & Staff Demographics*

During the 2012-13 school year when the incident took place, African-American students accounted for 2,779 of the 32,601 students in the District, or about 8.52% of total enrollment. White students accounted for 24.31% of all students. At the School XXXXXXXXX XXXXXXXXX, African-American students accounted for fewer than 1% of the School's enrollment (18 out of 2,220 students). The School's white enrollment was 53.7% white (1,191 students). In 2012-13, in the District, 8.4% of administrators were African American, while 73.7% were white.<sup>14</sup> In addition, 84.6% (93/110) of certificated staff at the School were white; one certificated staff member was African American.

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<sup>13</sup> Lodi Unified School District, Administrative Regulation 5145.7, *Sexual Harassment*. Available at [http://www.lodiUSD.net/cms/page\\_view?d=x&piid=&vpid=1276351870158](http://www.lodiUSD.net/cms/page_view?d=x&piid=&vpid=1276351870158).

<sup>14</sup> California Department of Education, DataQuest, 2012-2013 staffing data. Available at <http://data1.cde.ca.gov/dataquest/>.

*School Discipline Data, Incidents Involving Allegations of Harassment, and Consequences*

School discipline data analyzed by OCR included a number of harassment incidents.<sup>15</sup> During the prior year, in 2011-12, when XXXXXXXXXX XXX XX XXX XXXXXXXXXX XXXXX, there were 21 documented incidents of racial slurs, or hazing/harassment, 67% of which were committed by white students (the most of any racial group). School discipline data showed that at least two such incidents in 2011-12 did not result in an out-of-school suspension for the offender, even though the District Conduct Code required at least one day of suspension.

*District & School Climate Reports*

The 2010-11 and 2013-14, California Healthy Kids Survey (Student Survey) and California School Climate Survey (Staff Survey) provide information about the climate for African-American students in the District and at the School.<sup>16</sup> With regard to harassment based on race, color, or national origin in 2013-14, 17% or almost one in every five ninth grade student in the District reported such harassment at school one or more times in the previous year.<sup>17</sup> In addition, in 2010-11, African-American ninth grade students reported the highest rates of any racial group of harassment based on race, color, or national origin, as 28% reported such harassment, as compared to 14% of white students.<sup>18</sup> African-American students also reported the highest rates of harassment for all “hate” reasons combined.<sup>19</sup>

The 2010-11 Staff Survey showed that staff were aware of some issues with racial harassment and fairness in discipline in the District.<sup>20</sup> For example, one-quarter of staff (25%) disagreed or strongly disagreed that staff examine their cultural biases.<sup>21</sup> Thirty percent of high school staff indicated that staff need additional professional development for working with diverse racial, ethnic, or cultural groups. Just 34% of high school staff strongly agreed that their school “[f]oster[ed] an appreciation of student diversity and respect for each other.”<sup>22</sup> Seventy seven percent of high school staff reported that racial or ethnic conflict among students was either a mild (55%), moderate (18%), or severe problem (4%).<sup>23</sup> 68% of high school staff did not strongly agree that their school handles discipline fairly.<sup>24</sup>

Analysis

As stated above, in analyzing claims of harassment under Title VI, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently severe, persistent or pervasive that it denies or limits a student’s ability

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<sup>15</sup> This analysis is based on discipline data provided to OCR for the School for the 2011-12 school year, XXXX XXXXXXXX X XXXXXXXXXX XXX XXXXXXX.

<sup>16</sup> California Healthy Kids and School Climate Survey, 2010-11 & 2013-14, WestEd. Available at <http://chks.wested.org/reports/search>. Note: California Healthy Kids and School Climate Surveys are not available for 2011-12 or 2012-13. The 2010-11 survey collected data from seventh, ninth, and eleventh graders in the District: XXX XXXXXXXXXX XXX XX XXXXXXX XXXXX XXXX XXXX XXXX.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> California Healthy Kids Survey 2010-11, WestEd, at 43.

<sup>19</sup> *Id.*

<sup>20</sup> This discussion only addresses the 2010-11 California School Climate Survey because the 2013-14 survey did not include high school staff.

<sup>21</sup> *Id.* at 25.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 23.

<sup>24</sup> *Id.*

to participate in or benefit from the district's education program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age of the individuals involved, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. OCR also considers whether other incidents motivated by race have occurred at the school to the complainant or others. If a district's grievance procedures encompass race, color, and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

Here, OCR found that the District had notice of racial epithets being directed at Student A in Incidents 1 and 3, along with the possibility of another occurrence during Incident 2. On January XX, 2013, School staff were also informed that Student B had reported that he regularly called Student A "nigga." Moreover, School staff should have been on notice that this type of prohibited harassment was prevalent since published school climate surveys from 2010-11, XXXX XXXXXXXX X XXX XX XXXXX XXXXX, showed that African-American ninth grade students in the District reported the highest rates of any racial group of harassment based on race, color, or national origin, as 28% reported such harassment, compared to 14% of white students. Even after recognizing that the District issued disciplinary sanctions regarding Incidents 1, 2 and 3, and may have issued disciplinary sanctions regarding other incidents, the facts gathered to date raised a concern that the District did not 1) fully assess whether Student A may have needed services or other supports in response to the incidents, as required by Administrative Regulation 5145.7, or 2) review the totality of the circumstances regarding reported incidents of racial harassment, including the use of racial epithets by its students on school grounds, to determine if Student A or other students experienced a hostile environment.

Prior to OCR completing its investigation regarding Issue 2, the District expressed its willingness to enter into a resolution agreement to resolve the compliance concerns. OCR determined that it is appropriate to resolve the allegations with the attached resolution agreement. To make a compliance determination, OCR would need to conduct additional interviews, and review the student files and actions taken by the School related to other incidents of racial harassment identified in school discipline data.

**Issue 3:** *Whether the District discriminated against African-American students in discipline District-wide by (a) subjecting African-American students in the District to discipline policies and practices which, while facially neutral, have an unlawful disparate impact; and (b) treating African-American students differently and more harshly in discipline.*

#### *Disparate Impact*

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

#### Facts and Analysis<sup>25</sup>

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<sup>25</sup> Unless otherwise noted, where this discussion cites rates and explains that one racial group is more likely to receive discipline or a consequence than another, the disparity is statistically significant at a 99% confidence level. A disparity that is statistically significant at a 99% level of confidence means that there is less than a 1% likelihood that the disparity is due to chance.

Do the District's Discipline Policies, Which Are Neutral on their Face, Have an Adverse Impact on African-American Students?

*Neutral Policies*

The District's discipline policies are found in the Board Policies and Administrative Regulations, as well as the District Conduct Code. The District Conduct Code<sup>26</sup> was effective between the 2011-12 and 2013-14 school years and was updated in a few relevant respects in 2014-15, as described herein. The District Conduct Code states that it is intended to provide students "a school environment in which optimum learning can take place," and "inform students, parents and staff about school rules and the consequences for certain behaviors."<sup>27</sup> The District Conduct Code further explains that it "shall be applied consistently," and the goal of "all disciplin[e] actions . . . shall be to reinforce and encourage appropriate behavior and respect for others."<sup>28</sup> It states that inconsistent application undermines the District's goals for student discipline and that staff will "[c]onsistently apply classroom, school and District rules."<sup>29</sup>

The District Conduct Code enumerates the type and severity of discipline appropriate for various offenses. As described further in the disparate treatment section, the District Conduct Code divides misbehavior into four levels of offenses, with "Level One" the least serious, and "Level Four" the most serious; each offense has a range of consequences and some offenses contain a minimum and maximum discipline consequence. The possible school disciplinary consequences range from warnings, parent conferences, or detention to in-school-suspension (ISS), out-of-school suspension (OSS) (up to five days), expulsion, transfer to an alternative school program, and notice to law enforcement.<sup>30</sup> A student may receive more than one consequence for an offense.

District Administrative Regulation 5144 (in effect from February 7, 2012 through January 11, 2016) regarding student discipline states that "[r]ules for student discipline shall be developed at each school site and filed with the district office," and such rules "shall be consistent with law, Board of Education policy and district regulations . . . ."<sup>31</sup> However, as discussed below, some site matrix consequences for lower level misbehavior were more severe at schools reviewed by OCR with high African-American enrollment.

Based on Administrative Regulation 5144, at least nine middle and high school sites (including all of the sites OCR visited) use their own site-based discipline matrices, which delineate the possible consequences for initial and subsequent offenses for various behaviors. OCR reviewed the five site discipline matrices at the high schools and middle schools where it conducted onsite visits and four other middle and high school matrices and found that all of them were different, in some respect, from the District Conduct Code, as well as being different from each other. For example, the offense consequences in the site matrices were sometimes different from matrix to matrix and did not align

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<sup>26</sup> OCR notes that the District's Code of Conduct is also facially neutral.

<sup>27</sup> Lodi Unified School District Student Conduct Code, K-12, 2013-2014, at 2, available at <http://district-lusd-ca.schoolloop.com/file/1272780633242/1229223230983/6720244604465137867.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3.

<sup>31</sup> Lodi Unified School District, Administrative Regulation 5144, Students, Discipline. The District revised this Administrative Regulation on January 12, 2016. However, the current version last reviewed August 8, 2016 includes the same language in effect during the 2013-2014 school year. Available at [http://www.lodiisd.net/cms/page\\_view?d=x&piid=&vpid=1276351870158](http://www.lodiisd.net/cms/page_view?d=x&piid=&vpid=1276351870158).

with the District Conduct Code. In addition, the type of misbehavior for which discipline could be administered was defined differently in the matrices and the District Conduct Code.

### *School Discipline Matrices - High Schools*

The Site-based discipline matrices for a number of offenses at Bear Creek and McNair High Schools, schools with the two highest percentages of African-American enrollment, provided for more severe consequences than the discipline matrix for Lodi High School:

In 2013-14, among the four comprehensive high schools in the District, Bear Creek and McNair High Schools had the highest percentages of African-American enrollment, at 15.5%, and 15.4%, respectively. In contrast, Lodi and Tokay High School had the highest percentages of white enrollment at 52.3% and 31.6%, respectively, and the lowest percentages of African-American enrollment at 1.1% and 2.2%, respectively. Bear Creek and McNair High, which had higher African-American enrollment than Lodi High, had site matrices that reflected more severe consequences for a number of more minor and subjective offenses, as described below.

- Willful Defiance/Disruption Offenses: As discussed above, various offenses listed in the school site matrices fall under the broad category of willful defiance/disruption. Examples of offenses aligned with more severe consequences at the high schools in the District with higher African-American enrollment (Bear Creek and McNair), are described below.
  - Dress Code: For a fourth incident of a dress code (not gang-related) offense, the Bear Creek and McNair High matrices provided for one day in-school suspension, while the Lodi High matrix allowed only for an administrative conference. In addition, for a fifth offense, the Bear Creek and McNair High matrices allowed for two days of in-school suspension and one day out-of-school suspension, respectively, while Lodi High's matrix again did not permit an exclusionary consequence such as suspension.
  - Horseplay: For a first offense of horseplay, while the matrices for Bear Creek and McNair High allowed for a two day out-of-school suspension, the matrix for Lodi High provided for only a warning.
  - Forged Note/Fake Parent Call: For a second offense for a forged note or fake parent phone call, the Bear Creek and McNair High matrices allowed for one day in-school suspension, while the Lodi High matrix allowed for just Saturday school.
  - Disrespectful Comment Toward a Teacher: For a first offense of a disrespectful comment toward teacher, the Bear Creek and McNair High matrices allowed for up to three days of out-of-school suspension while the Lodi High matrix allowed for "possibly" an out-of-school suspension.<sup>32</sup>

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<sup>32</sup> Lodi High's matrix specifically says "possibly suspension" depending on severity for such first offenses, whereas in other areas it specifies when an out-of-school suspension can range from a number of days, such as 1-3 or 1-5.

- Profanity: For a first offense of profanity, the matrices for Bear Creek and McNair High allowed for up to 2 days of out-of-school suspension, while the Lodi High matrix called for Saturday school.<sup>33</sup>
- Tardiness/Truancy: The discipline matrices at Bear Creek and McNair High allowed for suspensions for tardiness and/or truanicies, while Lodi High’s matrix did not allow suspensions for tardiness and/or truancy.

Examples of the differences between the Bear Creek, McNair, and Lodi High discipline matrices are illustrated in more detail in the table below:

Offense	School	1 <sup>st</sup> Incident	2 <sup>nd</sup> Incident	3 <sup>rd</sup> Incident	4 <sup>th</sup> Incident	5 <sup>th</sup> Incident
<b>Forged Note, fake parent phone call, etc.</b>	<b>Lodi H.S.</b>	1 Saturday School	1 Saturday School	1 day OSS	2 days OSS	Not listed – see previous
	<b>Bear Creek H.S.</b>	1 Saturday School	1 day ISS	2 days ISS	2 days OSS	3 days OSS
	<b>McNair H.S.</b>	2 Saturday Schools	1 day ISS	1 day OSS	2 days OSS	3 days OSS
<b>Dress Code (not gang related)</b>	<b>Lodi H.S.</b>	Warning/ Parent Contact	Warning/ Parent Contact	Warning/ Parent Contact	Administrative Conference	Not listed – see previous
	<b>Bear Creek H.S.</b>	Warning/ Parent Contact	1 Detention	1 Saturday School	1 day ISS	2 day ISS
	<b>McNair H.S.</b>	Warning/ Parent Contact	1 Saturday School	2 Saturday Schools	1 day ISS	1 day OSS
<b>Horseplay</b>	<b>Lodi H.S.</b>	Warning/Sat. School	1 day Sat. School to 1-3 days OSS	5 day OSS; expectation plan	Not listed – see previous	Not listed – see previous
	<b>Bear Creek H.S.</b>	1 Sat. School to 1-2 days OSS	1 day ISS to 1-3 days OSS	2 days ISS to 1-3 days OSS	1-3 days OSS	5 days OSS
	<b>McNair H.S.</b>	1 Sat. School to 1-2 days OSS	2 Sat. Schools to 1-3 days OSS	1 day ISS to 1-3 days OSS	1-3 days OSS	5 days OSS
<b>Cutting Class/Leaving Campus without Permission</b>	<b>Lodi H.S.</b>	1 Sat. School	1 Sat. School / Parent Contact	1 Sat. School / Parent Contact / Referral to CWA	1 Sat. School / Parent Contact / Referral to CWA	Not listed – see previous
	<b>Bear Creek H.S.</b>	1 Sat. School / Loss of off-campus pass current and	1 day ISS / Parent Contact	2 days ISS / ISS Teacher Counselor referral for	1 day OSS	2-3 Days OSS

<sup>33</sup> The 2011-12 through 2013-14 District Conduct Codes state as a possible disciplinary action: “Saturday School may be assigned to the student on Saturday for repeated unexcused absences or for other infractions.” The revised 2014-15 and 2015-16 District Conduct Code, states with respect to Saturday school that “students have the option to attend Saturday School to clear one all day or single period of unexcused absence or truancy.”

Offense	School	1 <sup>st</sup> Incident	2 <sup>nd</sup> Incident	3 <sup>rd</sup> Incident	4 <sup>th</sup> Incident	5 <sup>th</sup> Incident
		subsequent quarter / Parent Contact		possible alternative placement		
	McNair H.S.	1 Sat. School	2 Sat. Schools / Parent Contact	1 day ISS	1 day OSS	2-3 days OSS
Disrespectful Comment toward Teacher	Lodi H.S.	Detention / Possibly OSS (depending on severity) / Parent Contact	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	5 days OSS (possible expulsion depending on severity) / Behavior Contract	Not listed – see previous
	Bear Creek H.S.	1 day Saturday School to 3 days OSS (depending on severity) / Parent Contact	1 Day ISS to 3 days OSS (depending on severity) / Parent Contact	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	5 days OSS (possible expulsion depending on severity) / Behavior Contract
	McNair H.S.	1 day Saturday School to 3 days OSS (depending on severity) / Parent Contact	1 Day ISS to 3 days OSS (depending on severity) / Parent Contact	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	1-5 days OSS (possible expulsion depending on severity) / Behavior Contract	5 days OSS (possible expulsion depending on severity) / Behavior Contract
Profanity towards another student	Lodi H.S.	Detention / Possibly OSS (depending on severity) / Parent Contact	1-3 days OSS (depending on severity)	1-3 days OSS (depending on severity)	5 days OSS	Not listed – see previous
	Bear Creek H.S.	Saturday School / up to 2 days OSS (depending on severity) / Parent Contact	1 day ISS – 3 days OSS (depending on severity) / Parent Contact	1-3 days OSS (depending on severity)	1-3 days OSS (depending on severity)	5 days OSS
	McNair H.S.	Saturday School / up to 2 days OSS (depending on severity) / Parent Contact	1 day ISS – 3 days OSS (depending on severity) / Parent Contact	1-3 days OSS (depending on severity)	1-3 days OSS (depending on severity)	5 days OSS

*School Discipline Matrices - Middle Schools*

The discipline matrix for Delta Sierra Middle provided for more severe consequences for a number of offenses than the matrix for Lodi Middle. In 2013-14, among the seven comprehensive middle schools

in the District, Delta Sierra Middle School (Delta Sierra Middle) had the highest percentage of African-American enrollment, at 32.0%. In contrast, Lodi Middle School (Lodi Middle) had African-American enrollment of only 1.6%, and the third highest percentage of white enrollment at 28.4%. The Delta Sierra Middle discipline matrix reflected more severe consequences than the Lodi Middle matrix for a number of more minor and subjective offenses, as described below.

- Willful Defiance/Disruption Offenses: For willful defiance/disruption – one of the most common discipline offenses in the District – while Delta Sierra Middle’s matrix allowed for class suspension, out-of-school suspension, and parent contact for a second offense, Lodi Middle’s matrix only called for detention and parent contact for the second offense. In addition, for fourth and fifth offenses, Delta Sierra Middle’s matrix allowed for 1-5 days of out-of-school suspension and notification of law enforcement, while Lodi Middle’s matrix allowed for just 1-3 days of out-of-school suspension, and made no mention of notification of law enforcement.

The discipline matrices for Delta Sierra Middle and Lodi Middle also reflected discipline consequences for a number of more specific offenses, described below, that for purposes of suspension would fall under California Education Code Section 48900(k) for willful defiance/disruption. As described below, for these offenses the consequences at Delta Sierra Middle were more severe than the consequences at Lodi Middle.<sup>34</sup>

- Failure to Serve Detention or Follow Rules: For a second offense of “failure to serve detention or follow rules,” the Delta Sierra Middle matrix allowed for in-school suspension, while Lodi Middle’s calls for non-exclusionary consequences of detention and parent contact. For a third and fourth offense, while Delta Sierra Middle’s matrix allowed for 1-3 and 3-5 days of out-of-school suspension, respectively, Lodi Middle’s matrix allowed only for 1 day out-of-school suspension for a third offense, 2 days for a fourth offense, and 3 days for fifth and subsequent offenses (compared to 5 days at Delta Sierra Middle for fifth and subsequent offenses).
- Bullying: For a third offense of physical or verbal bullying, the Delta Sierra Middle matrix allowed for up to 5 days of out-of-school suspension, while the Lodi Middle matrix allowed only for up to 3 days.
- Dress Code: For dress code offenses, while the Delta Sierra Middle matrix called for 1-5 days of out-of-school suspension for a fourth offense, the Lodi Middle matrix did not recommend an out-of-school suspension for *any* dress code violations, and only recommended a five day detention for a fourth offense, and Friday School (and change of attire) for a fifth offense.
- Failure to Identify Oneself: For a second offense of failing to identify oneself, the Delta Sierra Middle matrix allowed for in-school suspension, while the Lodi Middle matrix only allowed for detention.

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<sup>34</sup> Pursuant to California Education Code, Section 48900, suspensions are only permitted for enumerated offenses. The District data reflects some discipline for offenses that cannot be clearly categorized in any enumerated offense under state law except California Education Code Section 48900(k) willful defiance/disruption, or that are most clearly categorized under this offense code. Therefore, because the District’s data does not provide fields for some such offenses listed in its site matrices, OCR has analyzed these offenses using the District’s discipline data for 48900(k) willful defiance/disruption.



- Skateboard, Scooter, and Skates: For skateboards, scooter, and skates related offenses, the Delta Sierra Middle matrix called for 1-3 days out-of-school suspension for a third offense, and 3-5 days out-of-school suspension for a fourth offense (and confiscation), while the Lodi Middle matrix called for a maximum consequence of only detention (and confiscation).
- Laser Pointer Use: For a second offense of possession or use of a laser pointer, the Delta Sierra Middle matrix allowed for in-school suspension, while the Lodi Middle matrix allowed for 2 days of detention.
- Tardiness/Truancy: The matrix for Delta Sierra Middle allowed for in-school suspensions for tardiness and/or truancy, while the matrix for Lodi Middle did not allow for any such exclusionary discipline for tardiness and/or truancy.
- Profanity/Vulgarity: For a third offense of profanity/vulgarity, while the Lodi Middle matrix allowed up to two days of suspension, the Delta Sierra Middle matrix allowed for up to three suspension days. The Delta Sierra Middle matrix also allowed for 3-5 days of suspension for each subsequent incident of profanity or vulgarity after the third offense, while the Lodi Middle matrix called for 1-2 days of suspension for a fourth offense, 3-4 days for a fifth and sixth offense, and 4-5 days for any additional incidents.
- Forging/Falsifying Documents: For a second offense of forging or falsifying documents, the Delta Sierra Middle matrix allowed for in-school suspension, while the Lodi Middle matrix only allowed for detention.

#### *District-Wide Disparate Impact on African-American Students*

OCR found that the District's facially neutral Administrative Regulation 5144 permitted site policies that had a disparate impact on African-American students. OCR found that African-American students were overrepresented at almost every level of discipline to a statistically significant degree – from referral to in-school-suspension, out-of-school suspension, expulsion, and citation – every year analyzed, including each of the four school years from 2011 to 2015.<sup>35</sup>

#### Tardiness/Truancy

Specifically, with regard to truancy and tardiness, the evidence revealed that tardiness and truancy issues are two of the most common reasons for disciplinary referrals in the District (34% of first time referrals in 2014-15), and that African-American students are disproportionately impacted to a statistically significant degree.<sup>36</sup> Such referrals can cause students to miss valuable class time, even when the resulting consequence is non-exclusionary. District discipline data from as recent as the 2014-15 school year reflects out-of-school, as well as in-school and class suspensions for tardiness and/or truancy, which were disproportionately administered to African-American students. Specifically with respect to suspensions in the 2014-15 school year, African-American students were 6.84 times more

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<sup>35</sup> For other categories of discipline not discussed in the disparate impact section, please see the different treatment section.

<sup>36</sup> OCR's investigation also raised concerns that Latino students are receiving disproportionate discipline for truancy and tardiness. For example, Latino students were 3.45 times more likely than white students to receive an in or out-of-school suspension for tardiness or truancy in 2014-15.

likely than white students to receive an in or out-of-school suspension for tardiness or truancy.<sup>37</sup> In 2013-14, African-American students were also disproportionately in-school suspended, accounting for 44.5% (57) of the in school suspensions for tardiness/truancy compared to white students who accounted for just 5.5% (7) of the 128 in school suspensions for tardiness/truancy.<sup>38</sup>

In addition, OCR found that the high school site that was suspending students for these reasons the most, McNair High, (constituting 45.8% of such suspensions in the District in 2014-15), was also one of the sites with the highest percentages of African-American students, while the comprehensive high school site with the highest percentage of white students, Lodi High, suspended students less frequently for these reasons (25.1% of such suspensions in the district in 2014-15). White students were also underrepresented in suspensions for tardiness and truancy at both sites. At McNair High, white students made up 9.9% of the student population, but received only 2.2% of the suspensions for tardy/truancy. At Lodi High, white students made up 54.1% of the student population, but received only 17.6% of the suspensions for tardy/truancy.

### Willful Defiance/Disruption<sup>39</sup>

In addition, the District's policies with regard to in-school and out-of-school suspensions for willful defiance/disruption offenses had a disparate impact on African-American students. These policies were particularly important because the willful defiance/disruption category was the most common basis for suspending students during the four school years from 2011-12 to 2014-15, with that basis constituting almost half (46.8%) of all in-school and out-of-school suspensions issued during that time period.<sup>40</sup> In 2011-12, African-American students in the District were also 3.44 times more likely to receive an ISS for defiance/disruption than white students, and this disparity rose to 7.30 times as likely in 2013-14. For out-of-school suspensions, African-American students were 3.40 times more likely to receive an OSS for defiance/disruption than white students, in 2013-14, up from 3.23 times as likely in 2011-12. In 2014-15, African-American students were over five times as likely to receive an OSS for defiance/disruption, and 1.56 times more likely to receive an ISS for defiance/disruption.<sup>41</sup>

Almost half of the suspensions (1,171) at Bear Creek and McNair High, the two high schools with the highest African-American enrollment and harsher punishments in the school discipline site rubric for these offenses, were issued to African-American students, even though African-American students made up only 15% of the students at those two high schools. At Delta Sierra Middle with a high African-

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<sup>37</sup> For 2014-15, there were 203 in- and out-of-school suspensions for tardiness or truancy, out of a total of 3,620 in and out-of-school suspensions in the District that year (5.6%).

<sup>38</sup> For 2013-14, there were 128 in-school suspensions for tardiness or truancy, out of a total of 2,809 in-school suspensions in the District that year (4.6%).

<sup>39</sup> The data in this paragraph refers to all incidents of willful defiance/disruption.

<sup>40</sup> 36% of all suspensions in the 2011-12 school year, 45.6% of all suspensions in the 2012-13 school year, 60.7% of suspensions in the 2013-14 school year, and 24.8% of suspensions in the 2014-15 school year were for willful defiance/disruption. OCR notes that the 2014-15 data likely underrepresents the number of suspensions for willful defiance/disruption because the data provided by the District was incomplete. Specifically, 1463 referral incidents were missing the field indicating what consequence the student received as a result of the incident. Several of the schools with incomplete data included schools with high African-American enrollment, such as Delta Sierra Middle and Bear Creek High School. More than forty percent (592 total) of referrals with a missing consequence field were disciplinary referrals for willful defiance/disruption and African-American students accounted for 24.2% of such referrals with incomplete data (compared to 2014-15 enrollment of 7.94%).

<sup>41</sup> The 1.56 times greater likelihood for African-American students to receive an ISS for defiance/disruption in 2014-15 was not statistically significant. The greater likelihood for African-American students to receive an ISS for defiance/disruption was statistically significant each of the other three years from 2011-2014, and the disparities were statistically significant all four years (2011-2015) for OSS for defiance/disruption.

American enrollment and more severe consequences for this offense in its site discipline rubric than Lodi Middle, which has a low African-American enrollment, over 58% (114) of the suspensions for willful defiance/disruption were issued to African-American students, even though African-American students made up only 32% of the student population at Delta Sierra Middle. Furthermore, during the 2014-15 school year, kindergarten through third grade African-American students accounted for 16.1% of the 62 out-of-school suspensions, but only 7.94% of District enrollment, whereas white students accounted for 38.7% of such suspensions and 28.5% of enrollment.<sup>42</sup>

#### Dress Code & Profanity/Vulgarity Violations

District data from 2011-12 through 2014-15 showed that during this four year period, African-American students also disproportionately received referrals for dress code violations. Most recently, in 2014-2015, African-American students accounted for 23.4% of such referrals (7.94% enrollment), while white students accounted for 12.3% of such referrals (28.5% enrollment). At Bear Creek and McNair High, with the highest African-American student enrollment and more severe consequences in their discipline site rubrics for profanity/vulgarity, African-American students accounted for just over 31% of such incidents, and 34.2% of suspension days, while white students accounted for 19% of such incidents and 21.3% of suspension days. At Lodi and Tokay High with the lowest African-American enrollment (2% and under) and less severe consequences in their site rubrics, no African-American students were disciplined for such incidents, while white students accounted for 39.4% of incidents and 35.9% of suspension days (compared to their combined enrollment percentage at the two schools of 41.9%).

#### Days Lost to Suspensions

Furthermore, in the 2013-2014 school year alone, the District's 2,827 African-American students received over 2,400 in-school and out-of-school suspensions and lost roughly 3,400 days of instruction as a result. In contrast, the District's 7,719 white students, who accounted for 2.7 times more students than the African-American enrollment, experienced about one-half the number of in-school and out-of-school incidents – just 1,210 – and over 1,200 fewer days of lost instruction. For in-school suspensions, in 2013-14, although African-American students accounted for 8.6% of the population, and white students accounted for almost a quarter of District students (23.48%), African-American students lost more than three times the number of days (588 days) to in-school suspensions as white students (190 days).

Focusing solely on out-of-school suspensions, in 2013-2014, although African-American students accounted for 8.6% of the student population, and white students accounted for almost a quarter of District students (23.48%), white students received fewer days of out-of-school suspensions (1,983) than African-American students (2,773).

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<sup>42</sup> For willful defiance/disruption, for 2014-15, the data show 13.5 days of lost instruction for the 13 incidents of African-American students in kindergarten through third grade suspended out-of-school for willful defiance/disruption. African-American students were 1.49 times more likely to receive such a suspension, a disparity that was not statistically significant. There were 75 total in-school and out-of-school suspensions for kindergarten through third grade willful defiance or disruption in 2014-15. There were 10 such suspensions for African-American students and 30 for white students; African American students made up 13.3% of such suspensions, but only 7.94% of total enrollment, and white students made up 40% of such suspensions, and 28.5% of enrollment. African-American students were 1.19 times as likely to receive such a suspension, a disparity that was not statistically significant.

Accordingly, OCR found that the District's facially neutral Administrative Regulation 5144, which was adopted without the intent to discriminate, and the local school site policies created pursuant to that regulation had a disparate impact on African American students during the 2011-12 through 2014-15 school years.

Are the District's Administrative Regulation and Discipline Policies Necessary to Meet an Important Educational Goal?

OCR found that the District's Administrative Regulation 5144 permitting each school site to develop different rules regarding student discipline is not necessary to meet an important educational goal. In this regard, OCR's policy review revealed that the District Conduct Code and other District-wide policy documents reiterated that "consistency" in the implementation of Discipline was one of the District's paramount goals and the foundation for ensuring safety, due process, and educational opportunity. Nevertheless, Administrative Regulation 5144 authorized site-based discipline rules that were different from one another, harsher in some respects at schools with high percentages of African-American students, and not aligned with the District's own Conduct Code. Furthermore, the District did not provide OCR with any educational justification for its different school site discipline rubric policies, which have a disparate impact on African-American students in the District.

Beyond the concerns raised regarding Administrative Regulation 5144, the District's discipline practices for truancy and tardiness and for suspension of students in kindergarten through third grade also raise civil rights concerns because they violate state law. Under the legal framework in California, during the 2011-12 through 2014-15 school years, school districts in California were not permitted to suspend students for truancy and tardiness. California law establishes the list of specific offenses for which suspension is permitted and these offenses are not included in that list.<sup>43</sup> In addition, California law provides that "[i]t is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities."<sup>44</sup> State law further specifies its intent that other alternatives be used for such offenses and includes a list of such alternatives, which include restorative justice, positive behavior supports, referrals to mental health counseling, pro social instruction,<sup>45</sup> and others. As of January 1, 2015, California law also prohibited in-school and out-of-school suspensions for students in grades kindergarten through third grade for the offense of willful defiance/disruption. State law also does not permit suspensions for offenses not specifically categorized and defined in California Education Code Section 48900, *et. seq.*

The District's Conduct Code policy was generally consistent with California law in not permitting suspensions to be issued to students who were truant or tardy<sup>46</sup> and, as of the 2014-15 school year, also did not permit in-school and out-of-school suspensions for students in grades kindergarten through third grade for the offense of willful defiance/disruption.<sup>47</sup> However, Administrative Regulation 5144 permitted each school site to develop its own school site discipline policies and did not establish an adequate procedure for review or oversight to ensure they were not inconsistent with or different from District discipline policy.

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<sup>43</sup> Cal. Educ. Code §§ 48900, *et. seq.*

<sup>44</sup> Cal. Educ. Code § 48900(w).

<sup>45</sup> Cal. Ed. Code § 48900.5.

<sup>46</sup> The only offense for which suspension is permitted under the District Conduct Code is "leav[ing] campus without proper authorization."

<sup>47</sup> Cal. Educ. Code § 48900(k).

OCR found that the policy and practice of suspending students for truancies and tardiness and, as of the 2014-15 school year, kindergarten-third grade students for willful defiance/disruption offenses are not necessary to meet an important educational goal. Suspending students for these offenses is not permitted by California law, the law includes the legislature’s intent that other alternatives to suspension be utilized to address truancy, tardiness, and other low-level behavior difficulties,<sup>48</sup> and the District’s own Conduct Code states that suspensions for these offenses are not permitted.

For these reasons, OCR concluded that while the District’s Administrative Regulation 5144 was facially neutral, it had a disparate impact on African-American students and was not necessary to meet the District’s educational goals.<sup>49</sup> Accordingly, OCR determined that a preponderance of the evidence establishes that the District’s Administrative Regulation 5144 created local discipline policies that had an unlawful disparate impact on African-American students on the basis of race in violation of Title VI and its implementing regulation during the 2011-12 through the 2014-15 school years.

*Different Treatment*

Facts<sup>50</sup>

*A. District’s Conduct Code & Training Regarding Student Discipline*<sup>51</sup>

The District’s general levels and the range of disciplinary consequences which are found in its District Conduct Code are summarized in the table below.

	<u>Types of Offenses</u>	<u>Severity of Discipline</u>
<u>Level One</u> <sup>52</sup>	Least serious offenses such as: causing/attempting to cause damage to school or private property; stealing school property; possession/use of tobacco; committing an obscene act or habitual profanity/vulgarity; sexual harassment (grades 4-12); and disruptive activities and willful defiance.	Ranges from warning to out of school suspension.
<u>Level Two</u>	Offenses such as: possessing or using alcohol or other controlled substances, willfully causing a major disruption, possession of an imitation firearm, fighting (causing, attempting to cause, or threatening physical harm), and possessing drug paraphernalia. <sup>53</sup>	Ranges from mandatory suspension, notifying law enforcement, to expulsion. It specifies that for K-3 students, fewer days than the minimum stated suspension days is allowed. <sup>54</sup>
<u>Level Three</u>	Serious behaviors, specifically causing serious bodily	Ranges from five day suspension, notify law

<sup>48</sup> Cal. Educ. Code § 48900.5.

<sup>49</sup> OCR also notes that with respect to whether there are comparable alternative policies or practices to meet the District’s goals of consistent application of school discipline, safe schools, and students in class and learning, there is research to support that such alternative policies and practices that emphasize positive interventions, restorative practices, and social and emotional learning over student removal are comparably more effective than exclusionary discipline at changing student behavior while maintaining a safe and positive school climate, and that for truancies and tardies, such policies or practices include using other interventions and student supports to engage and support students who are late to class or who are truant.

<sup>50</sup> District data analyzed by OCR in this section includes four school-years: 2011-2015, as well as CRDC and CDE data for the years described in the summary section above.

<sup>51</sup> Except as otherwise noted herein, the District did not report any significant discipline policy changes during the four years of discipline data analyzed by OCR.

<sup>52</sup> Lodi Unified School District Student Conduct Code, K-12, 2013-2014, at 5.

<sup>53</sup> *Id.* at 7-9.

<sup>54</sup> *Id.* at 7.

	<u>Types of Offenses</u>	<u>Severity of Discipline</u>
	injury; possessing a knife, dangerous object, or certain controlled substances; robbery and extortion, and assault or battery on a school employee. <sup>55</sup>	enforcement, to expulsion. It specifies that for K-3 students, fewer days than the minimum stated suspension days is allowed. <sup>56</sup>
<u>Level Four</u>	Most serious, and include possession, use or sale of a firearm, brandishing a knife, unlawfully selling controlled substances, committing or attempting sexual assault or committing sexual battery, possession of an explosive, or aiding and abetting a crime of physical violence resulting in great bodily injury to the victim. <sup>57</sup>	Requires a five day suspension and recommendation for expulsion, consistent with California law. It also provides for notifying law enforcement. <sup>58</sup> No discretion is permitted to deviate from the listed consequences. <sup>59</sup>

From 2011-2012 until the 2014-2015 District Conduct Code revisions, Level One<sup>60</sup> defiance/disruption (also known as California Education Code section 48900(k)) was delineated into 17 different actions, including defying or disobeying school officials; failing to identify oneself; forging, falsifying, or altering school documents; dress code violations; and cell phone use. Many of the defiance/disruption offenses listed in the District Conduct Code were broad and/or vague. For example, conduct that “interfere[s] with the peaceful conduct of the classroom or campus” was prohibited, with no further guidance provided. Similarly, “defy[ing] or disobey[ing] school officials” was prohibited but 10 out of 17 offenses had no description as to specific conduct prohibited.<sup>61</sup>

The District’s revisions to the District Conduct Code in 2014-15 eliminated the 17 different actions for 48900(k) conduct, leaving the broad state law definition: “[d]isrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.” No maximum and minimum consequences are listed for 48900(k) offenses, as they are for the other Level One offenses. Consistent with California law, the 2014-15 District Conduct Code states that suspension under this provision is not allowed for grades kindergarten through third grade.<sup>62</sup>

#### *Staff Training Regarding the District’s Discipline Policies; Different Interpretations by Staff*

The District had no formal training program to provide training for teachers, staff, or site administrators charged with administering school discipline on the District Conduct Code, equitable discipline practices, including practices that would result in nondiscriminatory administration of discipline, and due process in discipline. In this regard, at the time of OCR’s site visits during the 2013-14 school year, the District administrators who oversee discipline told OCR that it held site administrator meetings to discuss discipline generally, but did not conduct regular trainings on applying the District Conduct Code consistently. They could not clearly explain the criteria used to make discretionary discipline determinations at the site level, and told OCR that the District does not regularly train administrators on

<sup>55</sup> *Id.* at 10.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 10-11.

<sup>58</sup> *Id.* at 11.

<sup>59</sup> *Id.* at 10-11.

<sup>60</sup> *Id.* at 5-6.

<sup>61</sup> Lodi Unified School District Student Conduct Code, K-12, 2013-2014, at 6.

<sup>62</sup> *Id.*

making such determinations, to address the District's Conduct Code requirement to implement discipline consistently.

Five site administrators from four different sites told OCR that the District had not provided training regarding discipline implementation, including ensuring consistent application of its discipline policies in recent years, and a sixth site administrator from a fifth site could not remember any such trainings. One administrator told OCR that the District had held no such trainings during his ten years with the District. District staff, including at least six site administrators and many of the teachers interviewed by OCR in 2013-14, did not recall any formal training regarding the District's discipline policies and practices, although they did report periodic discussions about discipline and the District Conduct Code during meetings. In response to a request to the District for a list of all trainings on nondiscrimination in school discipline for staff at Lodi High School since August 2011, the District responded that, as of June 2013, there had been none.

Administrators at two sites reported providing an overview of their site discipline matrix with staff, while administrators at two other sites did not report conducting such meetings or trainings with staff regarding their discipline policies and expectations. (Although the Principal at one of the schools, Bear Creek High, which OCR visited explained that such trainings were provided for site staff. However, building staff who administered discipline told OCR that they had received no such training from the site or the District.) The two schools out of the four included here that did not conduct such trainings/meetings were Delta Sierra Middle (in 2012-13, Delta Sierra had the highest percent enrollment of African-American students among comprehensive schools in the District) and Bear Creek H.S. (47% of African American students in the District's comprehensive high schools attended Bear Creek in 2012-13); African-American students receive a disproportionate number of suspensions at these school sites. Several District administrators who generally oversee the District's schools acknowledged that the District needs more training of site administrators to ensure consistency in application of the District's discipline policy. As detailed further below, during the 2015-16 school year, the District initiated some relevant training in this regard.

Through its interviews and onsite visits, OCR found that staff had different interpretations of discipline terms. For example, terms such as "defiant" or "disruptive" conduct which can result in school discipline ranging from a warning to out-of-school suspension, were defined and understood differently by different teachers, staff, and administrators at different sites throughout the District.

#### *Law Enforcement on School Campuses in the District*

Since at least 2012, the District has had memoranda of understanding (MOUs) with both the Lodi and Stockton Police Departments for SROs on District campuses. The District pays for two officers, but two additional officers are provided for by the Lodi Police Department to patrol District campuses. The District also pays for two officers from the Stockton Police Department to patrol its campuses. In 2013-14, the District provided office space for SROs at Lodi, Tokay, Bear Creek, and McNair High Schools. The six officers were assigned to patrol schools throughout the District; the four Lodi Police Department SROs patrol schools in Lodi (in 2013-14, these schools were Lodi Middle and High Schools, Tokay High School, and Millswood Middle School), and the two Stockton Police Department SROs patrol schools in Stockton (stationed at Bear Creek and McNair high schools).

The existing (2015-16) and previous (2012-13) MOUs for SROs between the District and the Lodi and Stockton Police Departments do not provide guidance on when (or if) SROs should be involved in a

student discipline incident on school grounds and do not include information about any training that will be provided to SROs or the preparation the Police Departments will provide to officers who work on or around school campuses.<sup>63</sup> The SRO can request discipline or other information about a student, and school staff can obtain the information and provide it to the SRO. School administrators told OCR that, generally, at sites where the SROs are stationed, they have school walkie-talkies so they hear of events occurring on campus and can decide whether to intervene. In responses to OCR's request for data or information about trainings provided, the District did not report providing or offering any training for SROs regarding their role in student discipline.

Administrators from at least three sites told OCR that they refer students to the SRO if they believe the offense may be a penal code violation, and based on their School discipline rubric. At least two site administrators reported that SROs give citations to every student involved in a fight. Two school administrators, including one at a high enrollment African-American high school, told OCR that their SROs sometimes decide to cite students inconsistently from how they are disciplined based on the school's investigation. For example one school administrator told OCR that the SRO sometimes gives students citations even though the School's own investigation determined the offense did not occur, or the student acted in self-defense. The administrator explained that at times the school did not discipline a student, such as for a fight, based on their investigation, but the SRO cited the student. One high school administrator stated that sometimes the SRO only cites one student, even when the School disciplines both.

The District does not consistently document SRO-student interactions in its discipline database. As such, OCR could not review or analyze the SRO data. In this regard, the District has a field for citations in its discipline system but no fields for capturing information regarding referrals to law enforcement, searches, or arrests. District administrators told OCR that they do not know whether the SROs working in the District contact, cite, or arrest a disproportionate number of African-American or other students of color (or students with disabilities) because the Lodi and Stockton Police Department's do not provide the District with any such data, and their school sites do not regularly collect and enter such data. School site administrators who entered some data about contact with SROs told OCR that they did not consistently do so.

While the District provided some data to OCR regarding citations, the data were incomplete. For example, the District's discipline data did not indicate that Student A, involved in this case, received a citation despite the fact that one was issued. At least one District administrator expressed concern about the lack of information from the SROs, and stated that more data regarding SRO treatment of students would help to ensure non-discrimination. OCR was not able to interview the SRO XXXXXXXXX XX XXXX XXXX because at the time of the scheduled interview the SRO declined to make himself available, and the District entered into this Resolution Agreement before OCR completed its review of this issue.

#### *Student Discipline Recordkeeping*

As discussed above, the District has an electronic information system that allows it to track student discipline information by student, referral, consequence, type of offense, race/ethnicity, free or reduced lunch status, disability, school, grade, and other factors. The District can use this data to calculate rates

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<sup>63</sup> This refers to the SRO MOUs in place during the 2012-13 and 2013-14 school years, as well as the current 2015-16 SRO MOUs.



of discipline by race, school, grade, type of offense, staff involved, consequence, and other criteria. However, the 2014-15 discipline data provided by the District to OCR, had incomplete data with respect to consequences for disciplinary referrals for several schools, including schools with high African-American enrollment and previously high discipline rates.<sup>64</sup>

In reviewing the 2011-12 through 2014-15 years of data provided, OCR found that the discipline incidents are not always coded accurately. As explained above, the District's Conduct Code differs from the site based discipline matrices. There are multiple fields where a specific behavior could be categorized, and the District has not conducted training or issued written guidance for site administrators regarding consistently categorizing discipline offenses and who can enter the data.

In addition, as discussed above, the District does not have a system or process for gathering consistent data on students who are referred to law enforcement, cited or arrested. The District does not receive information from the SROs working for and with the District regarding students referred, cited, and arrested, or their race/ethnicity. Staff at several schools told OCR they do not collect or report data on interactions with law enforcement.

As stated previously, the District's data system has some data on student-law enforcement interactions, but the data is limited to a few schools, and is otherwise incomplete. For example, at Lodi High School, which had over 40 fights/assault/batteries during the four years, a key administrator told OCR that their SRO gives a citation for every fight, but the school reported zero citations from 2011-2015; Bear Creek High also reported zero citations. Of the other high schools, Tokay High only reported numbers for two of four years (2011-12 and 2012-13) and McNair High only reported numbers for 2012-13 (1 citation) and 2013-14 (8 citations). In the most recent data provided to OCR, just three schools reported any citations in 2014-15, and all three were elementary schools; just 8 citations were reported for the entire District. From 2011-2015, on average, just 10.25 of the 49 schools reported any citations any given year, and most were elementary schools.

*B. Data Review: Disproportionate Discipline of African-American Students, Other Student Groups, & High Overall Rates<sup>65</sup>*

Summary

The data analyzed by OCR reflects District-wide persistent and statistically significant racial disparities for African-American students at every level of discipline. These racial disparities in discipline date back to at least 2009-10, when, according to CRDC data, African-American students were 2.88 times more likely to receive one or more out-of-school suspensions than their white peers in the District. At least in significant part, a large percentage of the disparity relates to subjective and minor offenses. For

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<sup>64</sup> As discussed supra in footnote 40, this is likely an underrepresentation of the consequences imposed, as there are 1,463 discipline referrals in the 2014-15 school year for which the District provided incomplete data. In all prior years of data reviewed (2011-12 to 2013-14 school years), the data field with the missing data not only listed consequences but also other interventions, such as parent contact or counseling. African-American students account for 24.18% of these referrals, and white students account for 17.95%. At least 115 of the offenses listed for referral but that do not have a consequence identified were offenses that require at least one day of suspension, according to the District Conduct Code (Level Two, Three or Four offenses). Three offenses require a suspension and, under certain circumstances, recommendation for expulsion, or a suspension and mandatory expulsion: committed or attempted to commit sexual battery, or possession of a knife or other dangerous object, but none of these consequences are listed.

<sup>65</sup> Unless otherwise noted, where this discussion cites rates and explains that one racial group is more likely to receive discipline or a consequence than another, the disparity is statistically significant at a 99% confidence level.

example, racial disparities in discipline of African-American students for offenses such as defiance/disruption are statistically significant in all four years reviewed, while more objective and serious offenses such as possession, use, or sale of drugs or weapons are either more likely to involve white students, or where African-American students are more likely to be disciplined for these offenses, the disparity is small and not statistically significant.

#### District-Wide Referral Rates & Race

African-American students were overrepresented among disciplinary referrals each of the four years that OCR analyzed. While African-American students accounted for an average of 8.44% of student enrollment in the District from the 2011-12 through 2014-15 school years, they accounted for 26.19% (23,309) of all disciplinary referrals. In contrast, while white students accounted for 25.46% of the students enrolled, they made up 17.24% (15,348) of the 89,007 disciplinary referrals during these four years.

Table 1: Enrollment 2011-12 through 2014-15

Enrollment Year	African-American		White		Total Students
	#	%	#	%	#
2011-2012	2,907	8.80%	8,253	24.98%	33,034
2012-2013	2,779	8.52%	7,925	24.31%	32,601
2013-2014	2,827	8.60%	7,719	23.48%	32,879
2014-2015 <sup>66</sup>	3,145	7.94%	11,269	28.47%	39,588

African-American students also received one or more disciplinary referrals at a rate two or three times greater than the white student referral rate, each of the four school years. These disparities in referral rates, which ranged from 2.05 times in 2013-14, to 3.13 times in 2014-15, were statistically significant each of the four years.

Table 2: Students with One or More Disciplinary Referrals by Race 2011-12 through 2014-15

Year	African-American (students referred)			White (students referred)			Total Students Referred
	# of Students With 1 or More Referral	% of Students with 1 or More Referral	% of Enroll.	# of Students With 1 or More Referral	% of Students with 1 or More Referral	% of Enroll.	#
2011-2012	986	17.08%	8.80%	1,314	22.77%	24.98%	5,772
2012-2013	997	15.93%	8.52%	1,321	21.1%	24.31%	6,260
2013-2014	1,066	15.87%	8.60%	1,418	21.11%	23.48%	6,718
2014-2015	676	17.36%	7.94%	775	19.9%	28.47%	3,894

<sup>66</sup> This table reflects demographic data provided by the District to OCR for this review. As noted above, the data for 2014-15 reflects higher total enrollment than prior years for each racial group. The 2014-15 data also do not include District adult or associated non-public schools. Earlier years do include such data.

While almost four in every ten African-American students were referred at least one time in 2011-12, 2012-13, 2013-14, fewer than two in every ten white students were referred for discipline each of the same years. In 2014-15, the referral rate for African-American students dropped to just over two in every ten African-American students (2.1), and the referral rate for white students dropped as well, to less than one in every ten white students (0.69). The District's referral rates dropped significantly in 2014-15, from a rate of over 20.4% for all students in 2013-14 to 9.84% in 2014-15, but the disparity between the referral rates for white and African-American students actually grew larger from 2.05 in 2013-14 to 3.13 in 2014-15.

Table 3: Percent of Students with One or More Discipline Referrals by Race from 2011-12 through 2014-15

Yr.	African-American Students			White Students			Total Students Referred			AA v. White Rate
	Enroll	Refer	Rate	Enroll	Refer	Rate	Enroll	Refer	Rate	
2011-2012	2,907	986	33.92%	8,253	1,314	15.92%	33,034	5,772	17.47%	2.13x
2012-2013	2,779	997	35.88%	7,925	1,321	16.67%	32,601	6,260	19.2%	2.15x
2013-2014	2,827	1,066	37.71%	7,719	1,418	18.37%	32,879	6,718	20.43%	2.05x
2014-2015	3,145	676	21.49%	11,269	775	6.88%	39,588	3,894	9.84%	3.13x

#### District-Wide Offense Types for First Time Referrals

In 2014-15, over 34% of first time referrals for students were for tardy or truancy related reasons. The next leading cause for referrals was defiance/disruption (48900(k)) offenses, accounting for just under 22% of all referrals. In contrast, serious objective category incidents, such as possession of weapons or drugs accounted for less than 2% of all first referrals. Fighting related incidents (48900(a)(1) and (a)(2)), accounted for just under 9% of all first referrals. Data from the 2013-14 academic year reflected similar trends.

#### District-Wide Consequences for Students Receiving First Time Referrals

In addition to persistent African-American overrepresentation in overall referrals and referral rates, the data also showed that African-American students were also more likely to receive exclusionary discipline for such first time referrals, as compared to white students.

In 2014-15,<sup>67</sup> of the 3,894 students referred at least once, 26% received detention (27% in 2013-2014). Friday and Saturday School was the next most common consequences, accounting for over 17% of all consequences for first time referrals (down from over 23% in 2013-2014). Next, out-of-school suspensions accounted for just over 14% of all consequences (down from 17% in 2013-2014), and in-

<sup>67</sup>Please see footnote 40 and 64, supra, for concerns that the 2014-14 data likely underrepresents consequences, such as in and out-of-school suspensions.

school suspensions were used for another 4% of students referred the first time (up from 2.8% in 2013-2014).

As Table 3 above shows, in 2014-15, African-American students enrolled in the District were 3.13 times more likely to be referred for a discipline incident generally. Table 4 shows that these disparities in referral rates carried over to consequences, as African-American students enrolled in the District were 1.75 times more likely than white students to receive an ISS on a first referral, 3.61 times more likely to receive an OSS, and 3.19 times more likely to receive a class suspension.

Table 4: Disciplinary Actions Taken by Race for First Time Referrals

Action	% of African-American Students Receiving Consequence	% of White Students Receiving Consequence	Disparity
Warning	2.23%	0.49%	4.56x <sup>68</sup>
Detention	6.74%	1.46%	4.60x
Class Suspensions	1.02%	0.32%	3.19x
ISS	0.73%	0.42%	1.75x <sup>69</sup>
OSS	3.62%	1.00%	3.61x
Expulsions	0.0%	.03%	N/A
Citations	.13%	0.0%	N/A

As Table 5 below shows, in 2014-15, African-American students enrolled in the District were over 3.7 times more likely than white students to receive a first time referral for defiance/disruption, and were 3.75 times more likely than white enrolled students to receive a referral for defiance/disruption that resulted in an OSS for their first discipline referral of the year. Similarly, in 2013-14, African-American students were over 3.2 times more likely than white students to receive a first time referral for defiance/disruption, and were more than 2 times more likely than white students to receive a referral for defiance/disruption that resulted in OSS for their first discipline referral of the year. Both of these disparities were statistically significant.

Table 5: First Time Referrals of Defiance/Disruption<sup>70</sup>

Action	% of First-Time Referrals for African-American Students		% of First-Time Referrals for White Students		Disparity	
	2013-2014	2014-2015	2013-2014	2014-2015	2013-2014	2014-2015
All Defiance/Disruption Referrals	11.57%	5.66%	3.59%	1.52%	3.22x	3.73x
Defiance/Disruption Referrals with OSS	1.45%	0.73%	0.71%	0.20%	2.04	3.75x
Defiance/Disruption	0.74%	0.22%	0.14%	0.11%	5.21x	2.09x

<sup>68</sup> Highlighted yellow boxes indicate a statistically significant disparity.

<sup>69</sup> This disparity is statistically significant at a 95% confidence level using Fisher's Exact Test.

<sup>70</sup> Highlighted yellow boxes in this table indicate a statistically significant disparity.

Action	% of First-Time Referrals for African-American Students		% of First-Time Referrals for White Students		Disparity	
	2013-2014	2014-2015	2013-2014	2014-2015	2013-2014	2014-2015
<b>Referrals with ISS</b>						
<b>Defiance/Disruption Referrals with Class Suspensions</b>	1.34%	0.86%	0.34%	0.22%	3.99x	3.87x
<b>Defiance/Disruption Referrals with Warning</b>	0.78%	0.38%	0.25%	0.09%	3.16x	4.30x

District-Wide First Time Referrals By Offense Types – Rate for All Students

As reflected in Table 6 below, in 2014-15, African-American students were at least 3.7 times more likely than white students enrolled in the District to receive first time referrals for defiance/disruption, fighting related offenses, tardiness and truancy, and non-suspension offenses (e.g., related to electronic devices). However, for the very serious offenses of a first time referral for possession, use, or sale of weapons or drugs, white and African-American students were almost equally likely to receive a referral (the disparity was not statistically significant).

Likewise in 2013-14, African-American students were also 2.53 times more likely to receive a first referral for fighting/causing injury, and 2.19 times more likely for tardy or truancy. Conversely, white students were 1.26 times more likely to receive a first time referral for possession, use, or sale of drugs or a weapon.

Table 6: Offense Types For First Time Referrals<sup>71</sup>

Offense Type	% of African-American Students		% of White Students		Disparity	
	2013-2014	2014-2015	2013-2014	2014-2015	2013-2014	2014-2015
<b>Defiance/Disruption</b>	11.57%	5.66%	3.59%	1.52%	3.22x	3.73x
<b>Fighting/Cause Injury/Etc.</b>	4.85%	2.86%	1.92%	0.64%	2.53x	4.48x
<b>Tardy/Truancy</b>	7.89%	7.22%	3.6%	1.74%	2.19x	4.15x
<b>Non-Suspension Offenses – Electronic Device, etc.</b>	6.58%	6.36%	6.06%	1.39%	1.09x	4.56x
<b>Possess/Use/Sale Drugs or Weapons</b>	0.5%	0.22%	0.62%	0.17%	.80x (White students 1.26x more likely)	1.32x <sup>72</sup>

<sup>71</sup> Highlighted yellow boxes in this table indicate a statistically significant disparity.

<sup>72</sup> This disparity is not statistically significant.

## District-Wide In School Suspension (ISS) & Out of School Suspension (OSS)

### *Students Receiving One or More ISS in a School Year*

In each of the four years analyzed, the District was more likely to suspend a student by sending the student home (OSS), rather than suspending the student at school (ISS). In each of the four years analyzed, the District's ISS data reflects statistically significant racial disparities for African-American students. In each of the four years, African-American students were at least three times more likely than white students to receive one or more ISS. The largest disparity was in 2013-2014, when African-American students were over six times more likely to receive an ISS than white students.

### *Students Receiving One or More Out-of-School Suspension In a School Year*

For each of the three school years from 2011-12 to 2013-14, approximately 20 in every 100 African-American students in the District received at least one OSS, while fewer than 8 in every 100 white students received one or more OSS. In 2014-15, these OSS rates fell to under 8 in 100 for African-American students, and under 2 in 100 for white students, but the disparity between the rates for the two groups increased.<sup>73</sup> African-American students received one or more OSS at rates that ranged from a low of 2.74 times the white rate in 2011-12, to a high of 4.47 times in 2014-15. In each of the four years analyzed, the disparity in OSS rates favoring white students was statistically significant. In 2013-14, districtwide, approximately six out of every 100 (6.3%) non-African-American students received one or more OSS, while almost 20 of every 100 African-American students received one or more OSS.<sup>74</sup>

### *Students Receiving One or More OSS By Offense Type*

From 2011-12 through 2013-14, African-American students were more likely than white students to receive an OSS for subjective offenses such as defiance/disruption, and threats, while for objective offenses such as possession, use, or sale of drugs or weapons, white students were more likely to receive an OSS (2011-12), or the disparity was not statistically significant (2013-14). African-American students were also more likely to receive an OSS for offenses related to fighting. In 2013-14, African-American students were 3.40 times more likely to receive an OSS for defiance/disruption than white students, a disparity that was statistically significant. Although African-American students were slightly more likely than white students to receive an OSS for possession, use, or sale of drugs, alcohol, tobacco, or weapons in 2013-14, the difference was not statistically significant.

## District-Wide Student Expulsions

African-American students were overrepresented in the District in expulsions, as compared to white students, in each of the four years OCR analyzed, to a statistically significant degree. The expulsion rate disparity between African-American and white students ranged from a low in 2011-12 of just over two times, to a high in 2014-15 of over 4.3 times.

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<sup>73</sup> Please see footnote 40 and 64, supra, for concerns that the 2014-14 data likely underrepresents consequences, such as in and out-of-school suspensions.

<sup>74</sup> In its review of data, OCR identified other racial disparities in discipline. For example, the racial group with the next highest OSS rate was American Indian students, at 10.23%. Data also showed that Latino students were disproportionately subject to suspensions for tardiness or truancy, as they were 3.45 times more likely to receive such suspensions than white students, a disparity that was also statistically significant.

Although the disparity between African-American and white student expulsion rates grew during this four year period, the overall number and rate of expulsions fell – from a rate of .35% in 2011-12 to just .08% in 2014-15. Similarly, the rate for expulsions of African-American students fell from a range of .65% to .81% from 2011-14, to just .19% in 2014-15. The white expulsion rate also fell, from a high of .34% in 2011-12, to just .04% in 2014-15.

#### District-Wide Students Receiving Citations

As discussed previously, the citation data provided by the District is limited and incomplete, with numerous schools not reporting citations. For example, in 2014-15, the District reported just eight citations for the entire year. In 2013-14, only one high school reported citations, and 87% of the 61 students reported as having received a citation were in elementary or middle school. During the four year period analyzed, African-American students were overrepresented in citations every year except 2012-13. These disparities were statistically significant in 2011-12 and 2013-14. The four year citation rate for African-American students, from the 2011-12 to 2014-15 school year was 1.65 times greater than the white citation rate: .77% vs. .47%. This disparity was statistically significant.

#### Deviations from District Policy for Days of Suspension and Consequences & Race at XXXXX High School<sup>75</sup>

As discussed above, many of the Level One offenses provide significant discretion to school site administrators to determine the appropriate consequences from a range of possibilities. However, some Level Two offenses, as well as Level Three and Four offenses, have published minimum consequences that, on paper, allow for little discretion, such as a minimum five day suspension. At the School that XXXXXXXXXX attended, OCR analyzed such offenses for which the published District Conduct Code minimum was a consequence of five days of suspension to determine whether that School deviated from its published minimum District Conduct Code consequences, and if so, whether these deviations favor students based on their race.

Over the three school-year period of 2012-15, the District's data showed that white students at XXXXX High School were more likely than African-American and Latino students to benefit from deviations from District policy in terms of length of suspensions for offenses that required a minimum of five days of suspension.<sup>76</sup> While Latino and African-American students made up approximately 43.5% of the students at the School during these three years, African-American and Latino students accounted for 73.3% of the 5 day discipline offenses for which the School did not deviate below the minimum in the District Conduct Code. In contrast, white students accounted for 56.5% of students belonging to these three racial/ethnic groups at the School, and just 26.7% of non-deviations from the District Conduct Code. Moreover, according to the data, 50% of the white students who committed such mandatory five

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<sup>75</sup> OCR conducted additional analysis, as discussed in this section, of the discipline data for this school XXXXXXXX XX XXX XXX XXXXXXXX XXXXXXXX XX XXX XXXXXXXX. In reviewing the data at the School, OCR identified a number of ways in which the data also reflected harsher consequences for Latino students. As such, for purposes of analyzing deviations from policy at the School in this section, and the severity of consequences meted out at the School in this section only, OCR combined the analysis of Latino and African-American students where the data reflected similar trends in treatment. OCR has also noted relevant differences herein.

<sup>76</sup> This disparity was not statistically significant. However, the data analyzed encompasses all of the discipline incidents at the School provided by the District for the School for the three racial/ethnic groups: Latino, African-American and white that were the focus of the analysis here. Therefore, these percentages are based on totals that include only African-American, white, and Latino student populations, not the entire School population.

day suspension offenses, received suspensions of less than the minimum requirement in the District Conduct Code while 35% of the Latino students received punishment of less than the minimum, and 0% of the African-American students benefitted from such deviations from the District Conduct Code. A combined 33.3% of African-American and Latino students benefitted from deviations from the minimum number below 5 days.

By this measure, the data showed that white students were 1.5 times more likely than African-American and Latino students at XXXXX High School to benefit in terms of fewer days of suspension from deviations from the District Conduct Code in terms of length of suspensions for offenses that required a minimum of five days of suspension.<sup>77</sup>

*Severity of Consequences for Similar Offenses & Race at XXXXX High School*

African-American and Latino students at XXXXX High School received more severe punishment than white students who engaged in similar behavior. According to data for four school years from the School (2011-12 to 2014-15), white students consistently received less severe punishment than African-American and/or Latino students, including for first time referrals for the same offenses.<sup>78</sup>

*First Time Offenses & Discipline Severity in Terms of Likelihood of Suspension & Longest Suspension (5 Day Maximum Suspension Under California Law) at XXXXX High School*

Enrolled Students & Likelihood of Maximum, 5 Day Suspension for First Time Offenses at XXXXX High School

For the four years reviewed, for first-time offenses, African-American and Latino students enrolled at the School were more likely to receive the longest possible suspension allowed under California law, five days, as compared to white students, to a statistically significant degree. Whereas African-American and Latino Students accounted for 41.3% of enrolled students during these four years, they accounted for 54.9% of five day suspensions, as compared to white students who accounted for 54.4% of all students and 43.7% of all five day suspensions.

Enrolled Students & Likelihood of Suspension for First Time Offenses at XXXXX High School

During the four school-year period, African-American and Latino students who were enrolled at the School were over 1.5 times more likely to be suspended for a first referral (that school year), than white students (5.96% vs. 3.95%). More specifically, enrolled African-American students were 1.8 times more likely than white students to be suspended for a first referral (7.06% vs. 3.95%) and Latino students were 1.5 times more likely (5.94% vs. 3.95%).<sup>79</sup>

Length of Suspension & Severity of Offenses at XXXXX High School Based on Levels One and Two of the District Discipline Rubric<sup>80</sup>

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<sup>77</sup> This disparity was not statistically significant,

<sup>78</sup> These disparities were statistically significant in some instances, but not all, and reflected disproportionality.

<sup>79</sup> The disparities were not statistically significant.

<sup>80</sup> This analysis focused on Level One and Level Two offenses. The School did not use consistent offense descriptions for each of the four years of discipline OCR reviewed (2011-2015). Many offense descriptions also described similar or overlapping behavior, and in total the School used over 50 different offense descriptions. Therefore, to allow for comparison, OCR grouped



OCR also analyzed whether white students received less harsh consequences in terms of shorter suspension time for *the same or similar type offenses* (using all first time offenses for each school year), over the four year period (2011-2015).<sup>81</sup> This data showed that white students, on average, received shorter suspensions than Latino and African-American students for a first time referral for a similar type offense. In this regard, offenses involving fighting or some form of violence resulted in the most suspension days at the School over the four year period, accounting for 38.09% of such suspension days.<sup>82</sup> White students received, on average, shorter suspensions of 4.2 days for these offenses, as compared to African-American and Latino students who received an average of 4.62 days for similar type first time offenses (the African-American average was 4.33 days).

In addition, OCR conducted a more specific analysis of fighting related offenses at the School based on discipline data provided for incidents that only looked at the offenses of (1) use of force/violence/fighting; (2) 48900(a)(1) caused, attempted to cause, or threatened physical injury, (3) 48900(a)(2) willfully used force or violence upon another; and (4) caused physical injury. Based on the data reviewed, these offenses accounted for over 70% of the fighting/violence related suspension days from 2011-2015, and over a quarter (26.7%) of all suspension days for all types of offenses during this period. On average, white students received suspensions of 3.9 days for such offenses, while African-American students received an average of 4.0 days of suspension for such offenses and Latino students received 4.67 days of suspension for similar offenses. The data reviewed showed that at a statistically significant level white students were more likely to receive less than five days of suspension for such offenses, as compared to African-American and Latino students. OCR did not separately review individual discipline files to assess the specifics of the underlying incident which led to a suspension for the offense categories cited.

### *Staff Interviews*

Three of the 14 school administrators interviewed by OCR told OCR that they believed all students are treated equally in discipline. However, at least four administrators from three different schools who were interviewed by OCR principally during the 2013-2014 school year, including administrators who regularly handle discipline matters, told OCR that they believed African-American students were treated more harshly and unequally in discipline. These four administrators told OCR that they believed teachers and other staff were more likely to refer African-American students for discipline for behavior that white students and students of other races were not typically referred for. One administrator remarked that every day, the office was filled with African-American students, and he believed this was the result of bias, not different behavior. Another district administrator with direct knowledge told OCR that in the District white students receive the benefit of the doubt, and receive less serious consequences, while African-American students were not as likely to receive such favorable treatment.

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similar types of behavior into seven main categories: (1) fighting/violence related offenses; (2) possession or use of drugs, alcohol, etc., offenses; (3) defiance/disruption offenses; (4) harassment/bullying offenses; (5) property theft and damage related offenses; (6) possession of weapons offenses; and, (7) other (less than 2%).

<sup>81</sup> This analysis allows for comparison of the consequences given for first time referrals (that school year) for students who committed the same or similar type offenses.

<sup>82</sup> This category included the following offenses: fighting, use force/violence/fighting, assault/battery, 48900(a)(1) caused, attempted to cause, or threatened physical injury, 48900(a)(2) willfully used force or violence, caused physical injury, physical aggression, 48900(n) committed or attempted sexual assault, 48900(t) aided or abetted physical injury to another, and aided/abetted physical injury.

*Recent District Initiatives to Address Disproportionality in Discipline*

During OCR's investigation and in consultation with OCR, the District has initiated efforts to review and modify some of its disciplinary policies and practices. These efforts have included the following:

- in 2015, established a District level position of "Positive School Climate Coordinator" to oversee discipline reforms in the District and ensure equal treatment of students in discipline and hired a staff member for that position;
- began working with a consultant in approximately August of 2014, on improving its discipline system and in particular on developing positive school climates, and has consulted with a support center on positive behavior interventions and supports (PBIS)<sup>83</sup> and an expert on bias in school discipline;
- contracted for PBIS training and implementation, to be district-wide over the course of the next three years;
- provided some revisions to the District Conduct Code for the 2014-15 school year; and,
- enacted revisions to District Board Policies and Administrative Rules in the 2015-16 school year to emphasize positive and non-exclusionary approaches to school discipline, and increased review of site discipline policies.

Analysis – District-Wide Discipline

*District-wide Different Treatment*

To determine whether a school district has discriminated against a student on the basis of race in the discipline process, OCR looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances, and whether the treatment has resulted the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. To find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race.

OCR considers both direct and circumstantial evidence of racially discriminatory intent. Circumstantial evidence is evidence that creates an inference of discriminatory intent from the facts of the investigation as a whole, or from the totality of the circumstances. It may include, but is not limited to, whether the impact of a disciplinary policy or practice weighs more heavily on students of a particular race; whether there is a history of discriminatory conduct toward members of a student's race; the administrative history behind a disciplinary policy or decision; and whether there had been inconsistent application of disciplinary policies and practices to students of different racial groups.<sup>84</sup>

OCR's investigation showed that African-American students were overrepresented in discipline in the District for all four years reviewed. From 2011-12 to the 2014-15 school year, African-American

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<sup>83</sup> OCR notes that while significant research supports that PBIS, when implemented with fidelity has been shown to significantly reduce school removals and referrals and has other positive benefits on school climate, experts have recommended culturally responsive PBIS, which "considers the valuation, consideration, and integration of individuals' culture, language, heritage, and experiences leading to facilitated learning and development", to proactively address racial disparities in discipline. See, e.g., Banks T. & Obiakor F., *Culturally Responsive Positive Behavior Supports: Considerations for Practice*, Journal of Education and Training Studies, Volume 3, No. 2, March 2015.

<sup>84</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-68 (1977) (identifying a non-exhaustive list of factors that may serve as indicia of discriminatory intent).

students were overrepresented, as compared to white students, to a statistically significant degree at every level of discipline, from referral to out-of-school suspension, expulsion, and law enforcement citation. For example, in 2014-15, African-American students were 3.13 times more likely to be referred for discipline, 3.52 times more likely to be in-school suspended, 4.47 times more likely to be out-of-school suspended, and 4.3 times more likely to be expelled, as compared to white students. The citation data for the four year period from 2011-12 to 2014-15 showed that African-American students were 1.65 times more likely to receive a citation than white students, which was statistically significant.<sup>85</sup> The evidence also showed that African-American students were more likely to be disciplined for subjective, less serious offenses than white students.

Based on the data analyzed, XX XXX XXXX XXXXXX XXXX XXX XXXXXXXX XXXXXXXX, African-American students were less likely to benefit from deviations below District Conduct Code minimums for suspensions, as compared to white students. In comparing similar types of first time offenses at the school, the data appeared to show a pattern by which white students on average received shorter suspensions, as compared to African-American students (and Latino students) who were disciplined for a similar, first time offense.

OCR found that although the District Conduct Code was supposed to govern all of its school sites, and provide consistency and compliance with related laws, the District authorized sites to adopt different and often inconsistent site based discipline rubrics both with respect to the offense and definition of that offense and with respect to the consequence to be applied. As such, the consequences for misbehavior varied depending on the school site a student attended, as well as the student's behavior.

OCR's investigation also revealed that Level One and Two, less serious offenses were generally less clearly defined, and allowed for greater discretion among staff to choose from a significant range of possible consequences, often from a warning to recommendation for expulsion and/or law enforcement referral. For such subjective offenses in this District, the data revealed the highest disparities in terms of harsher punishments and referrals for African-American students. In addition, the District Conduct Code was not consistently followed at many sites, including at the School XXXXXXXXX XXXXXXXX where the data showed significant deviations from the District Conduct Code, which benefitted white students over African-American (and Latino) students.

OCR also found that the District and most sites had no process in place to train site administrators regarding school discipline and the District Conduct Code. Administrators, teachers, and other staff sometimes interpreted the same site policies to require different discipline responses for the same or similar offenses. While OCR recognizes that some discretion in disciplinary practices may be appropriate in implementing discipline policies, administrators and teachers gave OCR differing interpretations of the same policies, and District as well as site administrators were aware of the inconsistent application of discipline policies. Teachers were also aware of this issue, and according to teacher questionnaire responses at one of the middle school sites, teachers believed that the school's discipline system, including teacher referrals for student misbehavior, was inconsistent.

OCR found that district and site staff did not share a common understanding of important aspects of the District Conduct Code, including: 1) what conduct was prohibited; 2) how to determine the appropriate

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<sup>85</sup> The 2014-15 citation data provided by the District also reflected a disparity in citation rates, as according to the data, .13% of African-American students received a citation while 0% of white students received a citation. However, this was based on just eight citations reported to OCR by the District. The eight citations came from three elementary schools.

consequence, including how to weigh mitigating and exacerbating factors, prior discipline incidents, and other information; 3) whether a site discipline matrix or District Conduct Code should be used to determine the consequence, or both; 4) whether the consequences listed were a menu from which an administrator could choose what s/he thought was appropriate, or whether each consequence listed should be administered; 5) whether the site could deviate from the published minimum or maximum for a consequence, based on the specific situation; and, 6) whether students could be suspended in school or out, for tardiness or truancy.

Some site administrators and other staff attributed the overrepresentation of African-American students in the District's discipline system to racial bias and/or cultural competency deficiencies. However, others attributed this to other factors, such as lack of training, or told OCR they did not know the cause of the District's racial disparities in discipline.

To make a compliance determination with regard to this allegation, OCR would need to conduct further interviews with administrators, teachers and other staff involved in issuing specific consequences, review individual discipline files of students who appear to be treated differently in the discipline process based on categorization of discipline offenses, and conduct further interviews with African-American and white students receiving different consequences for offenses that are categorized similarly. However, prior to OCR completing its investigation, the District expressed its willingness to enter into the attached Resolution Agreement to resolve the compliance concerns raised by this allegation. OCR determined that it is appropriate to resolve the allegations with the attached resolution agreement, including provisions addressing concerns OCR identified with respect to the District's recordkeeping.

### Conclusion

The District has entered into a resolution agreement with OCR which is intended to address OCR's concerns with regard to allegations 1, 2, and 3(b), as well as the finding of noncompliance with regard to allegation 3(a) with respect to the 2011-2014 school years.

Pursuant to the attached resolution agreement, the District will: 1) continue to employ a Positive School Climate Coordinator to oversee implementation of the Agreement; 2) consult with experts as needed to assess the District's practices, identify root causes for the District's racial disparities in discipline and develop an action plan; 3) revise its discipline policies and regularly train staff to ensure consistency; 4) work with a District stakeholder discipline equity committee to inform the District's efforts; 5) adopt student focused remedies, including a system of student supports and interventions that keep students in class learning, as well as early intervention for at-risk students; 6) conduct outreach to the school community to provide training and information on alternatives to removals; 7) conduct school discipline climate surveys and assess what additional interventions are needed to ensure equitable and fair administration of discipline; 8) revise policies and procedures and training and the MOU with regard to SROs; 9) ensure that the District consistently collects and reports discipline data on a number of discipline factors, reviews data regularly, and self-monitors; 10) issue written guidance and provide training regarding responding to racial harassment; and, 11) provide compensatory services for the Student and removal of suspension records. When fully implemented, the agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Title VI and its implementing regulation, at 34 C.F.R. § 100.3.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. OCR will monitor the implementation of the resolution agreement, and notes that the District has already begun implementing many of the provisions of the agreement.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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

OCR would like to thank the District for its cooperation in resolving this case. OCR will continue to work with the District to complete the steps outlined in the agreement. If you have any questions, please contact me at (415) 486-5747.

Sincerely,

/S/

Laura Faer  
Regional Director

Enclosure

cc: Gabriel Sandoval, Partner, Atkinson, Andelson, Loya, Ruud & Romo