



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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August 16, 2022

**VIA ELECTRONIC MAIL**

Elvin Momon  
Superintendent  
Victor Valley Union High School District  
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Victorville, CA 92395  
[emomon@vvhhsd.org](mailto:emomon@vvhhsd.org)

Re: OCR Case Number 09-14-5003

Dear Superintendent Momon:

This letter notifies you of the resolution of the U.S. Department of Education (Department), Office for Civil Rights (OCR) compliance review of student discipline in Victor Valley Union High School District (the District). The compliance review, opened on August 12, 2014, examined whether the District discriminated against African American students by disciplining them more frequently and more harshly than similarly situated white students, in violation of the District's obligation to comply with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations, 34 C.F.R. Part 100.

**I. Summary of OCR's Compliance Review and Findings**

OCR reviewed documents, data, and other information provided by the District and conducted extensive interviews of District employees, students, parents, and others. OCR conducted a four-day site visit at the District, in which OCR visited the District office and six of the District's eight schools (three middle schools and three high schools).<sup>1</sup> OCR reviewed school discipline data through 2019 and conducted interviews of District employees in 2020, 2021, and 2022.

After careful review and analysis of the evidence obtained in this investigation, OCR found by a preponderance of the evidence that the District engaged in disparate treatment based on race in violation of Title VI by disciplining African American students more frequently and more harshly than similarly situated white students. This conclusion is based on the collective direct and circumstantial evidence of discriminatory intent that this letter summarizes here and details below.

This evidence included multiple witness statements to OCR from District- and school-level administrators and school employees whose job duties provided them with personal knowledge of the District's disciplinary practices and data. Based on their personal knowledge and professional

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<sup>1</sup> OCR conducted this site visit in November 2014.

experience with the District, these witnesses credibly told OCR that they believed the District was discriminating against African American students in discipline, particularly at certain schools and in multiple areas such as suspensions, expulsions, truancy, and law enforcement citations. During the period OCR reviewed, law enforcement citations were issued to students through a program called “Clean Sweep,” which authorized school administrators to issue citations to students for disciplinary infractions that required them to appear in juvenile court. Several witnesses described how Clean Sweep and District expulsion practices that departed from its policies and state law discriminated against African American students. Administrator and employee witnesses provided examples of such discrimination at various schools to OCR based on their personal knowledge and observations of discipline decisions and data during the scope of their District employment. The evidence also included witness statements from administrators and employees who observed what they perceived to be racial bias in the discipline process, and other employees whose statements reflected racial generalizations and negative racial stereotypes about African American students and families.

OCR’s evidence also included witness statements from interviewed students who reported that the District treated African American students differently in discipline than students of other races. For example, students reported that African American students were disciplined more often and more harshly for dress code violations and being loud than their white peers. Through its review of discipline files, OCR found individual examples of similarly situated African American and white students with the same or similar discipline history who were disciplined differently for the same or similar infractions, including dress code violations, subjective offenses like “defiance,” “disruption,” and “inappropriate behavior,” and objective offenses like truancy.

OCR’s conclusion that the District engaged in disparate treatment also relied on substantial circumstantial evidence of racial discrimination that was consistent with and supported the witness statements about the District’s harsher discipline of African American students than white students across multiple areas of discipline and schools. Such circumstantial evidence included statistical evidence that African American students were substantially overrepresented compared to their white peers at every level of District discipline: referrals, out-of-school suspensions, expulsions, and Clean Sweep citations. Consistent with the witness statements, OCR found that the District used Clean Sweep disproportionately with African American students and that racial disparities in the discipline data corresponded with the District’s application of discretionary and subjective infractions such as “defiance,” “disruption,” and “inappropriate behavior” – infractions that are more susceptible to racial bias than are objective infractions. The racial disparities that OCR found in disciplinary referrals, suspension rates, expulsion rates, Clean Sweep citations, and suspensions for subjective infractions affected a large number of African American students because the District suspends and expels all students at much higher rates than other districts in California. OCR examined whether non-discriminatory reasons, such as the students’ prior discipline histories, or higher poverty rates (as measured by student participation in free or reduced-price lunch programs), explained the disparities in the District’s discipline of African American students. OCR determined that these reasons did not explain these disparities.

OCR found other circumstantial evidence in the District’s discipline data, files, and policies that corroborated the witnesses’ statements about discriminatory District departures from its own disciplinary policies and California law. Consistent with these witness statements, OCR found that these departures disproportionately harmed African American students and included:

mischaracterizing their behavior as more serious than it was to apply more severe consequences, such as suspensions for tardies and truancy that conflicted with state law; using “pre-expulsion” contracts not provided for in District policy as a way to expel students for violating the contracts even when the violation did not constitute an expellable offense; and sending students home from school (via “home custody”) without officially suspending them. One or more witnesses identified each of these departures, and OCR’s statistical analyses of the data and review of discipline files confirmed these departures.

These examples of similarly situated students from the files and witness statements, the District’s discriminatory departures from its policies and state law, and its disproportionate use of harsher discipline for African American students reported by witnesses and confirmed by data for suspensions, pre-expulsion contracts, expulsions, and Clean Sweep citations established a pattern of disparate disciplinary actions across types of discipline, schools, and grade levels that imposed greater harms on African American students than their white peers. These harms included multiple removals from school and significant lost learning time for African American students, and the District was aware of these foreseeable harms for many years during this compliance review. Collectively, this direct and circumstantial evidence demonstrated that the District’s disciplinary practices discriminated against its African American students in violation of Title VI.

OCR also found that the District’s recordkeeping regarding student discipline did not comply with the Title VI regulation and that timely, accurate, and complete recordkeeping will be essential to ensuring nondiscriminatory discipline in the District going forward. The District agreed to address these noncompliance findings through the enclosed Resolution Agreement.

Below this letter summarizes the applicable legal standards, the relevant facts obtained during the compliance review, OCR’s analysis, and the terms of the resolution reached with the District.

## **II. Legal Standards**

The standards for determining compliance with Title VI are set forth in the regulations at 34 C.F.R. §§ 100.3(a) and (b) and 100.6(b).

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Sections 100.3(b)(1)(i)-(vi) further state, in relevant part, that a recipient may not, on the ground of race, color, or national origin, (i) deny an individual any service or benefit provided under the program; (ii) provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program; (iii) subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; (iv) restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; (v) treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or (vi) deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program. The regulation, at 34 C.F.R. §

100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

OCR investigates alleged discrimination in a recipient's application of student discipline consistent with federal statutory authority, the Department's regulations, and pertinent case law. Disciplinary policies and practices can result in unlawful discrimination when a recipient intentionally subjects students to *different treatment* on account of their race, color, or national origin.

To determine if a recipient engaged in different treatment of students based on race, color, or national origin, OCR considers both direct and circumstantial evidence of racially discriminatory intent. Direct evidence includes remarks, statements, testimony, or other admissions that reflect racially discriminatory motives by school officials. 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. Circumstantial evidence may include, but is not limited to, the following: (1) different treatment of similarly situated students; (2) statistical evidence demonstrating a pattern of discriminatory effect (*i.e.*, whether the impact of the discipline policy or practice weighs more heavily on students of a particular race); (3) any relevant historical background, including whether there is a history of discriminatory conduct toward members of a particular race; (4) the administrative history behind a disciplinary policy or decision; (5) departures from normal procedures, practices, or substantive conclusions, including inconsistent application of disciplinary policies and practices to students of different racial groups; (6) a pattern of actions of decisionmakers that impose greater harm on students of a particular race than students of other races; and (7) the recipient's awareness of the impact and whether it was foreseeable.<sup>2</sup> Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular discipline incident or series of incidents.

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

Under the Title VI regulation, at 34 C.F.R. § 100.6(b), a school district must keep timely, complete, and accurate records so that the Department may be able to ascertain whether the school district has complied or is complying with Title VI. For example, school districts should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in Federally assisted programs.

### **III. Background and Methodology**

As detailed below in Section IV.B of this letter, the District's data sets produced to OCR for this review were incomplete in key respects, and it was not until 2022 when the District produced its final set of School Year (SY) 2018-19 data that OCR had enough data and other evidence across

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<sup>2</sup> See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 US 252 (1977).

years to complete this review. In addition, due to COVID-19, SY 2018-19 was the most recent complete school year for which school discipline data from the District was available. For these reasons, OCR's findings and analysis set forth below focus on the SY 2018-19 data for student discipline and enrollment.

According to District data provided to OCR, the District's SY 2018-19 enrollment was 13,769 students.<sup>3</sup> The majority were Latino, at 65.2% (8,975). African American students accounted for 20.8% (2,870) of enrollment, white students for 8.0% (1,097) of enrollment, Asian students for 3.7% (508), American Indian or Alaskan Native students for 1.0% (139), and Native Hawaiian or Pacific Islander students for 0.4% (51).<sup>4</sup> Because District enrollment is majority Latino, OCR considered whether to expand this compliance review to determine if the District discriminated against Latino students relative to white students. However, publicly available statistical data did not indicate that Latino students were overrepresented among out-of-school suspensions or expulsions as compared to their enrollment in the District when this review started or in subsequent years. OCR also found that Latino students were only slightly more likely to receive either discipline consequence than white students in those years, and that these disparities were substantially below disparities between African American and white students and did not warrant changing the scope of this review. As a result, OCR's findings below focus on data and other evidence of African American students being disciplined more often and more harshly than white students.

To evaluate whether the District discriminated against African American students in the administration of discipline, OCR examined discipline data at the district and school levels. The District has eight in-person schools and a separate virtual academy (Victor Valley Virtual Academy). The in-person schools include three comprehensive high schools (Adelanto, Silverado, and Victor Valley), one comprehensive junior high school (Hook), and four schools covering grades seven through twelve (Cobalt Institute of Math and Science (CIMS), Lakeview Leadership Academy, University Preparatory, and Goodwill Education Center<sup>5</sup>), though one of those schools (Lakeview) covered only grades 7-10 during SY 2018-19. Two of the District's grade 7-12 schools are schools of choice: CIMS and University Preparatory.

OCR also took into account the racial enrollments of each District school to assess if some were disciplining their African American students more often or more harshly than their white students. African American student enrollment was lowest at the two schools of choice, while they accounted for two of the three schools with the highest white enrollments in the District: University Preparatory (6% African American, 11.5% white) and CIMS (11.5% African American, 9.4% white).<sup>6</sup> African American student enrollment was highest at the alternative school and program where the District sends students as a result of expulsions or other disciplinary actions: African American students constituted 39% of students enrolled at Goodwill Alternative High and 31.4% of students at Goodwill Independent Study. By contrast, white student enrollment was lowest at this school and program, 3.4% and 6.9%, respectively. At Hook, Silverado, and Lakeview, African

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<sup>3</sup> Unless otherwise noted, all references to District data are to data provided by the District to OCR in this review.

<sup>4</sup> An additional 0.9% of students who were enrolled either declined to state their race/ethnicity or did not have a race assigned in the data provided by the District to OCR.

<sup>5</sup> Goodwill Education Center includes Goodwill Alternative High School and Goodwill Independent Study.

<sup>6</sup> University Preparatory had the highest percent of white student enrollment in the District, CIMS had the third highest percent of white enrollment, and Lakeview had the second highest percent of white enrollment at 10.7%.

American students constituted 24.3%, 24.7%, and 19.8% of enrollment, respectively, while white students constituted 7.7%, 7.6%, and 10.7%, respectively. At Adelanto High and Victor Valley High, African American students constituted 24.8% and 22.6% of enrollment, respectively, while white students constituted 4.4% and 8.6% of enrollment, respectively.

To assess whether the District disciplined African American students more harshly than white students, OCR also looked at when and where the District used law enforcement for student discipline. OCR found that the District used a juvenile citation program operated by the San Bernardino County Sheriff's Department called Clean Sweep from the beginning of this compliance review until SY 2018-19. According to the county's web site, Clean Sweep "is the only juvenile citation program in the country that empowers school administrators to write citations for students who break the law on campus."<sup>7</sup> As part of the program, school administrators can issue citations to students aged ten through seventeen for disciplinary incidents involving loitering, tobacco, littering, keeping lost property, petty theft, graffiti, alcohol, and marijuana, and these citations require students to appear in court where a judge handles them as infractions. According to Victor Valley High School's Student Handbook, as a result of the citations, a "hearing officer can impose fines, community service, probation stipulations, driver's license suspension, monetary fines and/or other judgments at the discretion of the officer." The District reported to OCR that it used Clean Sweep at four schools: Adelanto, Hook, Silverado, and Victor Valley. The District did not use Clean Sweep at the two choice schools (CIMS and University Preparatory), which had the lowest African American enrollments and among the highest white enrollments in the District.

The District also placed school resource officers (SROs) at only three schools, all of which also participated in Clean Sweep. According to District administrators, in SY 2018-19, the District contracted for two SROs, one at Adelanto and a second who was shared between Silverado and Victor Valley High School. No SROs were stationed at the schools serving middle school students (Hook and Lakeview) and no SROs were stationed at the two high schools with the smallest percentages of African American students (CIMS and University Preparatory). According to a contract with the City of Victorville, the duties of the SROs included enforcing criminal laws on campus and "when requested, assist[ing] the school with enforcement of school rule violations and related Education Code violations (i.e., dress code, on campus truancy, etc.)."

The District also employed a campus security officer at these same three schools (Adelanto, Silverado, and Victor Valley) and used campus security assistants at the remaining schools. Campus security officers were authorized to carry handcuffs and pepper spray, but campus security assistants were not. The District also contracted for the services of four probation officers, one stationed at the same three schools (Adelanto, Silverado, and Victor Valley) and a fourth who was shared between the two schools enrolling middle school students (Hook and Lakeview). As with the SROs and campus security officers, the two schools that served the smallest percentages of African American students and among the largest percentage of white students (CIMS and University Preparatory) did not have probation officers.

As discussed below, OCR found that the evidence from interviews with District- and school-level administrators and school employees, discipline data, and other records revealed a pattern of more

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<sup>7</sup> See <https://wp.sbcounty.gov/sheriff/programs/cleansweep/> (last visited on August 12, 2022).

frequent and harsher discipline against African American students relative to their white peers across schools and a starker pattern at the schools that had higher African American enrollments and/or involved law enforcement in their disciplinary practices.

#### **IV. Facts**

This Section summarizes the facts that OCR found in this compliance review based on: (a) the District's discipline policies and procedures; (b) its recordkeeping regarding student discipline; (c) OCR's interviews with District-level and school-level administrators and school-level employees; (d) student interviews and student climate reports; (e) examples from the District files of similarly situated students with racially disparate discipline; (f) OCR's statistical analyses of the District's discipline data, including referrals, suspensions, tardies, truancy, pre-expulsion contracts, expulsions, Clean Sweep citations, first-time referrals, and subjective infractions; and (g) departures from the District's Discipline Matrix.

##### **A. The District's Discipline Policies and Procedures**

OCR reviewed the District's discipline policies and procedures at the district and school levels. This discussion focuses on the District's discipline policies that applied to the SY 2018-19 discipline data analyzed below. Unless otherwise noted, these policies remained in effect through the end of SY 2021-22.

District Policy BP 5144, titled "Discipline," provides a high-level overview of the District's discipline policy and has not been updated since 2008. The policy lists various discipline strategies that the District permits (e.g., counseling, parent conferences, detention, community service, reassignment, suspension, and expulsion). District administrative regulation AR 5144.1, titled "Suspension and Expulsion/Due Process," sets out the infractions for which students can be suspended or expelled under California law. This regulation permits suspensions only when "other means of correction have failed to bring about proper conduct," except that a pupil may be suspended upon a first infraction for several serious behaviors, including bringing a weapon to school, committing assault, or "causing a danger to persons."

The District also provided OCR with its SY 2017-18 administrator's guide for student discipline, titled "Progressive Discipline Matrix" (the Guide), which was still in use in SY 2021-22. The Guide notes that the District adopted School-Wide Positive Behavior Interventions and Supports (PBIS) as a district-wide initiative at the beginning of SY 2013-14 to "restructure disciplinary actions and address the district's disproportionality data." The Guide's purpose is to help site administrators consistently apply PBIS, the Discipline Matrix within the Guide (the Matrix), and student interventions.

The Guide groups interventions and consequences into five levels of response, ranging from Level 1 (classroom managed behaviors) to Level 5 (expulsion). The five levels are as follows.

- Level 1 is summarized as "Classroom Managed – Teachers are encouraged to try classroom management strategies" and includes a list of possible interventions and the following possible consequences: verbal corrective feedback; in-class time out; parent/guardian conference; use the buddy-teacher system; loss of classroom privilege; teacher and student conference; and

student written reflection.

- Level 2 is summarized as “Office Discipline Referral – Used to stress the seriousness of the behavior while keeping the student in school.” Level 2 includes a list of possible interventions when a student is referred to the front office and the following possible consequences: detention/time out; student verbal or written apology; refer to counselor; change of class; conference with student; remove privilege/restrict activity; restitution/community service; relationship development action; restorative conferencing; and Saturday School.
- Level 3 addresses on-campus intervention (OCI) and out-of-school suspension (OSS). Level 3 is summarized as “OCI/OSS – Used to remove student from classroom or school environment when Levels 1 & 2 consequences failed to bring proper conduct.” This level includes a list of possible interventions and the following possible consequences: Saturday School; in-school suspension (ISS) from school (1 to 2 days); OSS (1 to 2 days); Restorative Justice re-entry conferencing; and referral to the School Attendance Review Team/School Attendance Review Board.
- Level 4 is summarized as “OSS – Used when removal from school environment is needed due to the severity of the behavior.” Level 4 includes a list of possible interventions and the following possible consequences: OSS (3 to 5 days); and may refer for expulsion (“discretionary expulsion”) (total removal from school) if other means of correction have not brought about proper conduct or are not feasible, or there is a continuing danger to the physical safety of the student or others.
- Level 5 is summarized as “Expulsion – Used when the removal from school and referral for alternative placement or expulsion for a violation [is] specified in Education Code.” Level 5 includes a list of possible interventions and the following possible consequences: OSS (5 days); and referral for expulsion (“recommended expulsion”).

The Guide then groups specific behaviors into one of 18 categories, and for each behavior the Matrix specifies the appropriate level of response that school personnel should use. For example, under the category of “Disruption,” an instance of “Engaged in behavior causing an interruption during class or other school activity” is a Level 1 or 2 infraction, while “repeated and chronic behavior that creates an environment preventing teaching and learning” is categorized as a Level 2, 3, or 4 infraction, and the action of “caus[ing] a major disruption to the atmosphere of order and safety in the school, such as a riot” is categorized as a Level 3 or 4 infraction.

The Matrix provides that “[i]f the problem behavior is assigned to two or more Levels[,] then whenever possible, the lowest Level of intervention and consequences should be used first.” The Matrix also provides that “[a] Level 3 or above response may only be given if other means of correction have failed to bring about proper conduct; or due to the nature of the act, the student’s presence causes a danger to persons; or suspension is authorized by law.”

## **B. The District’s Recordkeeping Regarding Student Discipline**

When OCR initiated this compliance review, OCR requested discipline data at the district and school levels for SY 2011-12, 2012-13, and 2013-14, and reminded the District of its Title VI



obligations to keep records and submit “timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as . . . [OCR] may determine to be necessary . . . to ascertain” District compliance with Title VI. *See* 34 C.F.R. § 100.6(b). Despite these obligations, the District produced incomplete discipline records for these three school years and subsequent years. Due to the COVID-19 pandemic, SY 2018-19 is the most recent complete school year for which discipline data were available when schools provided in-person instruction for the full school year. For this reason, OCR requested that the District provide data regarding all discipline referrals issued to students for that school year, along with information such as the date and description of the incident, the student’s race, the infraction type, and the consequence(s) to the student. It was not until 2022 that the District produced its fourth and most complete discipline data set for SY 2018-19.

Even after multiple efforts, the District was not able to provide a complete and accurate set of discipline data due to its incomplete records. The data provided by the District included approximately 18,000 discipline referrals for SY 2018-19.<sup>8</sup> However, many of those incidents were missing critical information, such as the type of infraction, the disciplinary consequence, and the student’s race. Approximately 1,700 discipline referrals included no information about the type of infraction, more than 5,000 records did not list a disciplinary consequence or intervention, and approximately 1,700 records initially lacked the race of the student.<sup>9</sup> In these instances, the missing information was listed as “Null.” In total, at least one of those three pieces of information was missing for 6,633 records, which was over a third (35.8%) of the records provided to OCR. The District initially told OCR that these “Null” values were the result of school staff not entering values in these fields when entering the student discipline information. Later, the District added that some “Null” values may reflect data categories that were deleted when the District modified certain categories in more recent years. From 2020 to 2022, the District provided OCR with four different versions of SY 2018-19 discipline data as it attempted to provide OCR with accurate and complete data for the school year.

The data provided by the District were particularly incomplete for more serious incidents for which it issued suspensions – a type of data that the District has had to report to OCR’s mandatory Civil Rights Data Collection (CRDC) since 2014 and a type of discipline data that OCR has been requesting since this compliance review started in 2014. For example, 63.2% (1,022) of the 1,616 suspension incidents lacked an infraction type (“Null” for student infraction). Similarly, 70.5% (153) of the 217 student referrals for which the District issued a pre-expulsion contract (a contract which, if violated by the student, could lead to expulsion) lacked an infraction type (“Null” for student infraction). This included 80 of the 109 (73.4%) pre-expulsion contracts involving African American students. While these data limitations ultimately did not prevent OCR from conducting a meaningful analysis of the District’s discipline practices, they delayed OCR’s assessment.

Inconsistencies in the District’s data raised further concerns about its ability to produce “complete and accurate compliance reports” to demonstrate its compliance with Title VI. *See* 34 C.F.R. § 100.6(b). For example, the District’s data set provided to OCR that included the consequences for

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<sup>8</sup> The data provided by the District initially included about 40,000 records, but OCR reviewed the data and removed duplicate entries and determined that there were approximately 18,000 unique discipline incidents in the data.

<sup>9</sup> After OCR completed its analysis of the District’s discipline data, the District produced a revised data set that addressed the issues with records missing the race of the student and provided previously missing data regarding On-Campus Interventions (OCIs), but the revised data set did not include the other missing data.

all SY 2018-19 discipline incidents reported 39 expulsions. However, the data that the District reported to the CDE included 29 expulsions for SY 2018-19,<sup>10</sup> and the District later produced a separate expulsion workbook (that a District representative reported was the most comprehensive and accurate) that showed 73 expulsions. OCR's review of the District's submissions to the CRDC also revealed discrepancies with the internal data the District provided to OCR, as well as the data reported by the District to CDE. Despite the obligation to report such data to the CRDC, the District was not accurately or completely collecting and reporting this data for SY 2018-19. These various problems with the District's data caused significant delays in OCR's ability to fully assess the District's compliance with Title VI and its implementing regulations.

### **C. Direct and Circumstantial Evidence: Administrator and Employee Interviews**

Over the course of its investigation, OCR interviewed 17 District and school administrators and approximately 30 school employees about their knowledge of the District's discipline policies, practices, and data. These interviews revealed direct and circumstantial evidence of racial discrimination by District administrators, employees, SROs, and campus security staff in the discipline of African American students.

The following witness statements about the District's discipline practices and data were based on the personal knowledge of administrators and school employees acquired during the scope of their District employment while performing their job duties. These statements came from administrators and employees who oversaw, were responsible for, or otherwise had personal knowledge of District-wide and/or school-based disciplinary practices and incidents. These witness statements conveyed a shared and consistent concern from District-level and school-level administrators and other school employees about discrimination against African American students in school discipline. In addition, these concerns – gathered independently from each witness – were consistent with and supported by substantial evidence from other sources, such as the statements of student witnesses and incident descriptions, as well as discipline data and other records demonstrating persistent and significant racial disparities in the District's disciplinary practices, including in the specific areas and schools identified by the witnesses. The areas of discipline that witnesses identified as especially concerning included pre-expulsion contracts, expulsions, Clean Sweep citations, and the named schools included Hook, Lakeview, Silverado, and Adelanto. As described below, OCR's investigation confirmed such concerns in these discipline areas and schools.

#### **1. Concerns about Discrimination Against African American Students**

In interviews with OCR, three administrators with personal knowledge of the District's discipline practices, data, and related discrimination complaints based on their employment duties voiced concerns to OCR that the District was discriminating against African American students in the administration of student discipline. Administrator 1 first shared this concern generally about the District's discipline practices and then identified [redacted content] in particular for its discriminatory discipline practices against African American students. Administrator 1 stated that [redacted content] was removed [redacted content] in response to these and other concerns. Another administrator, (Administrator 2) corroborated this information. Both administrators had

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<sup>10</sup> See <https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRate.aspx?year=2018-19&aggllevel=District&cde=3667934> (last visited on August 12, 2022).

personal knowledge that the District had removed [redacted content] at least in part in response to concerns about racially discriminatory discipline against African American students at [redacted content]. Although the District took action to remove [redacted content] the school for [redacted content] and [redacted content] school years, and OCR identified a number of instances at [redacted content], when African American students were disciplined more harshly than white students who engaged in similarly serious behavior and who had the same or more extensive discipline histories. *See* Section IV.E (showing comparator student examples at [redacted content] and other District schools from SY 2018-19). In this respect, the District's discipline data confirmed that racially disparate discipline was occurring [redacted content], as the administrators reported to OCR.

In addition to identifying [redacted content], Administrators 1 and 2 independently noted concerns about discriminatory discipline practices against African Americans at [redacted content] as well based on their personal knowledge acquired through the performance of their job duties for the District. As Section IV.D below explains, students also raised concerns about discriminatory treatment and incidents at [redacted content], as well as [redacted content], in interviews with OCR. OCR's analysis of the District's discipline data and records reinforced witnesses' concerns about Hook, Adelanto, Silverado, and Lakeview because they had some of the highest rates of discipline for African American students in the District. *See* Section IV.F.

These administrators also reported to OCR observations about school administrators that reflected racial bias against African American students generally and not specifically to discipline. For example, Administrator 2 reported that a school administrator had referred to African American students as "animals," and that another school administrator was trying to remove a teacher based on concerns that the teacher simply did not like African American students.

Three administrator witnesses with personal knowledge of the District's disciplinary practices and data, including Administrator 3 whose job responsibilities also included overseeing discipline decisions, expressed concerns about harsher discipline of African American students relative to white students in the District. As detailed below, these concerns included harsher discipline based on departures from the District's disciplinary policies and state law; the use of law enforcement, including Clean Sweep; and other examples of African American students who were disciplined more harshly than similarly situated white students. OCR's analysis of the discipline data discussed in Section IV.F confirmed each of these concerns raised by the three administrators.

## **2. Departures from District Policies, Procedures, and State Law**

In interviews with OCR, administrator witnesses with direct knowledge and oversight of discipline in the District identified District and school practices that departed from District policies, District procedures, and/or California law and disproportionately harmed African American students.

For example, Administrator 2 was concerned that the District was using pre-expulsion contracts as a consequence for student behavior and was using such contracts disproportionately with African American students. District administrators and documents explained that pre-expulsion contracts were a disciplinary consequence whereby the District required students to sign a contract stipulating that their future misbehavior could lead to expulsion. Administrator 2 explained that pre-expulsion contracts are a departure from the District's policies and procedures because they

are not discussed as a disciplinary consequence anywhere in the District's Matrix and Administrator 2 was not aware of any written District policy for pre-expulsion contracts. Administrator 2 further explained to OCR that if a student on a pre-expulsion contract committed another infraction, the student could be expelled even if the infraction was not one of the five types of infractions for which the California Education Code requires expulsion, and without proving secondary findings or providing the due process of an expulsion hearing, as required by the Code. In these respects, the District's use of pre-expulsion contracts to expel students, a majority of whom were African American, departed from state law and District policies.

Administrator 3 echoed similar concerns regarding the District's use of pre-expulsion contracts with African American students, including that these contracts were used in a manner that applied harsher discipline to African American students. Administrator 3 told OCR that African American students were more likely to be expelled for subsequent infractions under pre-expulsion contracts than white students for whom the District exercised favorable discretion more often. As an example, Administrator 3 – who had direct knowledge of these incidents and the District's discipline policies and practices – recalled an instance in which they believed an African American student was treated more harshly than a Latina student who Administrator 3 believed had engaged in more serious conduct based on the District's policies and practices. Specifically, the administrator recalled that a Latina student tased another student at [redacted content] and was expelled for one semester and then allowed to return, whereas the District expelled an African American student for more than one semester after the student was noncompliant and threatening toward a security officer, but had not engaged in violence toward other students or staff.

The District's data confirmed these administrators' observations that the District used pre-expulsion contracts disproportionately with African American students and in particular at the same schools that the administrators had identified to OCR as having concerning overall discipline practices and discrimination against African American students – including Hook, Lakeview and Silverado.

Administrator 2 also reported concerns about District departures from state law with respect to expulsions. Administrator 2 reported that, prior to SY 2019-20, the District expelled students (including African American students) for infractions for which the California Education Code does not permit expulsion and without proving secondary findings for expulsions for non-mandatory infractions as required by the Code.<sup>11</sup> Rather than having the expulsion hearing panel consider evidence of secondary findings, Administrator 2 explained that a District administrator would simply check the box that these findings were made after the hearing ended.<sup>12</sup>

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<sup>11</sup> The California Education Code explains that for certain non-mandatory infractions (such as behavior that falls under Section 48900.4 for harassment, threats, or intimidation), the governing board of a school district may expel a student based on a finding that either (1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or (2) due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others. Cal. Educ. Code §§ 48915(b), (c). In addition, a determination to expel a student by a district's governing board that is based upon a recommendation of a hearing panel must be based "solely on the evidence adduced at hearing." *Id.* § 48918(f)(1).

<sup>12</sup> OCR learned that a District administrator ended this practice in 2020 because they believed it was not consistent with California law. Since then, District expulsion panels make secondary findings based on the evidence, when required.

Administrator 2 also told OCR that some schools had a practice of disenrolling students who were 18 years of age and older and involved in a discipline incident and labeling them as truants who could not be found. Administrator 2 believed that this practice was not legal under the Code and disproportionately harmed African Americans. A second administrator corroborated that this was previously a practice in the District. In 2018, an employee at a high school in the District (School Employee 1) independently contacted OCR and reported a similar concern. School Employee 1 reported that, at the end of each school year and to improve the school's graduation rates, an assistant principal (Assistant Principal 1) counseled African American and Latino students with discipline, attendance, and/or academic problems that they needed to leave the school, leading those students to believe they needed to enroll in the alternative high or independent study program at Goodwill. As discussed in Section IV.D below, African American students at Adelanto also similarly reported to OCR that an administrator told them that if they were over 18 and did something wrong, they would be expelled. OCR's review of the District's discipline records identified some examples consistent with School Employee 1's statement to OCR.

### **3. Clean Sweep, SROs, and Campus Security**

During interviews with OCR, administrators and school employees with direct knowledge of Clean Sweep, the District's use of SROs and campus security officers, and District-wide and/or school-specific discipline practices voiced concerns about racially discriminatory practices with respect to Clean Sweep, SROs, and campus security officers against African American students.

Specifically, administrators and school employees told OCR that they believed the District's use of Clean Sweep discriminated against African American students in SY 2018-19. For example, both Administrator 2 and Administrator 3 shared this belief based on their direct knowledge of Clean Sweep and the District's discipline data. OCR's analysis of the District's SY 2018-19 discipline data supported the administrators' and employees' concerns about Clean Sweep: the District was 3.4 times more likely to issue citations to African American students than white students.<sup>13</sup> See Section IV.F.5 below. District leadership also has expressed concerns about Clean Sweep's effect on students because they issued a memo recommending that the District not participate in the program. The memo noted that the communities affected by the program "are already facing debilitating levels of poverty," and that the harm of issuing citations to students that may result in criminal fines or lost wages for parents to appear in court is "unconscionable."

With respect to the actions of SROs outside of Clean Sweep, Administrator 3 told OCR that they witnessed arbitrary and inconsistent school practices with respect to citations and referrals to law enforcement of students, and that African American students were more likely to receive referrals to law enforcement and/or citations, as compared to similarly situated white students. Administrator 2 also noted that SROs operated on campuses and issued their own citations, but the District was not tracking referrals to law enforcement or their citations.

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<sup>13</sup> OCR's analysis included all of the Clean Sweep citations recorded in the District's SY 2018-19 discipline data. District administrators, however, told OCR that such data were incomplete because the District's recording of such citations was very inconsistent. OCR also noted that the number of students the District reported as having been referred to law enforcement and arrested in its SY 2017-18 CRDC data was likely inaccurate as these total numbers did not seem to be consistent with the number of students who received Clean Sweep citations.

With respect to campus security, Administrator 2 believed that security officers used force and pepper spray disproportionately with African American students compared to how those practices are used for similar behavior from students of other races. As an example, the Administrator described an incident involving an African American male student who was questioned by a campus monitor who did not recognize him, the situation escalated, and eventually law enforcement came, pepper sprayed the student, and arrested him. The administrator stated that the school's principal acknowledged that they used pepper spray too often. OCR learned that the District did not and does not track the use of pepper spray. The 2018-19 Student Handbook for one District high school, Adelanto, specifically referenced the use of pepper spray, noting that "[a]dults will use verbal judo first and ultimately physical force, which includes physical restraint, police arrest/citation and/or disbursement [sic] of OC Spray (Pepper Spray)." As described below in Section IV.D, students also raised concerns about campus security officers' use of pepper spray and other treatment that the students perceived as harsher toward African American students.

#### **4. Other Examples of Harsher Discipline Against African American Students**

In interviews with OCR, administrators and employees with direct knowledge of District- and school-level disciplinary practices shared other examples of harsher discipline of African American students relative to white students. For instance, Administrator 2 told OCR that they believed that African American students were disciplined more often and more severely than students of other races for similar behavior. Administrator 2 described an example of a teacher referring an African American student for sexual harassment because he was not wearing a belt and his pants were sagging. Under the District's discipline policy, sexual harassment is a Level 3 or Level 4 infraction that generally results in removing a student from the school environment through an in- or out-of-school suspension due to the severity of the behavior. Administrator 2 did not believe a white student would have been disciplined as harshly as the African American student was. OCR's review of discipline incidents at [redacted content] in SY 2018-19 identified a similar situation that corroborated Administrator 2's belief, where an African American student was disciplined more harshly than a white student after both students were "sagging" their pants.<sup>14</sup>

Administrator 2 also raised discrimination concerns about the harsher application of the District's tardiness policy to discipline African American students. Administrator 2 explained that the District's tardiness policy was to send up to three truancy letters to a student's family, with a copy of each letter sent to the District Attorney. After three letters, the student was classified as habitually truant and summoned to appear before the School Attendance Review Board (SARB). At that hearing, the parent and student are asked to sign an attendance contract, and failure to comply with it results in an order of a citation to appear in court. See <https://www.vvuhd.org/departments/educational-services/student-services/student-attendance-review-board-sarb>. Administrator 2 described an African American student with a disability who was referred to the SARB for being tardy, even though his tardies were reportedly due to medications that he took that made it difficult for the student to arrive at school on time. Administrator 2 did not believe a white student would have been treated as harshly as the African American student was.

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<sup>14</sup> See Section IV.E.

Similarly, Administrator 3 reported to OCR that school administrators had less “patience” with African American students when disciplining them. Administrator 3 reported that discretion was often used to the detriment of African American students because they could get suspended for two to five days for defiance or disruption, whereas the administrator rarely saw white students getting suspended for such incidents. As an example, the administrator mentioned a situation involving an African American student who was jumping in the air to grab a skateboard, accidentally bumped the administrator holding the skateboard, and was subsequently referred to be disciplined for assault and battery.

School Employee 1 reported similar concerns to OCR about the exercise of discretion in schools’ discipline decisions. School Employee 1 reported that Assistant Principal 1 was treating African American and Latino students more harshly in discipline than white students. As an example, School Employee 1 stated that a white student who often gets in fights was not disciplined for getting in a fight at a [redacted content] game because the student did not start the fight, whereas the District disciplined numerous African American and Latino students who also had not started fights for similar behavior.

School Employee 1 also told OCR that they witnessed another Assistant Principal at the school (Assistant Principal 2) yelling at an African American student in the office but then falsely telling the Principal that the student was the one who was yelling at him and being defiant. School Employee 1 reported that [redacted content] had not seen Assistant Principal 2 make similarly false accusations against white students.

In interviews with District and school employees, OCR explored the question of why the District’s discipline rates were higher for African American students. Testimony from five District employees (three school administrators and two teachers) (School Employees 2, 3, 4, 5 and 8) indicated to OCR that racial generalizations and stereotypes about African American students and their behavior, such as beliefs about “cultural” factors, may be leading to harsher or more frequent discipline of African American students. Those employees’ interviews reflected that District staff may be interpreting students speaking loudly as defiance, which could be leading to higher rates of referrals for African American students. For example, one principal explained that African American students are disciplined more because they are “loud” and it is their “culture.” Similarly, one of the highest referring teachers at a high school in the District (School Employee 7) told OCR that it was “a cultural thing” that “there seem to be a lot of African American kids who think fighting is a solution to everything” as an explanation for higher discipline rates for African American students. In addition, Administrator 4 reported that African American students were likely disciplined more because they “had a mouth on them.” The responses from these and other school employees reflected racialized generalizations and negative stereotypes about the behavior of African American students.

Consistent with the administrators’ and school employees’ concerns about racial bias and discriminatory discipline against African American students discussed above, OCR found corroborating evidence in the District’s data and records that schools imposed harsher discipline on African American students than white students. This included evidence, described in more detail below, that African American students were more likely to receive harsher discipline consequences for the same type of infraction and with a similar or lesser discipline history than white students. *See* Sections IV.E and IV.F. This evidence included the District’s racially

disparate use of exclusionary discipline for tardies and truancy (*see* Section IV.F.2), pre-expulsion contracts (*see* Section IV.F.3), expulsions (*see* Section IV.F.4), Clean Sweep citations (*see* Section IV.F.5), and subjective infractions like defiance and disruption (*see* Section IV.F.7), similar to the witnesses' examples discussed above. OCR also found in the student data and files specific examples in which African American students received harsher punishments than similarly situated white students, including for tardies and truancy, and for subjective infractions. *See* Sections IV.E and IV.F.2. This evidence also included examples where administrators and teachers mischaracterized the African American students' behavior to justify a harsher punishment under the District's discipline Matrix, *see* Section IV.G, similar to Administrator 3's example of a school administrator referring an African American student for assault and battery after the student accidentally bumped into the administrator with a skateboard, and Administrator 2's example of a teacher referring a student whose pants were sagging for sexual harassment. OCR also found evidence supporting the administrators' and employees' witness statements about discriminatory discipline against African Americans in student interviews, as the next section explains.

#### **D. Student Interviews and Climate Reports**

In addition to the concerns of administrators and employees, OCR heard concerns from students during its site visit that the District treated African American students differently in discipline than students of other races. Climate reports also revealed students' concerns about teacher fairness.

Like the administrators and school employees interviewed by OCR, students reported concerns with how campus security officers interacted with African American students. For example, during a visit to Adelanto, African American students reported to OCR their belief that pepper spray was used more often against them, and that they were treated more harshly by campus security. In one discussion at Victor Valley High School during OCR's site visit, a student reported that security officers would regularly stand by and always follow a group of African American students.

African American students at CIMS also reported to OCR that an Assistant Principal followed them and treated them differently from students of other racial groups, including with respect to dress code violations. Students in the group reported that when white or Latino students were being loud or laughing, they would not get in trouble in the same way that African American students would. Students also reported that while most teachers were fair, there were some teachers who treated African American students differently in discipline. This was echoed by students at Victor Valley High School, who also reported that African American students and Latino students were punished more frequently and harshly than white students.

Similarly, at least three students at Hook mentioned concerns about how Hook disproportionately applies the dress code to African American girls. A student at Hook also mentioned an example of when an African American student was suspended for fighting, whereas a white student was not. African American students at Hook also expressed concerns that they were unfairly perceived to be the initiators of misconduct and that they did not receive the benefit of the same progressive discipline that other students received. The students who participated in this interview with OCR felt demoralized and shared their strong beliefs that raising these concerns with the District would not result in any meaningful change in the discipline process.



Student concerns about whether teachers and other adults in their school were treating them fairly were also reflected in the results from the California Healthy Kids Survey given to District students in the seventh, ninth, and eleventh grades. For the most recent school year that data were publicly available (SY 2016-17), only 56% of seventh graders, 51% of ninth graders, and 50% of eleventh graders surveyed in the District agreed with the statement that “teachers at this school treat students fairly.” Further, 43% of seventh graders, 50% of ninth graders, and 45% of eleventh graders reported that it is only “a little true” or “not at all true” that there is a teacher or other adult at the school “who really cares about me.”

### **E. Examples of Similarly Situated Students with Racially Disparate Discipline**

OCR also reviewed descriptions of discipline incidents to assess if the District treated African American students more harshly than similarly situated white students. For example, OCR analyzed the consequences for students upon their first referral of the school year for subjective infractions, such as “defiance,” “disruption,” and “inappropriate behavior,” among others.<sup>15</sup> To analyze and compare the consequences for these students, OCR began by identifying 1,452 first-time referrals of students for subjective infractions in SY 2018-19, which included 395 African American students and 99 white students. OCR found that 21% (83) of the 395 African American students received some form of exclusionary or other serious discipline consequence such as a class-, in-school-, or out-of-school suspension or a behavior contract for their first referral of the school year, while 66.1% (261) of the 395 African American students referred for these infractions received non-exclusionary and less serious consequences such as a warning, counseling, or call home.<sup>16</sup> In contrast, 11% (11) of the 99 white students received an exclusionary or other serious consequence, while 71.1% (71) of the 99 white students received a less serious and non-exclusionary consequence. In other words, the percentage of African American students who received exclusionary or other serious discipline consequences for first-time subjective infractions like disruption was nearly double the percentage of white students.<sup>17</sup>

These data showed that the District was more likely to impose harsher discipline on African American students for first-time referrals of subjective infractions than on white students for the same types of infractions. OCR further analyzed these infractions as well as other infraction categories to determine if the behaviors involved were comparable. OCR found instances described below in which African American students received harsher discipline for behavior that was similar to that of non-African American students, based on the District’s written description of the behavior.<sup>18</sup> OCR’s data analysis demonstrates that these examples are not anomalous. Rather, they are consistent with OCR’s findings that African American students were more likely to receive more severe discipline consequences, including for first-time infractions and particularly for subjective areas of discipline such as “inappropriate behavior,” “defiance,” and “disruption,” as discussed above and further below in Sections IV.F.6 and IV.F.7. These examples are also

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<sup>15</sup> Specifically, OCR reviewed discipline consequences for defiance and disruption under Section 48900(k) of the California Education Code, other infractions coded as 48900.4 (which OCR found was often used for various behaviors including tardies/truancy and defiance/disruption), inappropriate behavior, horseplay, dress code, and candy/gum infractions.

<sup>16</sup> The data for the remaining, approximately 51 students, either did not provide the consequence received (“Null”) or the consequence did not fall clearly into either category.

<sup>17</sup> OCR conducted a similar analysis of “inappropriate behavior” incidents and found similar disparities.

<sup>18</sup> In addition to discipline history and the descriptions of the behavior, OCR also considered whether other non-racial factors such as disability status explained the different treatment and found that they did not.

consistent with OCR's findings that, on average, African American students received longer suspensions for behaviors such as fighting. *See* Section IV.F.1 below.

### **1. Defiance, Disruption, and Inappropriate Behavior**

For example, a ninth-grade African American student at [redacted content] continued eating a bag of chips in class after the teacher asked him to stop pursuant to a "no eating" rule. Then, after initially putting the chips away, he brought them out of his backpack and dumped them into his mouth after the teacher told him to go to the office. He received a one-day class suspension. By contrast, a tenth-grade white student at the same school received only counseling as a consequence for refusing to sit in his assigned seat, "walk[ing] around the room repeatedly," and distracting the other students in the class. The teacher sent the student to the discipline office where he was counseled regarding "appropriate classroom behavior." Similarly, another white ninth-grade student at the same school who was referred for being "always on the phone with another student and refus[ing] to get any work done in the classroom," received only counseling.

In another instance, an eighth-grade African American student at [redacted content] was referred for "inappropriate behavior" for talking while his teacher was trying to talk to someone else. It was the student's first discipline incident of the school year. The student received OCI for two class periods. In contrast, a white eighth-grade student at the same school was disciplined for "inappropriate behavior" when the student refused to stop making noise during testing and distracting other students, and received only a one-day after-school detention even though it was the student's eighteenth discipline incident of the school year, including eight prior referrals for "inappropriate behavior." Three days later, the white student was referred again for misbehavior – this time for being "argumentative," "loud and [a] constant distraction." The student was again assigned one day of after-school detention.

OCR also identified other instances of harsher treatment for African American students who engaged in "inappropriate behavior," "defiance" or "disruption" and were removed from instruction, which contrasted with numerous examples of white students who were not removed from instruction for similar offenses. For example, two eighth-grade African American students at [redacted content] were referred for "inappropriate behavior" for talking in class and messing around with friends, and being disrespectful, respectively. It was the first discipline referral of the year for both students. The students were temporarily removed from their classes, receiving OCI for the remainder of the period, and a two-period class suspension, respectively. By contrast two seventh-grade, one eighth-grade, and one ninth-grade white student at the same school were referred for hazing (taking off a male student's pants and shoes and wetting his shoes in the bathroom), inappropriate behavior (not following instructions and refusing to sit in seat), inappropriate behavior (male student slapping a female student on the butt), and kicking a hole in the gym wall during physical education class, respectively. These incidents were also the first discipline referrals of the school year for each white student. Unlike the two African American students, none of these white students were removed further from their classroom as a consequence of their inappropriate behavior. Instead, the first white student received a warning and call home, the second a call home, a one-day after-school detention, and a class reassignment, and the third two days of after-school detention and a requirement to pay for the repairs.

Similarly, a seventh-grade white student at the same school received detention after school for one

day, instead of being removed from instruction as the two African American students were, after the white student's first referral for engaging in "inappropriate behavior" by trying to pull down the pants of another student in class. In the student's second discipline referral of the year, the same student engaged in "defiance" and "disruption" by continuing to talk and disrupt class despite multiple warnings from the teacher. The student again received one-day of after-school detention. Another seventh-grade white student at the same school engaged in "inappropriate behavior" by eating in class after being told to stop, and refusing to take a time-out and instead insisting on going to the office. Upon going to the office, the student lost her referral slip and did not tell the office staff she was there for a discipline referral. This was the student's fourth discipline referral of the school year, including prior referrals for horseplay and fighting, but the student was not removed from instruction like the African American students were after their first referral for "inappropriate behavior." Instead, the white student received one-day of after-school detention. Even when a white student's inappropriate behavior involved damage to school property, the school did not remove the student from instruction. When an eighth-grade white student received their first discipline referral for kicking and destroying a section of concrete at the same school, and was also referred for discipline for, along with two other students, kicking and destroying a section of concrete at the school, the student received only a warning and call home. When the same student engaged in a second incident for being "loud and discourteous" during state testing, the student was not removed from instruction as the two African American students were, and instead received a consequence of four days of campus cleanup/lunch detention.

## 2. Fighting and Confrontation

Similarly, at [redacted content], three African American eighth-grade students were involved in altercations/fights in their first such discipline incident of the school year.<sup>19</sup> One student received a three-day OSS<sup>20</sup>, while the other two students received a two-day OSS and behavior contracts. By contrast, a white eighth-grade student at the same school was involved in a mutual altercation/fight in his third discipline referral of the school year (including one prior fight and one altercation in which he kicked another student in the ribs), and he received only a one-day OSS and a behavior contract. A white ninth-grade student at the same school involved in a mutual altercation/fight in the student's first incident of the school year received a one-day OSS.

As another example, an African American middle school student (Student A) at [redacted content] was involved in a confrontation with another student (Student B). It was Student A's first discipline incident of the school year. Student B pushed Student A; Student A pushed back. Student B then attempted to hit Student A. Student A, who pushed Student B but did not attempt to hit him, received a one-day OSS. By contrast, two white eighth-grade students at the same school were play fighting, which is prohibited, when their playing escalated into a real fight. Both students threw punches at each other. It was the first discipline incident for both students and neither was suspended. They both received lunch detention for one day. Similarly, two other eighth-grade white students at the same school were referred for "violence/battery" for throwing another student down by his backpack, and "inappropriate behavior" for slapping a female student on the butt, respectively. It was each student's first discipline incident of the school year. The

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<sup>19</sup> For two of these students, it was their first discipline incident of the school year. The third such student had one prior referral for a dress code violation.

<sup>20</sup> This incident was not described as a "mutual" altercation/fight, while the incidents involving the other two students were described as "mutual" by the District.

students received lunch detention for one day, and a call home and move to a different class, respectively.

In another instance at [redacted content], a twelfth-grade African American student was involved in a fight that another student initiated according to the District's written description of the incident, but that staff determined was mutual. The student received a three-day OSS and a behavior contract. By contrast, a ninth-grade white male student at the same school who was involved in a mutual fight with another student at lunch, after a verbal altercation earlier in the day, received only a one-day OSS.

### **3. Dress Code - Sagging**

OCR also found examples of harsher discipline similar to those identified in witness interviews. For example, an eighth-grade African American student at [redacted content] was referred for creating a hostile education environment (under California Education Code Section 48900.4) for wearing his pants low (sagging) and refusing to pull his pants up after repeated warnings. It was his first discipline incident of the school year and he received a one-day OSS. By contrast, a white eighth-grade student at the same school was referred for obscenity (under California Education Code Section 48900.i) for sagging his pants in class after prior warnings. The student also left the office before administrators were done speaking with him and he refused to return to the office. It was his second discipline referral of the school year; he was previously disciplined for slapping a female student on the butt. The student received lunch detention for five days but did not receive a suspension as the African American student had.

### **4. Truancy**

Consistent with the witness testimony about employees mischaracterizing student behavior to justify harsher punishments, OCR identified a seventh-grade African American student at [redacted content] who was disciplined for truancy that was inaccurately labeled as creating a hostile education environment (Section 48900.4), when the student was cutting class with two other students. It was the student's first attendance referral of the school year, and third referral overall (the prior two referrals were for dress code). The student received a one-day OSS. By contrast, an eighth-grade white student at the same school was referred for truancy when he was cutting class. It was his fourth attendance referral and he had eighteen prior discipline referrals as well as two bus referrals. His behavior was not categorized as creating a hostile education environment and he received after-school detention for one day. Moreover, approximately two weeks later he was referred again for cutting classes – his fifth such attendance referral, and twentieth discipline referral – and his behavior was not categorized as creating a hostile education environment. Once again, his consequence was only one day of after-school detention.

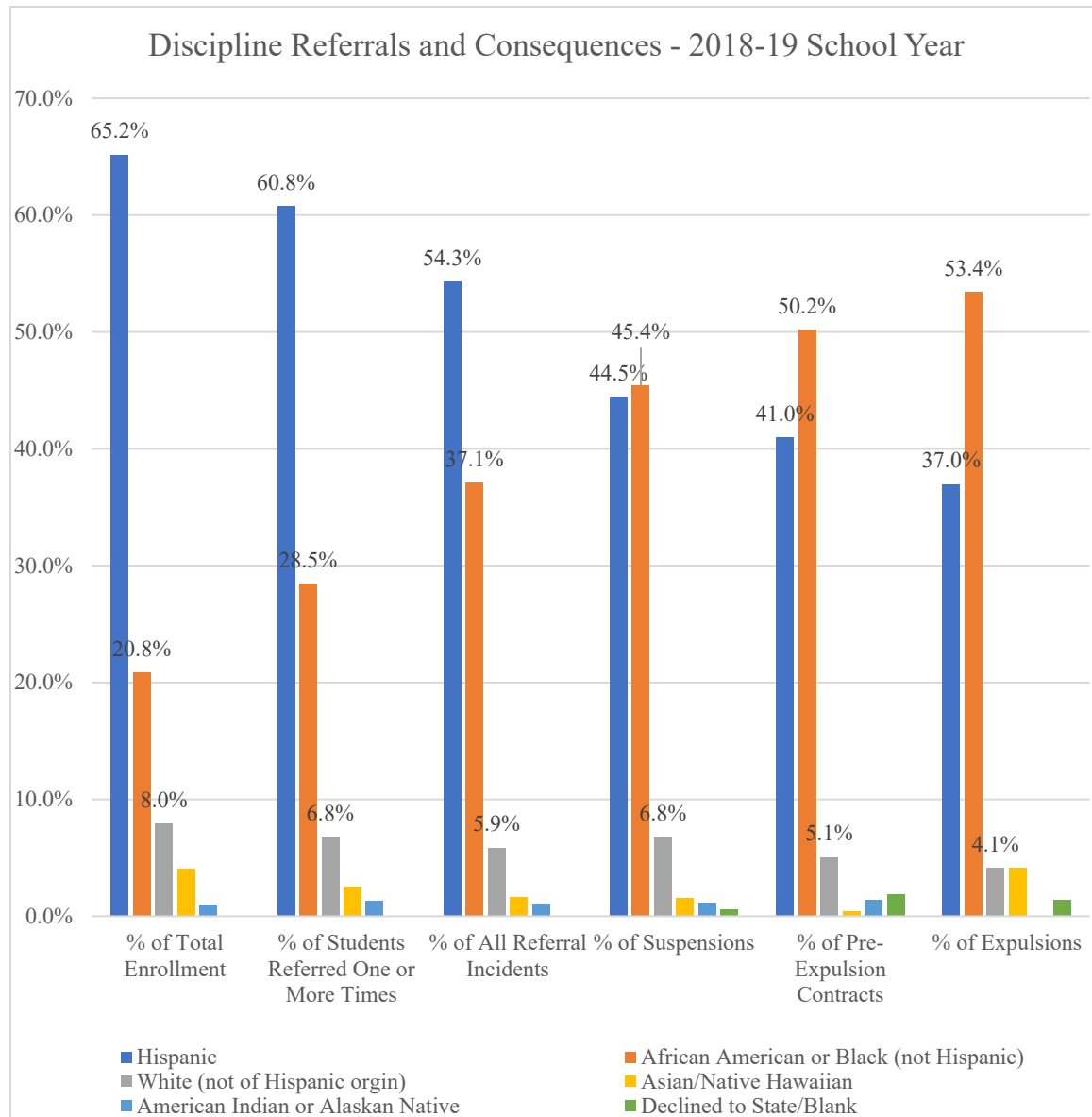
### **5. Obscenity**

An eighth-grade African American student at [redacted content] was referred for obscenity (Section 48900.i) for calling a staff member a “bitch” during class. It was the student's first discipline referral of the school year. The student received a one-day OSS. By contrast, a seventh-grade white student at the same school was referred for obscenity for calling a staff member a “fucking ho.” It was the student's eighth discipline referral, including prior incidents of obscenity

and fighting. The student received a two-day class suspension but not a full day OSS. In addition, an eighth-grade white student at the same school was referred for engaging in inappropriate behavior by “mocking” the teacher and being disrespectful in class. It was the student’s fourteenth discipline referral, including prior incidents of fighting, repeatedly disrupting class, obscenity, and previously calling his teacher a “fucking bitch.” The student received a two-day class suspension.

### F. Racial Disparities in the District’s Student Discipline Data

Despite its limitations described above,<sup>21</sup> the SY 2018-19 discipline data showed that the District disproportionately subjected African American students to discipline consequences of all types.



<sup>21</sup> As noted above, some of the referral data provided by the District was missing information about either the category of the infraction, the consequence issued, or the race of the Student.

OCR's review of the District's discipline data from 2011 through 2018 reflected similar patterns to those in the chart above for SY 2018-19. The chart shows that African American students were overrepresented in receiving discipline referrals and progressively more overrepresented as to more serious consequences such as suspension, pre-expulsion contracts, and expulsions. Each of these categories in the above chart is described in more detail below.

### **1. Racially Disparate Student Referral and Suspension Rates**

The District's SY 2018-19 data showed that African American students were overrepresented in referrals resulting in exclusionary discipline. African American students accounted for 42.9% of all referrals resulting in exclusionary discipline or other severe consequences (*i.e.*, suspension, expulsion, in-school suspension, classroom suspension (class suspensions),<sup>22</sup> citations, and pre-expulsion contracts). With respect to out-of-school suspensions, African American students were similarly disproportionately suspended, accounting for 45.4% of the District's 1,616 total suspensions and 40.8% of students suspended, while white students accounted for 6.9% of all suspensions and 6.7% of students suspended. Overall, African American students were 2.3 times more likely than white students to be suspended one or more times.<sup>23</sup>

Within the District, schools' suspension rates varied significantly. For example, Victor Valley High School issued suspensions to only 3.8% of its students in SY 2018-19. By contrast, several schools with very similar demographics to Victor Valley High School (including lower free or reduced-price lunch rates, as discussed further below) had noticeably higher suspension rates, far above the District- and State-wide average rates. In particular, Hook Middle School (grades 7-8) and Lakeview Leadership Academy (grades 7-10 as of SY 2018-19) had issued one or more suspensions to 19% and 20% of their students, respectively, rates that were five times higher than the rate of Victor Valley High School.<sup>24</sup> According to CDE data, these suspension rates placed Hook and Lakeview in the top 5% of suspension rates for schools statewide serving those grade levels,<sup>25</sup> and these data revealed that their rates were even higher for African American students. A third of African American students at Hook (32%) and Lakeview (34%) received one or more suspensions, almost double the rates for white students. Overall, according to CDE data, the District suspended approximately 60% more students than the average high school district in California (*i.e.*, 9% of students were suspended, as compared to 5.6% of students in the average high school district in California).

OCR also analyzed the outcomes for students suspended for fighting. Excluding students receiving special education services, OCR identified 9 white students and 62 African American students in SY 2018-19 who received a suspension for a single fighting incident with no prior discipline referrals during that school year. For those incidents, African American students received an average suspension of 2.6 days, compared to an average of 2.3 days for white students.

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<sup>22</sup> The term "class suspensions" in this letter refers to teacher-imposed suspensions from their classrooms. Under Section 48910 of the California Education Code, a teacher may suspend a student from their classroom for the day of suspension plus the following day.

<sup>23</sup> This disparity was statistically significant at over 99% using a Chi Square statistical test.

<sup>24</sup> See <https://www6.cde.ca.gov/californiamodel/report?indicator=susp&year=2019&cdcode=3667934&scode=> (last visited on August 12, 2022).

<sup>25</sup> See <https://www.cde.ca.gov/ta/ac/cm/documents/dashboardguide19.pdf> at 229-230 (last visited on August 12, 2022).

With respect to student referrals for all infractions, the District referred African American students disproportionately for discipline at statistically significant rates, as the chart above depicts. African American students were 1.6 times more likely to be referred for discipline than white students in SY 2018-19.<sup>26</sup> Stated another way, almost half (46.2%) of African American students in the District received a discipline referral, as compared to fewer than a third of white students (29.0%). As a result, 28.5% of the individual students who received one or more referrals in SY 2018-19 were African Americans even though they constituted only 20.8% of District enrollment, while 6.9% were white students even though they accounted for 8.0% of enrollment that school year.<sup>27</sup>

When looking across all discipline referrals (including subsequent referrals for the same students), the overrepresentation of African American students was even higher. In SY 2018-19, 37.1% of all referrals involved African American students even though they constituted only 20.8% of District enrollment. Conversely, only 5.9% of all discipline referrals that school year involved white students even though they constituted 8.0% of District enrollment. The overrepresentation of African American students in the District's overall referrals, number of students referred, and referrals for harsher discipline like suspensions in SY 2018-19 detailed above was consistent with the testimony of administrators and school employees that the District refers African American students for discipline more frequently and treats African American students more harshly than similarly situated white students.

## **2. Racially Disparate Exclusionary Discipline for Tardies and Truancy**

California law establishes the list of specific infractions for which suspension is permitted, and tardiness and truancy are not on that list. California law (Section 48900(w) of the California Education Code) specifically 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.” However, contrary to California law (which the District's Matrix recites at page 16), the Matrix allowed for out-of-school suspensions (for 1-2 days), as well as in-school suspensions/OCI (1-2 days), for repeated tardiness, cutting class, and excessive absences/truancy. The Matrix provided that tardiness and cutting class would fall under Levels 1-3, while excessive absences/truancy would fall under Levels 2 and 3.

OCR found that in SY 2018-19, District schools used various exclusionary removals to address tardy and truant students, including out-of-school, in-school/OCI, and class suspensions.<sup>28</sup> As discussed in further detail below, some schools also placed students on de facto out-of-school suspensions referred to as “home custody” for repeated tardiness or truancy even though the Matrix does not include “home custody” as a consequence for tardiness or truancy. “Home custody” entailed sending students home, often for multiple days until the end of the semester or year, based on an incident, often without officially characterizing the discipline as a suspension. In some

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<sup>26</sup> This disparity was statistically significant at over 99% using a Chi Square statistical test. Latino students, by contrast, were just 1.1 times more likely to be referred for discipline than white students.

<sup>27</sup> As noted above, a significant fraction of the referral incidents in the District's data were missing the race/ethnicity of the student. As a result, the analysis of referrals conducted in this section and in the chart above regarding the numbers and percentages of referrals excludes all students for whom no race or ethnicity data were available.

<sup>28</sup> Class suspensions as discussed here were removals of a student from their regular classroom learning environment. Such students would be sent to an administrator's office and/or placed in another setting such as OCI or in-school suspension for the class period or periods at issue.

instances, these schools repeatedly mischaracterized tardy or truant behavior under another discipline category, such as 48900.4 for harassment or threats, and then suspended students.

District data showed that schools used such removals from instruction to address students who were late for or who repeatedly missed instruction in at least 692 instances in SY 2018-19. This exclusionary discipline practice, which departed from the District's Matrix and California law, disproportionately harmed African American students. They accounted for 37.3% of such removals, as compared to their enrollment of 20.8%, while white students accounted for 5.1% of such removals and 8.0% of enrollment.

OCR asked the District about the rationale for these removals. The District explained that these practices were not based on a District-wide approach to using such removals to encourage better attendance or otherwise address tardies and truancy. OCR also requested any evidence the District had that these removals were effective in addressing tardiness and truancy. The District was unable to provide any such evidence.

### **3. Racially Disparate Use of Pre-Expulsion Contracts**

African American students were also overrepresented in the District's use of pre-expulsion contracts. In SY 2018-19, 210 of the District's students (1.5%) received a total of 217 pre-expulsion contracts.<sup>29</sup> Despite their regular use, pre-expulsion contracts are not listed as a possible consequence anywhere in the District's Matrix, and OCR did not find any evidence that the District provided administrators with any guidance as to when they should be used. African American students accounted for 50.2% of the pre-expulsion contracts (109 of 217), more than double their 20.8% share of enrollment. In contrast, white students accounted for 5.1% of pre-expulsion contracts (11/217), slightly less than their 8% share of enrollment. OCR found that African American students received pre-expulsion contracts at a rate that was 3.7 times greater than the rate for white students: 3.7% of African American students and 1% of white students received such contracts.<sup>30</sup>

The disproportionate use of pre-expulsion contracts for African American students was stark at certain schools among the five that used them: Adelanto, Hook, Silverado, Lakeview, and Victor Valley. At Adelanto, for example, African American students accounted for only 22.5% of enrollment but 64.3% of pre-expulsion contracts (18 out of 28), and no white students received such a contract even though they made up 4.4% of Adelanto's enrollment. Hook and Silverado accounted for half of all pre-expulsion contracts given in the District (49.8%; 108 out of 217), and over half of such contracts were given to African American students (51.4%; 56 out of 109).

### **4. Racially Disparate Expulsion Rates**

District data listed at least 73 students who were expelled during SY 2018-19.<sup>31</sup> African American

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<sup>29</sup> There were 217 pre-expulsion contracts issued to 210 students because some students had more than one contract.

<sup>30</sup> This disparity was statistically significant at over 99% using a Chi Square and Fisher Exact test. While Latino students were more likely to receive a free or reduced lunch than white students, Latino students were less likely than white students to receive a pre-expulsion contract (0.9% vs. 1.0%).

<sup>31</sup> As noted above, the District has produced conflicting data regarding the number of expulsions, but a District administrator reported that the data set containing at least 73 expulsions was the most complete and accurate



students accounted for 53.4% of the expulsions (39 out of 73), more than two and a half times their percentage of enrollment (20.8%). The racial disparity in the rates at which the District expelled students was even higher: the rate for African American students was five times greater than the rate for white students (1.4% vs. 0.27%).<sup>32</sup> The District's records also indicate that at least five African American students who were expelled were previously placed on pre-expulsion contracts.<sup>33</sup>

Both CDE and District data also reflected that the District expelled students at a much greater rate than other districts in California. According to CDE, the District's expulsion rate for all students (0.25%)<sup>34</sup> was almost three times the state's average (0.09%), and the District's expulsion rate for African American students (0.47%) was about two-and-a-half times the expulsion rate for African American students statewide (0.19%). According to District data, the expulsion rate for African American students was 7.1 times the state's rate (1.4% vs. 0.19%) and was not fully explained by the District's higher than average expulsion rate for all students, which was 5.9 times the state rate (0.53% vs. 0.09%). These racial disparities were also evident when comparing the District's rates to those of surrounding San Bernardino County; the expulsion rate for African Americans in the District was 4.7 times the county rate (1.4% vs. 0.29%), while only 2.3 times the county rate for white students (0.27% vs. 0.12%).

## 5. Racially Disparate Issuance of Clean Sweep Citations

OCR's analysis of the District's limited records about Clean Sweep supported the concerns shared by administrators and employees described above. District records indicated that in SY 2018-19, Adelanto, Hook, Silverado, and Victor Valley issued Clean Sweep citations to students. Across the four schools that issued citations, African American students were 3.4 times more likely to receive a Clean Sweep citation than white students.<sup>35</sup> In total, African American students accounted for 46.8% of the 47 citations, while white students accounted for just 4.3% of the citations. Citations were issued to African American students for truancy (14), loitering (6), sexual harassment (1), and inappropriate behavior (1). A review of the descriptions of the "loitering" incidents that led to citations reveals that these incidents were also versions of truancy violations, where a student was found socializing somewhere on campus instead of being in their assigned class. For the remaining students of other races, citations were issued for truancy (8), fighting (5), drugs (3), loitering (3), and graffiti (1).<sup>36</sup> In its review of student files, OCR also found Clean Sweep citations for African American students as a result of minor infractions. For instance, one African American student was issued a Clean Sweep citation when he attempted to throw a ketchup packet into a garbage can, but instead missed and another student walking by stepped on it, causing it to open.

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information. That data set included 82 students who were potentially expelled, but it was unclear whether nine of the students had actually been expelled, so OCR did not include those nine students in the analysis.

<sup>32</sup> This disparity was statistically significant at over 99% using a Chi Square test.

<sup>33</sup> As noted above, the witness told OCR that pre-expulsion contracts were used disproportionately with African Americans students and sometimes led to expulsions for otherwise non-expellable infractions when a student engaged in minor misbehavior after the development of such a pre-expulsion contract.

<sup>34</sup> See <https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRateLevels.aspx?year=2018-19&agglevel=District&cds=3667934> (last visited on August 12, 2022).

<sup>35</sup> This disparity was statistically significant at over 90% using a Chi-Square test.

<sup>36</sup> Consistent with these data, a District administrator told OCR that there was previously a District truancy officer who could issue Clean Sweep citations.

## 6. Racially Disparate Consequences for First-Time Disciplinary Referrals

When OCR focused its analysis of the District's discipline data on students with no prior disciplinary history in SY 2018-19 (i.e., first-time referrals), OCR found that African American students remained more likely to receive severe consequences. That is, of all the African American students in the District who received a first-time referral, 14.6% received a severe consequence as compared to only 9.4% of white students. The racial disparity was higher for students who received an out-of-school suspension for their first-time referral; the rate for African American students (4.7%) was more than double that of white students (2%).<sup>37</sup> Latino students, by contrast, were only 1.2 times more likely than white students to be suspended for a first referral.

Racial disparities in suspension rates persisted across student economic levels. Among students who received no free or reduced-price lunch, African American students were 2.1 times more likely than white students to be suspended for a first referral in SY 2018-19.<sup>38</sup> Among students who did receive free or reduced-price lunch, African American students were 3.0 times more likely than white students to receive a suspension for a first-time referral.<sup>39</sup>

## 7. Racially Disparate Suspensions for Subjective and Objective Infractions

OCR also analyzed the District's SY 2018-19 suspensions based on subjective assessments of student behavior, such as defiance and disruption (California Education Code Section 48900(k)), and "inappropriate behavior," as compared to the more objective behaviors like possession of weapons or drugs.<sup>40</sup> While African American students were substantially overrepresented among subjective and typically less serious infractions, African American students were not overrepresented in suspensions for the more serious objective behaviors underlying weapon- and drug-related infractions. African American students accounted for almost half (48.1%) of all suspensions for subjective-behavior infractions, more than double their share of student enrollment (20.8%), while white students accounted for 8.4% of such suspensions, almost exactly their share of student enrollment (8.0%). In contrast, for the weapon- and drug-related infractions, African American students accounted for 21.2% of such suspensions, almost exactly their share of enrollment (20.8%), while white students constituted 12.1% of such suspensions, meaning that they were overrepresented among these serious incidents as compared to their enrollment of 8.0%.

OCR also analyzed students who received more than one referral for "inappropriate behavior" and found racial disparities in the percentages of students who received at least two separate referrals

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<sup>37</sup> This disparity was statistically significant at over 99% using a Chi Square test.

<sup>38</sup> This disparity was statistically significant at 95% using a Fisher Exact test.

<sup>39</sup> This disparity was also statistically significant at over 99% using a Fisher Exact test.

<sup>40</sup> As discussed above, the District's data were incomplete and included "Null" values for student behavior that resulted in suspension for 1,022 of the 1,616 incidents. OCR analyzed the remaining 594 incidents for the following subjective behavior categories in the District's data: Cal. Educ. Code § 48900(k) disruption/defiance, "inappropriate behavior," § 48900.i obscenity, and § 48900.4 hostile educational environment. Note: OCR included § 48900.4 hostile educational environment because a review of the incident descriptions for these behaviors showed that these were often incidents of defiance/disruption or other subjective behavior that was categorized under § 48900.4 rather than § 48900(k). In addition, OCR analyzed the following areas as objective because they generally involved possession of drugs, a weapon, or some other prohibited item(s): 48900(j) drug paraphernalia, § 48900(l) receiving stolen property, § 48900(m) imitation firearm, § 48900(a)(3) possession of controlled substances, § 48915(c)(1) possession of a firearm, § 48915(c)(2) brandishing a knife, and § 48915(c)(3) selling a controlled substance.

for inappropriate behavior in SY 2018-19: 36.8% (321) of the 872 students were African American and 16.5% (53) were white. The consequences for a second referral for inappropriate behavior also reflected disparities based on race. African American students were almost twice as likely as white students to receive a suspension of any kind or a behavior contract after a second referral for inappropriate behavior: 27.1% (87) of the 321 African American students and 15.1% (8) of the 53 white students received such consequences.<sup>41</sup>

### **G. Departures from the District's Discipline Matrix**

OCR also identified a consistent pattern at two district schools that did not follow the Matrix because they suspended African American students for behavior that the schools mischaracterized as more severe than it was under the Matrix. For example, Lakeview Leadership Academy regularly miscategorized less severe behavior that is typically described as defiance or disruption as more serious behavior under Section 48900.4 that is reserved for “intentionally engag[ing] in harassment, threats, or intimidation, directed against school district personnel or pupils.” As a result of the two schools’ practice of departing from the Matrix, infractions that they should have addressed under Level 1 or Level 2 of the Matrix were treated as Level 3 or Level 4 offenses and resulted in harsher consequences for African American students than the Matrix supported.<sup>42</sup> Under the Matrix, Level 4 consequences involve “long term removal of the student from the school environment” and “focus on protecting the safety of the school community and ending self-destructive and dangerous behavior.”

At Lakeview, 42% (229) of the 546 suspensions in SY 2018-19 were issued to African American students. The school based 29.3% (67) of the suspensions of African Americans on alleged violations of Section 48900.4. Several of these suspensions clearly did not meet the criteria under Section 48900.4. As one example, an African American student who refused to hand over his phone to a teacher or administrator received a three-day suspension (which is reserved for a Level 4 infraction under the Matrix) for an alleged violation of Section 48900.4. And another African American student who left campus before school to go to a fast-food restaurant and returned during second period was suspended for one day for an alleged violation of Section 48900.4.

Similarly, OCR found a pattern at Adelanto (and at least one instance at Lakeview) of school staff categorizing truancy, and in some cases potentially defiant behavior, as a more serious Section 48900.4 infraction, resulting in out-of-school suspensions for African American and other students. OCR found 10 incidents where the District issued out-of-school suspensions to African American students under Section 48900.4 for incidents most accurately characterized as tardiness and truancy, and only one such incident for white students. As explained above, suspension and expulsion are not authorized consequences under California Education Code Section 48900(w) for “a pupil who is truant, tardy, or otherwise absent from school activities.” In addition, the Matrix allows for a Level 1, 2, or 3 consequence for cutting classes and Level 2 or 3 consequences for excessive absences/truancy. Moreover, the Matrix requires staff to start at the lowest level consequence first and only impose a Level 3 consequence after “other means of correction have

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<sup>41</sup> This disparity was statistically significant at over 90% using a Chi Square test.

<sup>42</sup> The Matrix provides a category for “non-cooperative behavior” that includes a listing for “failure to follow directions, share, respond to staff requests, or allow others to participate in an activity.” The Matrix recommends responding to “noncooperative behavior” at Level 1 (Classroom-Managed) or Level 2 (officer referral without exclusionary discipline).

failed to bring about proper conduct” because a Level 3 consequence could include one to two days of in- or out-of-school suspension.<sup>43</sup> Thus, by departing from the Matrix and California law by mischaracterizing the truancy as harassment, threats, or intimidation, Adelanto subjected students to more severe consequences that begin at Level 2 and proceed to a Level 4 consequence (i.e., consequences of three- to five-day suspensions). OCR identified African American students who received such Level 4 consequences of out-of-school suspension for three to five days for truancy and/or defiance or disruption that Adelanto mischaracterized as an Education Code Section 48900.4 infraction. OCR did not identify any white students who received Level 4 consequences for truancy or defiance incidents that were mischaracterized under Section 48900.4.

OCR also found that Adelanto had a practice of placing some students on “home custody,” as noted above. Four incidents of “home custody” in the District’s records described the consequence as “in lieu of suspension,” and two of the 13 incidents were also listed as suspensions in the District’s data. The Matrix does not include “home custody” as a consequence for misbehavior, and OCR did not find a reference to it in the Adelanto site handbook. However, this was a field in the District’s discipline data and Adelanto High School used this consequence for 13 students in SY 2018-19, 39% (5) of whom were African American. Latino students accounted for the remaining portion of students who were put in “home custody” (62%; 8), while no white students were. The “home custody” consequence was meted out for a variety of behaviors of differing seriousness including truancy, confrontation, inappropriate behavior, hostile educational environment under California Code 48900.4, and possession of a knife or explosive.

## **V. Analysis**

Based on the evidence above, OCR examined whether the District engaged in different treatment of African American students in the administration of discipline and whether the District failed to collect and maintain data and records about its discipline practices in violation of Title VI.

### **A. The District Engaged in Discriminatory Different Treatment of African American Students in the Administration of Student Discipline**

OCR applied the legal standards above to the facts and found that the District engaged in discriminatory different treatment of African American students in its administration of discipline, in violation of Title VI and its implementing regulations at 34 C.F.R. §§ 100.3(a) and 100.3(b)(1)(i), (ii), (iv), and (vi). The statute and regulations state that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. To determine if the District engaged in different treatment of African American students based on race, OCR considered both direct and circumstantial evidence of racially discriminatory intent, including the statements of the interviewed administrators and employees that reflect racially discriminatory motives by school officials in their disciplinary decisions and exercise of discretion. OCR also considered other circumstantial evidence that creates an inference of discriminatory intent from the facts of the investigation as a whole, including: (1) different treatment of similarly situated students; (2) statistical evidence demonstrating a pattern of discriminatory effect in discipline against African American students; (3) departures from normal

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<sup>43</sup> As described, in allowing for suspensions for tardies or truancy under Level 3, the District’s Matrix is inconsistent with the California Education Code Section 48900(w).

discipline procedures and practices, including inconsistent application of such policies and practices to students of different racial groups; (4) a pattern of actions of decisionmakers that impose greater harm on students of a particular race than students of other races; and (5) the recipient's awareness of the impact and whether it was foreseeable.

Applying these legal standards, OCR found by a preponderance of the evidence that the District engaged in different treatment of African American students by disciplining them more frequently and more harshly than similarly situated white students. This finding relied upon six types of evidence. First, OCR relied on direct and circumstantial evidence from District witnesses, including administrators and school employees with personal knowledge of the District's discipline data and practices, who credibly reported to OCR that African American students were disciplined more often and more harshly than white students. Second, OCR found individual examples in which the District disciplined African American students more harshly than similarly situated white students, despite their similar behaviors and similar discipline histories. Third, OCR found statistical evidence showing that African American students were overrepresented in multiple areas of discipline, and that African American students were more likely to receive more severe discipline consequences, even when analyzing students who engaged in the same type of behavior with no prior discipline history. OCR further found that the disparities were greater when examining subjective infractions like defiance or disruption and disciplinary consequences involving the use of staff discretion. Fourth, OCR found many instances when the District departed from its Discipline Matrix, its disciplinary procedures, and California law when disciplining African American students. Fifth, OCR found a significant and consistent pattern of disparate disciplinary actions across types of discipline, schools, and grade levels that imposed greater harm on African American students, and lastly, that the District was aware of this foreseeable harm for many years during this compliance review.

Collectively, this direct and circumstantial evidence established that the District engaged in disparate treatment by disciplining African American students more often and more harshly based on race than white students.

### **1. Witness Statements Provided Direct and Circumstantial Evidence of Intentional Discrimination**

As described above, several high-level administrators and other witnesses, who had personal knowledge of the District's discipline practices acquired through performing their job duties for the District, reported their observations to OCR that African American students were subjected to discrimination in several areas of discipline and in particular at certain schools such as Hook, Silverado, Lakeview, and Adelanto. OCR found that many of these observations were supported by other witnesses, the District's discipline data, and other circumstantial evidence. For example, one administrator with personal knowledge based on the scope of their employment expressed concerns to OCR about discriminatory discipline against African American students at [redacted content] and knew that the District removed [redacted content] in part for this reason in [redacted content]. Another administrator with personal knowledge based on their job duties corroborated this information. While OCR recognizes that the District took action to [redacted content] in response to these concerns, [redacted content], the school year in which OCR identified several instances at this school involving harsher discipline of African American students than white

students who engaged in similarly serious behavior and who had the same or more extensive discipline histories. *See* Section IV.E.

In addition, three administrators with personal knowledge of the District's discipline practices based on their job duties told OCR that based on their direct observations of school and District discipline practices and data, they believed that the District disciplined African American students more often and more harshly than other students who engaged in similar behavior and each administrator identified examples of such disparate treatment. *See* Sections IV.C.1-4 above. One of these administrators reported to OCR that school staff often used discretion to mete out less severe consequences for white students while giving African American students harsher consequences. A school employee who reached out independently to OCR in 2018 reported a similar concern about school administrators exercising discretion to punish African American students more harshly than white students and provided examples to OCR.

As detailed in Section IV.C above, based on their personal knowledge acquired through completion of their job duties for the District, administrators and school employees identified specific concerns and examples of discriminatory discipline against African American students, including: (1) expulsion practices that departed from District policy or state law and disproportionately harmed African American students, including expulsions that were not conducted according to the California Education Code; (2) Clean Sweep's disproportionate harm to African American students; (3) a practice of disenrolling students who were at least 18 years of age after a discipline incident without due process, which also disproportionately harmed African American students; (4) the District's disproportionate use of harsher discipline consequences (such as expulsions, pre-expulsion contracts, and SARB) with African American students as compared to white students; (5) concerns regarding SROs and campus security officers' disproportionate use of pepper spray with African American students; and (6) perceptions of African American students among some staff that witnesses believed reflected racial bias and resulted in a higher number of discipline referrals for African American students.

These employees, who witnessed and had personal knowledge of the District's administration of discipline, also provided OCR with specific examples (described above) of what they perceived, based on their professional experience and knowledge, to be harsher treatment in discipline meted out to African American students as compared to white students who engaged in similar behavior. These witnesses explained that they believed school staff and administrators often used discretion in meting out discipline consequences to the detriment of African American students. Based on their personal knowledge, the witnesses identified harsher treatment of African American students with respect to tardies, truancy, suspensions, expulsions, and Clean Sweep citations. OCR's analysis of these areas of discipline corroborated these witness statements. As detailed in Section IV.F above, OCR found statistically significant and often large racial disparities in the District's SY 2018-19 data for suspensions, tardies, truancy, pre-expulsion contracts, expulsions, Clean Sweep citations, first-time disciplinary referrals, and subjective offenses. OCR's analysis found corroborating evidence that administrator and staff discretion for subjective offenses, like defiance, disruption, and inappropriate behavior, was more likely to be exercised to discipline African American students more often or more harshly as compared to white students. OCR also found evidence in the District's discipline data supporting witnesses' statements about school administrators' mischaracterizing the behavior of African American students to justify harsher discipline, as Section IV.G explains.

Students in the District also reported to OCR that they believed staff treated African American students differently and more harshly in school discipline. As discussed in Section IV.D, students told OCR that certain teachers and administrators scrutinized and disciplined African American students more than students of other races, including with respect to dress code and other behaviors. In addition, African American students reported that school security subjected them to unique scrutiny at some schools, including by following them, and by using pepper spray and other force disproportionately against them. California's Healthy Kids Survey also showed that almost half of students in grades 7, 9 and 11 did not think students were treated fairly in the District.

OCR's interviews with school staff also showed that some staff attempted to justify the more frequent and harsher discipline of African American students in the District with racial generalizations and negative stereotypes about the behavior of African American students or their families. For example, five such witnesses (three school administrators and two teachers) ascribed such discipline of African American students to "cultural factors," and notions that African American students had more familial and other challenges than students of other races. These generalizations were not based on factual information that the witnesses could provide regarding specific challenges that African American families and students in the District faced as compared to students of other races. Rather, OCR determined that these assumptions were based on racialized stereotypes that reflected racial bias among staff making decisions regarding student discipline.

## **2. Examples of Different Treatment of Similarly Situated Students**

Consistent with the witnesses' statements and their examples of similarly situated students, OCR's file review identified incidents in which the District disciplined African American students more harshly than similarly situated white students, despite their similar behaviors and their similar discipline histories. These examples included incidents involving defiance, inappropriate behavior, fights and confrontations, dress code infractions, truancy, and obscenity. *See* examples in Section IV.E above. OCR did not identify nondiscriminatory reasons that would explain the different disciplinary treatment identified in these examples. These examples were consistent with those shared by administrators and school employees (*see* Sections IV.C and IV.E) and the statistical evidence discussed above showing that African American students disproportionately received the harshest forms of discipline and often for the same infractions as white students like tardies, truancy, subjective offenses, and first-time disciplinary referrals (*see* Section IV.F above).

## **3. African American Students Were Overrepresented in Discipline Incidents and More Likely to Receive More Severe Disciplinary Consequences**

OCR's investigation showed that African American students were overrepresented in the District's discipline incidents. Although OCR's review of the data focused on SY 2018-19, OCR's review of the District's discipline data from 2011 through 2018 reflected similar patterns of overrepresentation of African American students. In SY 2018-19 – the most recent full school year for which discipline data (during in-person learning) were available during OCR's investigation – African American students were overrepresented compared to their white peers at every level of discipline: out-of-school suspensions (2.3 times more likely than white students), pre-expulsion contracts (3.7 times more likely), expulsions (5 times more likely), Clean Sweep

citations (3.4 times more likely), and referrals overall (1.6 times more likely).<sup>44</sup> Not only was the District more likely to discipline African American students than their white peers, it was also more likely to discipline African American students multiple times and more harshly with suspensions. For example, African American students accounted for 37.1% of all discipline referrals and 45.4% of all suspensions – which include students referred or suspended more than once – and 28.5% of all first referrals and 40.8% of all first suspensions – which include students referred or suspended at least once – even though they accounted for only 20.8% of enrollment. Similarly, African American students were also more likely to be suspended – in violation of state law – for tardies or truancy, as they accounted for 37.3% of such removals (compared to 20.8% of enrollment), while white students accounted for just 5.1% of such removals (compared to 8.0% enrollment).

The overrepresentation of African American students in Clean Sweep citations was particularly noteworthy. The District reported the use of Clean Sweep citations at only four schools: Adelanto, Hook, Silverado, and Victor Valley. The District did not use Clean Sweep at the two choice schools: CIMS and University Preparatory, two schools with some of the highest white enrollments and lowest African American enrollments in the District. In SY 2018-19, across the four schools, 46.8% of citations were issued to African American students, even though they constituted only 23.9% of students enrolled. Data provided by the District showed African American students disproportionately received citations through the program in prior years as well. OCR's concerns about this racial disproportionality and the program's overall impact on African American students were supported by the concerns of two school and district administrators who reported to OCR that citations were issued in a racially discriminatory way.

The District also used pre-expulsion contracts disproportionately with African American students. OCR found evidence that the five schools that used pre-expulsion contracts did so predominantly for African American students. Specifically, African American students accounted for 50.2% of the pre-expulsion contracts in SY 2018-19 and received such contracts at a rate that was 3.7 times greater than the rate for white students. OCR also found that at least five of the African American students who were expelled in SY 2018-19 were previously on a pre-expulsion contract. These racial disparities reflected striking departures from the District's policies because the District's Matrix and other discipline policies did not even authorize such contracts.

Overall, OCR found that the District was more likely to impose more severe disciplinary consequences on African American students than white students for the same or comparable infractions. OCR compared disciplinary consequences by race for first referrals in SY 2018-19. The District's first-time-referral discipline data showed that African American students were overrepresented among more severe consequences and were more likely to receive more severe consequences than white students at statistically significant levels. For example, African American students were 2.4 times more likely than white students to receive an out-of-school suspension for a first referral.<sup>45</sup> Even among first referrals for the same type of behavior, such as "inappropriate behavior," OCR found that African American students were two times more likely than white students to receive more severe consequences such as a class suspension, in-school

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<sup>44</sup> These disparities were statistically significant at over 99% for referrals, suspensions, pre-expulsion contracts, and expulsions, and at 90% or greater for Clean Sweep citations using a Chi Square test.

<sup>45</sup> This disparity was statistically significant at over 99% using a Chi Square test.



suspension, or out-of-school suspension or a behavior contract.<sup>46</sup> In addition, for students suspended for fighting with no prior discipline history, African Americans received longer average suspensions. This evidence reflected that prior discipline history or the type of infraction did not explain the higher rates of exclusionary discipline or more severe consequences for African American students as compared to white students.

The data across school years, schools, and infractions consistently point to race as a salient factor in the District's persistent disparities in discipline. For example, in SY 2018-19, Latino students were typically disciplined at levels much more commensurate with their enrollment and at rates that reflected smaller disparities than African American students when compared to white students. For example, Latino students were 1.1 times more likely to be referred for discipline than white students, as compared to 1.6 times for African American students. Similarly, Latino students were 1.2 times more likely than white students to be suspended out-of-school, as compared to 2.3 times for African American students. OCR considered if other factors might explain the stark pattern of racial disparities across the District's discipline data and determined that higher rates of poverty among students (as measured by their participation in free or reduced-price lunch programs) did not explain the District's disparities in discipline for African American students. OCR found that disparities in discipline for African American students were persistent regardless of free or reduced-price lunch participation (*i.e.*, poverty status).<sup>47</sup> If higher rates of poverty drove the District's discipline disparities for African American students, OCR would have expected Latino students to have similar or greater rates of discipline than African American students. But that was not the case here.

While the District's data indicate that poverty levels, prior discipline history, and the type of infraction do not explain the higher or more severe rates of discipline for African American students in the District, OCR found that the level of subjectivity of the type of infraction does explain some of these disparities for African American students. OCR's analysis of the District's SY 2018-19 discipline data found that African American students were substantially overrepresented among typically less serious and subjective infractions, such as defiance, disruption, and inappropriate behavior, where they accounted for almost half of all such suspensions (48.1%). In contrast, white students constituted 8.4% of suspensions for these subjective infractions – almost commensurate with their 8.0% share of enrollment. By contrast, OCR's analysis showed that African American students were not overrepresented relative their enrollment in the objective and typically more serious infraction types of possession of weapons or drugs. African American students accounted for 21.2% of such suspensions, as compared to their enrollment of 20.8%, while white students were overrepresented among such suspensions at 12.1%, as compared to their enrolment of 8.0%.

Evidence showing that the more subjective infractions corresponded with greater racial disparities in discipline for African American students, coupled with the evidence showing that prior

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<sup>46</sup> This disparity was statistically significant at over 95% using a Chi Square test.

<sup>47</sup> For example, among students who received free or reduced-price lunch, African American students were three times more likely than white students to receive a suspension for a first referral. And African American students were 2.1 times more likely than white students to receive a suspension for a first-time referral among students who received no free or reduced-price lunch. These disparities were statistically significant at 95% or higher using a Fisher's Exact test. OCR also found that the schools' overall poverty rates did not seem to influence discipline rates. For example, according to CDE's SY 2018-19 data, Victor Valley High School had the highest poverty rate in the District, with 91.3% of its students on free or reduced-price lunch, yet the lowest suspension rate of 3.8%.

discipline history, infraction type, and poverty (as measured by free or reduced price lunch data) do not explain these disparities, supports the assertions by District and school witnesses that the District subjected African American students to more frequent and harsher discipline based on their race.

#### **4. The District Departed from its Discipline Policies and from California Law**

As noted above, OCR considers direct and circumstantial evidence of racially discriminatory intent to determine if a school district has discriminated against students in discipline in violation of Title VI. Circumstantial evidence can include school district departures from its normal procedures and practices, including its inconsistent application of disciplinary policies and practices to students of different racial groups. As discussed below, OCR found three areas where District discipline practices for African American students showed departures from its normal procedures and practices, as well as state law: 1) mischaracterizing lower-level behaviors, such as tardy or truancy, as more serious behavior that aligned with more severe consequences under the Matrix; 2) expulsion practices; and 3) removing students from school through “home custody.” These departures resulted in increased exclusions from school for African American students as compared to white students.

The first area of departure involved the District’s practice of mischaracterizing lower-level behaviors such as tardies, truancy, and defiance/disruption as more serious behavior (harassment, threats, or intimidation) that aligned with more severe consequences (e.g., under Section 48900.4) when disciplining African American students. OCR found that as a result of these departures from the Matrix, the District suspended African American students for behavior that would likely not have warranted a suspension under the Matrix had the District categorized the behavior correctly. For example, had the District categorized the student’s tardy or truancy accurately under the Matrix, it would have supported a Level 1, 2, or 3 response, with a requirement to start at the lowest level response first, and with a maximum possible consequence of two days of suspension. However, in departing from its Matrix and California law by mischaracterizing the tardy or truancy as “harassment, threats or intimidation,” the Matrix consequences began at Level 2 and could rise to a maximum of five days of suspension under Level 4 – a far more severe consequence than the Matrix permitted had the District categorized the students’ behavior accurately. OCR found that this practice was common at Adelanto and Lakeview, but also existed at other schools in the District, and resulted in ten out-of-school suspensions of African American students (and only one such suspension for a white student) for tardiness and truancy, even though California law explicitly prohibits suspension for those offenses. OCR also identified an example at [redacted content] where a white student’s similar truant behavior was not mischaracterized and therefore resulted in after-school detention rather than a suspension. *See* Section IV.E.

Related to this issue, even when not mischaracterized as more serious behavior, the District’s responses to tardy and truancy incidents also departed from state law and disproportionately impacted African American students. OCR determined that the District regularly removed students from instruction through out-of-school, in-school/OCI, and class suspensions, in conflict with California law. OCR found that this practice disproportionately and adversely impacted African American students who accounted for 37.3% of such removals in SY 2018-19, as compared to their enrollment of 20.8%, and as compared to white students, who accounted for 5.1% of such removals and 8.0% of District enrollment.

OCR also found that the District departed from its normal discipline procedures in several ways with respect to its expulsion practices. Specifically, five schools used pre-expulsion contracts even though the Matrix does not provide for them. As noted above, OCR found that the District used these contracts disproportionately for African American students. At least one administrator familiar with such contracts told OCR that there was no District policy governing their use and that African American students were unfairly subjected to them for behavior that students of other races also engaged in but for which they were not placed on such contracts. OCR was particularly concerned that the lack of guidance for the use of these contracts allowed for the subjective exercise of unguided discretion in which racial biases or stereotypes may be manifested. The witness also told OCR that these contracts sometimes led to expulsions of African American students for minor infractions that would not have otherwise warranted expulsion under the Education Code or Matrix and for which students of other races were not expelled.

In addition, OCR also noted two other notable departures from normal discipline procedures related to expulsions. One administrator familiar with the expulsion process reported that the District conducted expulsions (including expulsions for African American students) for behavior that was not expellable under the California Education Code without making secondary findings as required for non-mandatory expulsion infractions. And another administrator reported that some schools departed from normal procedures and the California Education Code by disenrolling students who were 18 years of age or older and involved in a discipline incident, and that this practice was used disproportionately with African American students.

As a third area of departure from normal discipline procedures, OCR found that administrators at Adelanto placed some students on “home custody” as a disciplinary consequence, even though the Matrix does not include this consequence. This practice involved de facto suspensions, sometimes for multiple days until the end of the semester or school year, and often without officially categorizing the “home custody” as a suspension – another departure from the District’s normal practices and California law.<sup>48</sup> This departure disproportionately harmed African American students; the District placed five African American, eight Latino students, and no white students on “home custody” in SY 2018-19.

### **5. The District’s Pattern of Disciplinary Actions Caused Greater Harm to African American Students and Its Awareness of this Foreseeable Impact**

As explained above, OCR found significant evidence that the District’s discipline practices imposed greater harm on African American students in the witness interviews of District administrators and employees, OCR’s statistical analyses of the District’s discipline data, and its discipline files. This evidence showed a consistent pattern of harm against African American students across multiple forms of discipline, including disciplinary referrals, suspensions, pre-expulsion contracts, expulsions, and Clean Sweep citations. The District’s very high rates of discipline for African American students as compared to its rates for white students, coupled with

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<sup>48</sup> When Adelanto used “home custody” in lieu of suspension, it is unclear whether, in each instance, it complied with the District’s suspension procedures requiring notice of the alleged conduct and the opportunity for the student to be heard, however in some instances, the comments specifically stated that a student was being placed on “home custody” “in lieu of suspension,” suggesting that due process and other actions associated with suspension were not taken.

its high rates of discipline for all students, resulted in large numbers of African American students being harmed by exclusionary discipline and made the District an outlier among other nearby districts and throughout California.

This harm affected African American students across all schools and all grade levels, and the harm was greatest at the schools that District administrators, employees, and students identified as using discriminatory discipline practices against African American students. OCR was particularly concerned that the District's rates of suspension were even higher for its younger middle school students at Hook and Lakeview, each of which suspended approximately one-third of its African American students in SY 2018-19. OCR found that African American students were disciplined more harshly than similarly situated white students at [redacted content] in [redacted content] (*see* Section IV.E above), consistent with the administrators' concerns expressed to OCR.

The District was aware of the disproportionate and harmful impact of its disciplinary practices on African American students over multiple years throughout OCR's compliance review. These harms were foreseeable based on the District's disciplinary data being reported to OCR in this review and for the CRDC, which showed, for example, the persistent overrepresentation of African American students in suspensions and expulsions relative to white and Latino students. While the District took some steps over time to address these discipline-based harms to African American students, including removing [redacted content], initiating a district wide PBIS initiative in SY 2013-2014, and ending the use of Clean Sweep in 2019, OCR found that many of the other harmful practices discussed above continued into SY 2018-19. These practices included, among others, departures from the District's disciplinary policies and state law through the use of pre-expulsion contracts, school administrators' and employees' mischaracterizations of African American students' conduct to align with harsher sanctions under the Matrix, harsher discipline for tardies, truancy, and subjective infractions, and home custody.

## **VI. District Recordkeeping of Student Discipline Did Not Comply with Title VI**

The regulation implementing Title VI, at 34 C.F.R. § 100.6(b), requires recipients to collect, maintain, and provide to OCR such records, including school discipline data, that will enable OCR to ascertain whether the District's administration of student discipline complies with the nondiscrimination requirements of Title VI. As explained above, this includes accurate and complete student discipline data disaggregated by race, including referrals, suspensions, expulsions, referrals to law enforcement, and student arrests, as well as other disciplinary actions. OCR reminded the District of its Title VI obligations to keep and report timely, complete, and accurate records in 2014 when it initiated this compliance review. *See* 34 C.F.R. §§ 100.6(b)-(c).

OCR has identified significant and ongoing discrepancies, inaccuracies, and failures on the District's part to collect and maintain student discipline data consistent with 34 C.F.R. § 100.6(b). While these gaps in the data were not so significant as to prevent OCR from making a determination about the District's compliance with Title VI based on the collective data and by relying on other sources of evidence, the District's SY 2018-19 student discipline data nonetheless were incomplete in significant ways that hindered and delayed OCR's investigation. Over one-third of the 18,000 discipline referrals reported to OCR were missing one of these three critical pieces of information needed to demonstrate compliance with Title VI: the race of students, the

type of infraction, and the disciplinary consequence. OCR found thousands of “Null” values for these fields and the narrative description of the incident.

In addition, the District’s failures to maintain complete and accurate discipline records have persisted throughout OCR’s compliance review, even after OCR had requested them and the District knew OCR needed them to assess the District’s compliance with Title VI. OCR’s mandatory CRDC also has required the District to collect and maintain discipline data disaggregated by race for years, including suspension, expulsion, law enforcement referral, and arrest data that OCR needed in this compliance review, yet the District has not done so in an accurate or complete manner. Indeed, OCR found substantial discrepancies between the data the District reported for the CRDC and this compliance review. Given the scope and persistence of the District’s recordkeeping failures, OCR has determined that the District’s failure to collect and maintain data and related records and information regarding its school discipline practices is a violation of the regulation implementing Title VI at 34 C.F.R. § 100.6(b).

As a matter of technical assistance, OCR also notes that the District has not collected or maintained accurate data regarding the most severe disciplinary sanctions: expulsions, student citations (including Clean Sweep and other citations), student arrests, and use of force against students by campus security or law enforcement. Without accurate and complete information in these critical areas, the District cannot adequately assess its own compliance with Title VI. This failure also prevents the District from accurately tracking the effects of its student discipline practices over time and examining the root causes of its persistent racial disparities in discipline to ensure nondiscrimination based on race, color, or national origin under Title VI.

## **VII. Conclusion**

This concludes OCR’s compliance review of the District’s disciplinary practices under Title IV. Based on the above analysis of both direct and circumstantial evidence of racially discriminatory intent, OCR determined under Section 303(b) of OCR’s Case Processing Manual that the District’s student discipline practices violated Title VI and its implementing regulations at 34 C.F.R. §§ 100.3(a) and 100.3(b)(1)(i), (ii), (iv), and (vi). In addition to direct evidence of statements from District administrators and employees reflecting racially discriminatory motives, OCR reviewed circumstantial evidence that, based on the totality of the circumstances, evidenced racial discrimination in student discipline. This included examples of racially different treatment of similarly situated students, statistical evidence demonstrating a consistent and stark pattern of a racially discriminatory effect on African American students, several noticeable departures from normal District procedures and inconsistent application of disciplinary policies, and a pattern of actions that has imposed greater harm on African American students than students of other races.

OCR therefore determined that the District violated Title VI by discriminating against African American students based on race with regard to the administration of discipline. In addition, OCR found that the District’s discipline-related recordkeeping practices violated Title VI at 34 C.F.R. § 100.6(b).

To address the violations OCR found, to remedy the harms to affected African American students, and to ensure non-discrimination in student discipline, the District entered into the enclosed resolution agreement (Agreement). The Agreement commits the District to: 1) conduct a root

cause analysis to examine the causes of racial disparities in its student discipline and develop and implement a corresponding Corrective Action Plan; 2) employ a Director and retain or designate at least one consultant with expertise in nondiscriminatory discipline practices to help the District implement the Plan and Agreement; 3) establish a stakeholder equity committee to inform the District's implementation of the Plan and Agreement; 4) revise its discipline policies and procedures; 5) ensure accurate and complete student discipline record-keeping and reporting; 6) regularly analyze student discipline data and other information to identify and address possible areas of discrimination; 7) clarify prohibited discipline practices through a memorandum to appropriate staff; 8) provide training to staff on the revised discipline policies, practices, and record-keeping; 9) conduct student and parent information sessions regarding student discipline policies; 10) publicly report disaggregated discipline data; 11) revise policies, procedures, training, and Memoranda of Understanding with respect to law enforcement agencies; 12) conduct school climate surveys to assess perceptions of fairness and safety in the District; and 13) provide compensatory education to students subjected to discriminatory policies and practices.

Based on the commitments made in the enclosed Agreement, OCR is closing this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the violations OCR found. OCR will monitor the District's implementation of the Agreement until the District is in compliance with its terms and with the obligations under Title VI and its implementing regulations, 34 C.F.R. Part 100, which were at issue in this compliance review.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or any issues other than those addressed in this letter.

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

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

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact OCR Senior Attorney Brian Lambert at [Brian.Lambert@ed.gov](mailto:Brian.Lambert@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Regional Director  
San Francisco Enforcement Office

Enclosure