



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

September 20, 2023

By Email tmcmanus@wsfcs.k12.nc.us

Tricia McManus
Superintendent
Winston-Salem/Forsyth County Schools
P.O. Box 2513
Winston-Salem, NC 27102-2513

Re: OCR Complaint No. 11-10-5002
Resolution Letter

Dear Ms. McManus:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its compliance review of Winston-Salem/Forsyth County Schools, which we will refer to as the District. OCR initiated this compliance review pursuant to our authority under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department of Education. Title VI authorizes OCR to periodically review the practices of recipients to determine whether they are complying with the laws OCR enforces. OCR assessed whether the District discriminates against African American students by disciplining them more frequently and more harshly than similarly situated white students. We regret the length of time OCR has taken to resolve this compliance review.

Summary of Identified Concerns

OCR's review of District records suggested that similarly situated African American and white students were being treated differently at the referral stage and the sanctioning stage of the discipline process during the time period OCR investigated. In addition to persistent race disparities in suspension rates across all years for which OCR reviewed such data – with African American students receiving out-of-school suspension (OSS) at more than 4 times the rate at which white students received OSS, except during the COVID-impacted 2020-21 school year when African American students received OSS at approximately 3 times the rate of white students – OCR identified differences in imposition of discipline for African American students compared to white students who had similar discipline histories and engaged in similar behaviors. For example, African American students were more likely than white students to receive OSS for first-time offenses overall, and for certain specific first-time offenses like Inappropriate Language/Disrespect and Aggressive Behavior. OCR did not identify any offenses, from among the nine most common offenses, for which white students were suspended

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at a higher rate than African American students for first-time offenses to a statistically significant degree. Likewise, African American students, on average, received longer OSS for first-time Level 3 offenses like Fighting than white students. In addition, OCR noted that the District’s discipline policies prior to 2022 did not clearly define certain offenses, and the District’s revised, current discipline policies may not provide clear guidance to staff in determining when to submit referrals and in determining appropriate sanctions.

During the course of OCR’s investigation, the District requested to resolve the compliance review under Section 302 of OCR’s *Case Processing Manual (CPM)*. Pursuant to Section 302, OCR may resolve issues under investigation when the recipient expresses an interest in resolving the issues, and OCR determines it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. OCR determined that proceeding under Section 302 would be appropriate.

The relevant facts, legal standards, and conclusions are summarized below.

Methodology

The District’s geographic area consists of the city of Winston-Salem and the county of Forsyth, and it includes urban, suburban, and rural schools. The District is comprised of 42 elementary schools, 15 middle schools, 16 high schools, and 8 specialty schools.¹ It offers three alternative schools.² When OCR launched this compliance review, the District also had a number of Alternative Learning Centers (ALCs) in middle and high schools.

The District enrolls approximately 53,000 students. The District’s student population is approximately 34% white, 29% African American, 29% Hispanic, 5% multiracial, 3% Asian, and less than one percent American Indian or Native Hawaiian/Pacific Islander.³ As of the 2021-2022 school year, 10 of the District’s schools had student populations that were majority (i.e., above 50%) African American, 17 schools were majority white, and 11 schools were majority Hispanic; the remaining schools did not have any one race as a majority (i.e., no racial group was above 50%). OCR notes that, as of the 2021-2022 school year, 21 of the District’s schools had student populations that were less than 10% white, 7 schools were less than 10% African American, and 7 schools were less than 10% Hispanic.⁴

OCR reviewed the District’s disciplinary policies and procedures and analyzed data and student disciplinary files provided by the District. OCR also conducted a site visit. During the site visit, OCR visited two high schools, three middle schools, one elementary school, and one alternative program. At each school, OCR staff interviewed administrators, teachers, and other staff involved in the discipline process.

¹ <https://www.wsfcs.k12.nc.us/Page/120127>, last visited September 7, 2022.

² <https://www.wsfcs.k12.nc.us/Page/68>, last visited September 7, 2022.

³ <https://www.wsfcs.k12.nc.us/Page/120127>, last visited September 7, 2022.

⁴ This enrollment data is drawn from the North Carolina Department of Public Instruction’s Statistical Profile, specifically Table 10.1, at <http://apps.schools.nc.gov/ords/f?p=145:1>.

Legal Standards

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 school may not, on the ground of race, color or national origin, deny an individual any service or benefit provided under the program; 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; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; 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 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 school may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

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

Summary of Evidence Obtained

The District is governed by a Board of Education consisting of nine members, and is led by the Superintendent. The Board adopts District-wide policies, which are implemented through administrative regulations adopted by the Superintendent. The Superintendent's Executive Cabinet includes the Chief Equity and Accountability Officer. The District also employs an Executive Director of Equity, Access, and Acceleration (Executive Director of Equity), and it recently established an Equity Advisory Council.

Discipline Policies and Code of Student Conduct Prior to Summer 2022

The District has multiple policies and regulations governing discipline. In summer 2022, the District implemented major revisions to its discipline policies and regulations. This section discusses the policies and regulations in effect between the initiation of OCR's compliance review and summer 2022.

Policy 5131 listed specific rules for student behavior, as well as set out District principles regarding the management of student behavior and the authority of school personnel to address student behavior. Between 2010 and 2015, the Board revised Policy 5131;⁵ the rules for student behavior underwent only minor revisions. The Board revised Policy 5131 in summer 2021 to make the dress code gender neutral.

The Code of Student Conduct (Code) was an administrative regulation implementing Policy 5131. The Superintendent adopted extensive revisions to the Code in 2011, including to reduce the length of short-term suspensions, require schools to consider alternatives to suspension, and streamline and clarify the matrix of recommended sanctions. The Code underwent minor revisions in 2015 and 2018.

Policy 5131 contained over 40 rules for behavior, but did not designate names (e.g., disruptive behavior, insubordination) for each prohibited behavior. For example, Policy 5131 listed:

- “2. Students shall comply with all lawful directions of principals, teachers, substitute teachers, teacher assistants, bus drivers, and other school personnel who are authorized to give such directions.”
- “37. Students shall not skip/leave class or school without permission.”
- “40. Students shall not use profanity, obscenity, fighting or abusive words, or otherwise engage in speech that disrupts (written, symbolic or verbal) which materially and substantially disrupts the classroom or other school activities.” [sic]

The Code identified various offenses, grouped offenses into eight levels of severity, and recommended sanctions for each level. The Code recommended non-exclusionary discipline for Level 1 offenses such as Disruptive Behavior, Excessive Tardiness, and Bus Misbehavior; in-school suspension (ISS) for Level 2 offenses such as Disrespect of Faculty/Staff, Inappropriate Language/Disrespect, Insubordination, and Aggressive Behavior; and short-term out-of-school suspension (OSS), generally no more than 5 days, for Level 3 offenses such as Fighting. For more serious offenses, the Code recommended ALC assignment for up to 90 days for Level 4, alternative school assignment for Level 5, long-term OSS for Level 6, 365-day OSS for Level 7, and expulsion for Level 8.⁶ The Code also included certain directives; for instance, the Code stated that students may not be suspended for truancy or tardiness offenses. With respect to the recommended sanctions, the Code stated:

[T]hese are guidelines and not prescribed actions that must be followed in each and every instance of student misconduct. School administrators may impose more or less severe disciplinary actions based on mitigating and aggravating factors and in keeping with the principals [sic] set out in Policy 5131.

⁵ For instance, sections addressing school attendance, bullying and harassment, student searches, readmission of expelled students, and expungement of discipline records were removed from Policy 5131 and made part of separate policies or administrative regulations, while new sections were added to address general behavior management principles and plans, the authority of school personnel with respect to the use of force, the prohibition of corporal punishment, and the communication of discipline policies to students and parents.

⁶ The Code stated that only students 14 years of age or older may be expelled, and that expulsion decisions must be made by the Board of Education.

The Code included a list of circumstances that may aggravate or mitigate a sanction: the student’s age, mental capacity, intent, disciplinary history, and academic history; the potential benefits to the student of alternatives to suspension; how the student’s misconduct impacted others; whether the student “displayed an appropriate attitude and gave respectful cooperation during the investigation and/or after the offense occurred;” what other consequences the student may be experiencing outside of school; and what action the student and/or the student’s parent(s) have taken since the offense occurred.

The offenses named in the Code did not necessarily align with the descriptions of prohibited behavior in Policy 5131. The Code did not define most offenses; instead, it referred readers to Policy 5131 for “full offense descriptions.” However, because the rules for behavior in Policy 5131 did not indicate with what offenses they were aligned, a reader had to review the list of rules for the one that best matched the offense from the Code. For some offenses, there was not a clear match to a rule in Policy 5131. Furthermore, the descriptions of behaviors in Policy 5131 did not always provide clear guidance about when to refer students for misbehavior and what was the appropriate offense designation to assign, especially for some of the most common offenses, as described below.

The most common offenses in the District during the 2017-18 and 2018-19 school years were Disruptive Behavior, Insubordination, Aggressive Behavior, Bus Misbehavior, Fighting, Inappropriate Language/Disrespect, Cutting Class, and Disrespect of Faculty/Staff.⁷ With the exception of Fighting and Disrespect of Faculty/Staff, these tracked the six most common offenses in the District during the 2014-2015 school year, the year for which OCR below analyzes detailed discipline data. No rule of behavior in Policy 5131 clearly aligned with the offense designations for Disruptive Behavior, Bus Misbehavior, Inappropriate Language/Disrespect, and Aggressive Behavior.

For example, the only rule in Policy 5131 that could potentially have referred to Disruptive Behavior was: “Students shall not use profanity, obscenity, fighting or abusive words, or otherwise engage in speech that...materially and substantially disrupts the classroom or other school activities.” This rule, however, only described disruptive speech, not other forms of disruptive behavior. And while this rule appeared to match Disruptive Behavior, a Level 1 offense per the Code, it also appeared to match the offense of Inappropriate Language/Disrespect, a Level 2 offense per the Code.

Similarly, for Insubordination and Cutting Class, OCR was able to locate rules in Policy 5131 that appeared to align with these offenses; however, these rules failed to provide clear guidance to staff. With respect to Insubordination, Policy 5131’s aligned rule appeared to be: “students shall comply with all lawful directions” of District staff, with no further description or guidance that distinguished among types of directions, or types and frequency of failures to comply. With respect to Cutting Class, Policy 5131’s only relevant rule was: “students shall not skip/leave class or school without permission.” This rule could have aligned with the Code’s reference to Cutting Class (a Level 1 offense), Skipping Class (Level 1), Leaving Class without Permission

⁷ A presentation given by District staff at a Board meeting in April 2021 identified these eight offenses as the most common for the 2017-18 and 2018-19 school years.

(Level 1), Leaving School without Permission (Level 2), and Skipping School (Level 2), and did not provide guidance as to which of these offense designations to assign.

At the outset of OCR’s review, due process procedures were included in the Code. During the 2011-2012 school year, the Board separated due process procedures from the Code and created Policy 5131.5 – Procedures for Student Discipline, which included procedures for discipline investigations, student searches, parent notices, appeal hearings, requests for readmission of expelled students, and expungement of records. As initially adopted, Policy 5131.5 provided that parents could request hearings to appeal long-term suspensions and expulsions, but not other forms of discipline. In October 2021, Policy 5131.5 was revised to provide appeal rights for alternative school assignments as well.

In addition to the general policies and regulations discussed above, the District had other policies and administrative regulations to address specific situations, none of which concerned the most common offenses discussed above.

Code of Character, Conduct, and Support

The District launched a process to revise the Code in early 2021. At the District’s Board meeting on February 23, 2021, the Executive Director of Equity stated that the District had created a steering committee to analyze discipline data, review the Code, evaluate discipline policies, and reach out to other school districts to research best practices. At a subsequent Board meeting on April 27, 2021, the “Discipline Code Team” presented an analysis of discipline data from SY 2017-18 and 2018-19. In April 2021, the District contracted with a nonprofit organization to assist in reviewing and revising the Code. District staff reported to the Board that the revision process included numerous meetings of the “Code Team” and three “Code Coordinators”; five area task forces consisting of District leaders, school administrators, teachers, school-based student services staff, parents, and community members; and input from focus groups of students, school leaders, student services representatives, parents, and teacher leaders.

In May 2022, the District gave the public the opportunity to comment on the draft Code revisions through a comment period and in-person and virtual community information sessions. The District received approximately 170 written comments and feedback from approximately 100 stakeholders at nine community forums, including several forums for Spanish speakers, and then made changes in response to the feedback.

The Board approved the revised Code, re-named the Code of Character, Conduct, and Support (2022 Code), on June 14, 2022. According to a presentation given to the Board in May 2022, the goals of revising the Code included decreasing disciplinary responses resulting in lost instructional time, disproportional application of disciplinary responses, students with repeated problematic behaviors, and “discretionary language to describe unwanted behaviors.” When the Board adopted the revised Code, District staff set out a number of action steps for training school leaders and staff, reviewing implementation of the Code throughout the school year, and making “targeted updates” to the Code in spring 2023.⁸

⁸ A presentation given to the Board at its October 25, 2022 meeting reported that the District had completed the orientation of stakeholders, including District leaders, school administrators, teachers, parents, students, SROs,

The 2022 Code sets out:

- An equity statement;
- An introductory section that includes goals, core values, core beliefs, and seven “core concepts”: accountable and restorative approach, multi-tiered systems of support (MTSS) for behaviors, equity and fairness, social and emotional learning (SEL), character and conduct, culturally responsive practices, and trauma-sensitive practices;
- Rights and responsibilities of students, parents, and staff; and
- Classroom strategies to promote positive behavior, prevent off-track behaviors from becoming major problems, and provide interventions and supports.

The 2022 Code provides for six levels of disciplinary consequences and contains a list of aggravating and mitigating circumstances that administrators should consider when determining consequences. The 2022 Code also notes that multiple violations for the same behavior may warrant higher-level consequences. The 2022 Code provides that “[a] transparent data set, determined by district leaders and school leaders, will be collected and analyzed consistently to assess the use and impact of consequences and interventions, paying particular attention to indicators of overuse and disproportionality of referrals and suspensions among various student groups.”

The 2022 Code contains a Levels of Accountable Consequences and Restorative Interventions chart that lists the specific potential consequences for each level. Level 1 violations are managed by teachers within the classroom without submitting a discipline referral. Levels 2 through 6 appear to require the submission of a referral. For each of these levels, the chart states that the assigned consequences will “include some of or all of” the listed items, specifically:

- Level 2 violations may result in a student conference, parent notification, and/or detention (at the secondary level).
- Level 3 violations “may result in removal of the student from the classroom;” specifically, Level 2 consequences in addition to a parent conference, 1-2 days ISS, and/or 1 day out-of-school suspension (OSS).
- Level 4 violations “will result in removal of the student from the classroom for a short period of time,” specifically 3-5 days ISS and/or 2-5 days OSS.
- Level 5 violations “result in removal of the student from the classroom for an extended period of time,” specifically 5 days or more OSS and referral to alternative school placement.⁹
- Level 6 violations “result in removal of the student from the school for an extended period of time,” specifically “some or all of Level 5 consequences plus long-term suspension of more than 10 days, expulsion, and/or 365 [day] suspension.”

Student Services personnel, bus drivers, and other staff, and conducted professional learning on universal classroom strategies and restorative interventions. The presentation indicated that next steps included the development of the Code review and revision process; continued professional learning and support for District leaders, school administrators, and school staff on universal promotion and prevention strategies; continued support for Student Services personnel on the implementation of tiered interventions; and continued training and support for ISS and school-based behavior intervention staff.

⁹ A separate section of the 2022 Code indicates that students who engage in Level 5 violations may be suspended up to 10 days, with approval from an Area Superintendent required for 6-10 day suspensions.

In addition to consequences, the chart described above also specifies potential “interventions” for each level, e.g., behavior check-ins, de-escalation strategies, restorative conversations, problem-solving conferences, Peace Places and Reset Spaces within classrooms, apologies, restitution, mediation, counseling, mentoring, functional behavioral assessment/behavior intervention plan for students with disabilities, behavior coaching, referral to outside agencies or services, reentry planning, and threat assessments. The Code also lists numerous examples of “restorative interventions” that schools can choose from.

The 2022 Code contains a separate Behavior Violations Matrix chart (Matrix) that lists specific behavior violations and the appropriate consequence level(s) for each violation. The Matrix includes a total of 98 individual violations divided among 23 categories. Unlike the previous Code, the Matrix contains definitions of most violations. However, some violations continue to lack definitions. For most violations, the Matrix identifies two (and sometimes three) consequence levels, but provides no, or very limited, guidance to staff in selecting the appropriate level. Of particular note, the Matrix indicates that a number of violations could result in either Level 1 or Level 2 consequences, without specific guidance for distinguishing between a Level 1 violation that does not warrant a discipline referral and a Level 2 violation that requires a referral. In addition, the Matrix states generally that repeated incidents of the same violation may warrant the next level of consequences, which appears to further expand the range of potential consequences, but it does not indicate the specific number of repeated incidents that would elevate a violation to the next level. Similarly, a separate section of the 2022 Code addressing OSS states that “[s]tudents who engage in Level 4 offenses or repeat Level 2 or 3 offenses may be suspended for a short-term period of up to five days,” but does not provide further guidance. As noted above, the consequences chart indicates that Level 2 violations should result only in detention, while Level 3 violations should result in, at most, 1 day OSS.

OCR reviewed how the Matrix addresses the violations most analogous to the most common offenses during the 2017-18 and 2018-19 school years, to wit: Disruptive Behavior, Insubordination, Aggressive Behavior, Bus Misbehavior, Fighting, Inappropriate Language/Disrespect, Cutting Class, and Disrespect of Faculty/Staff.

- In place of Disruptive Behavior, the Matrix’s “classroom violations” category contains the following four specific violations: procedural violations; non-cooperation and non-participation; minor impulse control, self-management, and personal distress; and major impulse control, self-management, and personal distress. The Matrix defines these violations by providing multiple examples of behaviors that would fall under each. The Matrix indicates that procedural violations can result only in Level 1 consequences; non-cooperation and non-participation, as well as minor impulse control, can result in either Level 1 or Level 2 consequences; and major impulse control can result in either Level 2 or Level 3 consequences. The Matrix also contains a separate category for “common areas misbehavior” that includes five specific violations, all of which can result in consequences at two different levels. For a few violations in the “common areas misbehavior” category, the Matrix indicates that the frequency of incidents should be considered when determining the consequence level, but it provides no further guidance.

- Instead of Insubordination, the Matrix includes the violation “Persistent, hostile, oppositional, confrontational refusal to comply with directions and requests,” which can result in Level 3 or Level 4 consequences.
- Instead of Aggressive Behavior, the most analogous violations in the Matrix appear to be “minor physical aggression” and “major physical aggression” toward students, both of which are defined. The Matrix indicates that “minor physical aggression” can result in Level 2 or Level 3 consequences, but that consequences should be modified for grades PreK-5. The Matrix indicates that “major physical aggression” can result in Level 4 or Level 5 consequences, but that consequences should be modified for grades PreK-3. The Matrix contains several other violations with similar descriptions. In particular, “unwanted, non-sexual contact/touching” appears to be similar to “minor physical aggression,” and both can result in Level 2 or Level 3 consequences. “Physical assault” appears to be similar to “major physical aggression,” but can result in different consequences: a “violent assault causing serious bodily injury” can result in Level 5 or 6 consequences, while a “violent assault not causing bodily injury” can result in Level 3 or 4 consequences.
- Instead of Bus Misbehavior, the Matrix includes three separate violations in the category of “bus misconduct”: “[n]ot following bus safety expectations,” defined in detail, which can result in Level 2 or Level 3 consequences; fighting on the bus, which can result in Level 3 or Level 4 consequences; and bullying or harassment on the bus, which can result in Level 3 or Level 4 consequences. The Matrix notes that these violations can also result in suspension of bus privileges for a reasonable amount of time, and that consequences should be modified for grades PreK-3 and students with disabilities.
- With respect to Fighting, the Matrix defines this violation and indicates that fighting with no injury can result in Level 3 or Level 4 consequences, while fighting with an injury can result in Level 4 or Level 5 consequences, but that consequences should be modified for grades PreK-5.
- For Inappropriate Language/Disrespect, as well as Disrespect of Faculty/Staff, the Matrix instead includes the violations “Cursing, swearing, use of insulting, defaming, vulgar or abusive language directed at an adult,” which can result in Level 3 or Level 4 consequences, and “Cursing, swearing, use of insulting, defaming, vulgar or abusive language directed at students,” which can result in Level 2 or Level 3 consequences.
- In place of Cutting Class (and the similar offenses of Skipping Class, Leaving Class without Permission, Leaving School without Permission, and Skipping School, as well as Excessive Tardiness), the Matrix includes the following violations in the “attendance” category: late arrival to school, tardy during school day, cutting class, skipping school, leaving school without permission, leaving class without permission, presence in an unauthorized area, and unexcused absences. None of these violations are accompanied by definitions. The Matrix indicates that all of these violations can result in Level 1 or Level 2 consequences, and that multiple violations may warrant Level 3 consequences,

but not OSS. The Matrix notes that “the frequency of incidents needs to be considered when assigning levels,” but provides no further guidance.

The District’s Board approved revisions to Policy 5131 in August 2022, with the stated purpose of aligning Policy 5131 with the 2022 Code. The revised Policy 5131 retains rules for student behavior that, as discussed above, do not necessarily match the violations set out in the Code. However, as noted above, the 2022 Code now defines most violations and, in most cases, no longer refers readers to Policy 5131 for full descriptions.

Alternative Schools and Programs

As noted above, the Code prior to 2022 recommended ALC assignment for Level 4 offenses and alternative school assignment for Level 5 offenses. The Code noted that such assignments were also appropriate in three circumstances, namely for repeated lower-level offenses, when aggravating factors applied to lower-level offenses, and when mitigating factors applied to more serious offenses. In addition, the Code stated that “alternative education placement must be considered in lieu of long-term suspension” for Level 6 offenses, and it indicated that both ALCs and alternative schools were considered to be “alternative education placements” for this purpose. However, the Code stated that the Assistant Superintendent may decline to offer alternative education in lieu of long-term suspension for reasons such as the student exhibiting violent behavior, the student posing a threat, the student substantially disrupting the learning process, the student engaging in “serious misconduct that makes the provision of alternative educational services not feasible,” or the student failing to comply with reasonable conditions for admittance to an alternative program.

The 2022 Code indicates that students can be referred to alternative schools for Level 5 and Level 6 offenses. The 2022 Code does not provide for ALCs, and states that the “ISS designation will replace ALC in all district schools.” Furthermore, in September 2022 the Board adopted revisions to Policy 5131.5 – Procedures for Student Discipline – that removed all references to ALCs. Therefore, it appears that ALCs are no longer operational as of the 2022-2023 school year.

The administrative regulation titled AR 5117.5 Assignment of Pupils – Alternative Programs and Schools sets out procedures for referring students to alternative programs and returning alternative school students to regular school programs. These procedures have not changed significantly since the outset of OCR’s review.

When ALCs were used, according to AR 5117.5, the mission of the ALC was to serve students in a separate setting for up to 90 days within their home schools long enough to develop an effective behavior intervention plan. ALC assignments apparently were not subject to review by the District’s central office, nor were they subject to appeal by students and parents. Interviews of ALC coordinators revealed variations among ALC programs at different schools with respect to staffing and instruction, and a lack of behavior interventions in the programs.

For alternative school, unlike ALC assignments, the Code and AR 5117.5 indicated the Assistant Superintendent had to approve such assignments, which were to Main Street Academy,

Kingswood School or the Community Involvement Program (CIP). The Code stated that the Assistant Superintendent should consider whether other disciplinary interventions had been used by the school or would be successful in improving the student's behavior before approving a recommended alternative school assignment.

The 2022 Code provides that principals recommending alternative school assignments must first obtain approval from the appropriate Area Superintendent and then schedule a formal hearing with the Student Hearing Officer, which the student and parent have the right to attend. The Hearing Officer determines whether the recommended consequence is appropriate. Pursuant to the 2022 Code and Policy 5131.5, the student and parent may further appeal the Hearing Officer's decision to the Board of Education.

Pursuant to AR 5117.5, the principal at the alternative school reviews a student's progress, recommends an appropriate date for the student's return to the regular school, and develops a transition plan for the return. The Assistant Superintendent decides whether the proposed return is appropriate, the setting to which the student will return, and the return date. AR 5117.5 lists criteria related to attendance, behavior, academic effort, and other factors for determining whether a student is ready to return to a regular school.

Law Enforcement Involvement in Discipline

Throughout most of the time period covered by this investigation, the District contracted with three local law enforcement agencies to provide school resource officer (SRO) services: the Winston-Salem Police Department (WSPD), the Forsyth County Sheriff's Office (FCSO), and the Kernersville Police Department (KPD). WSPD stopped providing SRO services to the District during the 2020-21 school year. The current Memoranda of Understanding (MOUs) with FCSO and KPD, effective July 2022, state that these agencies will provide full-time SROs at each of the District's 29 traditional middle and high schools (25 schools for FCSO and 4 schools for KPD), in addition to 7 "roving" officers (6 for FCSO and 1 for KPD) not assigned to specific schools. The MOUs indicate that the SROs are employees of and supervised by the law enforcement agencies, not the District.

Regarding the role of SROs, the MOUs state that the District

will follow an adapted version [of] the "Triad Model" for [SROs]. This model will consist of law enforcement security, law-related student counseling, and law-related education. SROs and school law enforcement relationships are the first line of prevention and security, not punitive in nature. [District] personnel will handle school disciplinary matters, and SROs will handle matters that are criminal in nature.

The MOUs also state that SROs will "[r]efrain completely from functioning as a school disciplinarian. The [SRO] is not to be involved in the enforcement of disciplinary infractions that do not constitute violations of the law." Further, the MOU with FCSO states that SROs

shall not become involved in non-criminal school-related investigations or searches unless requested by the school principal or administrative staff, and, then in that event, only to provide for the security or safety of all persons involved in the search by school personnel. The SRO shall not participate in the search. If a search uncovers evidence of criminal misconduct, the evidence shall be turned over to the SRO.¹⁰

The MOUs require that school principals notify SROs of all cases involving alcohol or controlled substances. In addition, the MOUs acknowledge that North Carolina state law requires principals to immediately report to SROs or other law enforcement the following acts occurring on school property: assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm or weapon in violation of the law, and possession of a controlled substance in violation of the law. Beyond these specific offenses, the District’s administrative regulation on reporting criminal acts (AR 5131.7) provides that principals “may choose to report any other criminal act occurring on school property.”

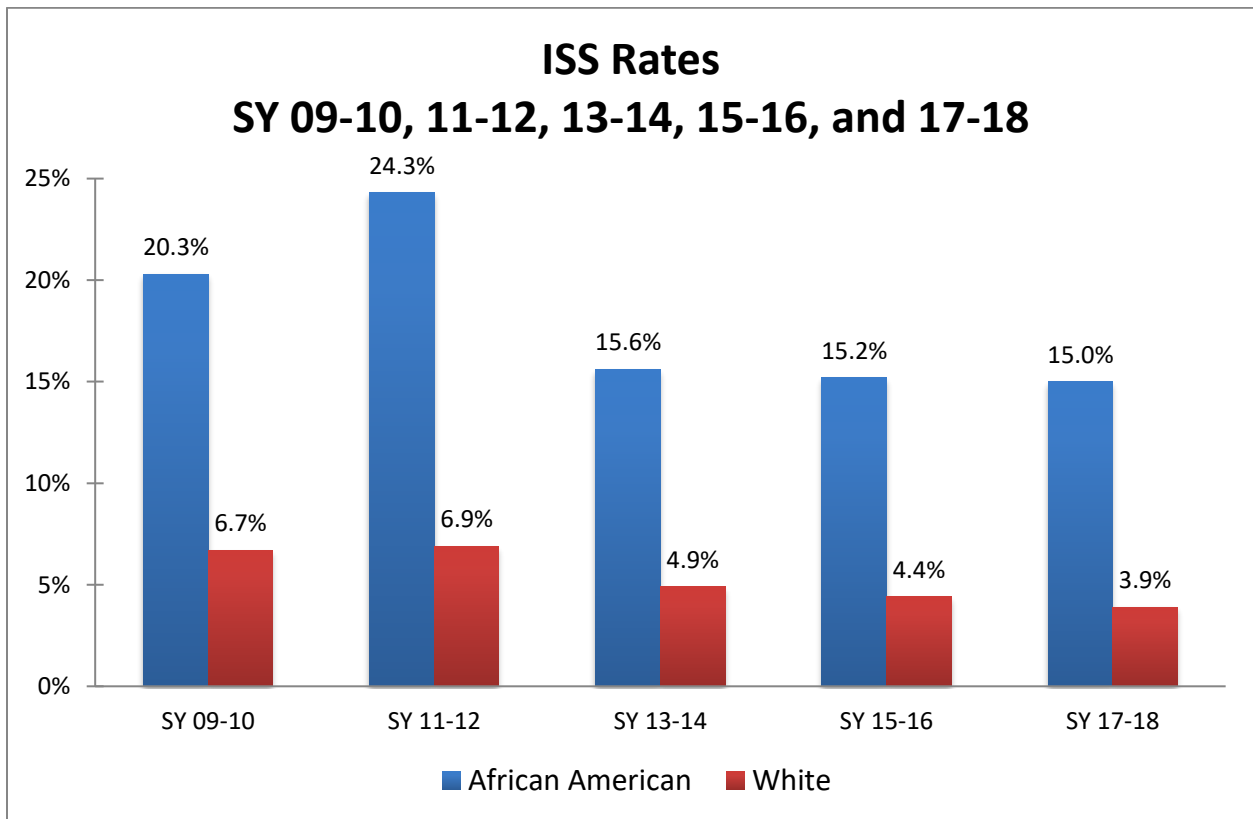
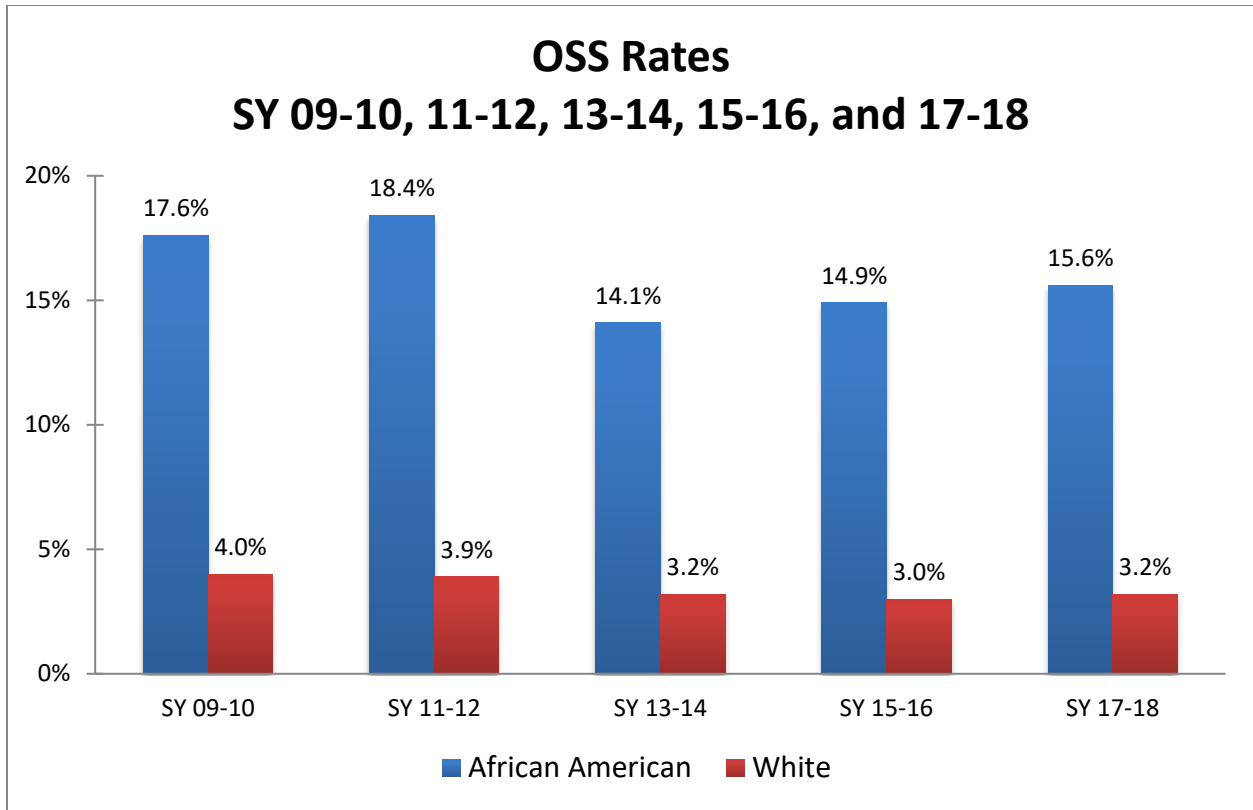
CRDC Discipline Data

Over the course of this investigation, the District has reported overall discipline data for OCR’s biannual Civil Rights Data Collection (CRDC).¹¹ OCR used that data to calculate out-of-school suspension (OSS) and in-school suspension (ISS) rates for African American and white students by dividing the number of students of a particular race who were suspended at least once by that race’s enrollment. In each year, the differences between the rates for African American and white students were statistically significant for both OSS and ISS.¹² Overall, the District reduced somewhat the OSS and ISS rates for both African American and white students, while also narrowing the percentage point difference between the African American and white rates, between school years (SY) 2009-10 and 2017-18. However, there were fluctuations in the rates from year to year rather than a consistent downward trend, as shown in the bar charts below.

¹⁰ The MOU with KPD contains a similar provision.

¹¹ The 2017-18 school year is the most recent year for which CRDC data was publicly available as of the date of this letter.

¹² A disparity is considered to be statistically significant when chance alone is unlikely to explain the difference. To test the statistical significance of differences between discipline rates for African American and white students, OCR used a Chi-square test or a two-tailed Fisher exact probability test. To test the statistical significance of differences between the proportion of disciplinary actions assigned to a particular race and the enrollment proportion for that race, OCR used a one-sample Z test. To test the statistical significance of differences in average (mean) values, OCR used a t-test. For all tests, OCR used a p-value threshold (confidence interval) of 0.05 to establish statistical significance.



OCR also examined CRDC data for the 2020-21 school year, which was heavily impacted by COVID-related disruptions and remote learning and therefore had significantly fewer students receiving suspensions than in earlier school years. In that year, the African American OSS rate was 1.2%, compared to the white OSS rate of 0.4%. The African American ISS rate was 0.3% and the white ISS rate was 0.2%.

North Carolina Department of Public Instruction (NCDPI) Discipline Data

Over the course of this investigation, the District also reported data to NCDPI on the number of short-term OSS it gave to students of each race annually.¹³ OCR used that data to calculate the proportion of short-term OSS given to African American and white students, by dividing the number of short-term OSS given to students of a particular race by the total number of short-term OSS given to all students. OCR compared those proportions to each race's proportion of enrollment. In each of the past 10 school years, African American students received short-term OSS out of proportion to their enrollment. From 2012-13 through 2019-20, African American students were 28.4%-28.8% of the District's enrollment and received 58.5%-62.1% of short-term OSS, while white students were 36.7%-43.0% of enrollment and received 12.5%-15.3% of short-term OSS. The 2020-21 school year, as noted above, was heavily impacted by COVID-related disruptions and had much lower numbers of short-term OSS for students of all races than typical school years. In the most recent school year, 2021-22, African American students were 29.1% of enrollment and received 59.0% of short-term OSS, while white students were 34.3% of enrollment and received 12.9% of short-term OSS.¹⁴

2014-2015 Discipline Data

OCR conducted an in-depth analysis of discipline data from SY 2014-15, using a data set provided by the District. In that year, the District's enrollment of approximately 54,000 students was 28.6% African American, 41.5% white, 23.5% Hispanic, and 6.4% other races or multiracial. The District's data set contained 34,920 disciplinary referrals, with a total of 10,720 students receiving at least one referral. OCR calculated that 15.8% of African American students received OSS at least once compared to 3.8% of white students, while 19.2% of African American students received ISS at least once compared to 5.9% of white students. OCR conducted further analysis of this data set to investigate the causes of these racial disparities in suspension rates. OCR examined whether African American students were more likely to be referred for discipline than white students and, once referred, whether African American students were sanctioned more harshly than white students. OCR also examined alternative program

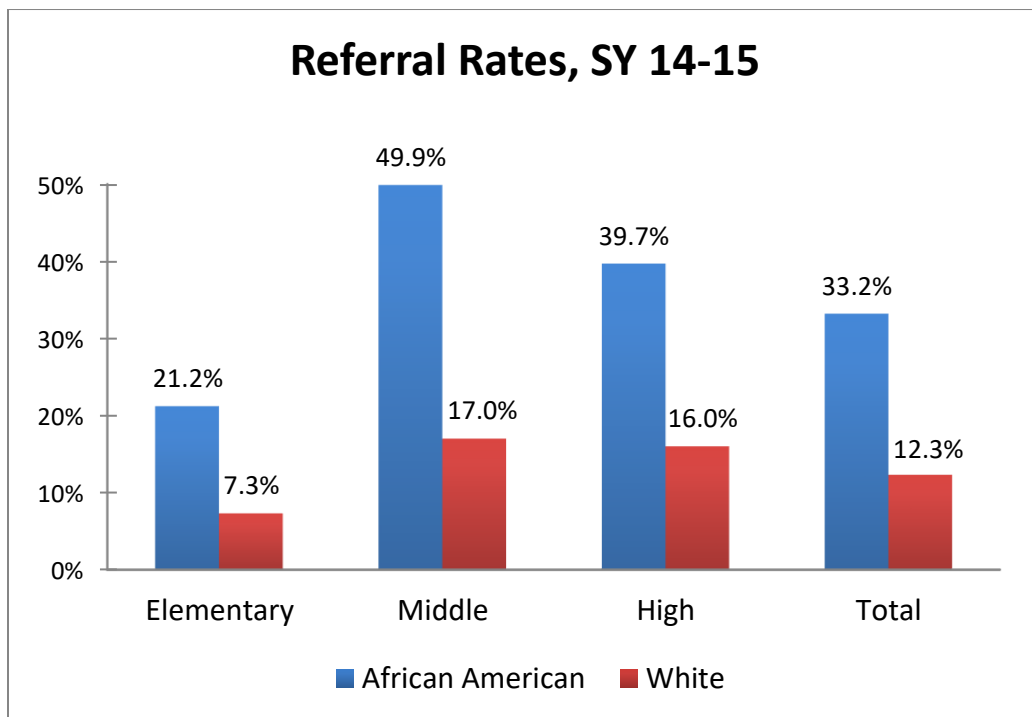
¹³ <https://www.dpi.nc.gov/data-reports/dropout-and-discipline-data/discipline-alp-and-dropout-annual-reports>, last visited March 30, 2023. These reports also included long-term OSS and expulsions. The District reported less than 20 long-term OSS in each school year between 2012-13 and 2021-22, and less than 5 expulsions in most of those years.

¹⁴ OCR reviewed similar discipline data for the current (2022-23) school year reported by District staff to the Board in March 2023. According to this data, African American students were responsible for 59.4% of all disciplinary incidents and 57.2% of incidents resulting in ISS or OSS, while white students were responsible for 14.2% of all disciplinary incidents and 14.2% of incidents resulting in ISS or OSS. 48.9% of students receiving discipline were African American and 50.0% of students receiving ISS or OSS were African American, while 16.8% of students receiving discipline were white and 14.6% of students receiving ISS or OSS were white. As with the previous school year, the District's enrollment was approximately 29% African American and 34% white.

assignments and law enforcement contacts.¹⁵ The results of OCR’s data analysis are described in more detail below. Throughout the analysis that follows, offense levels (i.e., Levels 1 through 8) are based on the Code. Some referrals in the data set were assigned multiple offense designations, e.g., both Insubordination and Disruptive Behavior. OCR categorized these referrals based on the highest offense level, e.g., a referral assigned a Level 2 offense and a Level 1 offense would be categorized as Level 2.

- *Referral Data*

OCR first investigated referral rates for discipline.¹⁶ Districtwide, 33.2% of African American students were referred at least once, compared to 12.3% of white students.¹⁷ African American students were referred at higher rates than white students at all school levels (elementary, middle, high, and other¹⁸) to a statistically significant degree. The referral rate for African American students was particularly high at the middle school level, where 49.9% of African American students were referred at least once compared to 17.0% of white students.



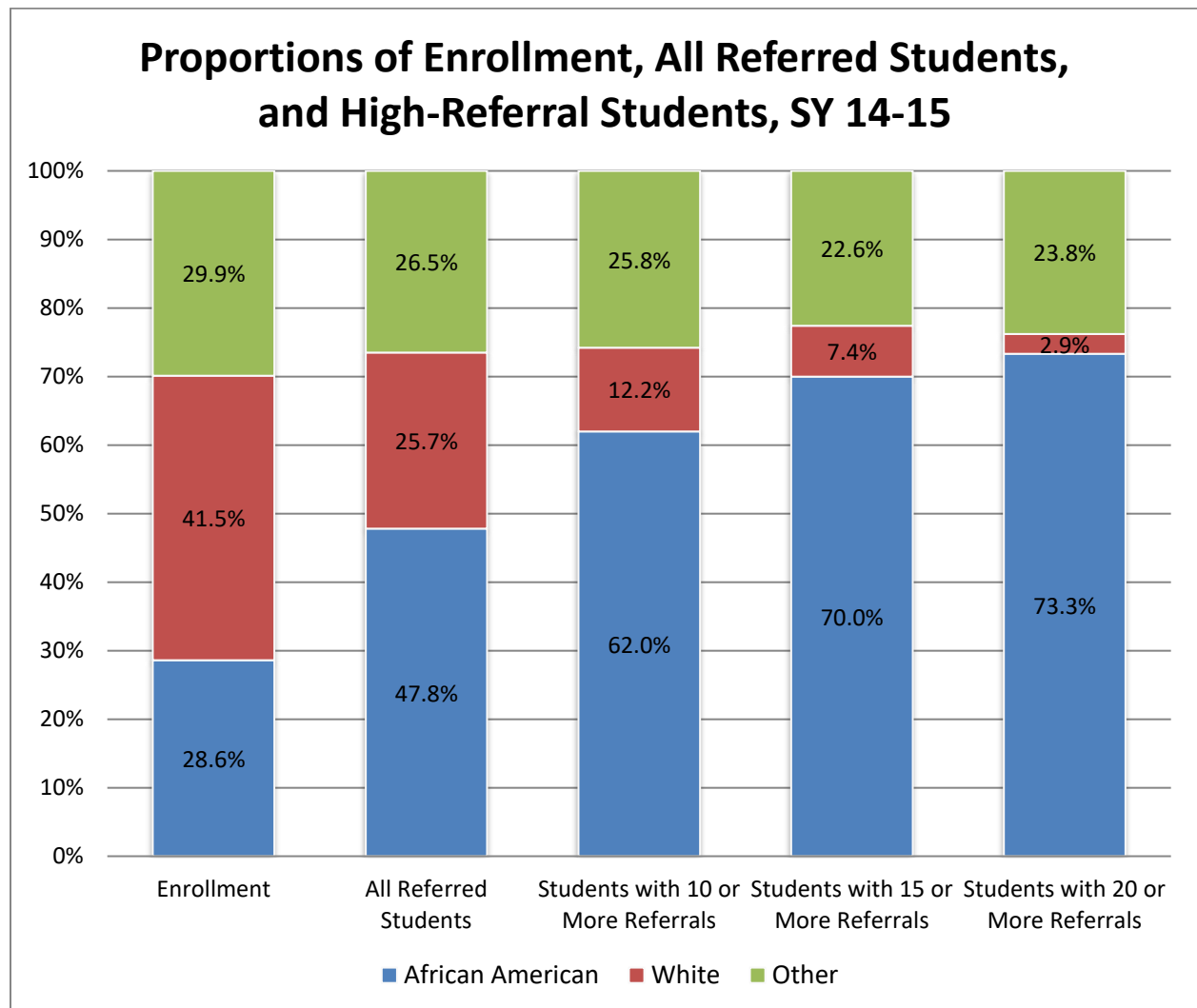
¹⁵ OCR did not examine expulsions because only a few students were expelled during SY 2014-15, according to the District’s data set.

¹⁶ By “referral rates,” OCR means the percent of enrolled students who were referred at least once. OCR calculated referral rates by dividing the number of students of a particular race who were referred at least once by the number of enrolled students of that race. Therefore, referral rates account for differences in enrollment between African American and white students and can be directly compared without reference to enrollment.

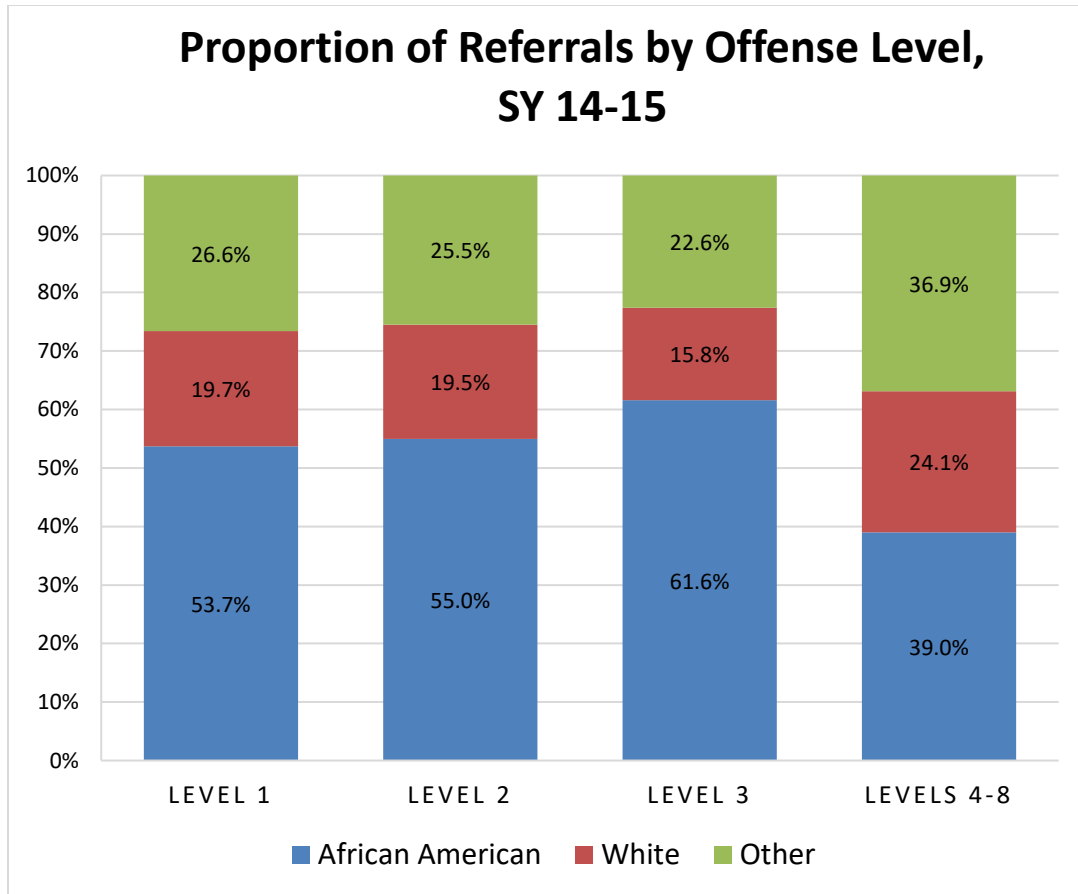
¹⁷ At the District’s Board meeting on April 27, 2021, District staff presented an analysis of discipline data from SY 2017-18 and 2018-19. The presentation reported that in SY 2017-18, 30.1% of African American students were referred at least once, compared to 9.0% of white students. In SY 2018-19, 29.4% of African American students were referred at least once compared to 9.1% of white students.

¹⁸ The “other” category includes alternative programs, self-contained special education programs, and programs with non-traditional grade configurations. These schools comprised approximately 4% of the District’s enrollment.

The data for repeat referrals also shows higher rates for African American students. Overall, African American students who were referred at least once received an average of 3.8 referrals for the year, whereas white students who were referred at least once received an average of 2.5 referrals. A small number of students received numerous referrals and accounted for a disproportionate share of the District’s overall referrals. Specifically, there were 735 students who each received 10 or more referrals. These 735 students were only 6.9% of the students who received referrals, but they accounted for 30.8% of all referrals received. Of the 735 students who received 10 or more referrals, 456 were African American (62.0%) and 90 were white (12.2%). Likewise, of the 283 students who each received 15 or more referrals, 198 were African American (70.0%) and 21 were white (7.4%). Of the 105 students who each received 20 or more referrals, 77 were African American (73.3%) and 3 were white (2.9%). For comparison, African American students were 28.6% of enrollment and 47.8% of all students who received referrals. These results are reflected in the bar chart below.



OCR also analyzed referrals according to offense levels. As reflected in the bar chart below, OCR found African American students received 53.7% of referrals for Level 1 offenses, 55.0% of referrals for Level 2 offenses, and 61.6% of referrals for Level 3 offenses; however, African American students received only 39.0% of referrals for Level 4-8 offenses.¹⁹ The gap (i.e., percentage point difference) between the proportion of referrals given to African American and white students was 34.0 percentage points for Level 1 offenses, 35.5 percentage points for Level 2 offenses, and 45.8 percentage points for Level 3 offenses; however, it was only 14.9 percentage points for Level 4-8 offenses.²⁰



Finally, OCR examined referral data at the middle and high school levels for the nine most common offenses in SY 2014-15, each of which had over 1,000 total referrals: Disruptive Behavior, Bus Misbehavior, Cutting Class, Excessive Tardiness, Insubordination, Inappropriate

¹⁹ OCR calculated these proportions by dividing the number of referrals given to students of a particular race by the number of referrals given to all students. OCR counted referrals, not students, so students who received multiple referrals were counted multiple times. These proportions do not account for enrollment differences and should therefore be considered in reference to enrollment proportions.

²⁰ OCR calculated the percentage point difference by subtracting the white proportion of referrals from the African American proportion of referrals.

Language/Disrespect, Aggressive Behavior, Disrespect of Faculty/Staff, and Fighting.²¹ This allowed OCR to compare referral data for more objective offenses, such as Cutting Class and Excessive Tardiness, to referral data for more subjective offenses.

At the middle and high school levels, the African American proportions of referrals were lowest for Cutting Class and Excessive Tardiness. In middle schools, African American students received 33.9% of all referrals given for Cutting Class and 34.6% of all referrals given for Excessive Tardiness. In contrast, for the other seven common offenses in middle schools, African American students received between 48.4% and 60.7% of all referrals given. In high schools, African American students received 53.2% of all referrals given for Cutting Class and 54.5% of all referrals given for Excessive Tardiness. For the other seven common offenses in high schools, African American students received between 60.4% and 74.2% of all referrals given.

- *First-Time Offender Sanction Data*

OCR analyzed the sanctions given to African American and white students for their first referral of the school year to determine whether African American first-time offenders (FTOs) were more likely to be suspended than white FTOs. The purpose of limiting the analysis to FTOs is to control for disciplinary history, which can impact the sanction a student receives. OCR calculated suspension rates for FTOs by dividing the number of FTOs of a particular race who received a suspension by the total number of FTOs of that race. OCR divided by the number of FTOs rather than the number of enrolled students in order to limit the analysis to those students who were referred for discipline, thereby controlling for differences in referral rates between African American and white students. OCR looked at ISS and OSS; OCR did not look at expulsions because there were too few to conduct a meaningful analysis.

District-wide, African American FTOs were more likely to receive OSS than white FTOs; specifically, 23.1% of African American FTOs received OSS compared to 16.6% of white FTOs, a statistically significant difference. The differences between the OSS rates of African American and white FTOs were also statistically significant at the elementary, middle, and high school levels. In elementary schools, 22.9% of African American FTOs received OSS compared to 15.6% of white FTOs. In middle schools, 20.8% of African American FTOs received OSS compared to 14.3% of white FTOs. In high schools, 21.4% of African American FTOs received OSS compared to 17.4% of white FTOs.

With respect to ISS, African American and white FTOs received ISS at similar rates Districtwide; specifically, 36.0% of African American FTOs received ISS compared to 34.1% of white FTOs, which was not a statistically significant difference. At the elementary and middle school levels, there were not statistically significant differences between the ISS rates of African American and white FTOs. However, in high schools, African American FTOs received ISS at a higher rate than white FTOs to a statistically significant degree; specifically, 49.9% of African American FTOs received ISS compared to 40.3% of white FTOs.

²¹ OCR did not include elementary schools in this analysis because there were no referrals for Cutting Class and Excessive Tardiness at the elementary level.

OCR also analyzed the OSS and ISS rates for African American and white FTOs at offense levels 1, 2, and 3 at the elementary, middle, and high school levels. All of the statistically significant disparities that OCR found are listed below. For the offense levels and school levels not listed below, OCR did not find statistically significant disparities.²²

- Elementary and Middle Schools, Level 2 Offenses. African American FTOs were more likely to receive OSS than white FTOs. Specifically, in elementary schools, 26.8% of African American FTOs received OSS compared to 13.5% of white FTOs; in middle schools, 16.6% of African American FTOs received OSS compared to 9.6% of white FTOs.
- High Schools, Level 1 and Level 2 Offenses. African American FTOs were more likely to receive ISS than white FTOs.²³ Specifically, for Level 1 offenses, 51.3% of African American FTOs received ISS compared to 38.2% of white FTOs. For Level 2 offenses, 64.1% of African American FTOs received ISS compared to 52.5% of white FTOs.
- High Schools, Level 3 Offenses. African American FTOs were more likely to receive OSS than white FTOs, while white FTOs were more likely to receive ISS than African American FTOs. Specifically, 90.6% of African American FTOs received OSS compared to 79.6% of white FTOs, while 8.6% of African American FTOs received ISS compared to 19.4% of white FTOs.

Because many FTOs received OSS for Level 3 offenses, OCR also calculated the average number of days of suspension given to African American and white FTOs. African American FTOs who received OSS for Level 3 offenses were suspended an average of 2.7 days, while white FTOs who received OSS were suspended an average of 2.2 days, a statistically significant difference. In particular, in high schools, African American FTOs who received OSS for Level 3 offenses were suspended an average of 3.5 days, while white FTOs were suspended an average of 2.5 days, a statistically significant difference.

OCR analyzed the OSS and ISS rates for African American and white FTOs for the nine most common offenses, and found the following statistically significant disparities:

- Excessive Tardiness. 25.3% of African American FTOs received ISS compared to 10.9% of white FTOs.²⁴
- Insubordination. 59.8% of African American FTOs received ISS compared to 47.3% of white FTOs.²⁵
- Inappropriate Language/Disrespect. 13.8% of African American FTOs received OSS compared to 5.3% of white FTOs.
- Aggressive Behavior. 28.1% of African American FTOs received OSS compared to 18.0% of white FTOs.

OCR did not identify any offenses, from among the nine most common offenses, for which white FTOs were suspended at a higher rate than African American FTOs to a statistically significant degree. For the remaining five offenses not listed above, there were no statistically significant differences between the OSS or ISS rates of African American and white FTOs. However,

²² For this analysis and the analysis of the nine most common offenses to follow, OCR only included each student's first referral of the school year, rather than their first referral for a particular offense level or offense.

²³ For OSS, the differences in rates between African American and white FTOs were not statistically significant.

²⁴ Only a few FTOs of either race received OSS, and the difference in OSS rates was not statistically significant.

²⁵ The difference in OSS rates was not statistically significant.

because most FTOs of both races received OSS for Fighting, OCR also compared the average days of suspension assigned to African American and white FTOs. African American FTOs who received OSS for Fighting were suspended an average of 2.9 days, while white FTOs were suspended an average of 2.3 days, a statistically significant difference.

Schools with majority African American student populations were more likely to suspend FTOs, both African American and white, than schools with majority white student populations. At majority African American schools, 27.5% of African American FTOs and 40.9% of white FTOs received OSS.²⁶ However, at majority white schools, 20.3% of African American FTOs and 13.4% of white FTOs received OSS. Schools with student populations that were neither majority African American nor majority white fell in between: at those schools, 22.2% of African American FTOs and 19.8% of white FTOs received OSS.

- *Alternative Program Data*

249 African American students (1.6% of the District's African American enrollment) and 83 white students (0.4% of the District's white enrollment) were assigned to an alternative program (i.e., an alternative school or an ALC) at least once. To investigate further, OCR first calculated alternative program placement rates for students who received disciplinary referrals during the 2014-15 school year (i.e., student counts). OCR determined that 4.9% of the African American students who received disciplinary referrals were assigned to an alternative program at least once, compared to 3.0% of the white students who received disciplinary referrals. This difference in alternative program placement rates was statistically significant.²⁷ In particular, at the middle school level, 7.0% of the African American students who received disciplinary referrals were assigned to an alternative program at least once compared to 2.4% of the white students who received referrals; this difference was statistically significant.

OCR next calculated the likelihood of individual disciplinary referrals resulting in alternative program placement (i.e., incident counts rather than student counts). OCR determined that referrals of African American students and referrals of white students were almost equally likely to result in alternative program assignments. Specifically, 2.0% of referrals of African American students and 1.6% of referrals of white students resulted in alternative program assignments; this difference was not statistically significant.²⁸

²⁶ OCR notes that there were only 66 white FTOs at majority African American schools, 27 of whom received OSS, so the OSS rate for white FTOs is based on a small number of students.

²⁷ The District provided a separate data set containing only alternative program assignments, which OCR did not rely upon because it was not consistent with the main data set. Specifically, some students appeared in the main data set who did not appear in the separate data set, and vice versa. OCR relied upon the main data for the sake of consistency with the rest of OCR's analysis. Nonetheless, according to the separate data set, 7.2% of African American students and 4.0% of white students who received disciplinary referrals were assigned to alternative programs at least once, a statistically significant difference. OCR also notes that the separate data set appeared to show that 18 students (nine African American, two white, seven Hispanic) were assigned to ALCs for more than 90 days, inconsistent with the District policies discussed above that limited ALC assignments to 90 days.

²⁸ The difference between the results when using incident counts as opposed to student counts stems from the fact that African American students have a higher average number of referrals per student than white students and are overrepresented among students who receive numerous disciplinary referrals, as discussed above in the section addressing referral data. While each individual disciplinary referral has about an equal likelihood of resulting in alternative program placement for African American and white students, African American students have more

- *Law Enforcement Contact Data*

The District contacted law enforcement at least once for 34 African American students (0.2% of the District’s African American enrollment) and 22 white students (0.1% of the District’s white enrollment). To investigate further, OCR first calculated law enforcement referral rates for students who received disciplinary referrals during the 2014-15 school year (i.e., student counts). OCR determined that 0.7% of the African American students who received disciplinary referrals and 0.8% of the white students who received disciplinary referrals were referred to law enforcement at least once; this difference was not statistically significant. OCR next calculated the likelihood of individual disciplinary referrals resulting in a referral to law enforcement (i.e., incident counts rather than student counts). OCR determined that referrals of African American students and referrals of white students were almost equally likely to result in law enforcement contacts. Specifically, 0.2% of referrals of African American students and 0.3% of referrals of white students resulted in law enforcement contacts. However, OCR notes that this data may be incomplete based on comparisons to subsequent CRDC data. For the SY 2015-16 CRDC the following year, the District reported much higher numbers of students referred to law enforcement. Specifically, the District reported that it referred 152 African American students and 57 white students to law enforcement at least once. For the SY 2017-18 CRDC, the District reported that it referred 144 African American students and 79 white students to law enforcement at least once.²⁹

Earlier Discipline Data

Earlier in this compliance review, OCR analyzed the District’s discipline data for SY 2010-11 and 2011-12. OCR’s findings were similar to the findings for SY 2014-15 described above. Specifically, OCR found that African American students were referred for discipline at higher rates than white students and were overrepresented among frequently referred students. Referral disparities between African American and white students were generally lower for more serious offenses and more objective offenses. At the sanctioning stage, African American FTOs received more severe sanctions than white FTOs for offenses at the same level.

OCR further analyzed FTO sanctions in SY 2011-12 by reviewing narrative descriptions of misconduct from disciplinary referral forms at several schools, finding evidence that African American FTOs were sometimes penalized more harshly than white FTOs for similar misbehavior. These narratives were not available for the vast majority of the referrals in the 2014-15 data. Based on the SY 2011-12 data, some examples of different treatment of FTOs follow:

- At a middle school, an African American student received one day ISS for copying another student’s homework, while a white student received only an administrative conference for the same behavior. At the same school, an African American student

chances of being sent to an alternative program over the course of a school year because they receive more disciplinary referrals on average, resulting in a higher likelihood of alternative program placement than for white students.

²⁹ For the SY 2020-21 CRDC, the District reported that it referred 28 African American students and 11 white students to law enforcement at least once; numbers were lower this year due to COVID-related disruptions.

received two days ISS for pouring milk on another student, while a white student received one day ISS for the same behavior.

- At a high school, eleven African American students and three white students received referrals for Level 1 offenses solely for talking in class; five of the eleven African American students received ISS, while none of the white students received ISS. At the same school, thirteen African American students and four white students received referrals for cheating or plagiarizing on an assignment or test; five of the thirteen African American students received ISS, while none of the white students received ISS.

In reviewing the narrative descriptions of misconduct from referral forms, OCR noted many inconsistencies in the designation of offenses. In some cases, the narrative description of the student's misconduct did not appear to match the offense designation assigned to the referral. In other cases, students with similar misconduct were assigned different offense designations. In addition, "other school defined offense" seemed to be used as a catch-all category for a variety of behaviors, some of which clearly seemed to fit another offense designation. At one high school, most of the misconduct designated with Level 2 offenses was comparable to other misconduct designated with Level 1 offenses. For example, one referral for using profanity might be designated as Disruptive Behavior (a Level 1 offense), while another referral for using profanity in a similar situation might be designated as Inappropriate Language/Disrespect (a Level 2 offense).

In addition to different treatment within schools, OCR found evidence that schools with majority African American student populations sanctioned FTOs (both African American and white) more severely than schools with majority white populations, particularly at the high school level; this trend was more pronounced in the 2010-11 and 2011-12 data than in the 2014-15 data.

Analysis

Based on the data reviewed, OCR's investigation suggested that similarly situated African American and white students were being treated differently at the referral stage and the sanctioning stage of the discipline process.

At the referral stage, OCR found that African American students were referred for discipline at higher rates than white students at all school levels. Furthermore, African American students received a higher share of referrals than their 28.6% share of enrollment at all offense levels and for each of the nine most common offenses. However, OCR found that racial disparities in referrals narrowed for the most serious offenses at Levels 4-8, where referring staff would typically exercise less discretion when determining whether to refer students. In addition, when OCR analyzed referral disparities for the nine most common offenses, Cutting Class and Excessive Tardiness, arguably more objective than the other offenses, had lower disparities than the other offenses. This suggested factors other than differences in behavior between African American and white students, possibly including racial bias, could be contributing to referral disparities when staff exercise greater discretion in determining whether to make referrals. OCR also noted that African American students were overrepresented among the most frequently referred students.

At the sanctioning stage, OCR identified differences in imposition of discipline for African American students compared to white students who had similar discipline histories and engaged in similar behaviors. OCR found that African American students were more likely than white students to receive OSS for first-time offenses overall, and that African American FTO students were suspended at higher rates than white FTO students for some specific offenses, again suggesting that factors other than objective differences in behavior may be influencing sanctioning decisions. African American FTO students were more likely to receive OSS than white FTO students for Level 2 offenses at the elementary and middle school level, for Level 3 offenses at the high school level, and for the specific offenses of Inappropriate Language/Disrespect and Aggressive Behavior. African American FTO students were more likely to receive ISS than white FTO students for Level 1 and Level 2 offenses at the high school level, and for the specific offenses of Excessive Tardiness and Insubordination. On average, African American FTO students received OSS for lengthier periods than white FTO students for Level 3 offenses and for the specific offense of Fighting.

OCR found evidence that schools with majority African American populations sanctioned FTO students more severely than schools with majority white populations, suggesting that District-wide racial disparities may have been caused, in part, by schools with higher African American enrollment implementing the Code more harshly for all of their students, regardless of race, than schools with lower African American enrollment. OCR's file review also found evidence that, within the same schools, African American FTO students were sometimes penalized more harshly than white FTO students for similar misbehavior.

OCR noted concerns about the District's recordkeeping with respect to the sanctions of alternative program assignment and law enforcement involvement. However, regarding alternative program assignment, the available data showed that African American students who received discipline referrals were more likely to be assigned to alternative programs than white students who received discipline referrals. Regarding law enforcement involvement, the available data showed that African American students were disproportionately referred to law enforcement relative to their enrollment in the District.

OCR is concerned that different treatment could have occurred because, prior to the 2022 Code revisions, the District's policies did not clearly define certain offenses, including some of the most common offenses, leaving staff unclear guidance regarding when to refer students for those offenses, and the appropriate offense designations to assign. In some cases, a behavior infraction could have resulted in either exclusionary or non-exclusionary discipline, depending on what offense designation was assigned to the infraction. For example, the rule in Policy 5131 that references profanity, abusive language, and disruptive speech did not provide guidance to staff in determining whether to designate an infraction as Disruptive Behavior, which was a Level 1 offense that generally would not have resulted in exclusionary discipline, or a Level 2 offense such as Inappropriate Language/Disrespect or Disrespect of Faculty/Staff, which generally would have resulted in ISS. In fact, OCR's review of student records showed inconsistencies in the designation of offenses, including misconduct designated as Level 2 offenses that was comparable to misconduct designated as Level 1 offenses. In another example, the rule in Policy 5131 regarding compliance with directions from principals, teachers, and other staff (which

appeared to be linked to Insubordination) did not provide clarity about the type or frequency of behavior that may warrant referral.

Similarly, OCR is concerned about possible different treatment with respect to placing African American students in alternative programs because the District's procedures lacked specific criteria for assigning students to these programs and lacked clear mechanisms for District-level oversight to ensure consistent implementation.

The District's recently revised 2022 Code addresses the lack of clear offense definitions. For most violations, particularly subjective violations, the 2022 Code includes definitions that should provide better guidance to staff in determining when students have committed violations and in designating violations consistently. However, there are some violations that continue to lack definitions, such as attendance-related violations, or that are defined in a way that overlaps with other violations, such as offenses involving physically aggressive behavior. Furthermore, the 2022 Code fails to provide clear guidance to staff in determining when to make referrals for violations that can result in either Level 1 or Level 2 consequences. At the sanctioning stage, the 2022 Code affords broad discretion to staff in determining consequence levels for specific violations and then selecting a sanction from the menu of options within each consequence level. Based in part on OCR's review of District implementation of the prior policies, OCR is concerned that this revised code may still lead to inconsistent sanctioning practices between and within schools and continue to allow subjective factors, possibly including racial bias, to influence decisions.

Before OCR concluded its investigation, the District asked to resolve this compliance review pursuant to Section 302. OCR determined it had identified concerns that would be appropriate to resolve through a resolution agreement.

Conclusion

The District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. The Agreement requires the District to continue its efforts to ensure fair and equitable disciplinary policies and practices by analyzing its discipline data; reviewing the 2022 Code to determine if further revisions are necessary; continuing to train administrators and staff on the revised Code; collecting complete and accurate data on all disciplinary referrals; working with local law enforcement agencies to ensure that data on SRO actions is collected and reported, that SRO training addresses the limited role of SROs in discipline, and that concerns regarding SROs are investigated; conducting an assessment of alternative schools, including the degree of compliance with existing policies and procedures and whether changes to programs and/or policies are warranted; providing information on its discipline policies for students and families; and submitting to OCR annual reports monitoring the effectiveness of the District's efforts. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statute and regulation at issue.

This concludes OCR’s investigation of this compliance review. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

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

We appreciate the District’s cooperation in the resolution of this compliance review. If you have any questions, please contact Sarah Morgan, the OCR attorney assigned to this compliance review, at 202-987-1459 or Sarah.Morgan@ed.gov.

Sincerely,

/s/

Emily Frangos
Regional Director
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Dionne Jenkins (via email dtjenkins@wsfcs.k12.nc.us)