



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, D.C.

XXXX

Dr. Pascal Mubenga  
Superintendent  
Durham Public Schools  
511 Cleveland Street  
PO Box 30002  
Durham, NC 27702

Re: OCR Complaint No. 11-13-1175  
Resolution Letter

Dear Dr. Mubenga:

This letter is to notify you of the outcome of the complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on XXXX against Durham Public Schools (the District). The Complainants alleged that the District's discipline policies and practices regarding out-of-school suspension unlawfully discriminated against African-American students, students with disabilities and African-American students with disabilities, in particular.

OCR is responsible for enforcing certain federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, or national origin in activities or programs that receive federal financial assistance. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance (FFA) from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public educational systems, regardless of whether they receive FFA from the Department. As a recipient of FFA and is a public entity, the District is subject to the provisions of Title VI, Section 504 and Title II.

**Legal Standards**

OCR investigated whether the District's disciplinary policies and practices, the application of these practices, or the effects of these practices were racially discriminatory in violation of Title VI. Title VI states that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity

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

operated by a recipient of Federal financial assistance. Title VI also prohibits a recipient, on the ground of race, color, or national origin, from denying an individual any service or benefit provided under the recipient's program; providing any service or benefit that is different from that provided to others under the program; or subjecting an individual to separate treatment in any matter related to the receipt of any service or benefit. In addition, a recipient, may not, directly or through contractual or other arrangements, utilize methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

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

Title VI also protects students even if a school contracts or arranges for entities, over which it exercises some control, to be responsible for aspect 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, "contract" law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

In addition to different treatment of students based on race, districts violate Federal law when they implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race.

OCR also investigated whether the District's disciplinary practices discriminated against students with disabilities. As stated above, Section 504 prohibits disability discrimination by recipients of Federal financial assistance, and Title II prohibits disability discrimination by public entities, including public school districts, in their services, programs, and activities. 29 U.S.C. § 794; 42 U.S.C. §§ 12131 et seq. Similar to Title VI, the Section 504 implementing regulation, at 34 C.F.R. § 104.4, provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination. The regulation further provides that a recipient may not otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service because of disability. Section 504 and Title II and their implementing regulations also provide certain protections when students with disabilities are disciplined.

### **Investigation**

In order to investigate this complaint, OCR reviewed documentation provided by the Complainants and the District. OCR also conducted an onsite visit to the District in December 2013. During that onsite, OCR visited four high schools, two middle schools, and the alternative school. At each school, OCR interviewed the principal, assistant principals, Positive Behavior Intervention and Supports (PBIS) coordinators, and special education coordinators. OCR also

interviewed District personnel, including the District’s Superintendent, Assistant Superintendent of Student, Family and Community Services, PBIS Coordinator, Coordinator of the Second Chance Academy, Director of Accountability Programs, Long Term Suspension Hearing Panel Facilitator, Director of Student Assignment, Coordinator of Preventive Services, Executive Director for Exceptional Children’s Services, Director of Student Services, and Short-Term Suspension Intervention Coordinator. OCR staff also interviewed the School Resource Officer (SRO) Coordinator from the Durham County Sheriff’s Office. OCR also attended a community meeting hosted by the District, where community members, parents, school administrators, teachers and other interested parties discussed the District’s discipline rates and disparities and strategies to reduce those disparities.

Prior to the completion of OCR’s investigation, the District, through counsel, expressed an interest in resolving this complaint through a Voluntary Resolution Agreement. In accordance with OCR case processing procedures<sup>1</sup>, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Based on the commitments the District has made in the attached agreement, OCR has determined that it is appropriate to close the investigation phase of this complaint. OCR’s findings to date are discussed in further detail below.

### **Overview of the District**

For the 2012-2013 school year, XXXX, the District operated 53 schools, including 11 middle schools and 12 high schools, along with an alternative school which served middle and high school students. The District had 33,086 students enrolled with over 9,800 students in high school, over 7,000 students in middle school and over 15,800 students in elementary school. The student population was: 51% African American; 24% Hispanic; 19% White; 3% Multiracial; and 2% Asian. Students with disabilities represented approximately 14% of District students. Currently, the District continues to operate 53 schools with approximately 33,500 students, and a similar racial composition.

### **CRDC Discipline Data**

According to the 2013-2014 CRDC data<sup>2</sup>, the District reported that approximately 2,350 students received OSS, a decrease of approximately 29% from the 2011-2012 school year. However, disparities in suspension rates between African-American and White students, and between students with and without disabilities, remained. African-American students, who made up 49.5% of the District, represented 77.7% of the students who received OSS. White students represented 18.9% of the population while representing only 4.9% of the students who received OSS. According to that data, 10.9% of African-American students were suspended, a decline of over three percentage points from earlier years. However, African-American students were 6.1 times more likely to be suspended than White students, who were suspended at a rate of only 1.8%. The suspension rate for students with disabilities also declined to 13.2%, but students with disabilities were still 2.2 times more likely to be suspended than students without disabilities and 3.1 times more likely to receive multiple suspensions.

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<sup>1</sup> OCR Case Processing Manual, Article III, Section 302

<sup>2</sup> Due to limitations of the CRDC data, OSS data for racial groups does not include students with disabilities who received services under Section 504 but were not eligible under IDEA.

## **Overview of the District's Disciplinary Policies and Practices**

### ***District's Data Collection***

In the District, discipline data is recorded and reported annually to the state of North Carolina through the PowerSchool program. Schools are required to report information related to suspensions, expulsions, alternative learning programs, and acts of crime and violence. North Carolina law requires that certain school-based offenses be reported to law enforcement immediately, including: homicides; assaults resulting in serious bodily injury; assaults involving use of a weapon; rapes; sexual offenses; sexual assaults; kidnapping; robbery with a dangerous weapon; and, taking indecent liberties with a minor. In addition, North Carolina Department of Public Instruction requires that data for all suspensions and expulsions be entered into PowerSchool. District administrators reported that the District relies solely on its electronic database for its official recordkeeping, while some schools do continue to use the paper forms for discipline referrals. At each school OCR visited, administrators reported that paper referrals drafted by teachers or other school staff are typed verbatim into the PowerSchool system, including all narrative information provided.

During OCR's December 2013 onsite visit, OCR staff inquired about the data collection procedures for each school. Generally, only those infractions that resulted in exclusion from the school environment, or exclusionary discipline, were reported in PowerSchool, although OCR's review of the District's data showed that some schools did report lower level offenses in PowerSchool. Schools reported that cell phone infractions, including confiscation of the phone or detentions, were not entered into PowerSchool, unless it was a repeated infraction that resulted in ISS or OSS. The same was true for truancy or lateness that did not result in ISS or OSS. OCR found that this was consistent with the District's data.

### ***Board of Education/District-wide Policies***

For the 2011-2012 through the 2014-2015 school years, the District's policies and procedures regarding student discipline were codified in District Policy Series 4300, including the Code of Student Conduct (the Code), which enumerated the different offenses and their levels. Policy 4301 listed five levels of offenses with Level 1 offenses considered the least severe and Level 5 the most severe offenses. The Code listed 35 offenses grouped into these five levels. Of note within the District's policies, principals had the authority to suspend a student for 10 days or less or recommend long-term suspension (LTS)<sup>3</sup> or expulsion of a student following the procedure outlined in District Policy 4303: Suspension and Expulsion. Teachers and other school members did not have the authority to suspend students or permanently exclude a student from the classroom, but had the authority to refer a student for discipline. Only the Superintendent (or a designee) had the authority to impose a LTS, although a principal could make a recommendation to the Superintendent for a LTS. These recommendations were then sent to a hearing panel for review and the Superintendent or the Superintendent's designee was the final authority in these cases. According to District Policy 4303.7, only the Board of Education could permanently expel a student fourteen years of age or older whose behavior "indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees."

In this Code of Conduct, the District had a number of lower level infractions that could result in exclusionary discipline, especially if the lower level infractions were repeated. These included:

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<sup>3</sup> Long-term Suspension or LTS is defined as a suspension in excess of 10 days for a single infraction.

cell phone violations; truancy/attendance issues; dress code violations; and bus violations (although these consequences typically involved suspension from the use of bus transportation). For example, during the 2011-2012 school year, there were over 600 incidents involving a student receiving a short-term suspension (10 days or less) for Attendance/Truancy-related issues.<sup>4</sup> Among those incidents, over 400 involved African American students (66%) and approximately 131 involved students with disabilities (21%).<sup>5</sup> During the same school year, over 1,800 disciplinary incidents involved students receiving OSS for Noncompliance with School Rules or Noncompliance with Directions, offenses which the District's Code of Conduct defined as Level 1 offenses. Among those incidents, over 1,400 involved African American students (approximately 79%) and over 500 incidents involved students with disabilities (approximately 28%). During OCR's December 2013 site visit, several school administrators reported that other repeated lower level infractions can result in exclusionary discipline, including repeated instances of disrespect or the use of profanity or inappropriate language. OCR notes that at least one administrator stated that the use of inappropriate language for a first time offense also could result in OSS.

### ***Revised Code of Conduct – 2015-2016 school year***

During the course of this investigation, the District revised its Code of Conduct. This decision was made following multiple community and board meetings and in consultation with a panel of community members and District employees. In February 2016, the District entered the final stages of adopting a revised Code of Conduct. OCR reviewed the revised Code of Conduct that was approved by the Board of Education on February 29, 2016. Generally, this revised Code of Conduct created two sets of conduct rules, one for elementary schools and another for middle and high schools, and eliminated the use of out-of-school suspensions for selected infractions.

The revised Code of Conduct retained the levels of infractions, with Level I being the least severe and Level V being the most severe. At the middle/high school level, Level I is the least serious category of disciplinary rules, divided into Level I.A, and Level I.B. Level I.A rule violations may result in in-school interventions and/or in-school disciplinary consequences only (the Code states they may not result in out-of-school suspension) while Level I.B rule violations should result in in-school interventions and/or in-school disciplinary consequences. These infractions include violations of the Electronic Devices policy, dress code violations, attendance infractions, minor disruptive behavior, noncompliance with directions or rules and inappropriate language. Level II rule violations involve more serious misconduct that may warrant in-school interventions, in-school disciplinary consequences, and/or short-term suspension of up to ten (10) days. These infractions include bullying/harassment, threats, fighting and "serious disruptive behavior" (the Code notes that this includes disruptions that threaten the safety of students, staff or others). Level III violations are more severe in nature and may support long-term suspension. These infractions include assault, lower level weapon and drug offenses, and gang activity. Level IV rule violations involve "firearms" or "destructive devices" as defined by North Carolina statute and compromise the safety and welfare of students and staff. Level V allows for expulsion of a student, as provided by state statute, for a violation of the Code of Conduct, if the student is fourteen years of age or older and the student's behavior demonstrates that that his/her continued presence in school constitutes a clear threat to the safety of other

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<sup>4</sup> This number includes duplicated student counts, meaning all infractions, including multiple infractions by the same student, are included.

<sup>5</sup> Note that, as stated above, the District's population was approximately 51% African American and students with disabilities represented approximately 14% of the population overall.

students or employees and the Board determines that there is no appropriate alternative education program. Additionally, any student who is a registered sex offender under N.C. General Statute 14-208 may be expelled consistent with state law.

A significant difference between the elementary and middle/high school codes is that the elementary code has retained Levels I.A, I.B., and I.C. The elementary school code classifies Level I.A as violations that only allow in-school interventions and consequences. Levels I.B and I.C urge in-school consequences as well, but allow for two and five day out-of-school suspension, respectively, in appropriate circumstances. Cheating, falsification, and gambling are the only Level I.B infractions at the elementary school level. Also of note, the infraction for serious disruptive behavior is a Level II infraction in the middle and high school code, but a Level I.C infraction in the elementary code.

Most importantly, the new Code of Conduct does not allow for out-of-school suspension for any student for lower level infractions, including: plagiarism, possession of electronic devices that are not considered weapons, student dress code infractions, minor disruptive behavior, and attendance infractions. These infractions are all now included in Level I.A of the codes. OCR notes that the revised Code of Conduct was implemented immediately upon passage by the Board of Education in February 2016.

#### **Alternative Education Program - Lakeview**

The District operates an alternative school - Lakeview School. For the 2012-2013 school year, 118 students were enrolled at Lakeview, 93 of which were African American (79%). 11 White students (9%) were enrolled at Lakeview during the same period. Regarding students with disabilities, District data indicates that 76 students with disabilities were enrolled at Lakeview during the 2012-2013 school year. Students may be placed at Lakeview either through the Office of Student Assignment, through a school-based referral or as an alternative to an LTS. The Office of Student Assignment can place a student at the school if the student was on LTS or in an alternative school in his or her previous district, is coming from a juvenile justice placement, or is identified as a special education student eligible for LTS in the District. A principal may refer a student for placement at Lakeview but the Superintendent must approve the referral. A student may also be placed at Lakeview pending criminal charges. The District operates additional alternative discipline programs, including the Second Chance Academy and a Short-Term Intervention Program at Lakeview School.

#### **School Resource Officers (SROs)**

The Sherriff of Durham County, in conjunction with the City of Durham, provided SROs to the District. During the December 2013 onsite, OCR staff interviewed the SRO Coordinator (SROC) for the District and he reported the following information: SROs primarily are responsible for processing serious infractions or criminal matters, including those offenses that are required to be reported to law enforcement (described above). In addition to processing these offenses, SROs do patrol the hallways of their assigned schools and respond to requests for assistance in classrooms from teachers or administrators. The SROC reported that SROs attempt to deescalate matters that are not criminal and try not to get involved in school discipline matters. However, there have been incidents where an SRO responded to a request for assistance regarding a discipline matter that resulted in the arrest of a student for failing to comply with the officer's instruction (the SROC reported that this does not happen often).

Regarding SRO training, the SROC reported that the 25 SROs assigned to the District attend a week-long course each summer specifically for SROs. In addition to the summer training, the SROC reported that SROs meet twice per month in the morning before the start of the school day and discuss SRO-related issues. SROs also host internal training sessions where they review scenarios and set policies and procedures for the school year. With respect to involvement with students, the SROC stated that SROs are trained to assist administrators and school personnel but only “step in” when necessary.

OCR reviewed the District’s data related to school-based arrests and found that 346 students were arrested during the 2011-2012 school year. Among those students, 242 were African American (70%) and 23 were White (7%). The infractions included: Possession of a Weapon/Controlled Substance/Alcohol; Assault; Fighting; Robbery/Larceny; Disorderly Conduct; Drugs; Compliance with School Rules/Directions; Truancy; and Verbal Abuse of Staff. OCR also notes that, among that group, 24 students with disabilities were arrested during the 2011-2012 school year. 20 were African American and one was White.

### **Information Obtained from Durham Community**

During the 2013-2014 school year, the District held community meetings to give the Durham community the opportunity to discuss their discipline-related concerns. OCR staff attended one such meeting and observed District personnel reporting discipline statistics and information to the community, including the existence of racial disparities present in the discipline statistics, and programmatic supports that were being implemented within the District, including PBIS, anti-bullying strategies and the analysis of school-level discipline data. District staff subsequently facilitated discussions within smaller groups of attendees concerning the following discussion points: (1) school staff, parent and community involvement; (2) student interventions; (3) training and student services; and (4) discipline policy and practices. OCR reviewed the responses documented by the groups and observed several groups conducting discussions. OCR notes that the meetings were well-attended and, at the meeting observed by OCR staff, over 100 community members attended the event. Per OCR observations, group members were very engaged and provided honest and thoughtful input on each topic.

In March 2014, the District received comments from the community that some community members did not prefer the format of the community meetings because: (1) discussion was limited to the discussion points selected by the District; (2) the time allotted to discuss the topics was limited by the District; and (3) community members preferred a more open format to discuss their concerns and hear the concerns of other community members. In response to this concern, the District organized an additional community meeting in a “public hearing” format, in which community members were permitted to discuss whatever concerns related to discipline they wanted to address. According to the Complainants, who provided information about the community meetings, this format was preferable for some members of the community and was well attended. The District reported to OCR that this information would also be compiled and presented to the School Board and the community, along with the information discussed in the other community meetings.

OCR also notes that the District continued community engagement activities with key stakeholders through the current (2017-2018) school year. The Complainants reported that the

District continued to hold community events and discuss the issues of discipline with key stakeholders, including holding community events and responding to community concerns.

### **Statistical Discipline Data**

During the 2011-12 academic year, there were approximately 2,000 high school students involved in disciplinary incidents<sup>6</sup> and approximately 1,750 middle school students. There were approximately 750 elementary school students involved in disciplinary incidents. These incidents resulted in over 2,300 students receiving an OSS for a first time offense: over 1,250 high school students, 575 middle school students, and over 450 elementary school students. African-American students were overrepresented in discipline generally, representing 72% of the students who received disciplinary sanctions while representing 51% of the student population. White students generally were underrepresented in discipline, constituting 19% of the population but only received approximately 8% of discipline sanctions.

OCR analyzed the 2011-2012 discipline data for middle and high school students. Suspensions for these students' first offenses totaled 8,457 days of OSS and 2,815 occurrences of ISS.<sup>7</sup> African American students received 6,844 days of OSS for first offenses while White students received 503 days of OSS. The average length of suspension for all students who received an OSS for a first offense was 3.7 days. Among all students, there is no evidence that African American students were suspended for longer periods of time on average than White students for their first offense, even though African American students were suspended more often than White students (based on their percentage of the student population).

As previously stated, infractions that do not result in exclusionary discipline are often not "tracked" by the District or an individual school.<sup>8</sup> The District has adopted a PBIS program to be implemented in each school in the District. In some cases, the programs at different schools mandate various steps to be completed prior to issuing a referral (including parent contact and conferences with the student) but does not often document those steps. Schools with detention programs reported that detention information is not always entered into PowerSchool.

African American students were disciplined at a rate disproportionate to their percentage of the population among most offenses, both subjective and objective. OCR notes that the overrepresentation of African American students was more pronounced in subjective offense categories that required the referring authority to exercise discretion of judgment regarding the offense. African American students were also overrepresented in offenses considered less subjective; however, the differences were larger and more consistent among subjective offenses, including Noncompliance with School Rules, Disruption of School and Intimidation of Staff and Students. White students were disproportionately disciplined for only two offenses – Smoking and Plagiarism.

### **Discipline of Students with Disabilities (or EC students)**

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<sup>6</sup> This is an unduplicated offense number, meaning OCR only considered the first infraction committed by each student.

<sup>7</sup> This includes students who were issued a specific number of periods of ISS and students who received a full day of ISS.

<sup>8</sup> However, some schools do have a process for ensuring that interventions are implemented prior to a teacher giving a student a referral for a discipline infraction. For example, at one middle school, teachers were provided a flow chart that described interventions that should be used prior to a discipline referral.



As stated above, the Complainants also alleged that the District's discipline policies and practices regarding out-of-school suspension unlawfully discriminate against students with disabilities and African-American students with disabilities, in particular. According to the District's enrollment for its Exceptional Children Program (ECP), for the 2011-2012 school year, students with disabilities represented approximately 13.5% of the District's population, including approximately 4,374 students.

OCR interviewed numerous District and School personnel regarding the discipline of EC students in the District. Most schools reported that the discipline of EC students is handled by the same administrator that handles discipline for non-EC population, whether by grade level or portion of the alphabet. Moreover, an EC Facilitator for two schools reported that administrators do not typically involve her in decisions concerning alternatives to suspension for EC students. School administrators acknowledged the challenges of disciplining EC students during interviews with OCR. For example, one administrator explained that students with severe emotional disabilities who, in middle schools across the county, are kept in smaller, more sheltered environments (e.g., smaller class sizes, limited number of teachers, lack of transitions between classes) often have difficulty once they transition to high school since the controlled environment of middle school had been removed. Another administrator commented that, often, middle schools use behavior plans with students that did not transition with the student to high school or could not be effectively administered in high school. Another administrator reported that the designation of "Other Health Impaired" in student files often leaves schools unprepared for dealing with a student's particular behavioral concerns, as this designation is used for Attention Deficit, Serious Emotional Disability, Oppositional Defiant Disorder, and other categories of disabilities impacting behavior. An administrator explained that students may be violating the discipline policy because their basic needs are not being met, they have problems accessing the curriculum, or they are frustrated with their school work. Specifically, an administrator noted that EC case managers and teachers are in short supply, the EC facilitator is not present every day, there are vacancies for positions supporting EC students, and there is a waiting list for consultants "a mile long." The administrator further noted that, at the state level, it is acceptable to have 40 EC students in one class, which impacts the behavior of students in the classroom. Interviewees familiar with the procedures at Lakeview noted anecdotally that a significant portion of students placed at the alternative school are EC students and meetings are required to be coordinated between Lakeview staff and the student's home school each time a placement is made. Staff emphasized that many EC students have already exceeded 10 days of suspension by the time they are placed at Lakeview and this causes procedural challenges. Another administrator noted that the availability of documentation in a student's EC file often causes challenges. Finally, the SROC reported that SROs responding to incidents in schools often do not have EC-related information that would assist officers in resolving or deescalating a situation, including those officers who do not regularly interact with a particular student (or are not responding to a request for assistance from the EC classroom).

OCR reviewed the discipline statistics provided by the District regarding students with disabilities and discipline and found that the statistics support the Complainant's allegations of an overrepresentation of students with disabilities in discipline. Of the over 4,500 students who were issued a disciplinary referral for the 2011-2012 school year, over 950 were students with disabilities. While EC students represented approximately 14% of the population, EC students represented approximately 21% of the students receiving disciplinary referrals. When OCR considered the over 11,000 infractions committed by all students, including each infraction a

student committed, EC students were involved in over 2,950 of these incidents (representing approximately 27% of all infractions committed in the District).

There were 953 first-time discipline incidents involving students with disabilities from a total of 4,597 incidents among all students (21%). Of the 953 students with disabilities who were disciplined, 749 were African American (79%) and 72 of these students were White (8%). These students received a total of 2,375 days (for the first offense) and the average suspension length was 4.3 days OSS. OCR notes that the average length of suspension for White students with disabilities was 2.6 days while the average days of suspension for African American students with disabilities was 4.5 days. Among the 2,950 offenses committed by students with disabilities, the majority involved the following infractions: Noncompliance with Directions/School Rules; Disorderly Conduct; Fighting; and Truancy.

### **The District's Proactive Measures to Address Discipline Disparities**

Prior to its notification of this complaint and throughout the investigation of the complaint, the District began taking significant steps to address its discipline rates and disparities. First, the District created a "Behavior Framework and Alternative to Suspension" document that clearly enumerates a number of alternatives to suspension to be used at all District schools. The document also lists community services available to students who are serving suspensions and provides guidance to administrators on the expected consequences students should receive for certain infractions. The District began closely monitoring its discipline-related data and the District's Area Superintendents began meeting monthly with school principals to review the data and compare the suspensions rates to the previous school year's rates. The District expanded the use of its "Early Warning Tracking System", which identifies students for supplemental services based on various factors, including discipline referrals, attendance issues and grades. The District has increased its focus on PBIS and has increased the training and emphasis on the program at each of the schools in the District within the last three years. School personnel interviewed by OCR, including school-level EC Facilitators were able to articulate the new system of referring students to intervention teams for various reasons, including increases in disciplinary infractions. The District introduced alternative programs for students receiving suspensions, including the Second Chance Academy for middle school students (discussed above). The District also cited a number of community-based organizations with which it is partnering to provide support services to struggling students. As noted above, the District also conducted multiple community meetings to discuss the community's views on discipline.

In addition, during OCR's investigation, the District hired an outside consultant to analyze its 2012-2013 discipline data. The District received a report, dated August 1, 2014, from the consultant on the use of OSS in the District. The District then shared information about the report with the Durham community, including posting information about the report and its findings on its website. The report analyzed the use of OSS as a disciplinary sanction in the District for the 2012-2013 school year and focused on disparities in the application of OSS by race and disability status.<sup>9</sup> OCR reviewed the report and found that the report included a thorough and in-depth analysis of the District's 2012-2013 discipline data, including considerations of race and disability status. OCR notes that the District initiated this report

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<sup>9</sup> The report does not examine the use of other types of exclusionary discipline such as expulsion or In School Suspension.

independent of OCR’s involvement and OCR was impressed with the scope of and detailed analysis included in the report.

OCR notes that the report supports OCR’s overall analysis and conclusions regarding the District’s OSS data. Specifically, the report notes that African American students and students with disabilities were over-represented in the District’s OSS data. African American students were nearly 10 times more likely to receive an OSS than White students. Students with disabilities were more than 6 times more likely to receive an OSS than students without disabilities. Further, African-American students were over-represented among students referred for almost every category of offense in the District’s Code of Conduct.

Specifically, the report found as follows:

- Severe offenses account for only 3% of incidents referred across the District.
- The most common infraction for which consequences were issued was Disorderly Conduct. The total number of referrals for Disorderly Conduct exceeded the sum of the top 15 most severe offense categories combined. Each day of the 185-day school year, an average of 14 students were referred for Disorderly Conduct. This infraction accounted for 3,600 lost days of instruction, which was 15% of the District-wide total.
- Schools serving the most economically disadvantaged populations were not the schools most reliant on OSS. The schools with the highest suspension rates had free and reduced lunch participation rates somewhere around the District’s average. The least disadvantaged schools in the District did not use OSS frequently.

The report also analyzed differences in treatment of students within particular schools and among all the District’s schools. The report found that, within any particular school, African American students were not disproportionately assigned OSS for the same offenses as White students. When they compared students of different races who received a consequence for the same offense at the same school, African American students were just as likely to receive a consequence of OSS as White students (there was no significant disparity between African American students and White students when they are referred for the same offense in the same school). However, when student discipline data was analyzed across the District and among different schools, significant racial disparities were observed.

Overall, the report listed five recommendations to reduce the rate of OSS in the District: forbid the use of OSS for offenses categorized as “minor”; set maximum OSS durations for all referral reasons; eliminate the use of OSS in elementary schools; forbid the use of OSS following a student’s first offense of the academic year; and forbid District personnel from serving both as the referring and consequence-determining staff members following any incident. The report notes that these recommendations would reduce suspensions, but not eliminate disparities. Therefore, the report notes that one sure way to eliminate disparities in discipline would be to eliminate OSS District-wide.<sup>10</sup> OCR notes that some of these recommendations were incorporated in the District’s revised Code of Conduct, discussed above.

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<sup>10</sup> OCR notes that the report was generated by the outside consultant retained by the District (and not required by OCR). While OCR appreciates the information provided to the District by the consultant, OCR does not endorse the

### **Resolution Agreement**

OCR would like to commend the District on its cooperation throughout this investigation and its proactive efforts to address discipline rates and disparities in the District. Since the beginning of this investigation, the District has been extremely prompt and responsive to OCR and has taken a noted interest in improving its policies and procedures regarding discipline. The District has engaged with the community, students and parents regarding its discipline policies and practices and has invested its resources in this issue, including personnel, time and money. Specifically, OCR notes the inclusive, comprehensive community forums held by the District, including the District's decision to change the format of the meetings in response to community concerns. OCR was also notes the District's hiring of an independent consultant to analyze its discipline data. The District also took proactive steps to communicate its discipline data to school administrators on a regular basis and give them behavior management tools and alternatives to suspensions. The District's actions reflected its commitment to Positive Behavior Interventions and Supports and its commitment of high-level District personnel to the issue of discipline reflected the District's goal of reducing discipline rates and disparities. Finally, OCR commends the District on its proactive efforts to revise its discipline policy and reduce the numbers of suspensions for lower level infractions. The District's February 2016 Code of Conduct, which was implemented immediately upon passage by the Board of Education, reflected the District's commitment to addressing disproportionate school discipline statistics.

As stated above, the District, through counsel, has expressed an interest in entering into a Voluntary Resolution Agreement to resolve this complaint. In addition, the Complainants presented additional information to OCR suggesting provisions to the resolution agreement. The Agreement is intended to ensure that the District implements fair and equitable discipline policies and practices and creates an environment where all students feel safe and welcome. Based on the commitments the District has made in the attached Agreement, OCR has determined that it is appropriate to close the investigative phase of this complaint. OCR will monitor the District's implementation of the Agreement to ensure that the provisions of the Agreement are implemented in a timely and effective manner and that the District's discipline policies are implemented in a non-discriminatory manner.

### **Conclusion**

This concludes OCR's investigation of the complaint. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be aware that the District may not harass, coerce, intimidate, or discriminate against an individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, that individual may file another complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related

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findings or recommendations of the consultant and does not, for example, require the District to prohibit the use of OSS district-wide.

correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, feel free to contact the undersigned at 202-453-5916 or [Kristi.Harris@ed.gov](mailto:Kristi.Harris@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Supervisory Attorney  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Ken Soo, Outside Counsel