



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

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Dr. Ethan Lenker  
Superintendent  
Pitt County Schools  
1717 W. Fifth St.  
Greenville, NC 27834

RE: OCR Complaint No. 11-14-1119  
Resolution Letter

Dear Dr. Lenker:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX against Pitt County Schools (the District). The Complainant filed a race discrimination complaint on behalf of the mother of a student (the Student) at XXXX (the School). The Complainant alleged that the Student was discriminated against based on his race (Bi-Racial, African American and Hispanic) and national origin (Hispanic) when, in XXXX, School personnel XXXX within the District and later XXXX at the School (Allegation 1). During the course of the investigation, OCR reviewed the District's discipline policies, practices and statistics, including an inquiry into whether the District discriminates against African American students by disciplining them more frequently and more harshly than similarly-situated students (Allegation 2).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000 et seq., and its implementing regulation, at 34 C.F.R. Part 100, which prohibit recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. The District receives financial assistance from the Department and must therefore comply with Title VI and its implementing regulation.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

### **Allegation 1**

#### **Background**

The District serves over 23,500 students in thirty-seven schools, including six high schools, seven middle schools and sixteen elementary schools. The District also operates six schools which serve students in grades K-8, one preschool education center, and one early college high

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

school. For the 2016-2017 school year, the District reported that over 1,842 minority students were enrolled in the District, representing forty-three native languages. The District noted that the student population was 47.1% African American, 35.7% White, 11.6% Hispanic, 3.8% Multiracial, 1.5% Asian and 0.2% American Indian.<sup>1</sup>

XXXX 4 PARAGRAPHS REDACTED XXXX

### **Legal Standard**

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University's programs or activities on the basis of race, color, or national origin. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly-situated individuals of a different race or national origin. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the difference in treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

### **Analysis**

As an initial matter, OCR investigated whether the Complainant presented an initial, or *prima facie*, case of different treatment based on race or national origin. District staff confirmed that the Student was the only student XXXX from the Program at the School during the XXXX school year. XXXX SENTENCE REDACTED XXXX. Because students of other races and national origins were enrolled in the Program, were not XXXX, and were permitted to XXXX, OCR found, for the purpose of this investigation, that the Complainant stated an initial case of discrimination.

OCR also found that the District articulated a legitimate, non-discriminatory reason for suspending the Student and transferring him from the School. XXXX 2 SENTENCES REDACTED XXXX. Because the District administered another XXXX program at XXXX school with a more experienced teacher, specialized training, and additional supports, the decision was made to XXXX the Student. Therefore, OCR found that the District articulated a legitimate, nondiscriminatory reason for its actions.

Next, OCR investigated whether the reason provided by the District was a pretext for unlawful discrimination. First, OCR reviewed documentation provided by the District in support of its position. OCR reviewed incident reports and witness statements describing the Student's XXXX, including XXXX. XXXX 5 SENTENCES REDACTED XXXX.

In addition, the District provided copies of meetings notes and email correspondence between the Parent and District and School staff. In those documents, staff note the XXXX, request the Parent's assistance in XXXX. In addition, OCR reviewed XXXX and intervention strategies

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<sup>1</sup> See, <https://www.pitt.k12.nc.us/domain/5>

developed by School and Program staff to address the XXXX. OCR notes that, based on the documentation provided, these strategies were not successful.

Finally, OCR reviewed the emails and documents created when the Student XXXX, including a letter from the Director to the Parent informing her that, XXXX. OCR also reviewed emails between District and Program staff created at the time XXXX, and note that the discussion XXXX discussed at length. OCR did not find any references to the Student's race in any of the documents.

Next, OCR considered whether other students in the Program at the School were treated more favorably than the Student. While multiple students were XXXX, OCR notes that one White student was treated identically to the Student. That student (Student 2), who was not initially placed at XXXX but at another school participating in the XXXX program, XXXX similar to the Student, XXXX. The District noted that Student 2 was first issued XXXX and later XXXX, where he was able to receive the additional supports he needed. The Director noted to OCR that he was the decision-maker regarding both student XXXX. The District confirmed that there were no other XXXXX, which, as previously noted, was comprised of a majority of Hispanic and African American students.

Based on all the information above, OCR finds insufficient evidence that the Student was subjected to race or national origin discrimination, as alleged.

## **Allegation 2**

### **Legal Standard**

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of race, color, or national origin. In addition to potential violations of Title VI for unlawful differences in treatment (legal standard described above), a school district also violates Title VI if they adopt facially neutral policies that have an unjustified, adverse disparate impact on students based on race. See 34 C.F.R. § 100.3(b)(2).

### **District's Policies, Procedures and Process Related to Discipline**

The District's Board of Education (the Board) approved its current policies in August 2016 and codified the policies in the 4300 series. In prior years, the policies were codified in Chapter 10 of the old policy manual. The District's policies pertaining to student behavior are incorporated into the District's Code of Student Conduct (the Code). The Code is updated each school year and is distributed to students and parents at the beginning of the year.

The Code states that principals are authorized to make rules for their schools and are responsible for maintaining discipline in their schools. Teachers are authorized to make rules consistent with the Code for their classrooms. The Code also states that the school principals have the final authority on in-school discipline and short-term suspensions (10 days or less) and that there is no appeal to the Board for these decisions. In instances where the principal recommends long term suspensions or expulsions, the District requires a hearing in front of a fair and impartial decision-maker.

Furthermore, each school is responsible for creating a student behavior management plan that elaborates on processes for addressing student misbehavior and the use of intervention strategies and consequences. OCR did not receive any student behavior management plans to review.

### **2014-2015 and 2015-2016 Student Codes of Conduct<sup>2</sup>**

The Code was codified in Chapter 10 in the Board’s policies. It did not describe the process by which a disciplinary referral was made. Rather, it indicated that each school had in place a referral system. The Code listed 25 Rules representing categories of infractions and within each Rule, the Code listed several additional infractions. Each Rule provided a description of the infraction and provided the recommended number of days of out-of-school suspension a student should receive for the offense. The Code provided out-of-school suspension as the primary discipline option and only referenced other forms of discipline, (e.g., in-school discipline, expulsion) in the preamble. The Rules did not provide guidance regarding what factors a disciplinarian should consider when determining the discipline disposition. OCR notes that Rule 25, violation of any criminal law, was the only violation that required school principals to consider factors, such as the nature of the level of offense, the age of the student, the effect of the crime on the school environment, whether the victim of the crime was a student or school employee, and whether the student’s presence is a threat or is disruptive, when determining the student’s discipline.

The Code recommended that students generally be suspended up to three days out-of-school for a first offense, up to five days out-of-school for a second offense; up to seven days out-of-school for a third offense; and up to ten days out-of-school (and the principal may recommend a long term suspension) for a fourth offense. This discipline could be imposed on students who did not comply with the District’s policies and procedures; failed to identify themselves or failed to give his/her correct name when requested; who left school grounds or class without permission; engaged in dishonesty, such as cheating, copying term papers, plagiarism, text messaging, picture taking, lying to a school official, etc.; engaged in any conduct that caused disruption in class; violated the network/internet use policy; tampered with computers; entered school property without authorization; used or possessed any form of tobacco product or lighters/matches; used insulting or abusive language, sign, or act towards staff or other students; or damaged personal property less than \$200.

The Code allowed harsher discipline for a few infractions. First, the Code recommended that a student be suspended for up to five days out-of-school for the first offense and up to ten days out-of-school for the second offense for disrupting school; possession of obscenity; communicating threats to staff and students; damage to personal property in excess of \$200; injury or damage to school property or another student’s property; theft of property less than \$200; and burning property on school grounds. A principal could recommend long-term suspension for “flagrant instances” (no definition of this term was provided in the Code). Second, the Code noted that a student who engaged in fighting, horseplay, or disorderly conduct could receive up to five days out-of-school suspension for the first offense, up to seven days out-

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<sup>2</sup> The District indicated that the 2014-2015 and 2015-2016 Student Codes of Conduct were the same. *See*, <https://www.pitt.k12.nc.us/Page/43>

of-school for the second offense, and up to ten days out-of-school for the third offense. Third, the Code recommended that a student receive up to ten days out-of-school and the principal may recommend long term suspension if a student refused to submit to a search, was involved in an assault inflicting serious injury, was in possession or used a weapon; threatened or communicated a bomb threat; or possessed or distributed alcohol, controlled substances, or prescription drugs.

While the Code noted the difference in disciplinary consequences based on a student's first, second, third, or other offense, the Code did not mention how far back into a student's prior history administrators should look to determine the appropriate discipline.

### **2016-2017 Student Code of Conduct<sup>3</sup>**

The Board adopted the 2016-2017 policies in August 2016. Section 1 of the Code focuses on infractions and consequences. The Code added a new introductory section that distinguishes between minor and serious violations. For minor violations, i.e., inappropriate or disrespectful language, dress code violations, noncompliance with staff directives, and minor physical altercations, the Code provides 14 disciplinary measures or responses that may be used, such as parent conference, peer mediation, academic intervention, in-school suspension, community service, exclusion from extracurricular activities, suspension from bus privileges, placement in an appropriate alternative program, etc. For serious violations, the Code notes that a student may be reassigned to an appropriate alternative program, long-term suspension, or expulsion.

The Code added a dress code section noting that the dress code can be modified should a student have a religious or medical waiver, special activity accommodation, or the principal makes a special request to the Board. The Code added a school bus conduct section that explains how students should act while on the bus and notes the consequences, such as transportation suspension, should the bus rules not be followed. The Code recognizes that an IEP review may be needed if a student with a disability is receiving the bus as a related aid or service under Section 504.

The Code changed the manner in which it was categorizing discipline. In the new Code, the offenses are grouped into Levels (Level 1-5), indicating the severity of the violation and consequence, with Level 1 being the least severe. Each level of infraction provides a list of conduct that falls within the level and provides a list of disciplinary measures that can be taken against a student. Furthermore, each level notes that repeated violations of a level rule may result in the violation rising to the next level. The Code does not indicate how far back in a student's prior disciplinary history should be reviewed and considered when determining whether a repeated violation should increase the offense to the next level warranting a harsher discipline consequence.

- Level 1 lists eight “minor” infractions: skipping class, dishonest acts, disruptive behavior, horseplay, leaving class without permission, student dress code violation, unauthorized use of electronic device, and absences. Dishonest Acts is defined as “including, but not limited to, cheating, copying term papers, plagiarism, *text messaging*, *picture taking*, forging the

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<sup>3</sup> The District's Board Policies related to Student Behavior, including the Parent and Student Handbook, were adopted in August 2016. See <https://www.pitt.k12.nc.us/Page/2183>

signature of a parent or school staff, or lying to a school official. Disruptive Behavior is defined as “[n]o student shall, by use of passive resistance, noise, or any other form of conduct intentionally cause the disruption of any lawful function, mission, or process of the school to which he/she is assigned, or any other school in the” District. Level 1 provides 14 specific interventions that can be used, such as warning, parental conference, detention, bus suspension, mediation, community service, etc. The specified interventions do not include suspension – school staff are supposed to use school-based interventions for a first-time Level 1 offense. The Code notes that the “[a]vailability of specific interventions may vary from school to school.” The Code indicates that repeated violations of a Level 1 rule or other aggravating facts can raise an offense to Level 2. The Code does not provide information regarding alternative placement nor aggravating factors.<sup>4</sup>

- Level 2 lists nine “more serious” infractions: repeated Level 1 offenses, damage or injury to personal or real property; discourteous, abusive, or insulting language, sign, or act towards another student; disrespect of staff, which includes the use of discourteous, abusive or insulting language, signs, or other acts towards staff; insubordination; leaving without permission, misuse of technology; possession or use of tobacco or lighters; and unauthorized entry of personal property. Level 2 consequences may include in-school interventions or 1-5 days of out-of-school suspension and the principal may recommend alternative placement or long-term suspension upon the presence of aggravating factors. The Code indicates that repeated violations of a Level 2 rule or other aggravating facts can raise an offense to Level 3.
- Level 3 lists fifteen “more severe” infractions: repeated Level 2 offenses, aggressive behavior, bullying and harassment, cyber bullying or misuse of social media, communicating threats, disruption of school, false fire alarms, fighting, hazing, possession of obscenity, sexual harassment or misconduct, simple assault, theft, and trespassing. Each infraction has a description. Level 3 offenses may warrant 1-7 days out of school suspension and the principal may recommend alternative placement or long-term suspension based upon the presence of aggravating factors. Level 3 focuses on bullying, harassment, sexual harassment, and sexual misconduct as a disciplinary issue, however, OCR notes that the Board also has a separate policy for discrimination, harassment, and bullying.<sup>5</sup> The Code references the separate Board policy regarding bullying and harassment, but it fails to reference it for sexual harassment and misconduct. Furthermore, the Code fails to reference the Board’s discrimination, harassment, bullying complaint procedures.
- Level 4 lists thirteen infractions that are considered behaviors that “compromise the safety and welfare of students and staff: repeated Level 3 offenses, assault inflicting serious injury, assault on staff or volunteer, disorderly conduct, refuse to submit to a search, gangs and gang related, over the counter medication, possession of alcoholic beverage, possession of weapon or dangerous object, possession of narcotics, prescription drugs, under the influence, and violation of any criminal law. The Code states that the principal will consider suspension or

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<sup>4</sup> OCR notes that, according to the new policy, school administrators are supposed to use in-school interventions for a first-time Level 1 offense, rather than suspension. OCR notes that this change should have a positive impact on the District’s suspension rates.

<sup>5</sup> Board Policy 1720-4015-7225

expulsion of a student if the student engaged in *any* conduct in violation of state or federal criminal law despite whether the act was on or off campus. It notes that the principal shall consider 5 factors when determining the consequence. Level 4 offenses may warrant up to 10 days out-of-school suspension and a recommendation for alternative placement and/or long-term suspension.

- Level 5 lists seven infractions that are also considered behaviors that compromise the safety and welfare of students and or staff and warrant a long term suspension: repeated Level 4 offenses, assault inflicting serious injury, bomb threat or hoax, threat or hoax of terror, distribution or sale of narcotics, malicious burning, and possession of firearm or destructive device. Level 5 offenses may warrant in a 10 day out-of-school suspension and a recommendation for long term suspension or expulsion. The Code notes that Level 5 allows for expulsion because North Carolina law permits expulsion for students who are 14 years of age or older and the District consider the student’s behavior to be a clear threat to the safety of others and that there is no appropriate alternative education program. The Code further states that “any student who is a registered sex offender under [a North Carolina statute] may be expelled pursuant to N.C.G.S. 115C-390.11” OCR notes that the N.C.G.S. 115C-390.11 governs “expulsions” and states that a board can expel a student if it is determined at a board hearing that a student’s presence constitutes a clear threat to the safety of others or staff and that the decision is based on clear and convincing evidence.

In general, each infraction has a description; however, the descriptions do not provide clarification of the offenses and often are restatements of the offense. OCR notes that there are a few offenses, such as discourtesy to other students and to teachers, insubordination, dishonest acts for text messaging and picture taking, and disruption of school, that are vague, undefined and unnecessarily subjective offenses. For the 2015-2016 school year, the most recent year for which OCR reviewed discipline data, for first-time offenders, African American students were more than three times as likely as White students to be referred for insubordination and disruptive behavior. Overall, African American students were 2.6 times more likely than White students to be referred at least once, and the discrepancy in referrals increased for at least two of the more subjective offenses. There are instances where the Code provides more details regarding the offense, mostly in Level 4 and 5 offenses; however, this is the exception. The Code allows long term out-of-school suspension (11 days or more) or alternative placement for infractions for Level 2-4 offenses, but the Code does not provide any information regarding alternative placement referral, aggravating factors, or mitigating factors. The Code also does not provide any information regarding the referral process and a school’s behavior plan. Section 1 also does not mention disciplining students with disabilities nor does it refer to another section in the Code.

Section II of the Code focuses on disciplinary guidelines. The Code states that the Principal must investigate student discipline matters and consider mitigating and aggravating factors; however, the Code does not provide any definition or explanation of what information should be considered as a mitigating and aggravating factor. The Code notes that the Principal may suspend a student for ten days or less and that the Principal shall make a good faith effort to notify a parent on the date of the decision and then follow-up within two days providing written notice with a description of the conduct and the student’s rights during the suspension. The Code

also allows the Principal to recommend an alternative learning program for a student depending on the totality of circumstances; however, the Code does not provide any guidance regarding what factors should be considered in these instances. The Code notes that if a Principal imposes a long-term suspension, meaning more than ten days, that the superintendent will review the decision and that the Board reviews the Superintendent’s recommendation if his recommendation is expulsion.

Section III of the Code explains the District’s due process procedures for suspension and expulsion. Section III emphasizes that “the principal has the final authority regarding in-school discipline and short-term suspension. Board Policy provides no appeal to the Board of Education for these decisions.” The Code notes that a student who is suspended for ten days or less “shall be given the opportunity to take textbooks home . . . upon request, the right to receive all missed assignments and, to the extent practicable, the materials distributed to students in connection with the assignment; and an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.” The Code allows adequate notice, an opportunity for a hearing, a fair and impartial decision-maker, and a decision supported by the evidence for long-term suspensions and/or expulsions.

Section III of the Code notes that “[p]rincipals are to use discretion disciplining disabled students whose behaviors may be related to their disabilities, especially those with moderate to severe impairment.” The Code refers to the District’s 504 Procedures Manual and the Exceptional Children’s Program. OCR notes that the Code further discusses students with a disability who have an IEP or Section 504 Plan in Section IV of Section III. However, the Code fails to include Section 504 in its discussion of what the District must do in instances when a student with a disability is suspended for more than ten days in Section IV(B).

### **District Recordkeeping Procedures**

During the 2015-2016 school year, the District began using a computer program called Educator’s Handbook<sup>6</sup> to record all discipline, from classroom incidents, office referrals, and suspensions. During the 2014-2015 school year, the District used PowerSchool.

### **Involvement of Local Law Enforcement in School Discipline**

The Code requires the principal to report sixteen offenses to law enforcement and the superintendent when the principal has personal knowledge or actual notice that an act has occurred on school property. The Pitt County Sheriff and the Greenville Police Department provide the District with School Resource Officers (SROs). SROs are responsible for investigating, consulting, and receiving complaints and are required to complete forty hours of training by the Department of Justice. In an interview with OCR in October 2014, the District’s Security Specialist, who oversaw the day-to-day operations of the SRO program, provided that SROs were sometimes asked to have a “presence” in non-reportable offenses when school staff were not sure how a student may react. He also provided that SROs had an obligation to become involved in school-based discipline incidents if there was a safety risk. He provided that most of the SROs were aware of the District’s discipline policies, but did not believe they had received any training on them, and he did not believe that data on school-based arrests or SRO involvement in school discipline was tracked.

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<sup>6</sup> See <http://www.educatorshandbook.com/>

The data reported for the 2015-2016 school year included a “report to law enforcement” action/consequence for student behavior. The District listed 19 students as being reported to law enforcement, with 21 reports total. Of the 19 reported students, 15 were African American and one was White. They were reported for 13 offenses, including possession of marijuana, possession of a weapon, disorderly conduct, and disrespect of faculty/staff. Not every student who was referred at the school level for these offenses was reported to law enforcement. For example, 24 students were referred for possession of marijuana, 17 African American and 4 White, but only two students were listed as being reported to law enforcement, one African American and one Hispanic.

### **Alternative Learning Programs/Schools**

The District’s Alternative Education Programs include: Restarting and Igniting Self Accountability to Excel located at W.H. Robinson Elementary School, Pitt Academy Transition Center Middle School located at Grady White Boat/E.R. Boys & Girls Club, and Pitt Academy Transition Center High School located at Pitt County’s Boys & Girls Club. The District requires students enrolled in some alternative programs to participate in IMPACT, a social support system. IMPACT ensures that each student has an adult advocate and mandates that students participate in group and individual counseling sessions. A similar program, known as RISE, is provided at the elementary alternative program.

The Code does not include a section on alternative learning programs and schools; it only notes that alternative school is a disciplinary option for Level 2-4 offenses. The District’s Board Policy 3470/4305 notes that the District’s alternative learning programs or schools are an option when a student’s behavior management or academic performance needs cannot be met in a regular education setting. “The superintendent or designee shall direct school officials at alternative learning program or school to develop a behavior management plan, and a parent involvement plan if appropriate.” The superintendent reviews the plans and the Board will review on a regular basis whether the programs comply with State Board standards.

The Board Policy notes that students can be assigned to an alternative program or school voluntarily, involuntarily, or pursuant to a disciplinary reassignment or suspension. OCR notes a voluntary transfer is when a parent agrees that the transfer is appropriate for the student and an involuntary transfer is when a student presents a clear threat to the safety of others, presents a significant disruption to the educational environment, is at risk of dropping out or not meeting standards for promotion, has been charged with a felony and the education environment may be disrupted, and has been disciplined due to his behavior. Moreover, the Board Policy allows an involuntary transfer due to “any set of circumstances under which the board determines that transfer is appropriate.”

The Board Policy encourages school administrators to meet with a student’s parents prior to an involuntary transfer, but does not require it. If a voluntary agreement for the transfer is not reached, and the principal recommends that a student be transferred, the principal must provide in writing (1) an explanation of the student’s behavior and academic performance; (2) documentation of the efforts that the school has done to support the student; and (3) documentation of the circumstances that support the recommendation. A copy of the

documentation is provided to the superintendent and to the parents. This is only required for involuntary transfers. The parents may request an “informal” meeting with the superintendent to discuss the transfer and the superintendent decides who may be in the meeting. If the superintendent approves the transfer, the parents can appeal the superintendent’s decision to the board and the board will hear the appeal in a closed session. During the appeal, the student may be placed in the alternative learning program.

OCR reviewed the 2017-2018 Pitt Academy Transition Center and RISE Student Handbook (the Handbook).<sup>7</sup> For each offense the Handbook provides a vague description of the offense and notes the disciplinary consequence, which is most often suspension. The Handbook gives no indication of the recommended length of time for the suspension and does not clarify whether the recommended suspension is in-school or out-of-school. OCR notes that the Handbook does not mention any alternative in-school interventions. The Handbook lists the following offenses: academic dishonesty; bullying; cell phones, electronic devices, and earbuds; disobedience, insubordination, failure to comply; disrespect; dress code; fighting; fireworks; gambling; internet; leaving campus; program property/vandalism; social conduct, and stealing. Specifically, the Handbook states the following:

- Bullying: “Any student exhibiting such [bullying] behavior will be removed from the classroom or program environment for as long as necessary.”
- Disobedience/Insubordination/Failure to Comply: “All students will follow the reasonable instructions or directions of any [District] staff member. Failure to do so will be considered disobedience.” Refusal to follow instructions “will be considered disobedient behavior and may result in immediate suspension.
- Disrespect: “No students shall behave in a manner that is considered to be disrespectful . . . [s]uch behavior includes, but is not limited to, talking back to a staff member, use of profane or vulgar language to or in the presence of staff members, or disrespectful gestures or body gestures directed toward staff members . . . [p]ropane or vulgar language directed toward a staff member may result in out of school suspension.”
- Leaving Campus: “Leaving campus may result in suspension or removal from the program.”
- Social Conduct: “Loud, disruptive behavior, profanity, and intimate contact . . . are not considered appropriate. Inappropriate behavior may result in disciplinary action as determined by the administrator.”

The Handbook explains that the District offers four types of placements within the alternative education program. First, the Transition Center is for “short term placement (minimum of 10 days) for students new to the [District] coming from any of the following: therapeutic foster home, leveled group home, locked facility, or alternative school.” Second, Pitt Academy, Tier 1, is designed for long-term placement (90 days) and it is for students who have been charged with

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<sup>7</sup> See

[https://www.pitt.k12.nc.us/site/handlers/filedownload.ashx?moduleinstanceid=7182&dataid=25558&FileName=PATC and RISE Student Handbook.pdf](https://www.pitt.k12.nc.us/site/handlers/filedownload.ashx?moduleinstanceid=7182&dataid=25558&FileName=PATC%20and%20RISE%20Student%20Handbook.pdf)

a felony, major discipline incident, chronic misbehavior, or potential graduate/drop out recovery or parental referral. Third, Pitt Academy, Tier 2, is for students who are not successful in Tier 1 or who are administratively placed in Tier 2 by an administrator. Tier 2 is offered four evenings per week from 3:30 p.m. to 5:30 p.m., totaling eight hours per week. Fourth, Pitt Academy, Tier 3, is for students who are not successful in Tier 1 or 2 or who are administratively placed in Tier 3 by an administrator. Tier 3 is offered from home using online course content with weekly check-in appointments.

The District reported that during the 2015-2016 school year, 114 students were sent to an alternative education program, including 89 African American students.

**Data Analysis**

OCR reviewed student discipline data for the 2013-2014 and 2015-2016 school years. Table #1 summarizes the enrollment by race for both of those school years.

<b>Table #1: Enrollment, by Race</b>					
	<b>African-American (AA)</b>		<b>White</b>		<b>Total Students</b>
	#	%	#	%	#
<b>2013-2014</b>	11,483	48%	8,968	37%	24,025
<b>2015-2016</b>	11,315	48%	8,326	35%	23,474

The District provided OCR with detailed data regarding student disciplinary referrals and outcomes for the 2013-2014 and 2015-2016 school years. The data sets provided by the District contained 21,664 disciplinary referrals for SY 2013-2014, with a total of 6,742 students receiving at least one referral, and 41,421 disciplinary referrals for SY 2015-2016, with a total of 8,715 students receiving at least one referral.

Table #2 below shows the number of African American and White students who were referred at least once for both school years. These statistics represent unduplicated student counts, meaning that each student was counted once rather than counting the total number of referrals. Table #2 also shows referral rates for African American and White students, i.e., the percent of enrolled students of each race 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. For example, the districtwide referral rate for African American students for the 2013-2014 school year was calculated by dividing the number of African American students referred at least once (4,610) by the number of African American students enrolled in the District (11,483, from Table #1 above), yielding a referral rate of 0.401 or 40.1%. In other words, 40.1% of the African American students in the District were referred at least once, compared to only 15.3% of the White students. Because referral rates for each race were calculated by dividing by that race’s enrollment, referral rates account for differences in enrollment between African American and White students.<sup>8</sup> Therefore, the referral rates of

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<sup>8</sup> For example, if there were four students of Race X in a district and one of the four students received a referral, the referral rate for Race X would be 25%. However, if there were 100 students of Race X in the district and one

African American and White students can be directly compared without reference to each race’s proportion of enrollment.

Table #2 below also reports “risk ratios,” which were calculated by dividing the African American students’ referral rate by the White students’ referral rate. For the 2013-2014 risk ratio, OCR divided 40.1% by 15.3% and obtained a risk ratio of 2.62, meaning that African American students were referred at a rate 2.62 times greater than White students. In other words, African American students were more than two and a half times more likely than White students to be referred at least once. (If the White students’ referral rate was greater than the African American referral rate, the risk ratio would be less than 1.)

Although the risk ratio decreased slightly from the 2013-2014 school year to the 2015-2016 school year, the referral rates for both African American students and White students had a significant increase. This could reflect either an increase in referrals, or a difference in how the District reported the number of referrals.

<b>Table #2: African American and White Students Referred at Least Once</b>							
	<b>AA</b>			<b>White</b>			<b>AA/ White Risk Ratio</b>
	Students Referred at Least Once	Enrollment	Referral Rate	Students Referred at Least Once	Enrollment	Referral Rate	
2013-2014	4610	11483	40.1%	1373	8968	15.3%	2.62
2015-2016	5971	11315	52.8%	1716	8326	20.6%	2.56

Table #3 below shows the number of referrals given to African American and White students for both school years. These numbers represent incident counts rather than student counts, so students who received multiple referrals were counted multiple times. Table #3 also reports the proportion, or percent, of referrals given to students of each race, calculated by dividing the number of referrals given to students of a particular race by the number of referrals given to all students. For example, the proportion of referrals given to African American students districtwide for the 2013-2014 school year was calculated by dividing the number of referrals given to African American students (16,737) by the total number of referrals given to all students (21,664). Unlike the referral rate, discussed above, the proportion of referrals given to students of each race does not account for enrollment differences. Therefore, the referral proportions in the table below are only meaningful in reference to enrollment proportions. African American students received 77% of all referrals despite being only 48% of district enrollment, whereas White students received 14% of all referrals while representing 37% of district enrollment. The differences between the African American proportion of referrals and the African American proportion of enrollment were statistically significant.<sup>9</sup>

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student received a referral, the referral rate for Race X would be 1%. If there were 100 students of Race X, it would take 25 students of that race being referred at least once to reach a referral rate of 25%.

<sup>9</sup> OCR calculated the statistical significance of differences in proportions using a one sample Z-test, with a 0.05 threshold for statistical significance.

<b>Table #3: Referrals Given to African American (AA) and White Students</b>					
	Referrals of AA Students	Referrals of White Students	Total Referrals (All Races)	AA Proportion of Referrals	White Proportion of Referrals
2013-2014	16737	3017	21664	77.3%	13.9%
2015-2016	32439	5321	41421	78.3%	12.8%

The table below shows that African American students who were referred at least once averaged a total of 3.6 referrals for the 2013-2014 school year and 5.4 referrals for the 2015-2016 school year, whereas White students who were referred at least once averaged a total of 2.2 referrals for the 2013-2014 school year and 3.1 referrals for the 2015-2016 school year. The averages in the table below were calculated by dividing the total number of referrals by the number of students who received at least one referral.

<b>Table #4: Average Number of Referrals Per Student for African American (AA) and White Students who Received at Least One Referral</b>		
	Average Number of Referrals Per Referred AA Student	Average Number of Referrals Per Referred White Student
2013-2014	3.6	2.2
2015-2016	5.4	3.1

Table 5 shows the race of students who received multiple referrals for the 2015-2016 school year. The table shows that African American students make up an increasingly larger proportion of the students who received multiple referrals. In addition, for the 2015-2016 school year, 16.9% of African American students who were referred at least once received ten or more referrals, while only 6.9% of White students who were referred at least once received ten or more referrals.

<b>Table #5: Proportion of Students with Multiple Referrals</b>		
	AA Students	White Students
Proportion of Enrollment	48.2%	35.5%
Proportion of Students Referred	68.5%	19.7%
Proportion of Students with 10 or more referrals	82.7%	9.7%
Proportion of Students with 15 or more referrals	84.7%	8.9%
Proportion of Students with 20 or more referrals	89.1%	5.6%

OCR examined data on in-school suspensions (ISS) and out-of-school suspensions (OSS) in SY 2013-2014 and SY 2015-2016. OCR calculated ISS and OSS rates for African American and White students first-time offenders by dividing the number of students who were suspended in-school and out-of-school on their first referral by the number of students referred at least once. OCR calculated risk ratios by dividing the ISS and OSS rate for African American students by

the rate for White students. The risk ratios for both receiving ISS or OSS for the first referral were 1.1 and 1.3, respectively, indicating that African American students were about as likely as White students to receive ISS or OSS for their first referral.

OCR also examined referrals for preschool students. For the school year in which the Student was enrolled in the Program (the 2013-2014 school year), the District reported that ten preschool students were issued out-of-school suspensions. Most of the preschool students who were suspended received this punishment more than once, so that there were twenty total suspensions. Of the ten students, one was White (Student 2), six were African American, two were Hispanic, and one was identified as mixed race (the Student). OCR notes that the African American students were more likely than the White student to receive multiple days of suspension. For example, one African American preschool student was suspended five times within a two month period, while another African American student was suspended four times within a two month period. OCR again notes that the Program in the District was designed for underserved students, including students with both academic and behavioral challenges. OCR also does not find that the students' behavior did not warrant suspension or that the students should not have been suspended. Instead, OCR notes here the number of suspensions among preschool students and that the majority of the suspensions were issued to African American and Hispanic students.

During the 2015-2016 school year, only one school, XXXX, reported any discipline referrals to OCR. According to the documentation provided by the District, XXXX issued 13 discipline referrals for preschool students, with six students total receiving referrals. All six students were African American. XXXX enrollment for that school year was 54% African American and 33% White. Eight of the referrals resulted in out-of-school suspension. The data provided did not include XXXX referrals from any other school.

### **Conclusion**

During the course of this investigation, OCR notes that the District was receptive to and cooperative with OCR investigators and, early in the investigation, noted the importance of implementing its discipline policies in a fair, consistent, and race-neutral manner. During the investigation, the District made positive changes to address discipline disparities and the use of out of school suspension. Specifically, as noted above, the District revised its discipline policies to eliminate out of school suspension as a consequence for lower level offense, except in specific circumstances. The District began reviewing its referral process to its alternative schools and program, and began exploring ways to utilize its behavior management programs. The District also began examining its discipline numbers and rates. The District acknowledged to OCR that racial disparities in discipline existed in the District, noting that District staff found the same disparities in their internal reviews and were attempting to reduce the disparity and the overall suspension rate. The District had conducted some research into evidence-based solutions, but, as noted above, has requested OCR's assistance in identifying useful resources and strategies. Based upon these concerns and prior to OCR completing its investigation or finding any violations of Title VI, the District agreed to enter into a voluntary resolution agreement.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on December 14, 2017 which, when fully implemented, will resolve the

allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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 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 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Zorayda Moreira-Smith, the OCR attorney assigned to this complaint, at 202-453-6946 or [Zorayda.Moreira-Smith@ed.gov](mailto:Zorayda.Moreira-Smith@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

Cc: Karen Harrington