



Resource on Confronting Racial Discrimination in Student Discipline

**U.S. Department of Education
Office for Civil Rights**

**U.S. Department of Justice
Civil Rights Division**

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May 26, 2023

Dear Colleague:

The U.S. Departments of Education and Justice (Departments) share with educators around the country the goal that all students attend schools where they are supported, safe, and able to access an excellent education. A school environment that is free from discrimination is essential to meeting that goal. Decades of enforcement activity by the Office for Civil Rights at the U.S. Department of Education and the Civil Rights Division at the U.S. Department of Justice, under Title VI of the Civil Rights Act of 1964 (Title VI) and Title IV of the Civil Rights Act of 1964 (Title IV), have demonstrated that discrimination based on race, color, and national origin in student discipline was, and continues to be, a significant concern. The examples of investigations of racial discrimination in student discipline in this Resource span the current and two most recent presidential administrations, reflecting the continuing urgency of assuring nondiscrimination in student discipline in our nation's schools as well as continuity in the Departments' enforcement practices over that time. The Departments are committed to supporting school communities to fulfill Congress' nondiscrimination guarantee for students in schools. The Departments recognize and appreciate school administrators, teachers, and educational staff across the nation who work to administer student discipline fairly and provide a safe, positive, and nondiscriminatory educational environment for all students and a safe environment for educators.

Discrimination in student discipline forecloses opportunities for students, pushing them out of the classroom and diverting them from a path to success in school and beyond. Significant disparities by race – beginning as early as preschool – have persisted in the application of student discipline in schools.ⁱ While racial disparities in student discipline alone do not violate the law, ensuring compliance with Federal nondiscrimination obligations can involve examining the underlying causes of such disparities. In specific cases, the Departments and the courts have concluded that violations of the laws the Departments enforce underlie these disparities.ⁱⁱ In the Departments' experience, some school communities examine their data to evaluate their own civil rights compliance, and the Departments likewise refer to data as one among several tools for analysis. To offer information about the Departments' enforcement efforts in this area, the Resource summarizes several past investigations involving race, color, or national origin discrimination in student discipline policies or practices conducted under the nondiscrimination laws and regulations the Departments enforce, including Title VI.ⁱⁱⁱ

In recent years, educators, students, and families have faced extraordinary and unprecedented challenges in their schools and communities. As a result of the pandemic, students have reported stress, trauma, isolation, and lost learning opportunities, with significant academic and mental health consequences.^{iv} Recent Centers for Disease Control and Prevention data reflect that more than one third of high school students reported during the pandemic that they had faced bad or unfair treatment because of their race or ethnicity. Students who reported such experiences also reported poor mental health and less connection to school.^v In this context, parents, guardians, and communities have struggled to overcome practical and economic barriers and to support student learning. And school administrators, teachers, and educational staff have worked to meet the academic, social, and behavioral needs of their students in this incredibly challenging environment, while themselves experiencing the harms of the pandemic. Against this backdrop of sustained challenges and interrupted learning, students particularly benefit from

attending class, fully engaged and in learning environments that are positive, inclusive, and safe. The student mental health crisis, including recent research showing one in three girls considered suicide during the pandemic,^{vi} requires that we work urgently now, to ensure that all students feel welcome and supported in school – including by ensuring nondiscrimination in student discipline.

To support schools during these unprecedented times, the Bipartisan Safer Communities Act (BSCA) of 2022 provides historic funding, including \$1 billion in grant funding to help schools establish safe, healthy, and supportive learning opportunities and environments and \$1 billion in funding to increase the number of mental health professionals in schools. In addition, the U.S. Department of Education has distributed \$122 billion in American Rescue Plan (ARP) funding to states and school districts to help address students' needs that resulted from the pandemic.^{vii} With input from parents and communities, States and school districts may use ARP Elementary and Secondary School Emergency Relief (ESSER) and other ARP funds to help ensure nondiscriminatory access to programs in a variety of ways to meet students' behavioral, mental health, and academic needs. ARP ESSER funds may be used to address the needs of students, particularly those who have been disproportionately impacted by the pandemic, by creating and sustaining safe, stable, positive, and inclusive learning environments including through development and implementation of discipline policies that emphasize preventive practices and strategies. For example, ARP ESSER funds may be used to:

- Support the analysis and use of data related to attendance, academic success, and discipline to identify students in need of additional supports and guide improvements.
- Support the administration and analysis of high-quality school climate and other surveys to identify needs arising from the pandemic.
- Fully staff schools, including with school counselors and other certified mental health professionals, and provide students with tutoring, afterschool and summer learning, and enrichment programs to help students make meaningful academic and behavioral progress as students and educators respond to and recover from the pandemic.
- Support professional development for teachers, school leaders, and other educators on meeting students' needs arising from the pandemic, including the importance of managing their classrooms in a nondiscriminatory way.
- Build strong teacher-student relationships and improve school engagement as part of the efforts to address the impact of lost instructional time resulting from the pandemic.

More information about effective strategies to address the impact of lost instructional time and allowable uses of ARP ESSER and BSCA funds is available in the Department of Education's *Frequently Asked Questions, Elementary and Secondary School Emergency Relief Programs/Governor's Emergency Education Relief Programs* document, and the *Bipartisan Safer Communities Act Stronger Connections Grant Program Frequently Asked Questions*.^{viii}

We share the information in this Resource to support your schools' efforts to confront the issue of race discrimination in student discipline effectively. The Departments are also available to provide technical assistance to support schools' efforts to create welcoming, supportive, and safe educational environments for all students.^{ix}

Thank you for your continued commitment to ensuring that all schools provide supportive and safe learning and working environments for students and staff that are free from discrimination.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education

/s/

Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

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- ⁱ U.S. Dep't of Educ., OCR, Civil Rights Data Collection, Discipline Practices in Preschool, 2017-18 (July 2021), <https://ocrdata.ed.gov/assets/downloads/crdc-DOE-Discipline-Practices-in-Preschool-part1.pdf>; see also U.S. Dep't of Educ., OCR, Civil Rights Data Collection, Suspensions and Expulsions in Public Schools, 2017-18 Civil Rights Data Collection (August 2022), https://ocrdata.ed.gov/assets/downloads/Suspensions_and_Expulsion_Part2.pdf; U.S. Dep't of Educ., OCR, Civil Rights Data Collection, Corporal Punishment in Public Schools, 2017-18 Civil Rights Data Collection (March 2023), https://ocrdata.ed.gov/assets/downloads/Corporal_Punishment_Part4.pdf; U.S. Dep't of Educ., OCR, Civil Rights Data Collection, Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools, 2017-18 Civil Rights Data Collection (January 2023), https://ocrdata.ed.gov/assets/downloads/Referrals_and_Arrests_Part5.pdf. U.S. Dep't of Educ., OCR, CRDC, 2017-18, <https://ocrdata.ed.gov/estimations/2017-2018>.
- ⁱⁱ See, e.g., *infra*, at 2-3 (Victor Valley Union High School District), 4-5 (Davis School District), and 16-17 (Christina School District).
- ⁱⁱⁱ The Departments also enforce Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Title IX of the Education Amendments Act of 1972, and their implementing regulations, which prohibit discriminatory discipline based on disability and sex. Student discipline must comply with all civil rights laws, and the protections provided by these laws may intersect.
- ^{iv} See, e.g., Centers for Disease Control and Prevention, *Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic – COVID Experiences Survey, United States, October 8-November 13, 2020* (March 19, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm>.
- ^v See Centers for Disease Control and Prevention, *Perceived Racism and Demographic, Mental Health, and Behavioral Characteristics Among High School Students During the COVID-19 Pandemic – Adolescent Behaviors and Experiences Survey, United States, January–June 2021* (April 1, 2022), <https://www.cdc.gov/mmwr/volumes/71/su/pdfs/su7103a4-h.pdf>.
- ^{vi} See Centers for Disease Control and Prevention, *Youth Risk Behavior Survey Data Summary and Trends Report (2011-2021)*, 2, 63-66, https://www.cdc.gov/healthyyouth/data/yrebs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.
- ^{vii} See U.S. Dep't of Educ., *Fact Sheet, American Rescue Plan Act of 2021, Elementary and Secondary School Emergency Relief Fund (ARP ESSER)*, https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf.
- ^{viii} See U.S. Dep't of Educ., *Frequently Asked Questions, Elementary and Secondary School Emergency Relief Programs, Governor's Emergency Education Relief Programs* (December 2022), <https://oese.ed.gov/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update-1.pdf>; see also, U.S. Dep't of Educ., *Bipartisan Safer Communities Act Stronger Connections Program Frequently Asked Questions* (April 2023), <https://oese.ed.gov/files/2023/04/23-0083.BSCA-FAQs.pdf>.
- ^{ix} For information about schools' legal obligations relating to the discipline of students with disabilities, please see U.S. Dep't of Educ., OCR, Dear Colleague Letter: *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973* (July 19, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>; see also, U.S. Dep't of Educ., Office of Special Education and Rehabilitative Services, *2022 OSEP Discipline-Behavior Guidance* (July 19, 2022), <https://osepideasthatwork.org/federal-resources-stakeholders/topical-issues/2022-osep-discipline-behavior-guidance>.

Introduction¹

The following text summarizes investigations involving student discipline policies or practices that the Departments have conducted under the nondiscrimination laws and regulations they enforce, including Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving Federal financial assistance, and/or Title IV of the Civil Rights Act of 1964 (Title IV), which authorizes the Attorney General to address denials of equal protection based on race, color, national origin, sex, or religion in public schools.²

These investigations highlight ways the U.S. Department of Education's Office for Civil Rights (OCR) and U.S. Department of Justice's Civil Rights Division (DOJ) have applied the law to facts and illustrate the types of remedies the Departments have previously obtained. They also demonstrate ways in which school districts can take steps to proactively improve the administration of student discipline. This proactive work has frequently formed a helpful foundation for the additional steps outlined in the Departments' resolution agreements. The investigations were resolved at various stages of review, including in some cases based on concerns that OCR identified before completing an investigation and before OCR made findings of a violation of the law. In addition, the facts highlighted in the summaries below do not constitute all of the information and facts that formed the basis for the Departments' findings or concerns, but illustrate some of the relevant facts in each case. Some of these investigations involved multiple statutes, illustrating how legal protections for students may intersect.³ Title VI's protection from discrimination on the basis of race, color, or national origin applies to all students, including students with disabilities and students who identify as male, female, or nonbinary and lesbian, gay, bisexual, transgender, queer, questioning, or intersex (LGBTQI+).

As illustrated by the investigations summarized below, a school's responsibility not to discriminate against students on the basis of race, color, or national origin applies to any program or activity of the recipient, directly or through contractual or other arrangements.⁴ In the school context, this duty not to discriminate

¹ This document is for informational and technical assistance purposes only. It does not constitute final agency action, as it does not have an immediate and direct legal effect. It does not create any new rights or obligations, and it is not enforceable. Neither the Departments' investigations nor the summaries included below constitute binding precedent. Additionally, these examples are not exhaustive, and the facts and circumstances of each case are unique. The Departments preserve their discretion to investigate and assess the facts of each case individually and apply the law to the facts. The Departments also preserve their discretion to determine appropriate remedies based on the specific facts and circumstances of each case.

² The descriptions of OCR and DOJ investigations provided are summaries. Please access the links to the cases found in footnotes 5-6, 8-14, and 16-20 for more detailed information.

³ Some of the case examples provided below were also investigated on other bases in addition to Titles IV and/or VI, such as Title II of the Americans with Disabilities Act of 1990 (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504), both of which prohibit discrimination based on disability (the former by recipients of Federal financial assistance, the latter by public entities, regardless of whether they receive Federal funds), and/or the Equal Educational Opportunities Act of 1974 (EEOA), which, among other things, requires states and school districts to provide English Learner students with appropriate services to overcome language barriers. The Departments also enforce Title IX of the Education Amendments Act of 1972 (Title IX), which prohibits discrimination on the basis of sex by recipients of Federal financial assistance.

⁴ See, e.g., 34 C.F.R. § 100.3(b)(1).

extends to those who carry out some or all of the schools' functions, who can include lunch or recess monitors, substitute teachers, cafeteria staff, bus drivers, security staff, private security companies, or other contractors, as well as school district police officers or school resource officers (SROs), to the extent schools choose to have such personnel.

Where appropriate, the Departments' investigations under Titles IV and VI have included the entire course of the disciplinary process, from behavior management in the classroom or on the school bus, to referral to an administrator, to resolution of the discipline incident (including involvement of law enforcement).

The Departments are available to work collaboratively with school districts and provide further technical assistance. OCR is available to help districts develop and implement student discipline policies and procedures that are nondiscriminatory.

A. OCR: Victor Valley Union High School District, CA⁵ (Aug. 16, 2022)

On August 16, 2022, OCR resolved an investigation of Victor Valley Union High School District in Victorville, California, that evaluated whether the district discriminated against Black students in violation of Title VI by disciplining them more frequently and more harshly than similarly situated white students. As part of the investigation, OCR reviewed and analyzed the district's discipline records and data, policies and procedures, and memoranda of understanding with local law enforcement. OCR also interviewed district staff and students.

OCR's investigation found a pattern of harsher and more frequent disciplinary actions across types of discipline, schools, and grade levels for Black students than their white peers, resulting in significantly greater lost learning time for Black students. In reaching this finding, OCR relied on administrator testimony and documentary and statistical evidence reflecting widespread racial disparities in student discipline, particularly for subjective behaviors. OCR also identified specific instances, within and across district schools, in which Black students were treated more harshly than white students with similar or more extensive discipline histories for violations of school rules on dress code, tardiness, truancy, fighting, "inappropriate behavior," "defiance," and "disruption." OCR examined whether nondiscriminatory reasons explained the more frequent and harsher treatment of Black students in discipline. However, OCR found that student discipline history, seriousness of the behavior, age, and other nondiscriminatory rationales did not explain individual instances or the overall pattern of discipline disparities that OCR identified.

OCR also identified discriminatory discipline practices that departed from district discipline policies, conflicted with state law, and disproportionately harmed Black students, such as suspending students for tardiness and truancy and informal removals (e.g., sending students home for multiple days without adequate due process protections). OCR found a pattern of harsher treatment for Black students by school police officers, including law enforcement citations issued disproportionately to Black students, frequently in connection with minor and subjective behavioral infractions. District documents also

⁵ See U.S. Dep't of Educ., OCR, Letter to Elvin Momon, Superintendent, Victor Valley Union High School District (August 16, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Victor Valley Union High School District (August 15, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-b.pdf>.

peers to be referred for subjectively-defined behaviors. The actions the district agreed to take included reviewing and revising its discipline policies and procedures to ensure that policies and procedures:

- (1) are uniform among the district's schools;
- (2) provide clear guidance regarding discretionary discipline that includes concrete definitions of prohibited conduct and identifies developmentally appropriate criteria for responding to infractions;
- (3) articulate specific criteria and protocols for assignments to alternative placements; and
- (4) emphasize early intervention for misbehavior, prior to use of exclusionary discipline.⁷

C. DOJ: Davis School District, Farmington, UT⁸ (Oct. 21, 2021)

On October 21, 2021, DOJ reached a settlement agreement with Davis School District in Farmington, Utah, after finding that the district discriminated against Black students in student discipline. Specifically, DOJ found that the district issued harsher disciplinary penalties for Black students than their white peers for similar offenses, even when the students were close in age, had similar records of prior misconduct, and narrative descriptions of the events indicated that the conduct was comparable in severity. In particular, Black students were more likely to be subject to exclusionary discipline, such as in-school or out-of-school suspensions, whereas white students were more likely to receive non-exclusionary consequences. DOJ observed that these disparities were most prevalent when the underlying behavior was subjective, such as "disruptive behavior." In at least one instance, the district referred a Black student to law enforcement whereas a white student received a conference for the same offense.

The district acknowledged that its data showed that district staff treated Black students differently than white students. The district did not provide a legitimate explanation for why Black and white students were treated differently under the district's discipline policy and in law enforcement referrals. During the investigation, DOJ also found evidence that the district ignored complaints from students and parents alleging racial discrimination in discipline.

⁷ "Exclusionary discipline" as used in this document refers to the formal or informal removal, whether on a short-term or long-term basis, of a student from a class, school, or other educational program or activity for violating a school rule or code of conduct. Examples can include detentions, in-school suspensions, out-of-school suspensions, suspensions from riding the school bus, expulsions, disciplinary transfers to alternative schools, referrals to law enforcement, and school related arrests.

⁸ See Notice of Findings Letter, United States and the Davis School District (Sept. 15, 2021), <https://www.justice.gov/crt/case-document/file/1443736/download>; see also U.S. Dep't of Just., Justice Department Reaches Settlement to Remedy Severe Racial Harassment of Black and Asian-American Students in Utah School District (Oct. 21, 2021), <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-remedy-severe-racial-harassment-black-and-asian>; U.S. Dep't of Just., Settlement Agreement between the United States of America and The Davis School District (Oct. 20, 2021), <https://www.justice.gov/opa/press-release/file/1443866/download>.

To resolve noncompliance that DOJ identified in its Title IV investigation, the district committed to take various actions, including the following:

- (1) developing a districtwide code of conduct that describes alternatives to exclusionary discipline, requires staff to use interventions and corrective practices before assigning exclusionary discipline absent a threat to safety, and provides appropriate due process;
- (2) periodically reviewing discipline data, including regarding referrals to law enforcement, to identify and analyze racial disparities at the school and district levels;
- (3) identifying schools and particular staff members who discipline students of color more harshly than their similarly situated white peers and providing those staff members and schools with training on nondiscrimination in student discipline, implicit bias, and techniques for implementing non-exclusionary discipline interventions;
- (4) conducting reviews of incidents in which SROs or other law enforcement officials are involved and, if the incident was not handled consistent with district policy, taking appropriate remedial measures, which may include expunging student disciplinary records, providing compensatory work for school time missed, evaluating SRO placement, or providing coaching or support to district or law enforcement personnel; and
- (5) developing strategies for classroom management and student discipline that include de-escalation, conflict resolution, and positive behavioral strategies.

D. DOJ: Toledo Public Schools, OH⁹ (July 31, 2020)

On July 31, 2020, DOJ announced a settlement agreement with Toledo Public Schools in Ohio to address discriminatory discipline of students based on race or disability and to require appropriate language services for parents with limited English proficiency (LEP). The settlement agreement followed DOJ's investigation into complaints of discriminatory treatment of Black students and students with disabilities in student suspensions, expulsions, and referrals to law enforcement agencies. DOJ also investigated allegations that the district provided inadequate communication to parents who have LEP about matters essential to their children's education, including information about student discipline. The investigation was conducted under Title IV, Title II, and the EEOA.

Under the settlement agreement, the district committed to take proactive steps to ensure nondiscriminatory discipline practices, including by:

⁹ See Settlement Agreement, United States and the Board of Education of the Toledo City School District (July 31, 2020), <https://www.justice.gov/crt/case-document/file/1300171/download>; see also U.S. Dep't of Just., Justice Department Reaches Settlement with Toledo Public Schools to Resolve Complaints of Race and Disability Discrimination in Student Discipline (July 31, 2020), <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-toledo-public-schools-resolve-complaints-race-and>.

- (1) expanding its use of positive behavior supports, including through the Positive Behavior Intervention and Supports (PBIS) model, and ensuring individualized interventions for students with disabilities;
- (2) identifying ways to minimize unnecessary referrals to SROs and other law enforcement personnel;
- (3) regularly reviewing how its schools handle discipline incidents to ensure nondiscriminatory treatment of students;
- (4) ensuring that disciplinary consequences minimize students' loss of instructional time and providing reasonable opportunities for students to make up work; and
- (5) developing a professional development plan for training staff on classroom management and nondiscriminatory application of discipline, including information on alternatives to exclusionary discipline, bias-free policing, de-escalation techniques, working with students with disabilities, and the positive behavior supports program.

The district also committed to providing qualified interpreters and translations of information about student discipline and other essential information.

E. OCR: Wake County Public Schools, NC¹⁰ (Nov. 20, 2018)

On November 20, 2018, Wake County Public Schools in North Carolina entered into a resolution agreement with OCR to resolve an investigation of alleged racial discrimination in student discipline. OCR investigated a complaint alleging that the district discriminated on the basis of race by disciplining Black students more harshly than similarly situated white students.

During the investigation, OCR identified concerns related to the discipline code in effect at the time that the district entered into a resolution agreement with OCR. OCR obtained information suggesting that definitions of certain common offenses were subjective and overlapping. OCR's analysis of the district's data showed, among other things, that Black students were referred for discipline at higher rates than white students and were overrepresented among frequently referred students. The analysis also showed that Black students who were disciplined for the first time were suspended at higher rates than similarly situated white students for certain offenses.

To resolve compliance concerns OCR identified, the district committed to take actions including, but not limited to, the following:

- (1) notifying parents, guardians, students, and staff of how to raise concerns regarding SROs;

¹⁰ See U.S. Dep't of Educ., OCR, Letter to Cathy Quiroz Moore, Superintendent, Wake County Public School System (February 16, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11101313-a.pdf>; see also U.S. Dep't Educ., OCR, Resolution Agreement, Wake County Public Schools (November 20, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11101313-b.pdf>.

- (2) collecting and reporting to OCR detailed discipline data regarding the specific staff members making each referral and/or determining the sanction, if any;
- (3) analyzing student discipline data for evidence of unlawful discrimination; and
- (4) implementing corrective actions to address any concerns regarding unlawful intentional discrimination.

F. OCR: Durham Public Schools, NC¹¹ (Feb. 12, 2018)

On February 12, 2018, OCR resolved an investigation of a complaint alleging that Durham Public Schools in North Carolina discriminated against Black students, students with disabilities, and Black students with disabilities with respect to student discipline. OCR's investigation identified compliance concerns with respect to racial discrimination against Black students and students with disabilities, including Black students with disabilities. OCR found that Black students were 6.1 times more likely to be suspended than white students, and Black students were particularly overrepresented in discipline for subjective offense categories, such as noncompliance with school rules. The district's code of conduct included a number of lower level subjective offense categories that could result in exclusionary discipline, especially if the lower level infractions were repeated.

During the investigation, the district administrators and school principals began closely monitoring district discipline-related data and meeting monthly to analyze data and address any areas of possible discrimination. In resolving OCR's compliance concerns, the district committed to build on that practice through holding quarterly meetings with principals of all district schools to discuss disciplinary data, consider any data suggesting that Black students are disproportionately referred for discipline or sanctioned more harshly than similarly situated students of other races, and meet with individuals or groups or principals to further address concerns regarding disproportionality, school culture, and/or adherence to policies, practices, and procedures. The district committed to take appropriate corrective action responsive to concerns identified during these meetings.

To resolve compliance concerns OCR identified with respect to Title VI, Section 504, and Title II, the district agreed to continue these quarterly data review meetings and associated corrective actions and also committed to take actions including, but not limited to, the following:

- (1) providing implicit bias training for district staff and supporting community involvement in district development of student discipline practices;
- (2) accurately collecting and continually assessing each school site's discipline data and practices to ensure nondiscrimination, including with regard to student-law enforcement contacts; and

¹¹ See U.S. Dep't of Educ., OCR, Letter to Dr. Pascal Mubenga, Superintendent, Durham Public Schools (Feb. 12, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131175-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement, Durham Public Schools (Feb. 1, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131175-b.pdf>.

(3) developing guidelines for investigating complaints regarding SROs.

The district also adopted proactive measures to ensure nondiscrimination in its discipline practices, including implementing alternatives to suspensions; improving identification of students in need of supplemental services and supports; and increasing its use of evidence-based strategies to reduce exclusionary discipline, improve school climate, and increase consistency in staff responses to student behavior.

G. OCR: East Side Union High School District, CA¹² (Dec. 23, 2017)

On December 23, 2017, OCR resolved a Title VI investigation of a complaint alleging that East Side Union High School District in San Jose, California, discriminated in student discipline against Latino students in the district based on race or national origin and discriminated against a parent with LEP by not providing important discipline information that was provided to English-speaking parents in a language that she could understand.

In addition to widespread statistical disparities in every level of discipline for Latino students as compared to white students, OCR's investigation identified evidence of seemingly harsher treatment of Latino students as compared to their white peers who engaged in similar or more serious behavior, had similar discipline histories, were of comparable age, and attended the same school. OCR found that these disparities were driven, in significant part, by greater disparities in discipline for subjective offenses such as "defiance." For example, in 2013-2014, the district's discipline data showed that Latino students were referred for "defiance" nearly eight times more frequently than white students, yet Latino and white students were almost equally likely to be disciplined for objective and more serious offenses such as possession, use, or sale of drugs or weapons. The district's data also showed that students who had LEP were also substantially overrepresented in discipline incidents.

OCR also identified concerns about citations/tickets given by the district's SROs. In 2013-2014, SROs ticketed Latino students at more than twice the rate that white students were ticketed, and OCR found evidence suggesting that many of the incidents in which Latino students were ticketed were minor and discretionary. OCR also found that the district's memoranda of understanding with law enforcement and related policies did not clearly define the role of SROs. During the course of investigation, the district proactively revised its memorandum of understanding to ensure that students were only ticketed for more serious behaviors in order to reduce the number of youth unnecessarily involved in the youth justice system for minor misbehavior.

Finally, OCR identified concerns with respect to meaningful communication with a disciplined student's mother, who spoke Spanish and had LEP. The district did not provide OCR with evidence that it translated any written documents into Spanish for the student's mother regarding the student's discipline transfer to an alternative school. The student's mother also told OCR that the district failed to provide a qualified interpreter in suspension and discipline transfer meetings involving her son, instead relying on her son to

¹² See U.S. Dep't of Educ., OCR, Letter to Chris D. Funk, Superintendent, East Side Union High School District (Dec. 23, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141242-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with East Side Union High School District (Dec. 13, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141242-b.pdf>.

interpret for her in those meetings. And, the district lacked adequate board policies and guidance for school sites to ensure meaningful communication with LEP families, including regarding student discipline.

To resolve compliance concerns OCR identified, the district committed to take actions including, but not limited to, the following:

- (1) revising discipline policies to reduce subjectivity and provide greater clarity regarding behavioral expectations and appropriate consequences;
- (2) establishing clear and objective criteria for disciplinary transfers to alternative schools and returning students to their home school;
- (3) providing nondiscrimination training for SROs and establishing a process by which parents and students can file complaints against SROs;
- (4) developing policies and procedures clarifying that school administrators, rather than SROs, are responsible for routine student discipline matters; and
- (5) adopting policies and procedures requiring written translation and oral interpretation of important educational information for parents and guardians with LEP.

H. OCR: Paramount Academy, AZ¹³ (Dec. 14, 2017)

On December 14, 2017, OCR resolved an investigation of racial discrimination in discipline at Paramount Academy in Peoria, Arizona. Specifically, a parent alleged that the school treated her son differently in the administration of the school's dress code because he is a Black student with an afro hairstyle.

OCR's investigation found noncompliance with Title VI because although the school's dress code was racially neutral on its face, the school selectively enforced the policy against a Black student with respect to his hairstyle. Specifically, the school's dress code prohibited "trendy hair styles," among other restrictions. After the student changed his hair from braids to an afro, his teacher began telling him to get a haircut, and soon thereafter the school's administrators told his parent that he was violating the school dress code. These school administrators gave the parent shifting explanations for why the student's afro violated the dress code, including reasons that were not written in the dress code, such as the height or length of the student's afro – explaining that it could not be more than three fingers width from his head – and that it was distracting because it obstructed other students' view of the board and the student kept "pushing it up."

OCR found that the school could not identify any other students, including students of any other races, for whom it had applied its dress code policy in the same manner, including regarding the height or length of their hair (notably, the school allowed long hair that grew down, but not long hair in an afro style).

¹³ See U.S. Dep't of Educ., OCR, Letter to Dale Cline, Executive Director, Paramount Academy (Dec. 14, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08171341-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Paramount Academy (Dec. 13, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08171341-b.pdf>.

Additionally, the school could not provide a clear nondiscriminatory reason for determining that the student's hair violated the dress code and he needed to cut it. OCR identified yearbook pictures of students of other races who had hairstyles that seemed to violate the criteria the school described to the student and his parent. Therefore, OCR determined that the shifting rationales the school provided for disciplining the student for his hairstyle were pretextual – and that the school selectively enforced these criteria based on the student's race.

In order to resolve OCR's Title VI noncompliance determination, the school committed to take actions including the following:

- (1) providing a written apology to the student and his parent for the school's response to the student's afro hairstyle;
- (2) revising its dress code to include a statement of nondiscrimination, clarify that staff may not impose their own grooming standards on students that are not addressed in the school's dress code, a description of what students or parents may do if they believe the dress code is applied in a discriminatory manner, and a statement that afros do not violate the school's dress code;
- (3) collecting and maintaining data regarding dress code violations related to hair, to ensure nondiscrimination in application of the school's dress code with respect to hair; and
- (4) training staff regarding nondiscrimination based on race, color, or national origin, as well as the data collection and dress code policy changes described above.

I. OCR: Loleta Union Elementary School District, CA¹⁴ (Nov. 22, 2017)

On November 22, 2017, OCR resolved a complaint alleging discrimination against Native American students in student discipline in Loleta Union Elementary School District in Loleta, California. Specifically, OCR investigated whether the district discriminated against Native American students by disciplining them more frequently or more harshly than non-Native American students who engaged in similar or more serious conduct.

OCR's investigation, which was conducted pursuant to Title VI, Section 504, and Title II, identified concerns regarding discrimination against Native American students with respect to referrals, in-school-suspensions, out-of-school suspensions, informal removals, expulsions or involuntary discipline transfers, and referrals to law enforcement. District data showed that Native American students were overrepresented in numerous disciplinary categories. The investigation also uncovered racially biased statements made by a district administrator and specific instances of Native American students who were similarly situated to white students but appeared to have received harsher disciplinary consequences.

¹⁴ See U.S. Dep't of Educ., OCR, Letter to John Sutter, Superintendent, Loleta Union Elementary School District (Nov. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141111-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Loleta Union Elementary School District (Nov. 20, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141111-b.pdf>.

School officials did not provide and OCR was unable to identify nondiscriminatory reasons that explained the harsher treatment of Native American students in discipline in the specific instances identified.

Additionally, OCR identified concerns with respect to the district's practices regarding referral of students to law enforcement. OCR found that the principal at a district elementary school regularly called the local sheriff for minor behaviors such as climbing a tree and disproportionately referred Native American students to law enforcement. OCR also determined that the district did not have a system for providing Native American and other students exposed to trauma with appropriate behavioral and other supports and services, such as counseling, special education, Section 504 plans, and other interventions and services, despite significant trauma in the community the district served. As a result, the district repeatedly disciplined such students, rather than providing them with needed services.

In addition, OCR identified significant concerns with the district's recordkeeping. The district's inaccurate and incomplete discipline records, including with respect to referrals, suspensions, informal removals, expulsions, and referrals to law enforcement, threatened to prevent OCR from ascertaining whether the district's discipline practices were nondiscriminatory as required by Title VI.¹⁵

To resolve compliance concerns OCR identified, the district committed to take actions including, but not limited to, the following:

- (1) establishing a committee, including district staff, community members, and local Native American Tribal members, to provide ongoing input on student discipline and nondiscrimination;
- (2) hosting regular information sessions for parents, guardians, and community members regarding the district's discipline system, including how to file a discipline-related complaint;
- (3) providing appropriate early interventions for students demonstrating behavioral difficulties due to trauma; and
- (4) implementing multi-tiered systems of support, positive behavior strategies, trauma-informed services for students, and counseling and special education services, to address the educational needs of students.

J. DOJ: Wicomico County Public Schools, MD¹⁶ (Jan. 19, 2017)

On January 19, 2017, DOJ resolved an investigation, conducted under Title IV and under Title II, into complaints that Wicomico County Public Schools in Maryland discriminated against Black and Latino students, as well as students with disabilities, in student discipline. In its investigation, DOJ observed that Black and Latino students were more likely to receive discipline and received harsher discipline consequences than white students, and these results were not attributable to more serious misbehavior on the part of Black and Latino students. DOJ also identified concerns that school staff commonly relied

¹⁵ See 34 C.F.R. § 100.6(b).

¹⁶ See Settlement Agreement, United States and Wicomico County Public Schools (Jan. 19, 2017), <https://www.justice.gov/crt/case-document/file/930511/download>; see also U.S. Dep't of Just., Summary, Wicomico County Public School District (2017), <https://www.justice.gov/crt/case-summaries#wicomico>.

upon SROs to address routine classroom management issues and that Black students and students with disabilities were overrepresented in such incidents.

To resolve compliance concerns DOJ identified, the district committed to take actions including, but not limited to, the following:

- (1) requiring schools to use alternatives to exclusionary discipline to address dress code violations, tardiness, truancy, and failing to pay fines or financial restitution, and limiting exclusionary discipline to the most severe behaviors;
- (2) treating as exclusionary discipline any case in which a student is sent home before the normal close of the school day for reasons related to misbehavior;
- (3) allowing students to make up schoolwork missed due to tardiness, truancy, or discipline removals;
- (4) refraining from automatically assigning students to an alternative placement upon returning to school from a youth detention facility;
- (5) limiting the involvement of SROs and other law enforcement to responding to behaviors that pose a safety threat;
- (6) communicating expected positive behaviors, prohibited conduct, and consequences in a manner designed to be understood by all students, including students with disabilities and students who are English Learners; and
- (7) developing a continuum of alternatives to exclusionary discipline, including behavioral support plans, reflective writing assignments, conflict resolution, and restorative practices.

K. OCR: Lodi Unified School District, CA¹⁷ (Aug. 24, 2016)

On August 24, 2016, OCR resolved a complaint alleging racial discrimination in student discipline in Lodi Unified School District in California. OCR investigated whether the district discriminated against a Black student who was disciplined for hitting a white student after the white student called him a racial epithet. OCR also investigated whether the district treated Black students more harshly than white students in disciplinary procedures and whether the district's discipline policies and procedures had an unjustified discriminatory effect on Black students in violation of Title VI and its implementing regulations.

OCR's investigation identified concerns regarding discrimination against the Black student. OCR determined that, while the district followed its written discipline policies in disciplining the Black student, the district did not follow these policies in disciplining the white student, who was given more lenient

¹⁷ See U.S. Dep't of Educ., OCR, Letter to Dr. Cathy Nichols-Washer, Superintendent, Lodi Unified School District (Aug. 24, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09131314-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Lodi Unified School District (Aug. 17, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09131314-b.pdf>.

OCR's investigation under Title VI found, according to the district's data, persistent disproportionate discipline of Black students in the district from at least 2011-2012 through 2014-2015. For example, while Black students made up 25% of enrolled students in 2014-2015, they accounted for 55% of 1-5 day suspensions and 42% of in-school suspensions. OCR's investigation of the district's data did not find that Latino students were disproportionately disciplined. A district audit of its discipline practices also identified inconsistent practices including with respect to recordkeeping, due process for disciplined students, discipline practices within schools and across the district, discipline information provided to parents and students, and that the parameters of some discipline sanctions such as "defiance of authority" were unclear. During OCR's investigation, the district adopted a five-year strategic plan that included a commitment to ensuring equitable discipline practices. Specifically, the district's plan included "provid[ing] training and revis[ing] policies to support safe and respectful environments and equitable enforcement of disciplinary procedures."

The district also initiated a self-audit of its discipline practices, which included site reviews of all discipline referral forms for the 2013-2014 and 2014-2015 school years at 15 middle and high schools in the district. The district's internal audit found various concerns, including:

- incomplete and inconsistent recordkeeping;
- violations of student due process rights;
- inconsistent discipline practices both within and across schools in the district, including inconsistencies in the information schools provided to parents of suspended students; and
- unclear discipline categories and sanctions, including for subjective areas such as "defiance of authority" and "disrespect."

Based on these internal findings, the district took several actions, including reviewing its discipline policies and practices and revising its discipline code to reduce the categories of behaviors for which exclusionary discipline consequences are available. The district also created an Office of School Climate and hired a Director of School Climate and Student Discipline, as well as three Student Behavior Specialists, and began implementing PBIS to effectively support students, teach appropriate behavior, and minimize discipline that removed students from the classroom. The district also partnered with an educational services company specializing in root cause analysis and systems change.

To resolve OCR's compliance concerns, the district committed to take actions including, but not limited to, the following:

- (1) designating staff to serve as the district's Discipline Supervisor, oversee the implementation of the district's discipline policies and procedures in a fair and equitable manner for all students, and address complaints;
- (2) ensuring that its discipline policies and procedures include clear procedures for staff to follow when making referrals and eliminate, to the maximum extent possible, vague, subjective, or

redundant offense categories, including those that necessarily require a high degree of subjectivity and individual discretion;

- (3) reviewing its SRO program and providing annual training to all district SROs that explains the district's obligations under Title VI and the district's student discipline policies, practices, and procedures; and
- (4) establishing a student committee at each district middle school and high school to discuss and make recommendations concerning the equitable treatment of students in discipline, improve student behavior, and help students be more engaged in the educational program.

Additionally, at the conclusion of each school year, the district agreed to consider whether changes to its discipline code were needed based on its evaluation of student discipline data, the findings made by the discipline review team, and meetings with administrators and staff and submit any proposed changes to its discipline policies, procedures, and practices to OCR for review and approval prior to implementation.

M. OCR: Minneapolis Public Schools, MN¹⁹ (Nov. 13, 2014)

On November 13, 2014, OCR resolved an investigation to determine whether the Minneapolis Public Schools in Minnesota discriminated against Black students on the basis of race by disciplining them more frequently and more harshly than similarly situated white students.

OCR's investigation under Title VI revealed that Black students were disproportionately disciplined as compared to white students, including among students who received in- and out-of-school suspensions, administrative transfers to other schools, referrals to law enforcement, and other disciplinary actions taken by the district, including detentions, Saturday school, and community service or restitution. Specifically, while Black students accounted for approximately 40% of students enrolled in the district in 2010-2011 and 2011-2012, they were the subject of almost 75% of discipline incidents in the district those two years, including 79% of out-of-school suspensions and 70% or more of students referred to law enforcement. Additionally, for more than 25% of discipline incidents OCR identified, district staff could not explain the race-based different treatment that OCR identified between the discipline of Black and white students for similar behavior.

During OCR's investigation, the district engaged in a broad review and revision of its discipline policies and procedures by obtaining input from students, parents, and staff. The district's revised discipline policies and procedures went into effect at the start of the 2014-2015 school year. These revised policies and procedures clearly stated the district's goal of minimizing the amount of instruction time students lost because of discipline removals. The revised policies no longer allowed out-of-school suspensions for behaviors such as tardiness or truancy and provided clearer definitions for problem behaviors and categories of behavior, including specific examples, so that staff members could better understand the

¹⁹ See U.S. Dep't of Educ., OCR, Letter to Bernadeia H. Johnson, Superintendent, Minneapolis Public Schools (Nov. 20, 2014), <https://www2.ed.gov/documents/press-releases/minneapolis-letter.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Minneapolis Public Schools (Nov. 11, 2014), <https://www2.ed.gov/documents/press-releases/minneapolis-agreement.pdf>.

circumstances under which such categories could be used to determine disciplinary consequences and the distinctions between such categories.

To resolve compliance concerns OCR identified, the district committed to take actions including, but not limited to, the following:

- (1) consulting with and retaining an expert to assess and make recommendations to address the root causes for the racial disparities in discipline in the district, as needed;
- (2) establishing a district-wide discipline team to review the disciplinary actions taken at each school on an ongoing basis, including an annual review of discipline data at each school and by teacher, in order to ensure that these decisions are nondiscriminatory and consistent with the district's discipline policies and procedures;
- (3) requiring that school staff use a range of alternative corrective measures before referring a student for discipline, except in emergency situations;
- (4) revising its policy on involuntary administrative transfers and its SRO program to ensure their effectiveness in furthering the goals of nondiscrimination in the agreement; and
- (5) providing annual training to all SROs.

N. OCR: Christina School District, DE²⁰ (Dec. 14, 2012)

On December 14, 2012, OCR resolved an investigation of Christina School District in Delaware regarding racial discrimination in student discipline. Specifically, OCR's investigation sought to determine whether the district disciplined Black students more frequently and more harshly than similarly situated white students. OCR determined that the district engaged in discrimination against Black students in discipline, in violation of Title VI and its implementing regulations.

OCR's investigation identified examples of Black students who engaged in virtually identical behavior to white students but were punished more harshly than their white peers who had the same or more extensive discipline histories. OCR found such examples of different treatment at elementary, middle, and high schools in the district. These incidents covered a wide range of conduct, including cutting class, smoking, using foul language, engaging in unsafe horseplay during science lab, pulling fire alarms, aggressively touching another student or a teacher, making a bomb threat, and having a box cutter or small knife.

OCR found statistically significant disparities in the discipline rates for Black students, as compared to white students, in every year analyzed and at every school level. OCR's analysis also showed that for students referred for discipline for the first time, Black students were at least twice as likely to receive a

²⁰ See U.S. Dep't of Educ., OCR, Letter to Dr. Freeman Williams, Superintendent, Christina School District (Dec. 14, 2012), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03105001-a.pdf>; see also U.S. Dep't of Educ., OCR, Resolution Agreement with Christina School District (Dec. 12, 2012), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03105001-b.pdf>.

suspension (either in- or out-of-school) than white students for similarly serious misbehavior. Moreover, among students who were referred for discipline for the first time, Black students were over three times more likely than white students to receive an out-of-school rather than in-school suspension. Among students whose first disciplinary referral was for “inappropriate behavior,” Black students were nearly seven times more likely to receive an out-of-school suspension than white students. Additionally, some district decision-makers applied penalties in excess of those written in the student code of conduct or discipline rules.

During the investigation, the district took steps to ensure nondiscrimination in student discipline. These steps included implementing its Positive Behavior Support program; hiring personnel to assist with behavior modification plans and classroom management training; engaging parents and community members in revising its discipline rules; and working with the state department of education to improve its data system. During OCR’s investigation, the district also reduced its use of exclusionary discipline, which disproportionately harmed Black students. For example, from 2008-2009 to 2010-2011, the district reduced the total number of out-of-school suspensions from 9,541 to 5,403 and expulsions from 84 to 15. While Black students continued to account for a disproportionate share of suspensions, they were no longer disproportionately expelled. There were also a number of positive statistical trends reflected in the data over the three-year period under investigation, including reductions in the numbers of students referred for discipline, receiving ISS and OSS, or expelled.

To resolve OCR’s Title VI noncompliance determination, the district committed to a number of actions, including the following:

- (1) working with a consultant to review and modify district discipline policies and revise those that resulted in discriminatory discipline, including referrals, suspensions, expulsions, and arrests of students;
- (2) developing and implementing strategies for teaching, encouraging, and reinforcing positive student behavior that do not require engagement with the discipline system;
- (3) ensuring that all actions taken by SROs are documented and conducting a comprehensive review of SRO interventions and practices annually to assess their effectiveness and identify any necessary changes;
- (4) collecting and evaluating data regarding all discipline referrals, including those that did not result in disciplinary consequences, the use of discipline consequences, referrals to law enforcement, and suspension and expulsion at all schools; and
- (5) establishing a discipline review team to randomly review disciplinary actions taken at each school on an ongoing basis to ensure nondiscrimination.

Conclusion

The Departments are committed to promoting effective and appropriate student discipline policies and practices that create an inclusive and safe environment where all students can learn and succeed and educators can support them in that process. As part of this commitment, the Departments vigorously enforce Federal laws to eliminate unlawful discrimination based on race, color, or national origin in student discipline.

The Departments appreciate school districts' frequent cooperation in the Departments' investigations, acting as collaborative partners in resolving identified concerns and violations. The Departments likewise appreciate the many school districts, including districts identified above, that were or are already engaged in efforts to improve the administration of student discipline to ensure nondiscrimination and provide a safe, positive, and nondiscriminatory learning environment for all students and educators. This work has regularly provided an important foundation for implementing additional steps outlined in resolution agreements.

Thank you for your efforts to ensure that the nation's students are provided with equal educational opportunities. If you need technical assistance, please contact the OCR regional office serving your State or territory by visiting <https://ocrcas.ed.gov/contact-ocr>, or call OCR's Customer Service Team at 1-800-421-3481. You may find information about DOJ's Civil Rights Division, Educational Opportunities Section at <https://www.justice.gov/crt/educational-opportunities-section>; you may submit a complaint to DOJ's Civil Rights Division at <https://civilrights.justice.gov/>. For additional Department of Education resources related to student discipline, visit <https://www.ed.gov/discipline>.

We look forward to continuing our work together to ensure equal access to education and safe and supportive learning environments for all of America's students and its educators.