



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VI
ARKANSAS
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TEXAS

September 25, 2014

Dr. Gearl Loden, Superintendent
Tupelo Public School District
72 S. Green St.
Tupelo, MS 38804

Re: OCR Docket 06-11-5002

Dear Dr. Loden:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), conducted a compliance review of the Tupelo Public School District (District), Tupelo, Mississippi under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, at 34 C.F.R. Part 100.

Title VI, and its implementing regulation, at 34 C.F.R. Part 100, prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance from the Department. The District is a recipient of such assistance and is subject to the requirements of Title VI.

Title VI and its implementing regulation require that a school's disciplinary policies and practices be applied to students without regard to a student's race. OCR's review investigated the District's disciplinary policies and practices and, specifically, whether the District discriminated against African-American students by disciplining them more frequently and more harshly than other similarly situated students on the basis of race, in violation of Title VI and its implementing regulation, at 34 C.F.R. § 100.3.

Prior to the conclusion of OCR's investigation, OCR and the District agreed to explore voluntary resolution in accordance with OCR's *Case Processing Manual*, and the District entered into an agreement on September 15, 2014, which commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

Legal Authority

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. §100.3(a) and (b). The regulation, at 34 C.F.R. §100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a

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different manner; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or, deny an individual an opportunity to participate in a program through the provision of services that is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

OCR investigates alleged discrimination in the application of student discipline consistent with federal statutory authority, the Department’s regulations, policies and pertinent case law. Disciplinary policies and practices can result in unlawful discrimination based on race in two ways: first, if students are intentionally subject to *different treatment* on account of their race; second, even if a policy is neutral on its face but has a disproportionate and unjustified *effect* on student(s) of a particular race, referred to as *disparate impact*.

Different Treatment

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

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

Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular discipline incident or series of incidents.

Disparate Impact

In addition to different treatment of students based on race, schools violate Federal law when they evenhandedly implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as

“disparate impact.”¹ In determining whether a facially neutral student discipline policy has an unlawful disparate impact on the basis of race, OCR engages in the following three-part inquiry:

- 1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races?
- 2) Is the discipline policy necessary to meet an important educational goal?²
- 3) Even in situations where a school can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative discipline policies available that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school’s proffered justification a pretext for discrimination?

Overview of the District

The Tupelo Public School District is a Pre-Kindergarten through 12th grade school district located in Lee County, Mississippi, which is in the northeastern corner of the state. When OCR initiated the compliance review, the District had a total of fourteen schools, which included one Pre-Kindergarten school (King Early Childhood Education Center); ten Elementary schools (Grades K-2: Carver Elementary, Church Street Elementary, Joyner Elementary, Parkway Elementary, and Thomas Street Elementary; Grades 3-5: Lawhon Elementary, Lawndale Elementary, Pierce Street Elementary, and Rankin Elementary; Grade 6: Milam Elementary); one middle school (Grades 7-8, Tupelo Middle School); one high school (Grades 9-12, Tupelo High School); and one alternative school (Filmore Center).³

The District provided the following information regarding its overall student enrollment for the 2010-2011 and 2011-2012 school years.

District Total Enrollment

Enrollment by race	2010-2011		2011-2012	
African-American	3670	49%	3721	50%
White	3391	45%	3275	44%
Total	7484		7436	

Figure 1.

For this compliance review, OCR focused on three schools—Milam Elementary (6th Grade Center), Tupelo Middle School, and Tupelo High School (hereinafter referred to as the target schools) — because these schools represented fifty percent of the total District enrollment and comprised the largest number of sanctions administered. Below is the enrollment by race at each of the target schools:

¹ Recipients of Federal financial assistance are prohibited from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals or a particular race, color, or national origin.” 34 C.F.R. §100.3(b)(2); *see also* 28 C.F.R. §42.104(b)(2).

² *See Elston v. Talladega County Bd. Of Educ.*, 997 F.2d 1394 (11th Cir. 1993).

³ During the course of the investigation, the District closed Church Street Elementary and now uses the building for its curriculum department. According to the District, students now attend Carver Elementary.

Milam Elementary (6th Grade Center) Enrollment

Enrollment by race	2010-2011		2011-2012	
African-American	266	49%	310	50%
White	261	48%	273	44%
Total	546		619	

Figure 2.

Tupelo Middle School (TMS) Enrollment

Enrollment by race	2010-2011		2011-2012	
African-American	499	46%	494	48%
White	521	48%	484	47%
Total	1080		1031	

Figure 3.

Tupelo High School (THS) Enrollment

Enrollment by race	2010-2011		2011-2012	
African-American	1038	49%	1024	50%
White	954	46%	930	45%
Total	2092		2050	

Figure 4.

Summary of Review

During the investigation, OCR requested and received information from the District regarding its student enrollment, discipline records, and discipline policies and procedures. OCR conducted an onsite investigation at the District and interviewed students, teachers, and administrators and conducted a parent/community forum. OCR reviewed the discipline reports for each target school for both the 2010-2011 and 2011-2012 school years. OCR also examined data provided to the Department for the 2011 Civil Rights Data Collection (CRDC)⁴ and documents on the District’s website. Prior to the conclusion of OCR’s investigation, the District agreed to enter into a voluntary resolution agreement to resolve the compliance review.

Discipline Policies, Procedures and Practices

Preschool

The District does not have a separate discipline code for the King Early Childhood Education Center, the District’s preschool. The District informed OCR that it does not use disciplinary suspension or expulsion for preschool students and, in the 2011 CRDC, the District reported that it did not suspend or expel any of the 272 students at the preschool. The District’s 2014-15 parent handbook states that the Center uses "Positive Behavior Support," which it describes as a

⁴ <http://ocrdata.ed.gov>

behavioral process that “aims to build an emotionally safe environment in which positive behavior is more likely to occur.”⁵ The handbook further states:

The components of the plan are creating expectations, rules, reinforcement and intervention strategies. The Early Childhood Education Center’s Pre-Kindergarten classrooms are designed so that the children will be busy and engaged in activities, which will prevent serious behavior problems. If the child breaks a rule, the teacher and child will discuss the problem and the child will be redirected to another activity. However, if a child continually breaks a rule, the teacher and the child will work towards conflict resolution through our plan of Think, Talk and Do. If the problem continues, we will send a note home or call you and we can discuss a solution. Please remember that you know your child much better than we do and your support and input are critical. We believe that positive reinforcement can help prevent many discipline problems which can occur in the classroom of 4 year-olds.

Kindergarten – 12th Grade

OCR reviewed the District school board policies and Student Code of Conduct (Code of Conduct), which pertain to discipline for students in K – 12th grade. The District has separate discipline codes (Disciplinary Codes) for specific grade levels -- elementary grades K-5, 6th grade only, Middle School (7-8th grades), and High School, and for its Alternative School.⁶ Each Disciplinary Code lists violations and infractions and also lists consequences (“discipline ladder”/sanctions) for the misconduct. The listed sanctions include detention, in school suspension (ISS), out of school suspension (OSS), referral to the District’s alternative school, and expulsion. According to the District, instruction is provided to students during ISS.

None of the discipline policies includes provision for the use of corporal punishment and the District reported to OCR that it has not used corporal punishment for many years.

According to the District, each of the target school campuses also has its own student parent handbook, which refers generally to the District’s discipline policies and procedures. The Code of Conduct and student handbook are disseminated to parents and students at each school at the beginning of each school year.

The Discipline Codes indicate that teachers are encouraged to handle discipline within their classrooms, and that rule violations that result in the teacher’s referral of the student to the office will be handled according to the applicable discipline ladder. The February 1, 2011 District progressive discipline matrix for Elementary and Secondary schools stated that “Minor

⁵ The District’s 2014-15 parent handbook for the Early Childhood center is available at: <http://www.tupeloschools.com/cms/lib07/MS01910594/Centricity/Domain/502/ECEC%20Parent%20Handbook%202014-2015.pdf>.

⁶ The Student Code of Conduct and discipline policies are available on the District website under School Board Policies: http://www2.tupeloschools.com/liveserver_schoolboardpolicies/PolicyIndex.aspx. The District’s specific school-level Discipline Codes include codes for Elementary Grades K-5, Elementary Grade 6, Middle School Grades 7-8, High School, and the Alternative School. The District also has a Bus Discipline policy.

Offenses” are managed “on the spot” (classroom, common areas, etc.). Interventions for these behaviors are addressed and documented on “Low Level Referrals,” which may later be used to demonstrate a pattern of misbehavior. “Major Offenses” are described as violations that require the immediate attention of administrative staff. These behaviors are documented on an “Office Referral Form.”

During OCR interviews, administrative staff indicated that teachers were encouraged to use reasonable behavior class management techniques prior to referring students to the office for disciplinary action. Specifically, teachers indicated that they attempt to use the discipline ladder in the classroom before they refer a student to an administrator (assistant principal or principal) for disciplinary action. For example, at the 6th Grade Center, it was indicated that teachers can impose discipline procedures in the classrooms (*e.g.*, sitting out recess, writing an assignment). Staff at TMS indicated that they utilized the six-step classroom ladder prior to office referral, which include: 1) warning; 2) teacher conference; 3) parent contact; 4) counselor; 5) discipline assignment; and 6) office referral. At THS, staff indicated that they also use classroom procedures before office referral, although the District did not provide OCR with copies of any documents to demonstrate when and how THS uses classroom ladders.

Once referred out of the classroom for discipline, the first step in each of the discipline ladders is detention, and the last step is referral to the alternative school and/or expulsion. Under all of the policies, a student may enter the discipline ladder at any step, depending upon the nature of the offense. Students referred for a repeat or a more serious violation of the policies may escalate more than one step.

Kindergarten – 5th Grade: The District has a separate Discipline Code for its eight K-5 grade schools. The applicable Code lists 28 violations and infractions for K-5 students.

6th Grade: The District has a separate Discipline Code for Grade 6, which is located at Milam Elementary. The applicable Code lists the same 28 violations as the K-5 Discipline Code, but increases the severity of the available sanctions for many infractions. The Code provides for OSS as the first step for “harassment, intimidation or threatening of students or teachers” and “use or possession of dangerous objects.” The Code provides for referral to the alternative school or expulsion for students engaged in forgery, “possession of inappropriate photos or other printed materials on weapon making, pornography, violence, hatred, etc.” and “other misbehavior as determined by the school officials.”

At the K-6th grade levels, the Discipline Codes provide that the principal or designee may give an OSS for 10 offenses “without going through any of the steps of the discipline plan.” These include: 1. “a shocking or dangerous behavior which may cause physical or emotional harm to the student or others such as inappropriate touching;” 2. “Fighting, physical altercation;” 3. Weapons; 4. Stealing; 5. Drugs, alcohol, tobacco or drug paraphernalia; 6. Gang related dress or activity; 7. Destruction of school materials and property; 8. Inappropriate Clothing; 9. Sexual Harassment; and 10. Intimidation. In addition, OSS is included for these students as a step in the discipline ladder for other offenses such as defiance/disobedience, profanity or

vulgarity. OCR also noted that the discipline ladder for truancy at the K-6th grade levels ranges from Steps 2 to 9 (2 days of afterschool detention to up to 10 days OSS).⁷

7-8th Grades: The District has a separate Discipline Code for Grades 7-8, which are located at Tupelo Middle School, the District’s only middle school. The current Code lists 34 violations and infractions.

High School: The District has a separate Discipline Code for the District’s only high school, Tupelo High School. The Code lists the same 34 violations and infractions as the Middle School Discipline Code.

At the middle and high school levels, the steps on the disciplinary ladders for “skipping or cutting class” range from Steps 5 – 8 (3-4 days ISS to up to 10 days OSS or referral to the alternative school). The current Middle and High School Discipline Codes include OSS as the first step in the discipline ladder for offenses such as smoking and “sexual misconduct, harassment and improper touching.” OSS is also included as a step in the discipline ladder for other offenses such as defiance/disobedience, profanity or vulgarity, other misbehavior as determined by administration, use or possession of dangerous objects or materials, “improper behavior at school,” habitual violation of school rules, and dress code violations. The current Codes for the Middle and High Schools raised the consequences for many infractions. For example, the minimum sanction for profanity is now a 3 or 4-day ISS, compared to detention. In addition, the Codes raised the first step penalty for fighting from OSS to referral to alternative school for a minimum of 45 days.

The current Middle School and High School Discipline Codes include nine offenses with “non-negotiable” discipline consequences: (1) fight; (2) assault; (3) alcohol; (4) unlawful drugs; (5) selling/distributing unlawful drugs/alcohol; (6) weapons; (7) look-alike weapon; (8) theft; and (9) breaking/entering and/or major destruction of school property.⁸ The non-negotiable offenses each have a specific minimum sanction of a referral to the alternative school (for a minimum of 45 days) or expulsion. The Codes also indicate that all cases of “non-negotiables” will be reported to the Tupelo Police Department.

Further, while the District provided offense descriptions in the Student Code of Conduct for some infractions (*e.g.*, physical altercation, assault, disruptive behavior), some infractions were

⁷ OCR has stated that “policies that impose out-of-school suspensions or expulsions for truancy raise [disparate impact] concerns because a school would likely have difficulty demonstrating that excluding a student from attending school in response to the student’s efforts to avoid school was necessary to meet an important educational goal.” See Dear Colleague Letter on school discipline, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html> and School Discipline FAQs, <http://www2.ed.gov/policy/gen/guid/school-discipline/faq.pdf>.

⁸ Mississippi Code § 37-11-18 provides that “any student in any school who possesses any controlled substance in violation of the Uniform Controlled Substances Law, a knife, handgun, other firearm or any other instrument considered to be dangers and capable of causing bodily harm or who commits a violent act on educational property as defined by Section 97-37-17, Mississippi Code 1972, shall be subject to automatic expulsion for a calendar year by the superintendent or principal of the school in which the student is enrolled; provided, however, that the superintendent of the school shall be authorized to modify the period of time for such expulsion on a case by case basis. Such expulsion shall take effect immediately subject to the constitutional rights of due process, which shall include the student’s right to appeal to the local school board.”

subjective in nature and were not clearly defined in the Student Code or any of the Discipline Codes, such as “improper behavior at school” and “other misbehavior as determined by the administration.” For high school students, the discipline ladder for “improper behavior at school” ranged from Steps 1 (detention) – 11 (expulsion) and for “other misbehavior” from Steps 1 (detention) – 8 (10-day OSS or referral to alternative school). OCR noted that the conduct described for these specific behaviors could have been coded as specific infractions. Specifically, conduct coded as “other misbehavior” in the SAMS report included tardy, inappropriate use of school computer, rude to teacher, iChat in class, cell phone usage, rude and disrespectful, and horse playing.

Alternative School: The District has a separate Discipline Code for its one alternative school, Filmore Center. The Code includes 35 infractions. As noted above, students may be referred to the alternative school for numerous offenses. For example, at the high school, students may be referred to the alternative school for “non-negotiable” offenses such as fighting (minimum 45 days), assault (minimum 90 days), alcohol (minimum 90 days), possession of unlawful drugs (minimum 180 days) as well as for other offenses such as possession of tobacco or tobacco related products, smoking, writing on school walls, harassment, improper behavior at school, leaving campus without permission, skipping or cutting class, disruptive behavior, and “other misbehavior as determined by the administration.”

According to the District policy, the process for referring a student to Filmore School, includes steps where the school principal and/or counselor compiles disciplinary records, attendance records, and, if applicable, referral forms, interventions, the Functional Behavioral Assessment (FBA), or the Behavior Intervention Plan (BIP); a committee reviews the alternative placement referral; the parent is notified of the referral and a conference convened; the Director of Student Support Services and the Superintendent or designee review the referral; and the student and his or her parent or legal guardian are provided due process rights and appeal information.

An educational plan is developed for each student assigned to the alternative school, which follows the programs and class schedules from the home schools as closely as possible. Students receive grades at the alternative school, which are sent to the home school. The home school is responsible for the student’s final grade. The alternative school implements individual education plans (IEPs) for students who are to receive such services. While at the alternative school, students are searched thoroughly each day upon entry, escorted by security officers when changing classes, not allowed to carry purses, book bags or wallets, and not permitted to discuss specific information about other students and their situations in the community. Bus transportation is provided to students attending the alternative school. Students attending the alternative school are not permitted to participate in extra-curricular activities at their home school and are not permitted on the school’s campus until their alternative school placement has ended.

The alternative school uses a level system that prepares students to re-enter the home school and provides structure that allows the student to monitor his or her progress while learning replacement behaviors and social skills that lead to success. According to the alternative school handbook, the level system may be successfully completed in 30 or 45 school days. According to District policy, students are reinstated from the alternative school to their home school after a positive evaluation conducted by the Alternative Evaluation Committee, which is composed of

the Assistant Superintendent, Director of Alternative Center, and the principal or designee from the student's home school. A student's release from the alternative school is contingent upon the student's behavior, attendance record, participation in counseling, completion of assigned days, and academic progress during his or her assignment at the alternative school. A student may be granted early release only if the alternative school has reached the maximum teacher-student ratio in the regular program or the special education program. When this situation is encountered, the home schools are asked to consider accepting early release of a student, which also must be approved by the Alternative Evaluation Committee. OCR's review of the District's SAMS report and discipline referrals confirmed that students did return to their home school following an alternative school placement.

Referrals to Law Enforcement: The District maintains an agreement with the Lee County Juvenile Detention Center (JDC) in which it receives the services of school resource officers (SRO), who are police officers at TMS and THS. According to the District's website, the District employs eighteen full-time security officers and approximately thirty-five part-time officers.⁹ Two of the eighteen full-time officers are certified SROs and seven of the officers are certified School Safety Officers (SSO). The District School Board policy, EBC Security,¹⁰ outlines the duties of SROs, SSOs, and Campus Enforcement Officers (CEOs):

- A School Resource Officer (SRO) is a “fully trained officer with a minimum age of twenty-three and at least three years of law enforcement experience prior to assignment. The officer is qualified to work for any local law enforcement agency in the state. The officer is responsible for school safety administration/planning, enforcement activities, classroom instruction in areas of expertise and counseling referral of students.”
- A Campus Enforcement Officer (CEO) is “essentially a School Safety Officer who is commissioned by the district and has law enforcement authority. The officer has authority to carry weapons and make arrests. The officer is responsible only for enforcement and safety related activities and is not trained for school safety planning, classroom teaching or counseling related duties.”
- A School Safety Officer (SSO) is “assigned duties of safety and physical security under the supervision of a School Resource Officer, Campus Enforcement Officer, or school administrator. The officer does not have weapon-carrying or arrest authority. The officer conducts routine patrols, secures buildings and check for safety hazards.”

The District provided OCR a list of all individuals who are responsible for administering discipline on its campuses and the list only indicated that teachers, counselors and administrative staff are responsible for administering discipline. The list did not identify any SRO, CEO, or SSO who was responsible for administering or enforcing the District's discipline policies. The administrators confirmed to OCR that they have school security officers at the District and noted

⁹ “Safety and Security” page on <http://www.tupeloschools.com>.

¹⁰ The policy is available in at

<http://tupelo.msbaopolicy.org/DistrictPolicies/ViewsAdmin/SelectedDocumentReadOnly/tabid/5911/Default.aspx?docId=66422>.

they would contact the SRO for incidents requiring assistance, specifically with regard to any “major disciplinary infractions,” (e.g., weapons, alcohol, drugs or assault) because it is the SRO’s decision to handle any law enforcement issues. The District’s Discipline Codes for middle and high school students indicate that all cases of non-negotiable infractions will be reported to the Tupelo Police Department. The administrators OCR interviewed stated that they did not know if there was a written policy concerning the process for referring students to law enforcement; however, the administrators informed OCR that the SAMS report does include information about when a student received a law enforcement referral.

Disciplinary Recordkeeping

The District utilizes an electronic information and records management system known as SAMS. According to the District, SAMS stores the District’s students’ discipline records, including all referrals to the office for disciplinary action and documentation concerning students who have been referred to the Lee County Juvenile Detention Center. Information about classroom discipline is not entered into SAMS.

The Discipline Codes and Student Code do not include a specific infraction called “zm-non-criminal behavior,” for the three schools, but the District reported on its SAMS discipline report 1,582 infractions of zm-non-criminal behavior during the 2010-2011 school year¹¹ and 4,028 infractions during the 2011-2012 school year.¹² The District explained that the “zm” referred to infractions that were entered into the SAMS report on a monthly basis and that the SAMS system required a behavior to be coded as non-criminal behavior in order to reflect that the student was assigned ISS as a sanction. However, a review of the comprehensive discipline report indicated that students received sanctions other than ISS for the recorded non-criminal behavior infractions, including Saturday school detention, administrative discipline,¹³ OSS, and alternative school. The behaviors for zm-non criminal behavior infractions included verbal altercation, missed detention, physical altercation, tardy, skipping class and disruptive behavior.

OCR identified additional inconsistencies in the District’s administration of its discipline policies. OCR reviewed the SAMS report and discipline referral forms from all three target

¹¹ During the 2010-2011 school year, the TPSD reported 654 infractions of zm-non criminal behavior at THS; 833 infractions of zm-non criminal behavior at TMS; and 95 infractions of zm-non criminal behavior at the 6th Grade Center.

¹² During the 2011-2012 school year, the TPSD reported 1,337 infractions of zm-non criminal behavior at THS; 2,079 infractions of zm-non criminal behavior at TMS; and 612 infractions of zm-non criminal behavior at the 6th Grade Center.

¹³ The THS administrators gave varying definitions of the sanction of “administrative discipline.” The former THS principal stated “administrative discipline” is discipline where the student is warned, the parent is contacted, and a plan of action is developed for the student; whereas, one THS Assistant Principal stated “administrative discipline” was a warning without progressing up the discipline ladder and another THS Assistant Principal stated he “didn’t use that term.” The current THS principal stated that “administrative discipline” was used when the sanction was a parent meeting or when a student served half day of ISS, which did not fit in any other category on the SAMS report. The TMS Principal informed OCR that “administrative discipline” was not always punitive and stated, a circumstance when “administrative discipline” was used was when a student threatened to harm himself. The school did not penalize such a student but documented the incident and provided an intervention. However, the SAMS report indicates “administrative discipline” was used in many other circumstances, such as when the school temporarily or permanently took away a student’s laptop for misuse or inappropriate content.

schools. The District indicated that students were allowed to present statements or other witness statements, and the referral forms and attachments and SAMS report reviewed by OCR included a space for this information. However, the documents did not uniformly note that students presented statements prior to receiving a disciplinary sanction. Also, while the THS student referral forms included a notation for “previous action(s) taken by teacher,” OCR found that generally this was left blank. At the 6th Grade Center and TMS, referral forms included a space to note the type of communication to parent (note, phone call or meeting) and OCR’s review found there was little to no documentation on the referral form that parents were contacted regarding discipline actions.

Staff Training related to Discipline

Most of the staff from the three schools targeted in OCR’s investigation indicated that they did not recall any “formal training” regarding the District’s discipline policies and procedures, but they recalled discussions of the Code of Conduct as it relates to discipline during staff/faculty meetings. According to some teachers, they had training when they attended the “new teachers’ orientation.”

Discipline Data Analysis

During the 2010-2011 and 2011-2012 school years, at the three target schools, African-American students comprised 48% and 49%, while White students comprised 47% and 46% of the total enrollment for the target schools. Although African-American students and White students each represented roughly half of the total enrollment, respectively, the majority of disciplinary referrals were for the African-American students (81% for African-American students, compared to 17% for White students during the 2010-2011 school year; and 78% for African-American students, compared to 19% for White students during the 2011-2012 school year).

Next, OCR compared the number of individual student referrals for first offenses by race. African-American students constituted 68% of all students referred for discipline at least once in 2010-2011 and 67% in 2011-2012. White students constituted 28% of individual students referred for discipline at least once in 2010-2011 and 30% in 2011-2012. OCR determined that the difference between total enrollment and total referrals (including referrals for first time offenses) is statistically significant.

Target Schools – Enrollment and Referrals

	2010-2011 school year		2011-2012 school year	
	#	%	#	%
Enrollment				
African-American	1803	48%	1828	49%
White	1736	47%	1687	46%
Total (target schools)	3718		3700	

Disciplinary Referrals				
African-American	6291	81%	7440	78%
White	1322	17%	1760	19%
Total	7807		9493	
Referrals for First Offenses				
African-American	1065	68%	1173	67%
White	437	28%	526	30%
Total	1558		1760	

Figure 5.

The information in Figure 5 illustrates there is a statistically significant disproportionate representation of African-American students who were referred for discipline.

First Offense by Schools					
	African-American		White		Total
	#	%	#	%	#
2010-2011					
6th Grade Center	188	67%	87	31%	279
TMS	300	68%	123	28%	438
THS	577	69%	227	27%	841
Total	1065	68%	437	28%	1558
2011-2012					
6th Grade Center	227	62%	124	33%	369
TMS	322	72%	116	26%	449
THS	624	66%	286	30%	942
Total	1173	67%	526	30%	1760

Figure 6.

First Infractions (Offense):

OCR identified the first infraction of each student at each of the target schools. OCR ensured that the students who were compared by race/ethnicity were similarly situated, *i.e.*, students with similar conduct/behavior. OCR identified and focused on the SAMS report’s five common violations that received the highest number of referrals for which students were referred for discipline at each of the target schools. The results of OCR’s analysis of first infractions are outlined below:

Five Most Common Violations on School Property

	African-American		White		Total	African-American			White		Total
	#	%	#	%	#	#	%	#	%	#	
School Years	2010-2011					2011-2012					
6th Grade Center											
Proactive Counseling	43	53%	36	45%	81	Proactive Counseling	59	54%	38	35%	110
Defiance/disobedience	26	79%	7	21%	33	Defiance/disobedience	32	56%	25	44%	57
Excessive Tardy	14	56%	10	40%	25	Non-crim behavior	19	58%	14	42%	33
Fight	15	75%	5	25%	20	Excessive Tardy	9	41%	12	55%	22
Non-criminal behavior	12	60%	8	40%	20	Fight	9	69%	4	31%	13
TMS											
Disruptive behavior	62	70%	23	26%	89	Non-criminal behavior	153	82%	31	17%	186
Non-criminal behavior	68	78%	16	18%	87	Other misbehavior	60	59%	38	38%	101
Other misbehavior	49	62%	27	34%	79	Disruptive behavior	38	58%	25	38%	65
Excessive tardiness	28	47%	31	52%	60	Defiance/diobedience	18	69%	4	15%	26
Defiance/disobedience	25	81%	6	19%	31	Disorderly conduct	11	79%	3	21%	14
THS											
Excessive tardy	109	59%	60	32%	185	Non-criminal behavior	113	71%	39	24%	160
Other misbehavior	91	59%	57	37%	155	Other misbehavior	93	58%	59	37%	159
Non-criminal behavior	105	75%	28	20%	140	Excessive tardy	80	58%	52	38%	138
Truancy	44	71%	16	26%	62	Truancy	79	69%	32	28%	115
Profanity/vulgar	28	74%	9	24%	38	Dress Code	50	61%	29	35%	82

Figure 7.

OCR noted that “proactive counseling” was listed as one of the most common infractions, although it likely refers to infractions that resulted in “proactive counseling,” not the infractions themselves. The District’s Discipline Codes indicate that counseling may be added to any step in the applicable discipline ladders.

OCR further found that African-American students were sanctioned with ISS and OSS at a statistically significant disproportionate rate compared to White students.

In-School Suspension - Referral Incidents by Race

School Years	African-American		White		Total
	#	%	#	%	#
2010-2011					
6th Grade Ctr	237	76%	74	24%	311
TMS	716	81%	129	15%	887
THS	1035	87%	135	11%	1196
Total	1988	83%	338	14%	2394
2011-2012					
6th Grade Ctr	489	84%	92	16%	584
TMS	1276	79%	260	16%	1608
THS	659	83%	118	15%	796
Total	2424	81%	470	16%	2988

Figure 8.

Students Assigned ISS at Least Once, by Schools

2010-2011					
6th Grade Ctr	101	77%	30	23%	131
TMS	164	75%	49	22%	220
THS	289	78%	68	18%	370
Total	554	77%	147	20%	721
2011-2012					
6th Grade Ctr	148	79%	36	19%	187
TMS	230	77%	61	21%	297
THS	220	76%	61	21%	289
Total	598	77%	158	20%	773

Figure 9.

Out of School Suspension – Disciplinary Referral Incidents

2010-2011					
6th Grade Ctr	78	87%	11	12%	90
TMS	305	88%	33	10%	345
THS	422	89%	48	10%	476
Total	805	88%	92	10%	911
2011-2012					
6th Grade Ctr	124	85%	22	15%	146
TMS	394	80%	74	15%	494
THS	357	86%	50	12%	415
Total	875	83%	146	14%	1055

Figure 10.

Students Assigned OSS at Least Once

	African-American		White		Total
	#	%	#	%	#
2010-2011					
6th Grade Ctr	51	84%	9	15%	61
TMS	118	81%	22	15%	145
THS	159	81%	31	16%	196
Total	328	82%	62	15%	402
2011-2012					
6th Grade Ctr	72	84%	14	16%	86
TMS	134	82%	27	16%	164
THS	157	80%	36	18%	197
Total	363	81%	77	17%	447

Figure 11.

Further, OCR observed an increase in the total number of ISS and OSS assignments for African-American students from the 2010-2011 to 2011-2012 school years. Specifically, the number of ISS for African-American students increased from 554 to 598 and the number of OSS for African-American students increased from 328 to 363.

Referral to Alternative School

OCR reviewed the District’s alternative school referrals for the 2010-2011 and 2011-2012 school years, and determined that African-American students were disproportionately referred to a statistically significant extent compared to white students each school year. In 2010-2011, 49 African-American students were referred from the 6th Grade Center, TMS and THS, compared to 9 White students. In 2011-2012, 105 African-American students from the three schools were assigned to the alternative school compared to 25 White students. White students were referred to alternative school for the following offenses: possession, use, or sale of drugs, fighting, disorderly conduct, non-criminal behavior, off school property arrest, and “alternative school placement after suspension.” African-American students were referred to alternative school for the same offenses, as well as assault, bullying, weapon possession, and gang activity. African-American students constituted 83% in 2010-11 and 80% in 2011-2012 of the students assigned to the alternative school. For both years reviewed, African-American students were referred disproportionately to the alternative school to a statistically significant degree as compared to referrals for White students.

Expulsions

The District’s Discipline Codes list expulsion as the final step in the discipline ladders for numerous offenses, including use, sale or possession of drugs, drug paraphernalia, look-alike drugs, or alcohol on or near school grounds at school functions; intoxication; defacing or otherwise injuring property that belongs to the school district; assault, harassment, intimidation or threatening of other students; use or possession of dangerous objects or materials; improper behavior at school; habitual violation of school rules; gang or gang-like activity/association; and

sexual misconduct, harassment or improper touching. At the middle and high school levels, the current Discipline Codes provide for “non-negotiable” expulsions for selling/distributing unlawful drugs or alcohol, weapons, “look-a-like” weapon, theft, and breaking/entering and/or major destruction of school property.

The District did not provide any information to OCR in the investigation regarding expulsions in the 2010-11 and 2011-2012 school years. The District reported 6 expulsions for the 2011 CRDC collection. All of the expelled students were African-American students.

Referral to Law Enforcement

As noted, the District’s current Discipline Codes for middle and high school students indicate that all cases of non-negotiable infractions will be reported to the Tupelo Police Department.

The District did not provide any information to OCR in the investigation regarding referrals to law enforcement in the 2010-2011 and 2011-2012 school years. The District reported 24 referrals for the 2011 CRDC collection. Twenty of the 24 students were African-American students.

OCR also analyzed the total number of referrals at the target schools that resulted in referrals/detained by the Lee County Juvenile Detention Center (JDC), for offenses that occurred on school property. The District did not report any law enforcement referrals at the 6th Grade Center during either the 2010-2011 or 2011-2012 school years. For the middle and high schools for both school years reviewed, African-American students were disproportionately assigned (80% or more of the total students) to the Lee County JDC. The 46 African-American students assigned to JDC constituted over 80% of the total number of students assigned to JDC from TMS and THS in the two school years. African-American students were referred to Lee County JDC for arrests for crimes occurring off campus, possession, use, or sale of drugs, theft, fighting, and assault. White students were also referred to Lee County JDC for arrests for crimes occurring off campus. Further, the total number of African-American students referred/detained by the Lee County JDC significantly increased from 20 students during the 2010-2011 school year to 26 students during the 2011-2012 school year.

Incidents of Discipline

In addition to finding that African-American students were disciplined at a disproportionate rate compared to White students, OCR found specific incidents of different treatment in discipline with regard to first infractions in the 2010-2011 and 2011-2012 school years:

2010-2011 School Year

6th Grade Center

- Nine students (5 African-American, 1 Hispanic, 3 White) were disciplined for the first offense of *harass, intimidate, threaten*. Under the Discipline Policy, “harassment, intimidation, or threatening of students or teachers” corresponds to steps 8 – 10 of the discipline ladder (step 8: 5 day OSS, step 9: up to 10 days OSS; and step 10: placement

in alternative school or recommendation for expulsion). Four African-American students received OSS for the offense, two students (1 White, 1 African-American) received detention, one White student received administrative discipline, one White student received proactive counseling and one Hispanic student received “suspend pend hearing/OSS.” The White students received the least severe punishments for substantially similar conduct. Further, the electronic discipline report stated the conduct of the one White student who received detention was “hitting another student,” while African-American students received OSS for substantially similar conduct, including one African-American student who was disciplined with the infraction of *physical altercation* for “hitting another student.”

Tupelo Middle School

- Twenty students (16 African-American, 2 White, and 2 other students) were disciplined for the first offense of *profanity*. African-American students were the only students who received OSS for the first offense. White students received warnings and detention for substantially similar behavior.
- Fifty-four students (12 White, 40 African-American and 2 other students) were disciplined for the first offense of *zm-noncriminal behavior*. All students were disciplined with ISS except for one African-American student who was disciplined with alternative school for the remainder of the semester for conduct identified as “student in fight on bus.” When OCR compared this incident to *fighting* and *Bus: fighting*, OCR found that only African-American students were disciplined with any of these infractions and received OSS in nearly every incident. Further, when OCR reviewed all infractions based on a description of the conduct (*i.e.*, fighting, pushing, physical altercation), OCR found that African-American students received the most severe sanctions and were the only students to receive alternative school or ten or more days of OSS for the first infraction.

Tupelo High School

- One-hundred fifty-five students (57 White, 91 African-American and 7 other students) were disciplined for the first offense of *other misbehavior*. When comparing the students, OCR found one White student who received “proactive counseling” and the behavior was annotated as “rude to a teacher,” whereas two African-American students each received one day OSS for the same behavior “rude to a teacher.”
- Thirty-eight students (9 White, 28 African-American and 1 other student) were disciplined for the first offense of *profanity*. African-American students (7) were the only students who received OSS for the first offense of profanity. The most severe sanction any White student received was Saturday school.

2011-2012 School Year

6th Grade Center

- One hundred eight students (26 White, 78 African-American, and 4 other students) were disciplined for the first offense of *bus sanction*. The District’s Bus discipline policy states that students may enter the bus discipline ladder at any step, depending on the nature of the offense. The policy provides for a warning for step 1 and suspension from

the bus after step 1 for designated periods of time; the policy does not describe the specific ladder step for specific offenses. Five African-American students received a bus suspension and 103 students (26 White, 73 African-American, and 4 other students) received warnings. All five of the African-American students were disciplined for *Bus: fighting/pushing/tripping* and received suspensions ranging from one to three days. The discipline reports noted the conduct for these offenses were “hitting another student” or “fighting on a bus.” However, two White students were disciplined for sanctions other than fighting, receiving only a warning, but the conduct described in the discipline report indicated similar conduct to the African-American students who were suspended. One White student was disciplined for *Bus: failure to remain seated* and received a warning; however, the notes on the electronic discipline report stated “hitting another student.” Another White student was disciplined for *Bus: disregard safety/respect* and received a warning; however, the notes on the electronic discipline report stated “thumping another student.”

- Four students (1 White and 3 African-American) were disciplined for the first offense of *zm-disorderly conduct*. Two students (1 White and 1 African-American) received ISS and two African-American students received OSS. Only African-American students received OSS even though the conduct described in the electronic discipline report for all four students was similar.

Tupelo Middle School

- Fourteen students (3 White and 11 African-American) were disciplined for the first offense of *zm-disorderly conduct*. Eleven students (3 White and 8 African-American) received ISS; one African-American student received OSS; and two African-American students were suspended pending hearing/alternative school. While both White and African-American students were disciplined for this offense, African-American students received the most severe sanctions on their first infraction.

Tupelo High School

- Two students (1 White and 1 African-American) were disciplined for the first offense of *disorderly conduct*. Both students were disciplined with OSS; however, while the discipline referrals indicated similar conduct, the White student received three days of OSS, and the African-American student received five days of OSS.

Conclusion

OCR’s investigation revealed that the District’s separate Discipline Codes for different grade levels and the alternative school list the possible discipline violations and corresponding sanctions for each violation. However, the Codes provided administrators at all educational levels with a wide range of steps for the appropriate sanctions for many offenses that afforded the administrators broad discretion. Exclusionary discipline, including OSS, referral to alternative schools and expulsions, was an available option for many violations. The Codes also included offenses that permitted the subjective exercise of discretion on the part of the administrator, as terms such as “improper behavior at school” and “other misbehavior as determined by the administration,” were not defined in the Discipline Codes. Without clear definitions or explanations of these offenses, students and their parents and guardians do not have adequate notice of the specific behavior(s) that may result in the imposition of discipline.

OCR further noted that the current Discipline Codes for middle and high school students increased the sanctions for many offenses, including raising the first step penalty for fighting from OSS to referral to alternative school, and added new “non-negotiables” that provide for a minimum of 45-days at the alternative school and/or expulsion and reporting to law enforcement. OCR also observed that the Discipline Code required that students as young as 6th grade be referred to alternative school or for expulsion for the undefined “other misbehavior as determined by the school officials.”

OCR’s file review also revealed that students engaging in similar misconduct did not receive the same discipline. During the 2010-2011 and 2011-2012 school years, at the three target schools, while African-American students comprised 48% and 49%, they disproportionately represented to a statistically significant extent compared to white students in disciplinary referrals (81%, then 78%), ISS (77% for both school years), and OSS (82%, then 81%). In these two school years, OCR observed an increase in the total number of ISS and OSS assignments for African-American students: the number of ISS increased from 554 to 598 and the number of OSS increased from 328 to 363. Moreover, while the District reported in OCR’s CRDC that it expelled only 6 students and referred only 24 students to law enforcement in these two school years, all of the expelled students and 20 of the 24 students referred to law enforcement were African-American students. African-American students from the three targeted schools also constituted 80% or more of the students assigned to the alternative school or referred to the Lee County JDC in these two school years.

On September 15, 2014, the District entered into a voluntary resolution agreement (Agreement). Through the Agreement, the District commits to take specific actions to ensure that all students have an equal opportunity to learn in school. Provisions in the Agreement are intended to ensure that the District implements fair and equitable discipline policies and practices and creates an environment where all students feel safe and welcome. In addition, the District commits to provide teachers and administrators with the tools and training to support positive student behavior, thereby providing a range of options to prevent and address misconduct and ensure that the District’s disciplinary policies and practices are administered in a nondiscriminatory manner. To ensure that these measures are effectively implemented within the District, the Agreement provides for expert consultation on research-based methods of preventing discrimination against African-American students; specialized professional development for administrators, teachers, and staff; and outreach to students, parents, and community stakeholders to ensure that they have an opportunity to participate in assessing and improving the District’s ability to provide a safe school environment and engage all students in its education program.

The Agreement requires the District to take specific steps to:

- Designate an individual to serve as the District’s Discipline Supervisor and be responsible for overseeing the implementation of the District’s policies concerning discipline in a fair and equitable manner;
- Require school staff to employ a range of corrective measures before referring a student to disciplinary authorities;
- Establish student, staff and parent committees to discuss matters concerning the equitable treatment of students in the implementation of the District’s discipline policies, practices and procedures;

- Establish uniform standards for the content of student discipline files at all District schools;
- Review and revise its discipline policies, practices, and procedures that will ensure to the maximum extent possible that misbehavior is addressed in a manner that does not require removal from school;
- Review its policies and procedures for referring students to alternative school to ensure that the policies include clear entry criteria, guidelines on length of placement, guidelines for the provision of behavior supports and services, and provisions for the transition back to the home school environment;
- Ensure that the District has in place at each school a system to provide students who display behavior problems with support services designed to decrease behavioral difficulties;
- Provide training to all District students, teachers, administrators, school aides, and any other District personnel charged with supervising students, making disciplinary referrals or imposing sanctions;
- Conduct a comprehensive review of its use of law enforcement officials to assess the effectiveness of the use of these officials and provide law enforcement officials training that explains the District's obligations under Title VI and the District's student discipline policies, practices, and procedures; and
- Collect and evaluate data on an ongoing basis to assess whether the District is implementing its student discipline policies, practices, and procedures in a non-discriminatory manner.

Based on the commitments the District has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issue in the review. OCR will not close the monitoring of the Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI. Should the District fail to fully implement the Agreement, OCR will take appropriate action to ensure the District's compliance with Title VI including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the courtesy and cooperation shown by the District during the course of this review. If you have any questions about this matter, please contact Ms. Patricia Sinanan or Ms. Emily Babb, at (214) 661-9600.

Sincerely,

Taylor D. August
Director, Dallas Office
Office for Civil Rights