School Discipline and Disparate Impact

A Briefing Before
The United States Commission on Civil Rights
Held in Washington, DC

Briefing Report

Letter of Transmittal

The President
The President of the Senate
The Speaker of the House

Sirs:

The United States Commission on Civil Rights ("Commission") is pleased to transmit this report, *School Discipline and Disparate Impact*. The report is drawn from a briefing that the Commission held on February 11, 2011 that examined the effect that the U.S. Department of Education's Fall 2010 Disparate Impact initiative has had on schools and school districts across the country. This federal initiative was implemented to look at differences in discipline outcomes between students of color and other similarly-situated students. The initiative's aim is to identify whether the application of exclusionary discipline policies has had a disparate impact on students of color. During the briefing the panelists, teachers and administrators from racially diverse public school districts described how their particular schools have responded to this initiative. The Commission inquired as to whether the schools have changed their policies and practices and what those changes have been. In addition, the Commission inquired into whether school districts maintain comprehensive data that allows them to track the effectiveness of their discipline policies; whether teachers are appropriately trained to implement these policies; and what other methods are being used by districts to evaluate the effectiveness of their policies. Finally, the U.S. Department of Education provided background information on its disparate impact initiative and how the disparate impact theory is being implemented in its enforcement work.

The briefing identified a common theme among most of the teachers. This is that disciplinary problems can be greatly reduced through individualized instruction based on the student's capabilities, cultural sensitivity or competency, parental involvement and support, and effective school leadership. School administrators indicated that disciplinary problems could be reduced through consistent application of a transparent and uniform school-wide disciplinary policy. Many of the school administrators also indicated that they had successfully reduced discipline disparities and overall expulsions through the adoption of nationally-tested behavior management programs.

This report was unanimously approved on October 21, 2011 by Chairman Martin R. Castro, Vice Chair Abigail Thernstrom, and Commissioners Roberta Achtenberg, Todd Gaziano, Gail Heriot, Peter Kirsanow, David Kladney, and Michael Yaki.

For the Commission,

Martin R. Castro
Chairman

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Executive Summary

The Commission held a briefing entitled, "School Discipline and Disparate Impact" on February 11, 2011 to examine the effect of the U.S. Department of Education's disparate impact initiative announced in the fall of 2010 for schools and school districts across the country. The Commission asked teachers and administrators from racially diverse public school districts how they have responded to the new initiative; specifically, whether their teachers and administrators have changed their policies and practices as a result, and what those changes were. The Commission was interested also in whether the districts kept statistics to track the effectiveness of policies; how they train their teachers in implementing discipline policies; and what other means the districts used to evaluate whether their policies worked.

The Commission asked the U.S. Department of Education (ED or Department) to describe its disparate impact initiative and supply case documents indicating the manner in which the Department implemented disparate impact theory in its enforcement work. The Department's civil rights enforcement unit, the Office for Civil Rights (OCR), provided documents relating only to closed cases, which showed investigations that proceeded to resolution based initially on a disparate impact theory. The Department's policy as stated during the briefing is that statistically disparate results create a presumption of discrimination that must be rebutted by the school or district with evidence that the school or district has a legitimate educational justification and that there are no equally effective alternative policies that would achieve the school's educational goals. The Department indicated that it would continue to use disparate impact theory in its investigations, including those currently open, in addition to disparate treatment theory.

Teachers appearing before the Commission were Mr. Allen Zollman, Ms. Andrea Smith, Ms. Jamie Frank, Mrs. Louise Seng, and Mr. Patrick Welsh. Administrators appearing before the Commission were Ms. Suzanne Maxey, Principal at TC Williams High School in Alexandria City, Virginia; Dr. Osvaldo Piedra, Assistant Principal, East Lake High School, Pinellas County, Florida; Mr. Joseph Oliveri, Retired Director of Alternative Schools for the Austin Independent School District, Texas; Mr. Edward Gonzalez, Associate Superintendent, Department of Prevention and Intervention, Fresno Unified School District, Fresno County, California; Dr. Hardy Murphy, Superintendent, Evanston/Skokie District 65, Cook County, Illinois; Dr. Hertica Martin, Executive Director for Elementary and Secondary Education, Rochester Public Schools, Olmstead County, Minnesota; and Dr. Douglas Wright, Superintendent, San Juan School District, Blanding, Utah. Mr. Ricardo Soto, Principal Deputy Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Department of Education, appeared for the Department.

Points of agreement among most of the teachers were that disciplinary problems were greatly reduced among all students by attention to appropriate levels of difficulty in instructional materials, sensitivity to individual students and their backgrounds, parental involvement and support, and effective leadership by a school principal. Most, but not all of the teachers

reported no effort by school administrators to interfere with classroom discipline, but some reported onerous procedural and paperwork burdens before any disruptive student could be removed from class.

Points of agreement among the school administrators were the importance of the following: telling students what the rules are; why the school has those rules, what the consequences are for violating those rules, and being consistent in applying the rules. Also effective in their view was maintaining an approach that sought ways to change the school to better meet the needs of the students, rather than inflexibly following a pre-set view or imposing zero-tolerance rules that students knew produced unfair results; training teachers in understanding different cultures and personalities; devising special programs for behaviorally high-risk students; instituting parent engagement and education programs; and/or adopting one of several nationally-tested behavior management programs that had reduced disparities and overall expulsions in other districts.

Two of the speakers (Dr. Wright, San Juan, Utah and Dr. Martin, Rochester, Minnesota) were administrators from districts currently under investigation by the U.S. Department of Education's Office for Civil Rights for possible violations under the new discipline initiative. Dr. Wright's district uses nationally-tested behavioral support programs mentioned by other speakers, expanded the role for guidance counselors, and instituted a student support system; Dr. Martin's district uses some of the same techniques and nationally-tested programs discussed in the briefing.

Mr. Soto of the U.S. Department of Education's Office for Civil Rights (OCR) provided an overview the office's work and mission, which is to ensure equal access to education through vigorous enforcement of civil rights. Mr. Soto stated that OCR's disparate impact initiative stemmed from data showing a sharp increase in the numbers of students nationwide who were suspended or expelled, which OCR views as an indication of possible violations of Title VI of the Civil Rights Act of 1964 and addresses using both disparate treatment and disparate impact theories.

Summary of Proceedings

Panel 1. Teachers

Allen Zollman

Mr. Zollman teaches English as a second language in an urban school to students in fifth through eighth grades, and also remedial reading and math courses. The student body is multi-ethnic.

He described his teaching methods developed over the years that blend instruction and pacing, and have reduced disciplinary problems in his classes. He remarked that accurate pacing and attention to the appropriate difficulty level of instructional material result in many fewer behavior problems, many of which result from boredom with already-learned material or frustration at being presented with material that is too difficult. He testified that he has never been told to take into account disparate impact on racial groups in his disciplinary referrals, but if he were, he would have three choices: one, to disregard the directive; two, to comply and live with the resulting chaos; or three, to stop teaching in a public school.

Mr. Zollman stated that on those occasions calling for a student's removal from his class (termed a "referral"), the school's disciplinary procedures require that a teacher fill out a two-page form to document the offenses and even so, do not allow removal until the third infraction. Mr. Zollman testified that on those occasions such procedures resulted in extended disruptions, particularly since those students (regardless of ethnicity) know of such policies, take advantage of them to continue their disruptions, and sometimes encourage students to join in the disruptions who would not otherwise do so. He read aloud excerpts of interactions that he has set down in writing with students who know well that they may not be removed immediately. The result on those occasions, according to Mr. Zollman, is that 29 other children (the remainder of the class) are prevented from learning, which he believed had the greater disparate impact.

Andrea Smith

Ms. Smith is a sixth-grade mathematics teacher at E.L. Haynes Public Charter School in Washington, D.C., which has 600 students in grades Pre-Kindergarten through 8th grade. The student body is 54 percent black, 25 percent Hispanic, 18 percent white, and 3 percent Asian. 62 percent of the students qualify for free or reduced lunch under federal guidelines, and 21 percent are English-language learners.

She told the Commission that data drawn from the school showed that black males and also special-needs students were disproportionately suspended, but that suspension was not effective in eliciting better behavior since the same students were repeatedly suspended. The

school developed a tracking system that gave the teachers suspension data from their classes on a weekly basis to help get at the causes of disciplinary problems, and developed a program called "relational trust" to help students understand that their teachers are being fair when they hold them to high standards in a caring way. The school staff has also participated in race and equity in education seminars to discuss racial inequities in the school, and to help the teachers confront any inequities in teaching and school structure.

Ms. Smith related her work experience at other schools, choosing in one case to leave a tight-discipline school where student/teacher/parent relationships were strained by race, and in another leaving a school with lax discipline. Although she had not formed conclusions as to solutions, she did not believe that discipline problems were the result of single-parent families or deeply ingrained behavior characteristics of any particular student.

Jamie Frank

Ms. Frank has been a teacher in public schools with widely differing economic and racial characteristics in suburban Washington, D.C. for 11 years, ranging from 80 percent minority schools to affluent school districts where over 80 percent of school parents were college graduates. She related the pressure that she believes that teachers now experience to focus on categories of students targeted as needing attention by laws such as the No Child Left Behind Act, which sets up adequate yearly progress (AYP) standards for all students, but separates them under major racial/ethnic headings for reporting purposes.

Her view was that this pressure affected discipline policies as well, and that in some school districts teachers were ordered to reduce racially-disparate suspensions in spite of threatening behaviors toward teachers involving weapons. For example, in her school teachers were ordered to substitute a day of "exclusion" at home for what otherwise would have been a suspension. Her view was that the schools felt pressured to pass some minority students through high school regardless of how many days they did not appear for classes to keep graduation numbers high for each racial group. She testified that reduced disciplinary standards for some minority students stemmed from policies that prevented removals from school and substituted "in-school intervention" that did not have to be reported as suspensions.

Ms. Frank stated that she believes the causes of behavior infractions are socioeconomic, not race-based, and include the failure of some students' parents to support them in school endeavors.

Louise Seng

Mrs. Seng taught for 34 years in an inner city school in Allentown, Pennsylvania, whose approximately 900 students in grades six, seven and eight were comprised of approximately 90 percent minorities, of which half were Hispanic.

Mrs. Seng stated her commitment to racial equality and also her belief that her colleagues in the school felt the same. Because of this commitment, she and her colleagues had stayed at the school in preference to accepting jobs in wealthier schools. Her view was that racial and ethnic minority students at her school were disciplined more frequently because they often came from families that had not taught the sort of self-control necessary to thrive in school, and moreover, where it was considered acceptable to solve problems with violence both at home and at school. Some of these students lacked basic necessities such as regular bedtimes, adequate sleep and nutritious meals, and either fell asleep in class or had trouble sitting still. To address this, Mrs. Seng helped run a conflict resolution program that she believed was successful in reducing disruptions. She stated that she was never asked by a school administrator to reduce disparities in discipline rates across racial groups, but that such a demand would have made it even harder for all students to learn, an unfortunate outcome.

Patrick Welsh

Mr. Welsh has taught English at T.C. Williams High School in Alexandria, Virginia since 1970, published a book, *Tales Out of School*, and written frequently on education and youth culture for the Washington Post, USA Today, and the New York Times. He acknowledged the controversial nature of discipline as it interacts with race, but gave his view that certain students, chiefly African-Americans who bear the legacy of discrimination and are children of unmarried teenage mothers, caused disproportionate amounts of disciplinary trouble in his school. He pointed out that race was less an issue than what he termed an inter-generational cycle of dysfunction involving poverty, unwed teen pregnancy, and absent fathers.

Mr. Welsh explained that the number of discipline violations in his school has varied a great deal over the years depending largely on the skill of the principal. He stated that the solution lies not in civil rights lawsuits, but in interventions by principals and teachers who are good at dealing with students. He noted that his new school principal, Suzanne Maxey, who was also a speaker at this briefing, has been successful in reducing disciplinary infractions through her skill in dealing with students and her visibility throughout the school. By contrast and prior to her tenure, there were two different principals over four years during which there were frequent hallway fights that the unsuccessful principals avoided witnessing, with predictable results.

His view is that even with reductions in disciplinary referrals, certain African-American students will be disproportionate among that group due to the cycle of dysfunction in their lives. He added that white administrators who want to move up the career ranks play it safe by not disciplining adequately, which often results in white parents' removal of their children from those schools. Mr. Welsh believes the unfortunate result of the failure to discipline is that kids who pay the price of chaotic schools are mostly black.

Discussion

Commissioner Kirsanow asked if disciplinary problems had increased over the last 25-30 years, and if so, to what did the panelists attribute the increase?

Mr. Welsh replied that disciplinary problems had ebbed and flowed depending on the principal, since some principals has been afraid to confront them, and also he thought that students were often distracted by their cell phones.

Commissioner Kirsanow then asked the panelists whether the disparity in discipline rates was a result of racial discrimination or actually merited, and also whether Asian students presented similar disciplinary problems relative to other minority students.

Ms. Frank responded that in one of her schools, Vietnamese students clashed with Guatemalan gang members, but where there was a strong administrator conflicts were not brought inside the school. Weak administrators, on the other hand, were afraid of disparity in discipline rates being publicized in the Washington Post and declined to impose appropriate discipline.

Mrs. Seng responded that in her experience, the discipline in her school was merited, and as for discipline rates of other ethnic groups such as Asians, her view was that regardless of ethnicity or race, children of new immigrants were not as frequently disciplined because they came from families that worked hard and expected a lot from their children.

Commissioner Kirsanow asked the panelists what they thought would be the result of pressure to relax disciplinary standards. Mrs. Seng and Mr. Welsh answered that it would be negative. No panelists disagreed.

Commissioner Gaziano asked whether boys or girls were the most disruptive. Three panelists thought girls were significantly more disruptive (Welsh, Seng and Frank).

Commissioner Castro asked whether the panelists had information on harsher punishment of minorities as compared with white students for the same offense. Ms. Frank responded that in fact, African-American students were treated more leniently with respect to truancy so the school could avoid having to report disparities. Commissioner Castro then asked if the panelists could determine whether a particular teacher or administrator was acting based on racial discrimination. Mr. Welsh said he did not feel that he could, since in his experience, some teachers simply did not know how to handle hyper-masculine black students and unintentionally made things worse.

Commissioner Castro asked about “relational trust” that Ms. Smith had recounted. She answered that like Mr. Welsh, she could not tell if a teacher was discriminatory, but that some teachers were more successful with students of different races, a response echoed by Mr. Zollman.

Commissioner Titus acknowledged the difficulties teachers face, and although disagreeing with some of the statements by panelists, asked whether they had substantive policy suggestions. Mrs. Seng suggested sending in researchers as substitute teachers for a week to see for themselves what was happening. Mr. Welsh doubted that merely a bureaucratic memo or teacher training could provide a solution. His response was that the curative process was already going on, and involved continuously trying to find the best principals, better teachers,

and invited Commissioner Titus to substitute-teach in his school. Commissioner Titus responded that she would be glad to come to the classroom, but wanted insights into how to fix a systemic problem. Ms. Smith said that teacher training would be part of the solution, since she had entered the teaching profession through the Teach for America program that did not prepare her adequately. Mrs. Seng said that perhaps the effort should be directed specifically to a local school district, since each area had different problems and one solution would be unlikely to benefit all.

Commissioner Heriot asked for specific information, such as that given by Mr. Zollman, as to what their procedures were for disciplining students; and Vice Chair Thernstrom added a question asking to what degree they were confined by legal restrictions.

Ms. Frank said that in her school the administrators were told to reduce their suspension numbers. As a result, they developed a euphemism --"in-school exclusion or intervention" -- which allowed the school to avoid reporting the data as suspensions. In addition, the teachers had to fill out a form that required contacting a parent three times before disciplinary action was possible, and that usually a minority student simply reappeared in school even if parents did not respond. Student of parents who communicated with the school were more likely to receive merely lunch detention.

Commissioner Kirsanow asked what the effect of retaining disruptive students was on the learning experience, and Ms. Frank stated that it was "horrible." She said that a lax discipline policy meant that the usual punishment/reward system would not work, regardless of race. Students with involved parents, on the other hand, usually made better decisions, again, regardless of race.

Mr. Zollman added that his students tell him that they like the detentions, because they are a haven of tranquility insulated from the mayhem in the school. Mrs. Seng agreed.

Commissioner Achtenberg observed that any indication of racial prejudice on the part of schools or teachers would necessitate remedies. Mr. Zollman asked how such prejudice would be measured, which Commissioner Achtenberg agreed was the difficulty in this area, and one which the Department of Education was attempting to refine, perhaps inartfully. She also observed that she would like to hear from scholars and other experts on this topic.

Vice Chair Thernstrom asked panelists to address Commissioner Kirsanow's question about any disparities in discipline between Asians and African-Americans or Latinos, whether current laws impeded effective discipline, and the particular disciplinary problems of students from chaotic home environments thwarting effective school remedies. Ms. Frank answered that programs such as the KIPP boarding schools were very successful, but were not replicable in large numbers. She also said that college-ready academic achievement and disciplinary problems were connected, and it did not make sense to force all students onto the same college path when technical or vocational programs might engage certain students more. She suggested that students might find being paid for achieving high grades an incentive. Vice Chair Thernstrom observed that panelists had not clarified what exactly

constituted disciplinary problems. Several panelists stated that disciplinary problems were defined as major disruptions, not minor infractions such as eating in class.

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Panel 2. School Administrators

Suzanne Maxey

Ms. Maxey is the principal of T.C. Williams High School in Alexandria City, Virginia, and won the Washington Post Distinguished Educational Leadership Award for Montgomery County Public Schools. Ms. Maxey was also a teacher for fourteen years and a principal in four schools in two states and three jurisdictions. She referred to her experience in widely different educational and disciplinary systems as a basis for her comment that the formula for successful discipline has not changed. She tells students 1) what the rules are, 2) why the school has those rules, 3) what the consequences are for violating those rules; and requires her administrators and teachers to be consistent in applying this formula.

Ms. Maxey distinguished certain violations of school rules that administrators have no choice but to enforce, which include drugs, alcohol, weapons, and fighting. She then described a very large category, chiefly insubordination, which she considered discretionary. Ms. Maxey described an example of effective but humane discipline that occurred in her school involving a student from a low-income family who became disruptive in class because his week's lunch money had been stolen. The student was removed from his classroom by the teacher, but upon discovering the basis for his behavior, Ms. Maxey gave him $20 of her own money (teachers often do this, she said), took him back to his teacher, and explained what had happened. He apologized to the teacher, and was readmitted to class.

Ms. Maxey concluded her comments by noting that sometimes teachers do not cooperate with humane discipline, or sometimes the infraction is so serious that it cannot be ignored, but good teachers and administrators do impose discipline humanely.

Osvaldo Piedra

Dr. Osvaldo Piedra has taught for over twenty years in public elementary, middle and high school, and is an assistant principal with East Lake High School in Pinellas County, Florida. Dr. Piedra presented slides showing discipline policy development processes and also discipline discrepancy statistics for his school. (His slides are included in his written statement.)

Dr. Piedra's slides displayed discipline disparity statistics that he stated were similar to national-level statistics. These showed that Hispanics, African Americans, males generally, and low-SES (socio-economic-status) students were referred (removed) disproportionally compared to the general student body.

He stated that a desegregation lawsuit filed against his county in 1964 resulted in a court order lifted in the year 2000 when the district achieved unitary status, and that the school has attempted to close the achievement and discipline gaps between racial and ethnic groups. To reach these goals, Pinellas County has developed, in conjunction with the University of

South Florida, a behavior intervention system called "Problem Solving and Response to Intervention" that informs students ahead of time what is expected of them, and teaches them models of expected behavior. To assist with this program, the school has computer tracking systems to determine attendance, tardy attendance, grades and related indicia, so that appropriate services are targeted to students who need them.

Dr. Piedra stated that his school had successfully implemented a system that shifted its approach to determining what in the school was not meeting the needs of students, instead of finding which students were not complying with existing school requirements.

Joseph Oliveri

Mr. Joseph Oliveri is the former principal of the Alternative Learning Center and Director of Alternative Education for the Austin Independent School District (AISD), serving students in grades K-12, and co-chair of the Joint City of Austin/AISD Steering Committee on Gang Activity.

Mr. Oliveri described his 11-year experience as head of six to nine schools (the exact number varying with the year) to which students were removed, and stated that AISD has removed African-American students at a rate greater than their representation in the total school population, although the disparity has decreased over the years. The same disparity was present for Hispanics, although less so; whites and Asians were removed at a rate lower than their representation in the student population (the removal rate for Asians was far below). Mr. Oliveri recommended that Commissioners review a 2010 report entitled, "Texas' School-to-Prison Pipeline: School Expulsion: The Path from Lockout to Dropout"[1] which found disproportionate minority representation.

Mr. Oliveri told the Commissioners that the disparities were the result in some cases of prejudice, in others, ignorance of cultural differences, zero-tolerance rules inequitably applied between races, and removal for -- in his view -- minor infractions such as skipping classes or truancy. He also stated that disparities in academic skills go with discipline infractions, and recommended that potential solutions include using community resources such as mental health and social service agencies, better teacher training, character education, and use of programs such as Positive Behavior Support mentioned by other panelists.

Edward Gonzalez

Mr. Gonzalez is Associate Superintendent in charge of the Department of Prevention and Intervention for the Fresno Unified School District, the 4th largest school district in California. He is a five-time recipient of the *Who's Who Among America's Teachers* honor, and was chosen as the inaugural *National School Administrator of the Year* by the School Library Journal in 2003.

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[1] http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=380&Itemid (accessed April 19, 2011).

Mr. Gonzalez presented his own research findings that looked at six disproportionately disciplined subgroups in the Fresno District, which he stated has the highest concentration of poverty in the country. In Fresno schools, African-Americans were referred for expulsion at a rate three times their population numbers, as were special education, foster care, male and middle school students. (Mr. Gonzalez's slides are appended to his written submitted statement). His slides showed that disparities had somewhat lessened for blacks, special education, and male students, but rates for foster-care and middle school students had risen. Middle school students in particular had difficulty adjusting to a new school with a teaching structure consisting of many different teachers over a school day in place of just one, resulting in a middle school discipline rate of 40 percent of all expulsion referrals.

He described a class he had instituted, called the Men's Alliance for behaviorally high-risk students (mainly African-American and Hispanic), that has reduced the number and length of suspensions considerably, currently down 45 percent for number of suspensions. He is planning to expand the program to more schools because of its success. By requiring teachers to conform to procedural requirements, the school has reduced the number of expulsion referrals by 20 percent and actual expulsions by 40 percent. Mr. Gonzalez also drew attention to the disparately low percentages of Hispanics and African-Americans placed in gifted and talented classes (fewer than 2.5 percent).

As did Ms. Maxey, Mr. Gonzalez emphasized the importance of developing personal relationships with students. He implements this by talking individually with students in school; by visiting the barrio, housing projects and alternative placement schools; and by recognition of students as individuals whether he sees them in school or in their homes.

Discussion

Commissioner (now Chairman) Castro asked for Latino expulsion statistics. Mr. Gonzalez said that Latinos make up about 63 percent of the district, but have lower referral rates of 58 percent. He added that if African-Americans were removed from the totals, Latinos would make up a disproportionately high portion of referrals. Commissioner Castro asked Mr. Gonzalez to comment on a National Council of La Raza report on disparities in incarceration that showed that Latino youth in the prison system are punished more harshly that white students, and also an earlier report by the Campaign for Youth Justice showing the same results for African-American youth. Mr. Oliveri agreed with Commissioner Castro that patterns in this country have not changed, and that we need to learn more in order to have a better understanding of other cultures and expectations.

Ms. Maxey added that school expectations of good behavior were skewed in favor of what was easy for girls, so that boys or students who were more physically active had a hard time conforming. Also, she agreed with studies showing that personal relationships are much more important for Latino and African American students, and that some teachers were unable to adjust to this. Dr. Piedra stated that cultural and language differences of minority parents resulted in their failure to understand and take advantage of the appeal process after the imposition of discipline, and in their difficulties resulting from the absence of bilingual

administrators or bilingual translations. Also problematic for such parents were the inconvenient hours during which administrators are available.

Commissioner Castro asked whether any of the panelists could offer effective discipline alternatives that did not have a racially adverse impact. Mr. Gonzalez stated that it was very important to understand students' cultures, which would require teacher training and recruitment of teachers of color. Ms. Maxey pointed out as an example of differences that non-white parents did not write excuses for student absences, for reasons perhaps relating to comprehension or multiple jobs. Mr. Oliveri said that existing policies were the best that could be devised and that over time the numbers would improve.

Commissioner Kirsanow asked Ms. Maxey to expand on her remarks. She stated that the disparities were a result of black and Hispanic kids being more physically active, needing more personal interaction with teachers, having dysfunctional families, and even trying to function when they knew their parents were illegally in this country and had no social security numbers that would allow them to go to community colleges. Commissioner Kirsanow followed up his question by asking how she explained the good behavior of kids who had the same negative influences. She observed that in those circumstances there was usually a factor such as a strong mother or father in the home who did make the effort to meet with administrators or teachers, or even teachers who informally took responsibility for kids by buying their clothes and lunches. For example, she said her football coach provides his kids free breakfasts in addition to the federal lunch program; coaches them after school; cooks them dinner and oversees a study hall until 8 pm. That approach has generally resulted in higher grades among his students.

Commissioner Kirsanow asked if there were statistics on differences in discipline handed out by teachers to students of a race different from that of the teacher. Mr. Gonzalez replied that he had not seen such data; Ms. Maxey and Dr. Piedra both said they had. Dr. Piedra stated that data from his school showed that white teachers were likelier to impose discipline for offenses that minority teachers would not punish. Ms. Maxey disagreed that it was clear-cut as to race, instead observing that it was more likely due to the age of the teachers, or whether they had been trained in European school traditions [that expected obedience to teachers]. Mr. Gonzalez stated that there were many factors that should be considered as leading to the dysfunction that he witnessed -- many of them historical, such as the legacy of slavery and discrimination.

Commissioner Heriot asked whether the panelists make it a practice to investigate the facts before making a decision by speaking to a teacher who has recommended discipline. Ms. Maxey replied that, ideally, she would do so in addition to speaking with the parents and the student. Time pressures, however, sometimes prevented it, often with unfortunate results.

Commissioner Heriot asked Mr. Oliveri how he determined that a teacher was meting out discipline inappropriately by race. Mr. Oliveri answered that he did as much investigating as he could, and counseled the teacher if necessary. He noted that after adoption of the behavior support program, they had a systematic way to help teachers work with diverse populations. Commissioner Heriot asked how to find such data; Dr. Piedra answered that his school

district housed that information in a central database. Ms. Maxey responded that they did not keep such data. Mr. Gonzalez offered two suggestions for obtaining data: Dr. Robert Horner at the University of Oregon who has developed the School-Wide Information System, and Randy Sprick who developed "Safe and Civil Schools Training" at www. safeanddrugfreeschools.org. Mr. Oliveri stated that his school district, Austin Independent School District, also uses the Safe and Civil Schools Training.

Commissioner Titus referred to panelist comments about mental health services and the DREAM[2] Act as important, and asked about how schools are helping special-needs students, whose challenges are different from some of the problems addressed so far. Mr. Gonzalez answered that special education students in some districts are 90 percent male, and African American special education students are particularly numerous in disciplinary actions. Ms. Maxey stated that from the point of view of a special education student, school is particularly difficult in that it forces them to do what they are not easily able to do. Mr. Gonzalez responded that alternate options such as wood shop, metal shop, engines and other such classes have been removed because of high-stakes testing, resulting in charter schools' emergence to provide such classes. In his district, they have lost 11,000 students in the last eight years, in his view, because of the lack of viable options.

Ms. Maxey observed that the No Child Left Behind law has forced schools to address every subgroup of students, which is good, but has damaged the elective programs, such as vocational programs that do not figure into preparation for standardized tests. She stated that there are specialized vocational schools, but in her experience, kids do not want to leave their friends behind. Dr. Piedra agreed that electives had been negatively affected by the law.

Commissioner Gaziano began his questioning by observing that the impact of not enough discipline meant that education was disrupted, and asked if there was some way to measure such disruption. Ms. Maxey responded that the result was measured in fights breaking out, not data. Mr. Gonzalez stated that another way of measuring is to look at declining enrollment. Commissioner Gaziano observed that the decline might be for other reasons. Ms. Maxey stated that in her view, education is an art, not a science, and that good teachers and administrators should be used as models for others. She also pointed out that at her school the administrators are balanced by race, sex and age, which was important.

Commissioner Achtenberg posed a hypothetical in which data showed punishment of black students at disproportionately high levels, whereas white students were treated more leniently. In that situation, she asked how panelists would change their discipline practices. Ms. Maxey replied that she would talk individually to the teacher responsible for the disparity. Mr. Oliveri said that he would first observe the class and then point out to a teacher that he or she dealt with students differently by race.

Vice Chair Thernstrom observed that there was data on black teachers versus white teachers' discipline practices that showed that black teachers are even tougher on black kids than white teachers are. Also, the Vice Chair said that too many principals stay behind closed doors

[2] See http://durbin.senate.gov/public/index.cfm/files/serve?File_id=d15181fd-e37b-4ad6-9ca3-c5b2850c140c (accessed May 23, 2011).

instead of walking into classrooms and hallways to learn what is going on. She noted that whether or not some kids are more physically active, they will still have to go out into the world to work or go on to higher education where there are expectations about behavior that they will have to meet. For example KIPP schools,[3] although a success, are so demanding of teachers that they are not a model that can be scaled up nationally. Ms. Maxey responded that once she imposed strict discipline about small things, like hats and earphones, she found that major infractions lessened.

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[3] See http://www.kipp.org. (accessed Sept. 26, 2011).

Panel 3. U.S. Department of Education Official and School Administrators

Ricardo Soto

Mr. Ricardo Soto, Principal Deputy Assistant Secretary in the Office for Civil Rights (OCR or OCR/ED) in the Department of Education (ED or Department) told commissioners that he had represented school districts on education issues including discipline policies and student removals before coming to OCR and thus understood schools' point of view. He provided an overview of OCR's work and mission, which is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights. Although OCR enforces civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, age, and disability, he focused on Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. Title VI extends to all state education agencies, public K12 schools, public colleges and universities, and vocational, proprietary, and rehabilitation schools or agencies, plus libraries and museums receiving federal funding from the U.S. Department of Education.

OCR investigates and resolves discrimination complaints filed by anyone on behalf of those covered under its civil rights acts, and may also initiate compliance reviews, which involve more than one school, if OCR finds problems that are particularly acute or widespread. OCR also issues policy guidance and technical assistance to schools to promote voluntary compliance. It has twelve regional offices around the country with approximately 600 lawyers, investigators and other staff who have considerable expertise in resolving these issues. He noted that Secretary Duncan gave a speech in March 2010 announcing a reinvigorated OCR that would strive to make Dr. King's dream of a colorblind society a reality.

Mr. Soto related data gathered by OCR/ED showing almost 250,000 more suspended students nationwide than just four years earlier, and a 15 percent rise in expelled students. He stated that OCR viewed these data as an indication of disparate results for minorities that caused harms such as school dropouts, incarceration, and lessened employment and college opportunities. OCR also viewed these data as possibly indicating discrimination in violation of the civil rights laws.

He declined to discuss open cases, but offered an explanation of their legal theories governing OCR's enforcement efforts with regard to student discipline. First, he stated that Title VI requires school disciplinary policies and practices to be consistently applied to students regardless of race. He stated also that OCR's Title VI regulations prohibit both intentional discriminatory treatment on the basis of race, color or national origin and disparate impact results produced by facially neutral practices or policies for which a school cannot show a substantial legitimate educational justification or the absence of equally effective alternative policies.[4] OCR does not require for a finding of discrimination that a

[4] Mr. Soto cited 34 C.F.R. Section 100.

school have the intent to discriminate, but that "the evidence establishes that a facially neutral discipline policy, practice, or procedure causes a significant disproportionate racial impact and lacks a substantial legitimate educational justification."[5]

Mr. Soto explained further by stating that "even if there is a substantial legitimate educational justification, a violation may still be established under disparate impact if the evidence establishes that there are equally effective alternative policies, practices, or procedures that would achieve the school's educational goals while having a less significant adverse impact."[6]

He concluded his remarks by stating that the "answer to an equal, unfair, or ineffective student discipline … is not to abandon discipline"[7] or use a single approach for all schools or students, but to impose discipline in a non-discriminatory manner. He stated that OCR is using all its tools to help bring this about and is committed to ensuring that all students receive the best education possible, but he views the increasing numbers of disciplinary sanctions for subjective offenses as an indication that rules are not imposed fairly.

Hardy Murphy

Dr. Murphy is Superintendent of School District 65, a K-8 district serving approximately 7,000 students in Evanston, Illinois. He described his district as 40 percent white, almost 30 percent African-American, 15 percent Hispanic, and the remainder Asian and others. Of the African-American students, about 75 percent receive free and reduced lunch benefits. Of the Hispanic students, about 80 percent receive free and reduced lunch benefits; virtually no white students receive free or reduced cost lunches.

Dr. Murphy remarked that his district, like many others, faces disparities in educational outcomes but has won many awards for innovative programs that address these disparities. Other achievements are the extension of the school day through the teacher negotiation process, the institution of a behavior management system, programs to keep students in school, parent engagement and education programs, and sensitivity training for faculty and staff.

Dr. Murphy described his new teacher appraisal system that tracks individual student academic growth, and triggers discussions if goals are not met. He does not consider either being on free and reduced lunch or having problems at home extenuating circumstances, for example. He stated that a considerable body of research shows that high expectations are critical for each student, but that teacher understanding of a student's cultural history helps considerably by looking at each child positively. As a result, children are more likely to see classroom experiences as supportive and caring, rather than alienating, which helps to steer them away from rejection of school and the larger society. Aberrant behavior then becomes a less practical choice for students and disengagement a less desirable choice for their parents.

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[5] Briefing Transcript at 136, February 11, 2011.
[6] *Id.*
[7] *Id.*

He concluded by saying that his district has created a program in which students who would otherwise be suspended are invited with their parents to come into school and get a day of counseling with administrators and teachers, and that this program has succeeded in reducing the number of suspensions.

Hertica Martin

Dr. Hertica Martin is Executive Director for Elementary and Secondary Education in Rochester Public Schools, Minnesota. She noted that the Rochester Public School District is one of the five school districts under investigation by the Office for Civil Rights in the Department of Education.

Her schools have been under reform for the last four years, following a report showing an over-representation of African American males expelled from school, as shown in the statistics she provided to the Commission.[8] The statistics also showed that 29 percent of those suspended were students with disabilities and most of those were black males. The district developed a five-year plan to address the disparities, which included initiatives on efficacy, equity, core strengthening, interventions, and positive behavior/intervention supports (PBIS). Other programs include training on the "role of whiteness;" impact of race on learning; "courageous conversations about race;" culturally relevant classrooms; job-embedded coaching; crisis intervention; efficacy for parents, students and staff; and mentorship for students.

She said that PBIS teaches how to promote appropriate behavior in all students to reduce disparities, and that PBIS strategies have resulted in a decrease of 363 suspensions and expulsions over two school years, although disparities remain. The district remains concerned about the disparities. Dr. Martin gave an example of what not to do: singling out misbehaving students for humiliation or exclusion, because it results in an escalation of punishment and denies students the opportunity to learn.

Douglas Wright

Dr. Douglas Wright is Superintendent of Schools for the San Juan School District, Blanding, Utah. His district is also one of five currently under investigation by OCR/ED. He described his district in the southeast corner of Utah as very rural and geographically very large, unlike the other districts represented at the Commission briefing. Due to the approximately 8,000 square-mile-size of his district, it faces unique challenges, such as 2900 students in 12 schools, 52 percent of whom are American Indian chiefly from the Navajo Reservation, but also including students from two other sovereign Indian tribes. All of these tribes govern under individual treaties between each tribe and the United States, adding further administrative complexities. In response, the district has provided training to teachers to help them become more culturally sensitive, has developed a Navajo language curriculum, and

[8] Appended to her written statement, below.

helped students to recognize the value of their culture and experiences while fitting into the larger culture as a whole.

His district has put into effect disciplinary policies and practices that address behavior in the least oppressive manner possible to protect students and maintain an effective learning environment. The district uses the PBIS program mentioned by other briefing speakers, and is also implementing the OLWES Bullying Prevention Program, which together with an expanded role for guidance counselors in their elementary schools will address discipline disparities in their system. The hiring of elementary school counselors was the result of receiving a grant from the Department of Education that will not be renewed due to changes in grant application rules. Dr. Wright observed that his district would like to see more money funneled into that program and less into investigations that don't provide direct services to students.

Dr. Wright stated that in general, evidence shows that building a system of support rather than discipline helps students succeed. He remarked that previous speakers had described the role of principal as more of a counselor, which he agreed was more important than disciplinary actions.

In answer to the question posed by the Commission's letter[9] asking how schools had changed their policies in response to OCR/ED disparate impact initiative, he stated that his district reviews its policies and procedures on a regular basis to stay current with best practices and in compliance with changing laws and regulations. Specifically, his district created a hierarchy of disciplinary actions that distinguished serious from less serious offenses while complying with the Safe and Drug-Free Schools and Communities Act of 1994's zero-tolerance policies. The district has also implemented some agreements with the Navajo Nation to provide school resource counselors, although that has at times created problems stemming from harsher discipline.

Discussion

Commissioner Gaziano stated his concern with OCR's interpretation of Title VI as authorizing disparate impact-based enforcement, noting that several justices in *Alexander v. Sandoval* in dicta[10] viewed disparate impact regulations as problematic. Aside from such concerns, however, Commissioner Gaziano stated that OCR could have chosen not to use disparate impact, since such enforcement created a very heavy burden on schools to justify disparities in the absence of evidence of actual discrimination. He posited a hypothetical situation in which fears of OCR enforcement would pressure a teacher to impose less discipline than justified on one group, resulting in unequal treatment of, or intentional discrimination against other students, and asking Mr. Soto how this impact would be measured. Mr. Soto answered that his office did look at racial disparities, but actually conducted both kinds of investigations, meaning different treatment and disparate impact, and on occasion did find disparate treatment in discretionary offenses.

[9] The letter is reproduced in the Appendix, below.
[10] *Alexander v. Sandoval*, 532 U.S. 275 at 285, 286 (2001).

Commissioner Gaziano asked specifically what OCR would do if it found that a teacher was not sufficiently disciplining a student because he or she wanted to get racially equivalent results that would placate OCR; Mr. Soto responded that no one was suggesting that discipline should be based on disparate impact theory, just that the district should fairly implement disciplinary policies and procedures, regardless of race, national origin or color. Commissioner Gaziano stated that any disparate impact-based enforcement would trigger a heavy burden on schools. Commissioner Gaziano asserted that Mr. Soto's written statement mandated that a school meet this heavy burden of justifying their disparate results, rather than OCR bearing the burden of showing that the school's actions were in violation of Title VI. The Commissioner stated that OCR's policies in fact created a double burden on schools by requiring not only an affirmative showing that disparities were the result of fair procedures but an affirmative showing that there was no equally effective alternative disciplinary policy that resulted in fewer disparities.

Mr. Soto answered that in OCR's investigations, disparate results data are used to raise the issue of a Title VI violation, but that OCR then examines the data for different treatment, which is typically where it finds a possible violation. At that point OCR again goes back to whether there is disparate impact.

Commissioner Castro referred to the comments questioning the *ultra vires* nature of disparate impact regulations by some justices in the Sandoval majority[11] as nonbinding dicta, with which Commissioner Gaziano agreed. Commissioner Castro then called attention to Mr. Zollman's written statement and oral remarks, which posited a conundrum in which a school had two different disciplinary standards; one in which discipline was imposed entirely based on equitable treatment for those violations involving serious or criminal offenses; the other based on disparate impact data and thus sensitive to the race of the violator for those infractions involving minor offenses. Commissioner Castro asked Mr. Soto if that was what OCR was advocating. Mr. Soto responded emphatically that OCR was not advocating such a policy, but in its investigations did find unequal treatment in the imposition of discipline for lesser, or discretionary violations. In such cases, OCR then attempted to ensure that all procedures available to some students would be available to all students at all times, and entered into resolutions with schools that addressed these concerns. Mr. Soto stated that he applauded the work that other speakers were doing, and acknowledged the sensitivity of the issues.

Commissioner Castro drew attention to a report by the Commission's Florida State Advisory Committee on school discipline that he valued greatly, and recommended that relevant work of the Commission's state advisory committees (SACs) be included in the Commissioners' briefing books in the future. He stated that the Florida SAC report[12] found that there was a pathway to prison in the Duval County schools resulting from suspensions and expulsions that made it more likely that disciplined students, many of whom were African-American, would drop out and be at higher risk of incarceration. Commissioner Castro also noted that the Florida SAC report asserted that school discipline data in that state showed increased

[11] The transcript shows the word "dissents" but is likely a typographical error, since the comments were made in the majority opinion in that case.
[12] The report is available from the USCCR's Robert S. Rankin Memorial Library.

disproportion, and also that school behavior codes were written at a comprehension level beyond that of most students. The SAC's recommendations were that the Duval County school board examine the effectiveness of expulsions and zero-tolerance policies, institute initiatives such as Positive Behavior Supports to replace existing programs, and rewrite the school code to make it understandable for students at sixth or seventh grade reading levels. He invited panelists to comment on these proposals.

Dr. Martin said that she had no disagreement with them, but that she recommended examining why students misbehaved at certain times or in certain teachers' classrooms, and whether the misbehavior was due to boredom or being targeted unfairly by a teacher. She also recommended that teachers be prepared to deal with diverse populations and deal with each student individually.

Dr. Wright stated that he agreed that providing social support to students, not just discipline, was key, but that schools needed help from other social service providers. Dr. Murphy agreed, also pointing to the seminal case of *Brown v. Board of Education*[13] as the beginning of racial disparities, such as in special education, and stating that those incarcerated are also disproportionate in disabilities. He praised efforts like the Harlem Children's Zone[14] as models for public education. Commissioner Castro asked that the Florida SAC report be made part of the public record of the briefing and also any other SAC reports that were relevant. He also noted that multiple factors appeared to be causative, including poverty, and asked Dr. Wright to comment.

Dr. Wright answered that poverty was a factor, but in his district (including a portion of the Navajo Reservation) the long distances that some students had to travel to school were also a factor. Other factors included, for example, students sent to live with grandmothers or other relatives unfamiliar with the school system or even students living with parents who had been separated from their own families very early in life in Bureau of Indian Affairs boarding schools. He stated that his district was fortunate in having Navajos comprise 25% of the teaching staff to serve as role models, but more were needed.

Dr. Martin stated that poverty does not affect expectations for learning, pointing to her own experience coming from a single parent home, and that even in schools that had 90 percent poverty levels students learned successfully. She recommended studying the successes of such schools and replicating those strategies. Dr. Martin added that there may be many reasons for misbehavior that have nothing to do with race.

Commissioner Kirsanow noted that Title VI is different from Title VII, remarking that disparate impact theory in Title VII serves to ferret out disguised intentional discrimination that some civil plaintiffs would not have the resources to substantiate through pretrial discovery. He observed that education civil rights enforcement does not need disparate impact theory because both schools and OCR have access to data. He asked Mr. Soto what data OCR currently has showing the effectiveness of OCR's resolutions in this area. Mr. Soto answered that OCR does not have such data, but that OCR monitors a district after entering

[13] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
[14] See http://www.hcz.org (accessed May 17, 2011).

into a resolution agreement to make sure that the agreement addresses the violations OCR found. He reiterated that OCR uses both theories in its investigations under Title VI, but that most cases involve disparate treatment. He added that Assistant Secretary Ali was previously with the Education Trust in California that collects a great deal of data, and intends to improve OCR's data collection to assist in researching these issues.

Commissioner Kirsanow asked Mr. Soto which party to his enforcement proceedings makes the determination as to the nature of the remedy, or whether it was both OCR and the school district. Mr. Soto affirmed that it was both.

Commissioner Achtenberg referred to her own experience running a Title VI compliance group in the fair housing area that used disparate impact theory for help in devising a set of best practices tailored to the individual case. She asked Mr. Soto how OCR devised specific plans in their resolution agreements. Mr. Soto answered that he was very familiar with such plans from his previous work representing school districts in OCR investigations. In his view, such plans permitted the district to offer alternatives to remedies suggested by OCR, and in fact allowed flexibility also at earlier stages of the investigation before OCR invoked a more formal disciplinary process. He added that some districts appreciated OCR's identification of disciplinary practices that needed correction.

Commissioner Achtenberg seconded Commissioner Kirsanow's point about measuring results with data, which in her view would allay unfounded fears about the imposition of political correctness for its own sake.

Commissioner Heriot asked for a description of how OCR conducts its individual case investigations versus compliance reviews of multiple school districts, and whether compliance reviews encompass more than just discipline.

Mr. Soto answered that compliance reviews do not just encompass one issue, and may be brought pursuant to many of the statutes that OCR enforces, such as Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. Typically, OCR's field offices will look at data that is publicly available, including state websites, and also at OCR's civil rights data collection that is refreshed every two years. Then OCR looks at county-wide or school district databases to determine if there is a concern about the programs and policies of a particular school. Commissioner Heriot asked whether if OCR found something worth investigating after looking at the data it would decide at that point to open a compliance review; Mr. Soto answered that was correct. Commissioner Heriot asked also what OCR's procedures and approval processes were for opening such reviews. Mr. Soto responded that the findings are reviewed in OCR headquarters in Washington, often leading to requests for more information that include the visibility of the issue in the community. Once that information is received, headquarters officials make a decision, and the regional office then takes charge of the investigation.

Commissioner Heriot asked whether a recommendation to open an investigation targeted certain issues such as discipline, or even indicated that discipline was not among the issues to be examined. Mr. Soto answered that targeting was not always done and that although OCR

had opened around 40 compliance reviews, only a very few involved discipline and all are still open. Commissioner Heriot asked how long the compliance reviews usually take; Mr. Soto answered that they can take from several months to years. For example, when Assistant Secretary Ali came to OCR in May 2009 there were several reviews still open from 2007-2008.

Commissioner Heriot asked whether Mr. Soto had furnished the Commission with the identities of those school districts that were being investigated with compliance reviews, since he could not comment on open investigations; he replied that he had done so.[15]

Commissioner Gaziano commented that he might formulate a letter to OCR, with input from fellow commissioners. He asked whether OCR was able to collect data that showed that there was not enough classroom discipline, and how OCR might make such determination based just on data and documents. Mr. Soto answered that he would defer to his fellow panelists' greater classroom experience for comments on that question. Dr. Murphy observed that in his experience, classrooms where there was insufficient discipline would occasion a high number of parent complaints (Vice Chair Thernstrom interjected that only some schools would show this) and second, that absenteeism would increase where students would be afraid to come to school, or if their parents would feel they were unsafe in coming to school.

Commissioner Kirsanow asked Drs. Murphy, Martin and Wright how much of their time was spent on disciplinary problems. Dr. Murphy answered that it was a small amount because most students with difficulties did not present disciplinary challenges. He acknowledged a disproportionate number were African American, but even so were a very small percentage of students. His view was that in his district most students were behaving well. Dr. Martin agreed with Dr. Murphy; Dr. Wright commented that because his district had fewer administrators compared to those of the other panelists he spent between five and ten percent of his time on discipline.

Commissioner Castro asked if language barriers presented a problem for students in understanding the codes of conduct. Dr. Wright agreed that this was a problem in his district, because Navajo was not a written language until recently, and there were family literacy problems with both Navajo and English language announcements the schools sent home with students. Dr. Martin added that her district has bilingual specialists who help with translations. Dr. Murphy's district translates materials and sends out additional notices that identify major infractions that will result in suspensions to help alert parents throughout the year.

Vice Chair Thernstrom then thanked all the panelists for their participation and ended the briefing.

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[15] See OCR written statement, below.

Speakers' Written Statements

Panel 1 – Teachers

Allen Zollman

Remarks for the U. S. Commission on Civil Rights
Hearing on Disparate Impact
February 11, 2011

Good morning. My name is Allen Zollman. I teach English as a Second Language (ESL) to students in grades five through eight, in an urban Pennsylvania middle school. My regular classload consists of students from Southeast Asia, West Africa, the Middle East, the West Indies, and Latin America. In addition to that, I also teach two remedial classes per day—in reading and in math—to classes more closely representing a cross-section of the school's population, which is about 74% African-American, 15% Asian, 6% Latino, 3% white, and 2% 'other'. Altogether the school has about 325 students, ages 10-14.

My school district has a general discipline policy spelling out a broad framework. There are also district-level protocols for suspensions and transfers between schools, neither of which I am involved with. Then each school has specific procedures on which the teachers are briefed verbally and in writing. Teachers are told that the primary responsibility for classroom management rests with them, which is normal and reasonable.

For me, discipline does not mean punishment. It means teaching young people to make good decisions. It means creating the conditions where students will receive meaningful consequences for behavior—good or bad. It's a commonsensical notion. We arrive on time, things run on schedule. We damage somebody's property, we make restitution. We show off, we get 'time-out'. On a deeper level, discipline means providing the necessary order and conditions for teaching and learning to be possible.

I seldom need to refer a student out for disciplinary support. This is not because my voice is loud or my personality is forceful. It's not even that I know a lot of classroom management techniques, although I do know a few. It's because generally I am able to keep the students involved in learning with meaningful content and motivating tasks. It also helps that in my role I can often control the difficulty level of the material and the pace of instruction. Under these conditions my own behavior management techniques are usually sufficient for maintaining order. But sometimes a teacher cannot control the pace of instruction, or the difficulty level, or how engaging the material is. For example, some courses are scripted and instruction proceeds in lockstep. For many students, the pace will be too slow and they will

become bored. Or the pace will be too fast or the tasks too difficult, and they will become frustrated.

Some students tolerate boredom or frustration reasonably well, and others do not. When the instructional task is not well-matched to the general performance level of the class, some students may start acting out. But even when the instructional tasks are *on the whole* well-matched to the level of the class, there will unavoidably be a few students at either end for whom the material is a little too easy or a little too hard. And this is where they can get into trouble and make bad choices.

What does it look like when this happens? Pencil tapping, drumming on the desk, humming, calling out, chatting across the room, dancing in one's seat, singing, choral singing, exchanging insults in jest or in earnest, talking back to the teacher, use of profanity, standing up and telling stories to the class, wandering around the classroom handling objects or touching other students, leaning into the hall and addressing passers-by, engaging in horseplay, play-fighting, and real fighting.

When a student disturbs the decorum and instructional progress of a class, is not responding to requests or reminders, or generally has tried a teacher's patience to the limit, the teacher *can* call the office and request help. This is where the school's disciplinary procedures come into play. Before the student can be removed and placed in 'time out', the teacher must prepare a disciplinary referral—what many of us used to call a 'pink slip'. This is a two-page form with space for three offenses—not just one—and a checklist of measures taken by the teacher *before* issuing this referral. These measures include a private conference with the student, a change of seat location, a lunch time or after-school detention, or a phone call to a parent. Sometimes the foregoing strategies are effective, but often they are not. What is important to note here is that in order to get a disciplinary referral for disruption in my school, there must be three infractions and they must be documented in writing BEFORE the student can be removed from the classroom.

I should digress and mention that there is a higher level of offense that receives immediate attention from administrators and results in immediate removal of the student from the classroom. Such offenses include possession of a weapon, possession of drugs or alcohol, aggravated assault, and sexual assault. But for mere disruption, it is no simple thing to have a student removed *at the time of the disruptive behavior*. This means that for extended periods of time, it can happen that very little teaching and learning will take place in a given classroom.

Acknowledging that my job is to keep students in the classroom and to teach them, let's suppose that I have recorded infractions of a particular student over time, and have pursued the requisite measures: that is, spoken to the student, changed the student's seat, called the parent—I do not give detentions, they do not seem to improve behavior—and suppose now that I have prepared a written disciplinary referral. Under our rules, that student may now be removed and taken to the room designated for time-out, which we call *in-house suspension.* The student may spend one period or more there, and then return to class. A further step may be a hearing with an administrator, which could lead to an out-of-school suspension. But

suspensions do not seem to occur very often, and when they do, it seems that several teachers had independently issued referrals and it all added up. Officially there is a follow-up process associated with the referral, but in practice I generally do not learn whether a disciplinary hearing took place, or if it did, what actions were taken. So I cannot comment on discipline carried out beyond the classroom. I *can* report that each of the last five principals under whom I have worked has spoken at faculty meetings of being under pressure from district administrators to keep the number of suspensions down.

When I need administrative cooperation, I really do need it. Yet the need to build up a case to refer a misbehaving student and then wait for action at a higher level leaves me dealing with the problem myself for a while or, more often, persuades me to let things continue as they are without issuing a referral, in other words, teach through chaos. Indeed, because of behavior problems, there are times when very little teaching or learning takes place.

In such an environment, students see few meaningful consequences for their actions, so they not only continue to misbehave but the behaviors get more brazen, with more and more students joining in the fun, until even the quote-unquote 'good' kids are acting out. They often become cynical, reminding teachers that nothing will happen to them.

Here is an illustrative dialogue between me and an eighth grade girl who would not stop talking over me:

Z: You have two choices: either stop talking or I will have you removed.
Girl: I'm going to torture you. I'm doing this because I can't be removed. I CAN'T be removed.

The foregoing example contradicts any notion that the student didn't know what she was doing or 'didn't know better'. The following interchange likewise shows self-awareness and deliberateness. A boy and girl were involved in an escalating verbal dispute. (BLANK stands for profanity.)

Z: Tom, if she threatens you, just let me know.
Girl: I just did threaten him. I'm going to smack the BLANK out of him. I'm going to BLANK him up.

They know when they're being aggressive, when they're avoiding demands, when they're showing off. And they know when they're preventing others from learning. They make these choices—these bad choices. The less we are willing or able to respond, the more they will control the classroom, the hallways, and the school.

The disciplinary framework, which exists to provide back-up support, strongly encourages me to deal with problems at my own level. However I have never been told to make disciplinary referrals with a thought to disparate impact. I am not aware of any change in policy to this effect.

Were I directed to issue discipline referrals to students from different groups proportionally, it would represent an even greater constraint on effective discipline. In such a case, I can foresee one of three avenues to pursue:

A) Disregard the directive, refer students as I saw fit, and see what happens—but it would probably annoy my superiors.
B) Do nothing and live with the chaos, understanding that there would be even more times when little teaching and learning took place.
C) End my public school teaching career early and pursue other activities where there is more control over the work situation.

Ultimately, each instance of misbehavior in the classroom is unique and requires a customized response. It doesn't matter what the ethnicity of the student is—if a child acts out and creates a distraction, the other students will not learn. We are talking about disparate impact. As a teacher, what is the greater disparate impact? When one student can say in effect, "Cave in to my demands or I will shut you down—and there's nothing you can do about it", then 29 other children will be prevented from learning. *That* is the greater disparate impact. Thank you.

Additional comment: suppose we did discipline proportionally by ethnicity. We have reached the maximum allowable number of referrals with group *x* for disruptive behaviors. We will have to stop issuing referrals. Shall we likewise stop when we reached the maximum number of referrals for serious offenses, like weapons possession, sexual assault, or physical assault? If we say no—for these offenses there can be no withholding of discipline—then we have two disciplinary standards, one for minor 'disruptive' offenses and another for serious 'criminal' ones. This would be an incoherent policy.

Andrea Smith

I am a sixth grade mathematics teacher at E.L. Haynes Public Charter School located in Northwest Washington, D.C. E.L. Haynes serves 600 students, grades preK-8. Our student body is 54% African-American, 25% Latino, 18% White, and 3% Asian. In addition, 62% of Haynes students qualify for free or reduced lunch and 21% are English Language Learners.

Early on this school year, the teaching staff at my school was presented with disaggregated school wide discipline data. Out-of-school suspension rates for the first quarter of the school year broken down by race were included in the data. Teachers were asked to reflect with their colleagues about what the data revealed. We drew several conclusions from that data in a matter of minutes. First, we were suspending African-American males more than any other subgroup. We were also suspending students with special needs more than other subgroups. This meant as teachers we were referring and sending African-American males and students with special needs out of class more than any other subgroup. Second, we weren't effectively engaging and connecting with all students in a way that resulted in equitable academic outcomes, specifically African American males and special needs students. Finally, suspension was not an effective consequence as evidenced by repeated suspensions. Recently

we have started using a new discipline inputting/tracking system at my school. This new system does allow us to track and disaggregate discipline referrals and consequences on a weekly basis. Using this data, grade level teams can address discipline trends and try to get at the root of what is causing and perpetuating these trends.

I believe part of what is causing the disproportionality in student discipline referrals and suspensions at our school, is what we call at Haynes, "relational trust." One of the main predictors of if a student will go to college is positive relationships with their teachers in middle school. Discipline and relational trust are inextricably linked. In my experience, the more a student trusts that I will be fair, and hold them to high standards in a firm, yet caring way, the less discipline issues arise. Relational trust is not a science. Moreover, it plays out in small ways that few outsiders would note as significant in a classroom. It's the room to tell a joke when a student is singing during a lesson instead of confronting the student with a more abrasive redirection. It's a greeting at the door, or a question about how Chewy the dog is doing. It is recognizing what a student needs, even when they don't know they need it, or can't articulate what they need. It's listening to a student when they come to you with a problem, or sitting them down to have a conversation just to check in.

One's racial dispositions can influence relational trust. At my school I have been encouraged to examine and question how my own racial dispositions affect my teaching and my students. The E.L. Haynes staff has participated in Race and Equity in Education Seminars in which we began the conversation about racial inequities in our school. In order to eliminate the racial achievement gap, I believe we must commit ourselves to addressing racial inequities in our teaching and school structures. We must face our own racial experiences, and recognize what we contribute to the racial experiences of our students. As a white teacher, this is a recognition that is not always easy to make, and is not always clear cut, specifically when it comes to discipline. I often question if my discipline approach is perceived by a student as being racially influenced, or creates a learning environment in which the student doesn't feel affirmed. I have questioned if I am the best person to be teaching the students in my classroom.

Unfortunately, my experience has not led me to answers and solutions. It has led me to conclude that race matters when it comes to student discipline and school culture. I have chosen to not continue working at schools where I believed student-teacher-parent relationships were strained in part by race, even though the school was known for having tight discipline policies. I have also been disheartened working in schools with dismal discipline and no vision for student success. My experience has also proven to me that discipline issues in a school are not a result of some student's not being able to behave or single parent families. I do know that all students can learn and succeed if they are provided a positive learning environment in which they are affirmed, challenged, supported, and held accountable for their actions. In order to address the discipline challenges and disproportionality of race in discipline referrals, educators must address the issue of race head-on. We need educators and community members who are committed to having on-going conversations that address our role in the disparities in student discipline and achievement in our schools.

Jamie Frank

Personal Statement

For the past eleven years I have been a teacher in the suburban DC metro area. Over that time I have seen significant changes both in the classroom and in the demands placed on teachers. I have taught in highly diverse schools, where over 80% were minority students. I have also taught in extremely affluent communities, with over 80% of parents having graduated from college. These experiences have shown me there is great disparity in the way students are treated, the expectations held for them, and the measures of success.

No longer can teachers focus on individual student success, we must focus on the demographic makeup of students, and how they measure on standard-based assessments. We disaggregate data, focus on students most in academic need, and pay special attention to those sub-categories that we need to meet AYP. District and school-wide policies are made to protect those numbers, and to ensure the best possible outcome for each school. Teachers are taken to task when students are failing, misbehaving in their class, and performing below the standards.

Expectations are placed on teachers to ensure that the numbers are met, thereby paying specific focus on those sub-groups (i.e.: Hispanic, African-American, ESL, Special ED, etc.). This disparity not only impacts the disciplining of these students but the day-to-day classroom expectations for these students. Their ability to pass the course, the test, or whatever the measure is for an individual class, teachers are under pressure to ensure that students succeed. While this may sound like the obvious objective of all educators, the problem lies in the focus on the test scores, and on the numbers.

Several years ago, I worked at a school that was told by Central Office Superintendents that they had too many suspensions, and they must creatively discipline students. Specifically the number of minority suspensions had to be closer to the percentage of the whole student body. However, the students continued to behave harshly (knives in school, threatening teachers, disruptive classroom behavior, etc.) and because of the concern over published suspension numbers, the administrators allowed students to go home, and called it a day of exclusion. These students would be back in the same classroom the next day. In this situation, the school continues these practices, and since student graduation rates for minorities are relatively high, minority students are given a pass when they act up.

I serve on a number of Civic Education boards, and I have heard similar concerns from teachers around the country. School districts via administrators place huge burdens on teachers to ensure the numbers allow for AYP; not only in academic achievement but with attendance, graduation rates, and suspensions. Over the past 3 years, several counties in the DC metro area have removed their loss of credit policy. The reason for this change has been due to inequitable distribution of students losing credit for classes, resulting in a failure to graduate on time, with the majority of students being minority. The purpose of the loss of credit policy (generally when a student cuts class 5 or more times in a semester) reinforces the need that students attend class. When attempting to eradicate truancy issues within the

County, it became apparent that the largest percentage of truancy cases being investigated were for minority students. Once this was identified, fear of not being racially sensitive arose and the policies were changes. Currently without the loss of credit, there is no penalty for failing to attend classes.

Additionally, it is the policy that students are allowed to make up all of the work, re-teaching and reassessing for the missed days must be done by the teachers, and students can receive disciplinary actions by administrators if they choose to follow up. All absences whether excused or unexcused are to be considered the same. The burden of truant students then falls on the teachers. While statistical evidence shows that this policy was put into effect to ensure that racial disparity cannot be found for students whom do not attend classes, student attendance has been significantly impacted with its removal. This policy change was meant to benefit minority students. At the same time, there has been a State-wide decision to remove all In-School Suspension programs throughout the State of Maryland. Students cannot be disciplined by being removed from class (denied their education), thus the policies have been replaced by non-documented programs like In-school Inclusion or In School Intervention, all essentially the same, but not listed as suspensions.

From my experience working with students all along the socioeconomic spectrum, I believe that the real issue lies in the social and economic situation for students. The real issue of student success, albeit attendance, discipline, or achievement, continues to be socioeconomics.

Regardless of the race or ethnicity of a student it comes back to the parents, the economic situation they are in, and the support they provide. In my experience, the focus on which students get the attention, are disciplined the most, or have the least chance of success does not reflect a racial divide, as much as an economic one.

I could go on and on of how the need to meet the numbers has affected education but I am sure you will hear similar tales from many other teachers.

Louise Seng

My name is Louise Seng. I am a resident of Catasauqua, Pennsylvania, and I taught eighth-grade social studies (Government and Law) at Harrison-Morton Middle School in Allentown, Pennsylvania for thirty-four years. I retired in 2006. Approximately 900 sixth, seventh, and eighth grades are enrolled at Harrison-Morton each year, 90% of whom are racial and ethnic minorities. (The 90% figure includes Asian-American students.) A little over 50% of the students at Harrison-Morton were Hispanic. The majority of Hispanic students at Harrison-Morton were of Puerto Rican extraction, but there were also students from a range of other Latin and South American backgrounds.

Discipline at Harrison Morton was a challenge. In the year before I retired, there were 50 students suspended for a total of 200 infractions -- just during the months before Christmas.

Although I do not have exact data available, I believe that students from racial and ethnic minority groups were disciplined more frequently than those from other backgrounds. In my observation, racial prejudice or bias on the part of my fellow teachers or administrators was not a cause of these disparities in discipline. As far as I was able to tell, all of my colleagues were committed to racial equality and to equality of opportunity for our students. Indeed, many of my colleagues chose to teach at Harrison-Morton over wealthier schools because they were committed to helping students from poor backgrounds succeed against often long odds.

In my opinion, racial and ethnic minority students were disciplined more frequently because more of them came from families in which they had not learned the self-discipline necessary to thrive at school. Some came from families where they observed violence at home, and they therefore thought that it was acceptable to use violence to solve problems. It was not terribly unusual, for example, for one student to throw a chair at another during the middle of class because the second student made a nasty verbal comment. (While I was usually able to prevent such scuffles from breaking out in my class, other teachers – whether because of lack of experience or something else – sometimes had more trouble keeping students in line.) I noticed also that some students came from homes where they weren't expected to do homework, or to be home by a certain time, or to go to bed by a certain hour. Students who had been up or out late would sometimes fall asleep in class or would behave disruptively simply because they were tired. Some seemed to eat poor diets outside of school, and I believe that this might have contributed to hyperactive behavior in the classroom. Getting students to stay focused and pay attention was a constant challenge. Many students had trouble sitting still and paying attention – again, I suspect because they had not learned these skills at home.

For several years, I helped run a program called Conflict Resolution that I believed was effective in reducing discipline problems. My colleagues and I trained students to serve as peer mediators. The trained peer mediators helped other students to resolve conflicts. Though the peer mediation program was not always effective at deterring student-to-student fights, it did prevent some fights from occurring.

During my years teaching, I was never approached by an administrator (or anyone else) about reducing disparities in discipline. Because I am no longer teaching, I don't know exactly how my former school will respond to the new Department of Education initiative. I do hope that the Obama initiative doesn't lead to pressure on teachers at Harrison-Morton to use less discipline. As I said above, maintaining discipline in a school like Harrison Morton can be challenging. Lowering discipline standards could make it even harder for students from all racial and ethnic groups to learn, which would be an unfortunate outcome indeed.

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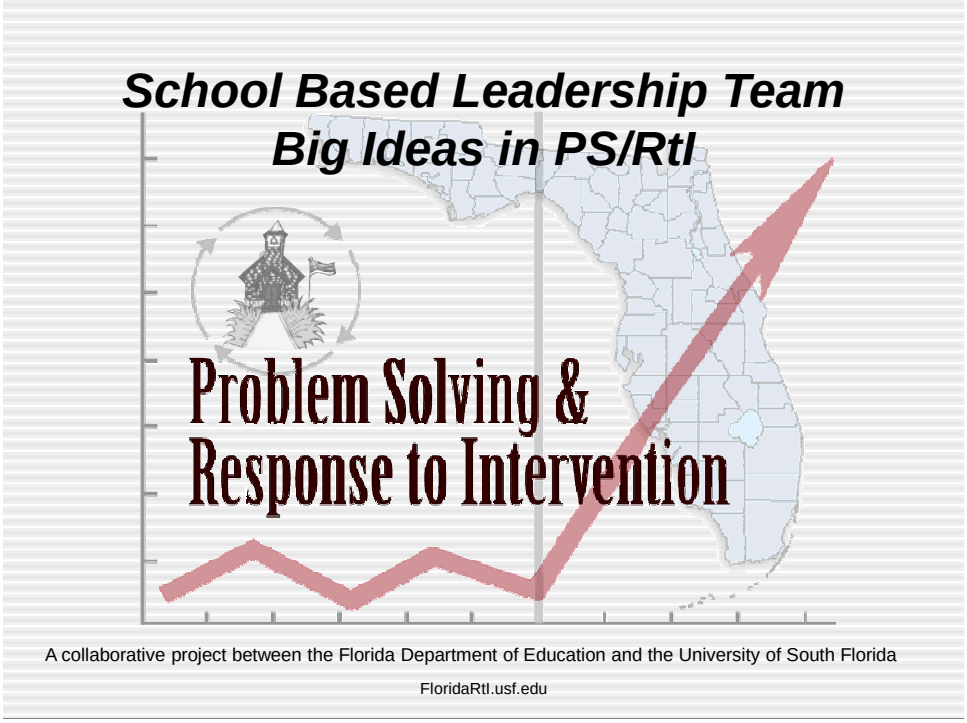
Panel 2 – School Administrators

Osvaldo Piedra

Dr. Osvaldo Piedra, Eastlake High School

The Pinellas County School District, Florida, has taken great steps forward to reduce learning and discipline gaps among African American and non-African American students. Our school district, through professional development, has trained teachers, administrators, and other school personnel in the Response to Intervention (RtI) structure to reduce academic and behavioral gaps between African American and Non African American students. Currently, the school district is in its second year of implementing the RtI process through the School Based Leadership Team (SBLT). Assisting the SBLT to develop strategies to reduce achievement and behavioral gaps is a new computer data management system that allows school personnel to track attendance, discipline and academic progress to detect areas of concern. The SBLT implementing the RtI process develops strategies to help reduce behavioral and academic gaps by providing the appropriate instructional service to struggling students.



Consensus Building: Beliefs

- PS/RtI is a General Education Initiative-Not Special Education
- Improving the effectiveness of core instruction is basic to this process
- NO Child Left Behind Really Means "NO"
- Assessment (data) should both inform and evaluate the impact of instruction
- Policies must be consistent with beliefs
- Beliefs must be supported by research
- How do you spell AYP?

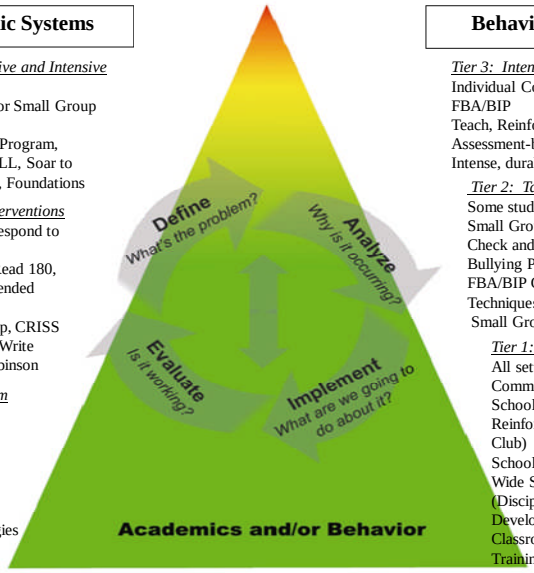
Three Tiered Model of School Supports: Example of an Infrastructure Resource Inventory

Academic Systems

Tier 3: Comprehensive and Intensive Interventions
Individual Students or Small Group (2-3)
Reading: Scholastic Program, Reading, Mastery, ALL, Soar to Success, Leap Track, Foundations

Tier 2: Strategic Interventions
Students that don't respond to the core curriculum
Reading: REACH, Read 180, CCC Lab Math: Extended Day
Writing: Small Group, CRISS strategies, and "Just Write Narrative" by K. Robinson

Tier 1: Core Curriculum
All students
Reading: Houghton Mifflin
Math: Harcourt
Writing: Six Traits Of Writing
Learning Focus Strategies



Behavioral Systems

Tier 3: Intensive Interventions
Individual Counseling
FBA/BIP
Teach, Reinforce, and Prevent (TRP)
Assessment-based
Intense, durable procedures

Tier 2: Targeted Group Interventions
Some students (at-risk)
Small Group Counseling
Check and Connect
Bullying Prevention Program
FBA/BIP Classroom Management Techniques, Professional Development
Small Group Parent Training, Data

Tier 1: Universal Interventions
All settings, all students
Committee, Preventive, proactive strategies
School Wide Rules/ Expectations Positive Reinforcement System (Tickets & 200 Club)
School Wide Consequence System School Wide Social Skills Program, Data (Discipline, Surveys, etc.) Professional Development (behavior)
Classroom Management Techniques, Parent Training

A Shift in Thinking

The central question is not:

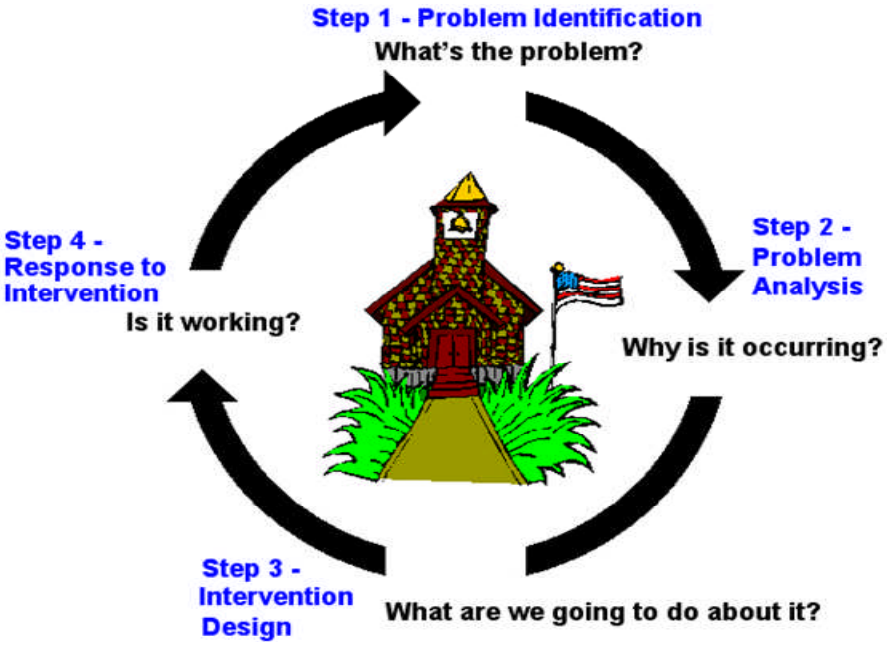
"What about the students is causing the performance discrepancy?"

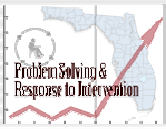
but

"What about the interaction of the curriculum, instruction, learners and learning environment should be altered so that the students will learn?"

This shift alters everything else

Ken Howell





Step 1 - What's the Problem?

In order to identify a problem, you've got to start with three pieces of data

- Benchmark level of performance
- Student level of performance
- Peer level of performance

Step 2- Why is it occurring?

Goal: The development of hypotheses about probable causes for the identified problem.

Assessments are then conducted to gather information to determine which are most / least likely

Prediction statement:

The problem is occurring because _____.

If _____ would occur, the problem would be reduced.

Step 3- What are we going to do about it?

- Effective teaching strategies consider both **what** to teach and **how** to teach it.
- Making good decisions will increase student progress.
- It is critical that the instruction be matched to the problem.

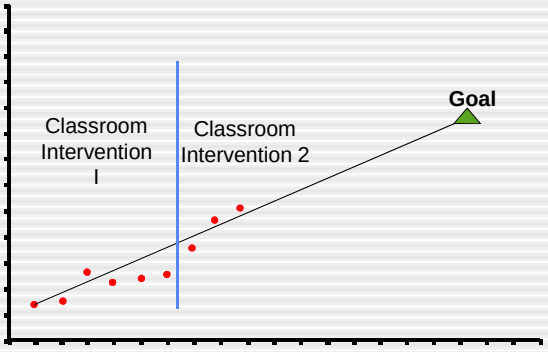
Howell & Nolet, 2000

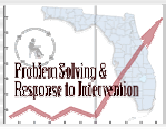
Step 4- Is it working?

Progress Monitoring

Making instructional decisions based on the review and analysis of student data

Progress monitoring always includes graphing





Steps in the Problem-Solving Process

1. PROBLEM IDENTIFICATION
   - Identify target skill
   - Data- current level of performance
   - Data- benchmark level(s)
   - Data- peer performance
   - Data- GAP analysis
2. PROBLEM ANALYSIS
   - Develop hypotheses(brainstorming)
   - Develop predictions/assessment
3. INTERVENTION DEVELOPMENT
   - Develop interventions in those areas for which data are available and hypotheses verified
   - Proximal/Distal
   - Implementation support
4. RESPONSE TO INTERVENTION (RtI)
   - Frequently collected data
   - Type of Response- good, questionable, poor

Example- Behavior

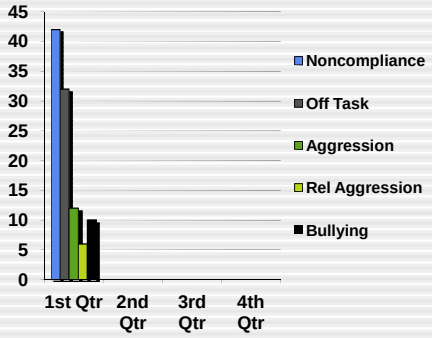
- Current Level of Performance:
  - Complies 35% of time
- Benchmark (set by teacher)
  - 75%
- Peer Performance
  - 40%
- GAP Analysis:

Benchmark/Target Student	75/35= 2.1 X difference	SIGNIFICANT GAP
Benchmark/Peer	75/40= 1.9 X difference	SIGNIFICANT GAP
Peer/Target Student	40/35= 1.1 X difference	NO SIGNIFICANT GAP

- Is behavior program effective?
- No, peers have significant gap from benchmark as well.

Referral Analysis

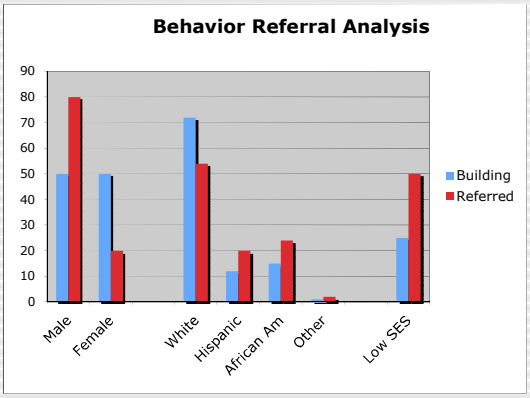
- 42% Noncompliance
- 30% Off-Task/Inattention
- 12% Physical/Verbal Aggression
- 6% Relational Aggression
- 10% Bullying

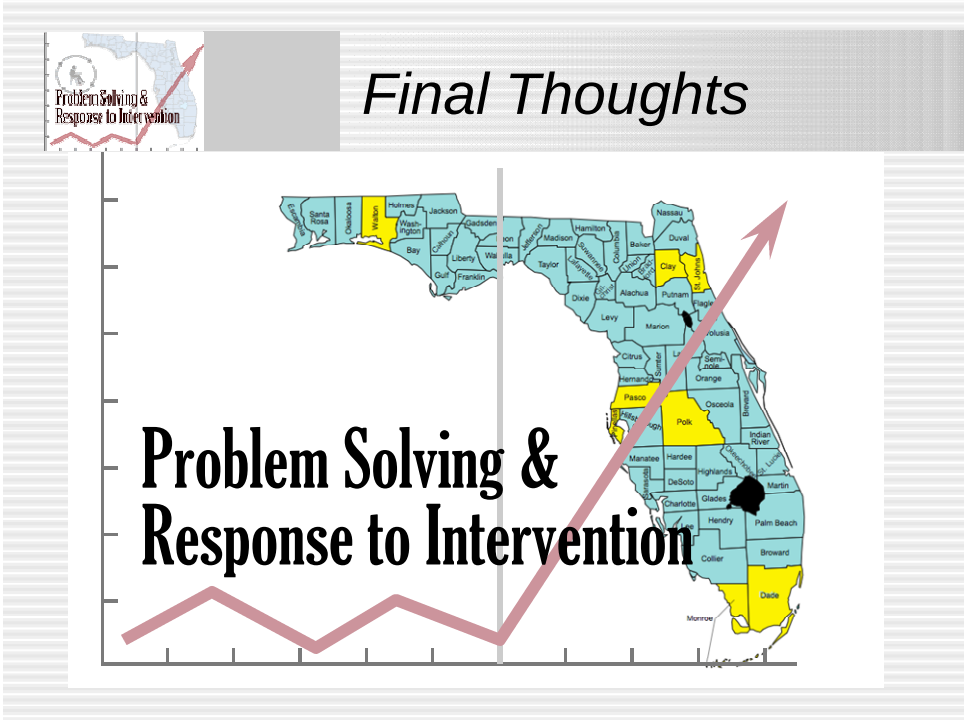


Building-Level Behavior Data

% Building	%Referred
Male 50%	80%
White 72%	54%
Hispanic 12%	20%
African American 15%	24%
Other 1%	2%
Low SES 25%	50%

Central Question: For which of these groups is the discipline plan inequitable?




Problem Solving & Response to Intervention
Final Thoughts
Problem Solving &
Response to Intervention
Escambia
Santa Rosa
Okaloosa
Walton
Holmes
Jackson
Wash-ington
Bay
Calhoun
Liberty
Gulf
Franklin
Gadsden
Madison
Taylor
Hamilton
Suwannee
Columbia
Baker
Nassau
Duval
Clay
St Johns
Dixie
Alachua
Putnam
Flagler
Levy
Marion
Volusia
Citrus
Hernando
Sumter
Semi-nole
Orange
Pasco
Osceola
Polk
Brevard
Indian River
Manatee
Hardee
Highlands
DeSoto
Martin
Charlotte
Glades
Hendry
Palm Beach
Collier
Broward
Dade
Monroe

***

Joseph Oliveri

Hello, my name is Joseph P. Oliveri and I am a retired administrator from the Austin Independent School District in Austin, Texas, a district of almost 80,000 students. My official job title was Director of Alternative Education. I supervised and principaled six (6) schools. These schools served over 9,000 students during a school year. Travis County Juvenile Justice and I cooperatively administered two of these schools. Students gained entry to these schools either by being arrested for offenses committed in the community (short term lockup) or remanded by a judge (long term lockup). Another school treated alcohol and substance offenders and was jointly administered by the Phoenix House program and me. The three other schools were removal schools, DAEPs or Discipline Alternative Education Programs, solely administered by me and covering all grades, an elementary, middle and high school.

The focus of my response to you concerns my eleven years of experience with the three removal schools. Austin ISD has removed African American students at a rate greater than their representation in total population. This was true all throughout my years of work and continues today although at lesser rates. Hispanics, who now represent over half of the total school population, are removed at slightly above their representation in the total population. Whites have always had removal rates below their representation. My focus is on what we in Texas call "discretionary removals for serious or persistent misbehavior." In almost all offense categories, AAs and special education students lead in the total removals.

A Texas Appleseed report entitled: The Texas' School-to-Prison Pipeline, School Expulsion: The Path from Lockout to Dropout (April 2010) states as one of its conclusions:

> Disproportionate representation of minority students in disciplinary referrals has plagued schools since desegregation. Texas Appleseed's research supports earlier findings that show that African American students are most often disciplined for low-level, "subjective" offenses like "serious or persistent misbehavior." The impact of disproportionate expulsion is of grave concern given both the achievement gap for minority students and their elevated dropout rates. If Texas is serious about addressing the achievement gap and high dropout rates for minority students, it must take a close look at the role that disproportionate disciplinary referrals play.

This disparity, in my experience is quite complex to explain. Is it prejudice? Yes, in some cases it appears that it is. Is it based on ignorance of cultural differences? Yes, in some cases it may be. Is it based on a strict adherence to "zero tolerance" regulations. Yes, I think it was more so in the past than it is today, although this is certainly a factor.

I have experienced cases where a White student and an African American committed the same offense at the same school and the AA was removed and the W student was permitted to remain on the campus. It happened too often to not make one feel that it may be symptomatic of other reasons behind the removal. And it contributes to the continued disparate removal of AAs. The information sources of this apparent prejudice were from the

parents of the AA student removed as well as other administrators from the removal school after I inquired about the removal details.

Another removal I have never understood is the removal of students to the DAEP for cutting classes or skipping school. To me this is symptomatic of others problems best addressed within the home school environment.

Disparities in academic abilities often go hand in hand with disparities in discipline. Many AAs and Hs do come to school without the academic skill set that would put them on par with their White peers. Sometimes class size and cultural unawareness cause some teachers to react to their behaviors differently than they would if they were White. Taking the time to learn about them and their cultural differences is a luxury many teachers feel they cannot afford to take. So they do what they feel they are paid to do and maintain discipline by removing the disruptive student.

The problem is that if we do not take other actions, often for this student the cycle repeats its self over and over until feeling they have no other choice, they drop out of school.

In an earlier report by Texas Appleseed entitled The Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance (October 2007) states as one of its conclusions:

> … Equally troubling are data-driven indicators that the greater predictor of whether a student will be sent to a DAEP is where he or she attends school— and not the nature of the offense. Add to this mix some districts' practice of referring very young children to DAEPs, and it becomes all the more imperative that, as a state, we assess how these policies contribute to the "criminalization" of student misbehavior that is removing large numbers of students from the classroom.
>
> For too many juveniles, their disciplinary removals from school are an introduction to the "school-to-prison pipeline." Whether the focus is on equity and fairness in the discipline process, or the link between discipline and academic failure or dropout, the numbers reported here are of grave concern. If Texas wants to meet its stated goals of reducing dropout, eliminating the achievement gap between white and minority students, and ensuring that its students are engaged and learning, better ways to maintain safety and order in classrooms must be found.

Well, if a student does something that calls for their removal, shouldn't they be removed? Do we just ignore their behavior just because they are AA? Of course the answer is, "no." But we do need to take steps to make informed decisions about an incident, be open to intent and self-defense as a plausible action, and work quickly to involve parents, even to the point of formalizing agreements on acceptable school behavior between them, their child and the school.

We need to expand our potential solution sources to include links to community mental health and social service agencies.

We also need to be preemptive in addressing the needs of students who are at risk of developing problematic behavior that impinge on school safety and learning opportunities for all students and teachers in the classroom. We need to provide teachers with the specialized training they need to work with students such as TESA (Teacher Expectations/Student Achievement) and GESA (Gender/Ethnicity and Student Achievement) training. We need to establish school-wide and District-wide practices and programs such as Positive Behavior Support, Character Education and we need to establish means and methods that help students to build relationships with peers and adults that will secure their future success.

(Note: I'm not sure I will include the following-JPO)

Inclosing, The Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance (October 2007) suggests a best practice model:

> A Multi-layer Approach to Successful School Discipline
>
> Research-based programs exist that are effective in reducing both disciplinary referrals and school violence. Studies show that successful programs do the following:
> • Target all students;
> • Use well-coordinated methods and approaches that are "research-based" and deemed effective;
> • Implement positive behavioral expectations and supports school-wide;
> • Provide adequate training and ongoing support to ensure effective implementation;
> • Involve school administrators, teachers, students, parents, mental health professionals, and community resources; and
> • Incorporate regular, rigorous evaluation to determine if the programs to improve behavior are continuing to work.

And

> Promising Practices from:
>
> The Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance (October 2007)
>
> Reducing Referrals in Austin Schools
> Sixty Austin schools—40 elementary schools, 14 middle schools, five high schools, and the local Disciplinary Alternative Education Program—will implement the Positive Behavior Support (PBS) program before the end of 2007.
>
> It is a school-wide program—a base upon which to begin building the three-tiered model discipline program endorsed by the U.S. Department of Education. Ten schools began using Positive Behavior Support five years ago—and already

disciplinary referrals are dropping.

An Austin elementary school with the highest number of discretionary referrals to the DAEP decreased its referral rate to one of the lowest in the district after instituting PBS, according to Jane Nethercut, Positive Behavior Coordinator for Austin ISD.

Data for 2004-05 documents a greater awareness of school rules, a drop in bullying, and an increased percentage of students reporting they "feel safe" in school on Austin campuses implementing Positive Behavior Support.

A PBS team on each campus develops global themes for the school—such as "show respect"—along with a set of behavioral expectations to reinforce those themes. Teachers and staff discuss these in class, provide examples, and positively reinforce positive behaviors.

Interventions with students with problem behaviors are creative and individualized. For example, a student who is physically aggressive at school might be referred to counseling by an outside group, such as SafePlace, which offers shelter to women who are physically abused. Another student might be paired with an on-campus mentor who offers advice and models positive behavior.

Accurate tracking of disciplinary data helps identify repeat offenders and adapt strategies to reach them.

The Austin school district plans to implement PBS in every school in the district by the year 2010.

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Edward C. Gonzalez

Associate Superintendent of the Department of Prevention and Intervention Fresno Unified School District, Fresno, CA

REPORT TO THE COMMISSION ON CIVIL RIGHTS
February 11, 2011

SECTION 1: DISPROPORTIONALITY

Fresno Unified School District, with an enrollment of 72,000, is the 4th largest District in California. Demographically, the ethnic make-up of the District is as follows: Hispanic (62%); Asian-American (13%), White (13%), African-American (10%). Native Americans and other groups comprise the remainder. One of my primary goals upon arrival in July 2010 was to address the issue of Discipline.

Disproportionality in FUSD. In the area of student expulsions in 2009/2010, the Disproportionality was stark in reference to the following particular student subgroups: 1) African-Americans; 2) Special Education students; 3) Students in Foster Care; 4) Male students; 5) Middle School students (7th/8th); and Native American students. The Disproportionality is evidenced in the data tables below:

EXPULSION REFERRALS - 2009/2010 (180 days)

SUBGROUP	% OF ENROLLMENT	% OF EXP REFERRALS	DISPROPORTIONALITY
African Americans	10.69%	30.35%	284%
Special Ed students	9.50%	27.42%	289%
Foster Care students	1.04%	2.80%	269%
Male students	50.91%	76.10%	149%
Middle School students	15.05%	37.38%	248%
Native Americans	0.66%	0.88	133%

EXPULSION REFERRALS - 2010/2011 (as of Day 90)

SUBGROUP	% OF ENROLLMENT	% OF EXP REFERRALS	DISPROPORTIONALITY
African Americans	10.26%	26.20%	255%
Special Ed students	9.42%	22.43%	238%
Foster Care students	0.99%	2.95%	298%
Male students	51.11%	75.65%	148%
Middle School students	14.76%	40.15%	272%
Native Americans	0.64%	1.48%	231%

To address these concerns, the District has initiated numerous interventions. Beginning in 2009/2010, the District began implementation of a K-12 Behavioral Intervention curriculum, "Safe & Civil Schools." SCS provides a three-tiered approach to behavioral referrals, empowering adults to take more control and responsibility in regard to modification of inappropriate behaviors. "Capturing Kids' Hearts" is another training, exclusively targeted at high school and middle school students. The Men's Alliance, an intervention class targeted at behaviorally-"at-risk" male students, was debuted this school year at three high schools and has already shown great promise in mitigating student suspensions, expulsions, and unexcused absences.

THE MEN'S ALLIANCE MID-YEAR REPORT – 2010/2011 - BEHAVIOR, ATTENDANCE, AND ACADEMICS (as of Day 84)

	2009/2010 (180 days)	2010/2011 (as of Day 84)	DIFFERENCE	% CHANGE
STU SUSP PER DAY	.31	.17	-.14	-45.16%
DAYS OF SUSP	1.93	0.40	-1.53	-79.27%
UNEXC ABSENCES	.96	.65	-.31	-32.29%
GPA	1.2	1.5	.3	+25.00%

In combination with these curricular and programmatic interventions, we have also focused on additional training regarding the expulsion process, and have clarified requirements and enhanced scrutiny of all referrals. Ed Code violations have been separated into three tiers – 1) Mandatory, 2) High-Priority, and 3) discretionary. The following is a list of the violations in each category:

MANDATORY: (ED CODE 48915c)

- Possession of a firearm
- Sale of a controlled substance
- Brandishing of a knife
- Sexual battery, or attempted sexual battery
- Possession of explosives

HIGH-PRIORITY: (ED CODE 48900)

- Fight or battery using a weapon
- Furnishing of a controlled substance
- Possession of a knife
- Assault/battery upon a staff member
- Arson

DISCRETIONARY: (ED CODE 48900)

- All other violations listed under Ed Code 48900 are considered discretionary. Ed Code requires expulsion only when other means of correction have not proven feasible. I have also initiated the expectation that non-Mandatory and non-High-Priority expulsion referrals will show evidence of a "good-faith" effort on the part of the site administration to make a home visit.

Our mid-year Expulsion report indicates that the combination of these interventions and strategies shows promise in reducing overall expulsions and Disproportionality in discipline. Three of the four largest subgroups – Males, African-Americans, and Special Education students—show decreases in Disproportionality. Middle school students, especially 8th graders, continue to be an area of concern.

Two other areas of increase need further examination. The greater Fresno area has become somewhat of a Mecca in California for the placement of students in Foster Care. There are 35 Group Homes which currently reside within the boundaries of Fresno Unified. A high percentage of these students arrive with great emotional, academic, and social needs. Unfortunately, the Licensed Childcare Institutions (LCI's) have not always worked collaboratively with school Districts, so important information regarding the high needs of these students is not always been forthcoming. The Department of Prevention and Intervention, working in tandem with our Special Education department, has initiated meetings with Group Home leaders at our high schools, and begun the process of improving our information sharing.

The final subgroup of Discipline Disproportionality—Native Americans—has increased sharply in 2010/2011. Numerically, this is a very small subgroup, and the total number of expulsion referrals as of Day 90 in 2010/2011 is only 4, so it may be premature to consider this disproportionate this year.

SECTION 2: EXPULSION DATA

Overall, the total number of expulsion referrals has dropped in 2010/2011, as well as the number of actual expulsions, as evidenced by the charts below:

COMPARISON OF 2009/2010 AND 2010/2011 EXPULSIONS

EXPULSION REFERRALS BY SCHOOL LEVEL

LEVEL	2009/2010 PER DAY	2010/2011 PER DAY (as of Day 90)	% CHANGE
Elementary School	.82	.49	-28.0%
Middle School	1.42	1.22	-14.1%
High School	1.55	1.33	-14.2%
FUSD	3.79	3.04	-19.7%

ACTUAL EXPULSIONS

	2009/2010 PER DAY	2010/2011 PER DAY (as of Day 81)*	% CHANGE
Expulsion Referrals	3.79	2.90	-23.4%
Canceled, Stopped, or Terminated	0.38	0.86	+128.8%
Actual Expulsions	3.41	2.04	-40.3%

**Actual Expulsions were calculated per day as of Day 81, due to the fact that there were still several cases pending beyond that date.*

Reasons for the decrease in expulsions in 2010/2011 mirror the reasons listed in the Disproportionality section. Of particular note is the Number of Referrals canceled or stopped this year. This can happen from one of three ways—they can be stopped by an Administrative Hearing Panel, a Manifestation Determination team in Special Ed, or by me as the Associate Superintendent of the Department of Prevention and Intervention.

SECTION 3: DISPROPORTIONALITY IN EQUITY AND ACCESS

Although not specifically concerning discipline disproportionality in equity and access is of fundamental importance in understanding the historical and on-going struggles of "at-risk" subgroups, particularly subgroups of ethnicity. The chart below illustrates the disproportionality in regard to the percentage of students identified as Gifted and Talented, as disaggregated by ethnicity:

GIFTED AND TALENTED EDUCATION (GATE)

ETHNICITY	TOTAL ENROLLMENT	TOTAL GATE IDENTIFIED	% OF ENR ID'd AS GATE
WHITE	9,552	1,180	12.35%
HISPANIC	45,200	1,126	2.49%
AFRICAN-AMERICAN	7,962	220	2.76%
ASIAN-AMERICAN	9,617	403	4.19%
OTHER	1,089	63	5.79%
TOTAL FUSD	73,420	2,992	4.08%

Clearly, students of color, specifically African-American and Hispanic students, are lagging far behind other ethnicities in GATE identification status. This has disturbing ramifications, both to students and their families, as it reinforces stereotypes of racial and ethnic inequities in innate cognitive abilities.

SECTION 4: NEXT STEPS

Fresno Unified is pursuing additional interventions and programmatic changes that we believe will continue to reduce Disproportionality among "at-risk" groups of students. These include the following:

- Expansion of the Men's Alliance program

  The Men's Alliance is currently at three Fresno Unified High Schools, but will expand to two additional high schools in the 2011/2012 school year.

- Improved networking with Licensed Childcare Institutions (LCI's) and Group Homes FUSD's Department of Prevention and Intervention (DPI) has devised a standardized protocol for the admission of students into our area Group Homes. In addition, FUSD have scheduled meetings at our high schools and invited Group Home staff to come to the table, share concerns, and work together with the District to enhance the opportunities for Group Home students to meet with success. I have also made arrangements for me and my Coordinator in charge of Foster Youth to make visits to each of our Group Homes.

- Full implementation of Safe & Civil Schools and "Capturing Kids' Hearts" curricula

  The 103 schools in the District were divided into four cohorts, and implementation of the SCS curriculum began in 2009/2010. The Department of Prevention and Intervention will recommend additional personnel to assist with training and augment the monitoring of implementation in 2011/2012.

- Creation of a Work Team on Diversity

  This Work Team consists of approximately two dozen FUSD employees, with a representation of both genders and all numerically-significant ethnic groups, who study the District's current practices in a wide variety of areas in order to address concerns and make recommendations for systemic changes.

- Corrective Reading and other academic programs

  Corrective Reading has not only shown promising results in academic advancement, it has had the unforeseen consequence of showing some ability to mitigate certain behaviors that result in suspension and/or expulsion.

- Credit Recovery expansion

  All FUSD high schools offer Credit Recovery options, and the District also utilizes two high school continuation programs to augment credits. In addition, FUSD is expanding its credit recovery options by implementing Extended Learning and on-line courses.

- Proposal to create a pilot intervention class, the Renaissance Academy Scholars (RAS)

  RAS features a self-contained classroom setting, augmented with remediation, music, art, computers, academic competition, and field trips embedded into the instructional model. This class would exclusively target behaviorally-"at-risk" students in 8th grade.

As of this writing, it is still in draft form and has yet to be submitted to the FUSD Board of Trustees.

SECTION 5: CONCLUDING REMARKS

Fresno Unified School District is committed to addressing the problem of Discipline Disproportionality that has been ongoing in urban districts throughout the country for more than a generation. The interventions described, as well as some others not mentioned, have exhibited promise thus far.

Overall expulsion referrals have dropped, and when this is combined with a drop in disproportionality, however slight, the result has been a huge decrease in the number of expelled students from each "at-risk" subgroups when compared to last year. We recognize that our challenges are great, but we have a forward-thinking Board and a visionary Superintendent, Mike Hanson, who deserve much credit for their efforts to improve educational opportunities for all students.

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REPORT TO THE COMMISSION ON CIVIL RIGHTS

Fresno Unified School District

Washington D.C. - February 11, 2011

Edward Gonzalez

SECTION 1: DISPROPORTIONALITY

EXPULSION REFERRALS – 2009/2010 (180 days)

- **DISPROPORTIONALITY**

SUBGROUP	% OF ENROLLMENT	% OF EXP REFERRALS	DISPROPORTIONALITY
African Americans	10.69%	30.35%	284%
Special Ed students	9.50%	27.42%	289%
Foster Care students	1.04%	2.80%	269%
Male students	50.91%	76.10%	149%
Middle School students	15.05%	37.38%	248%
Native Americans	0.66%	0.88%	133%

Fresno Unified School District

SECTION 1: DISPROPORTIONALITY

EXPULSION REFERRALS – 2010/2011 (as of day 90)

- **DISPROPORTIONALITY**

SUBGROUP	% OF ENROLLMENT	% OF EXP REFERRALS	DISPROPORTIONALITY
African Americans	10.26%	26.20%	255%
Special Ed students	9.42%	22.43%	238%
Foster Care students	0.99%	2.95%	298%
Male students	51.11%	75.65%	148%
Middle School students	14.76%	40.15%	272%
Native Americans	0.64%	1.48%	231%

Fresno Unified School District

SECTION 1: DISPROPORTIONALITY

THE MEN'S ALLIANCE MID-YEAR REPORT – 2010/2011 – BEHAVIOR, ATTENDANCE AND ACADEMICS (as of day 84)

- **DISPROPORTIONALITY**

	2009/2010 (180 days)	2010/2011 (as of day 84)	DIFFERENCE	% CHANGE
STUDENT SUSPENSION PER DAY	.31	.17	-.14	-45.16%
DAYS OF SUSPENSION	1.93	.40	-1.53	-79.27%
UNEXCUSED ABSENCES	.96	.65	-.31	-32.29%
GPA	1.2	1.5	.3	+25.00%

Fresno Unified School District

EXPULSION REFERRALS BY SCHOOL LEVEL

- DISPROPORTIONALITY

LEVEL	2009/2010 PER DAY	2010/2011 PER DAY (as of day 90)	% CHANGE
Elementary School	.82	.49	-28.0%
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Fresno Unified School District

ACTUAL EXPULSIONS

- DISPROPORTIONALITY

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*Actual Expulsions were calculated per day as of day 81, due to the fact that there were still several cases pending beyond that date.

Fresno Unified School District

SECTION 2: EXPULSION DATA

GIFTED AND TALENTED EDUCATION (GATE)

- **DISPROPORTIONALITY**

ETHNICITY	TOTAL ENROLLMENT	TOTAL GATE IDENTIFIED	% OF ENROLLED IDENTIFIED AS GATE
WHITE	9,552	1,180	12.35%
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AFRICAN-AMERICAN	7,962	220	2.76%
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OTHER	1,089	63	5.79%
TOTAL FUSD	73,420	2,992	4.08%

Fresno Unified School District

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Panel 3 – U.S. Department of Education Official and School Administrators

Ricardo Soto

STATEMENT OF
RICARDO SOTO
PRINCIPAL DEPUTY ASSISTANT SECRETARY
OFFICE FOR CIVIL RIGHTS
U.S. DEPARTMENT OF EDUCATION

BEFORE THE
U.S. COMMISSION ON CIVIL RIGHTS' BRIEFING

FEBRUARY 11, 2011

Introduction:

Thank you for inviting the Department of Education's Office for Civil Rights (OCR) to the U.S. Commission on Civil Rights' briefing on school discipline and disparate impact. I am Ricardo Soto, the Principal Deputy Assistant Secretary in OCR. I am pleased to be able to share with you the work that my office, under the leadership of Assistant Secretary Russlynn Ali, is doing to enforce the civil rights laws and to support schools in meeting their obligations to create and maintain the safe and orderly educational environments that are necessary for our nation's students to learn and thrive.

I understand the challenges that educators and administrators face when they are administering student discipline; because before coming to OCR, I dealt with them too. Prior to my work at OCR, I represented school districts on education issues which included providing advice regarding discipline policies and procedures, including the review of recommendations for suspension and expulsion by school administrators. I also served as the Assistant Secretary and Legal Counsel in the Office of the Secretary of Education of California where I advised the Secretary of Education and the Governor's Office on legal and policy issues related to elementary, secondary and higher education, including school discipline. Furthermore, I have served as in-house counsel for the San Diego Unified School District where I represented the Superintendent, Board and senior staff on education matters. All of these experiences have given me a hands-on perspective on the difficulties encountered when administering fair student discipline and I am excited to be working for OCR as we work towards finding solutions to this complicated issue.

I. Overview of OCR

Let me first provide an overview of my office and the work that we do. OCR's mission is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. OCR enforces civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, age, and disability. Most relevant to today's' briefing is OCR's enforcement of Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin. Title VI's protections extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal funding from the U.S. Department of Education.

As you know, a critical part of OCR's job is to investigate and resolve discrimination complaints. These complaints may be filed by anyone, on behalf of an individual or group that may have faced discrimination in education. Additionally, agency-initiated investigations - typically called compliance reviews- permit OCR to concentrate our efforts and resources on problems that are particularly acute or widespread. OCR also issues policy guidance and provides technical assistance to help schools, universities, parents, and community members understand their rights and responsibilities, and to promote voluntary compliance with the civil rights laws that we enforce.

OCR has a headquarters office and twelve regional offices around the country, with more than 600 attorneys, investigators and other staff working on investigating complaints, conducting compliance reviews, developing policy guidance, and providing technical assistance. As I have learned since joining OCR, our attorneys and investigators have a great deal of experience investigating and resolving Title VI complaints and compliance reviews involving allegations of discrimination in the administration of student discipline. In March of 2010, Secretary Duncan delivered remarks commemorating the 45th anniversary of "Bloody Sunday" — a pivotal moment in civil rights history — while highlighting key civil rights issues facing the nation today. In that speech, he announced a reinvigorated OCR that will "strive to make Dr. King's dream of a colorblind society a reality."

II. Discipline Disparities

Let me now turn to our work on issues relating to student discipline. From data gathered through the Department's Civil Rights Data Collection, OCR estimates that in the 2005-2006 school year, almost 250,000 more students nationwide received out-of-school suspensions than just four years earlier, and that the number of students who were expelled increased by fifteen percent. (Compare the Department's Civil Rights Data Collection for 2002 and 2006). OCR is concerned by the rising discipline rates and by the deep disparities in discipline in our nation's schools. Both - have been linked to increased likelihood of dropping out of school; decreased academic achievement; increased involvement with the juvenile-justice system; and impairment of future college and employment opportunities. And those are just a few of the harms to students. OCR is also concerned that significant disparities in the application of discipline policies, practices, and procedures nationwide may suggest that

discrimination is occurring that violates the federal anti-discrimination laws enforced by OCR. As Secretary Duncan said, "civil rights laws require vigorous enforcement not just because they are the law of the land, but because the data paint a stark picture of educational inequality."

III. Legal Theories

To maintain the integrity of our enforcement activities, OCR has a long-standing policy against releasing information about pending investigations. So today I will not be discussing open cases. But I will explain the legal theories that govern our enforcement efforts based on statutes, regulations, and case law that OCR would employ, when the facts and circumstances suggest they would be appropriate, to determine whether a school has violated Title VI. Although my remarks will focus on discrimination based on race in the administration of student discipline, when the facts and circumstances suggest they would be appropriate, OCR would apply the same legal theories in our investigations of possible race, color, or national origin discrimination in educational contexts.

Title VI requires that a school's disciplinary policies, practices and procedures must be applied consistently to similarly situated students, regardless of their race. The Department's Title VI regulations prohibit discrimination, therefore, both when it is the product of different treatment - intentional discrimination based on race, color, or national origin- and when it results from facially race-neutral policies, practices, or procedures that have a disparate impact on the basis of race, color or national origin. OCR's Title VI regulations can be found at 34 C.F.R. § 100.

Unlike cases involving different treatment, cases involving disparate-impact theory do not require that a school had the intent to discriminate. Rather, under the disparate-impact theory, the pertinent inquiry is whether the evidence establishes that a facially neutral discipline policy, practice, or procedure causes a significant disproportionate racial impact and lacks a substantial, legitimate educational justification. Even if there is a substantial, legitimate educational justification, a violation may still be established under disparate impact if the evidence establishes that there are equally effective alternative policies, practices, or procedures that would achieve the school's educational goals while having a less significant, adverse racial impact.

Statistical disproportionality in the administration of student discipline by race, color, or national origin, standing alone, will not generally establish a Title VI violation. Although data and statistical information are important indicators for OCR's work, they are but one category of evidence that OCR collects in its investigative process. OCR attorneys and investigators conduct interviews and collect a variety of information concerning a school's written and unwritten disciplinary policies, practices, and procedures. As stated above, schools can provide an educational justification for any data that suggests a statistical disproportionality.

Disparate-impact discrimination has been prohibited by the Title VI regulations since the Title VI regulations were written in 1964. These regulations have been used for decades by

all federal agencies, including OCR, that enforce Title VI in federally assisted programs. As President Kennedy said when he first proposed the legislation that ultimately became Title VI, "simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in a fashion which encourages, subsidizes, or results in racial discrimination." "Indirect discrimination," President Kennedy said, was "just as invidious" as direct discrimination.

The Department brought administrative proceedings, *In the Matter of Dillon County School District No. 1*, Docket No. 84-VI-16 and *In the Matter of Maywood School District #89*, Docket No. S-125, which were ultimately resolved in 1987 and 1990, respectively, under the Title VI disparate-impact theory.

In 1994, on the 30th Anniversary of the passage of Title VI, the Attorney General of the United States reminded federal agencies that, "administrative regulations implementing Title VI apply not only to intentional discrimination but also to policies and practices that have a discriminatory effect." (1994 Letter from the Attorney General on the Use of Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964.) The Attorney General instructed all federal agencies to "ensure that the disparate impact provisions in your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

Seven years later, in a 2001 memorandum following the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the Department of Justice instructed federal agencies that while *Sandoval* held that there is no private right of action to enforce Title VI's disparate-impact regulations, the Supreme Court did not address the validity of Title VI regulations themselves or call into question the government's authority and obligation to enforce them. (2001 Memorandum from the Assistant Attorney General on Executive Order 13166). The following year, the Department of Justice issued guidance and made clear that through this memorandum, the Assistant Attorney General had clarified that, *"Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities--the Executive Order remains in force." As you may recall, Executive Order 13166 requires federal agencies to examine the services they provide and develop and implement a system by which Limited English Proficient persons can meaningfully access those services. Additionally, the 2002 guidance stated that *Sandoval* did not "otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations." (2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons).

Most recently, in a 2009 memorandum on the 45th anniversary of the passage of Title VI, the Department of Justice, urged federal agencies "to remember that [we] serve an especially critical role in enforcing Title VI disparate impact regulations ... [Because] [v]ictims can only turn to the administrative complaint process, ... agencies must be particularly vigilant in ensuring strong enforcement in this area." (2009 Memorandum from the Acting Assistant

Attorney General on Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964).

Thus, the disparate-impact theory has been and remains a critical enforcement tool for OCR. Where OCR finds a violation of Title VI in the administration of student discipline, we will seek the school's voluntary agreement to take specific measures to remedy that violation. And indeed, wherever OCR finds evidence of a civil rights violation, most schools enter into voluntary resolution agreements which set forth what actions the school must take to remedy the situation and prevent future discrimination. These agreements, which OCR monitors closely, have resulted in significant changes benefitting students in schools throughout the nation.

IV. Case Example

Now, I would like to provide an example of a case where OCR found a violation of Title VI in the administration of student discipline. Because the case remains in the monitoring phase, I cannot provide identifying details. In this case, the complaint, filed by a teacher, alleged that a district discriminated against seventh-and eighth-grade African-American students by disciplining those students more harshly *(i.e.* differently) than white students. An analysis revealed that a statistically significant difference among the races existed in the school's application of its discipline policy, with African-American students receiving greater disciplinary sanctions for all four categories of misconduct examined. The District was unable to provide a legitimate, nondiscriminatory, non-pretextual explanation for this difference in treatment based on race. Through interviews and extensive document reviews, OCR confirmed that African-American students were punished more harshly than their white counterparts for the same or similar conduct. For example, OCR's review of teacher slips referring students for disciplinary actions revealed that the slips on white students also included positive teacher comments such as "wonderful student;' while no similar comments were included for African-American students. OCR also learned that most white students were allowed to exhaust informal and less harsh disciplinary sanctions before being referred for formal discipline, whereas similarly situated African-American students were not allowed to exhaust informal disciplinary sanctions.

Under such circumstances, an OCR agreement would normally include remedies such as: revising existing disciplinary policies and procedures to ensure uniform application of disciplinary consequences; training staff on the application of disciplinary policies and procedures; and prospective monitoring of disciplinary sanctions.

Conclusion:

The answer to unequal, unfair, or ineffective student discipline, of course, is not to abandon discipline policies, practices, and procedures. For many parents and teachers, disruptive and disorderly schools are serious problems because children cannot learn in classrooms that are not well managed. And, the Department of Education recognizes that disciplinary policies, practices, and procedures differ from school to school. There is no universal, one-size-fits-all approach to discipline that will be right for every school or all students. However, each

school has a responsibility not only to create a safe and orderly learning environment, but also to ensure that its disciplinary policies, practices, and procedures are administered in a nondiscriminatory manner. To help support schools in meeting the challenge to adopt effective and appropriate disciplinary policies, practices, and procedures that do not violate a student's civil rights, OCR is using all the tools at our disposal.

As I explained earlier, these include not just enforcement through complaint resolution and compliance reviews, but also policy guidance and technical assistance to schools on the administration of student discipline. For example, OCR, in partnership with Civil Rights Division of the Department of Justice, convened conferences last fall in Washington, DC and San Francisco on "Civil Rights and School Discipline: Addressing Disparities to Ensure Equal Educational Opportunity." Through these conferences, OCR, the Department of Justice, and education experts shared their knowledge about effective partnerships and best practices in the administration of student discipline. As I noted at the first conference, OCR is developing guidance, in the form of a Dear Colleague Letter, that will inform states and districts about their responsibilities in avoiding discrimination based on race in the administration of student discipline.

OCR also recognizes that we needed better data on disparate discipline, because better data will both help community members understand the problem and improve OCR's enforcement efforts. We have therefore begun collecting more detailed and accurate data to identify districts that are really struggling with discipline. In particular, OCR has expanded this year's Civil Rights Data Collection to cover more than 7,000 school districts, including all districts with more than 3,000 students. In its revised collection, OCR is collecting data on school discipline that includes data on corporal punishment, suspensions, tracking in-school and multiple suspensions, referrals to law enforcement, school-related arrests, and zero tolerance policies.

Thank you again for the opportunity to share OCR's work in this important area with the Commission. Secretary Duncan has repeatedly stated that education is the civil rights issue of our time. OCR is deeply committed to ensuring that every child receives the best education possible. Increasingly, the number of students losing educational instructional time due to disciplinary sanctions, such as out-of-school suspensions, expulsions, or referrals to law enforcement authorities, and alternative educational placements, has dramatically increased. All too often such consequences for student misconduct, especially from more subjective disciplinary offenses where judgments are inherently more discretionary, are not imposed in a fair and equitable manner. Moving forward, OCR is committed to using all the tools at our disposal to address this critical issue. I am happy to answer any questions the Commissioners have.

***

Hardy Murphy

Hardy Murphy, Ph.D.
Evanston/Skokie CC School District 65

Comments for the U.S. briefing on school discipline and disparate impact

Evanston/Skokie School District 65 is a K-8 school district located just north of the City of Chicago in Illinois. The district serves 7,000 students from a variety of economic and ethnic backgrounds (42% White, 27% Black, 20% Hispanic, 5% Asian, 6% Multi-Racial; 40% eligible for free or reduced lunch). Our schools offer families a high-quality educational experience and we provide many supports and services that enhance the academic environment.

Like other districts across the country, District 65 grapples with disparate outcomes in the application of discipline. Our data confirm a disproportionate representation of students of color, and we are continuing to address this disproportionality. A districtwide behavior-management system, a program to help keep students in school, parent engagement and education, and sensitivity training for faculty and staff are strategies we are using to address this disparity.

Having our educational professionals develop an understanding about our students' out-of-school experiences helps create an appreciation for their culture and background. Students, in turn, see these understandings as an affirmation of who they are and where they come from and an acknowledgement of their potential. As a result the children are more inclined to see their classroom experiences as supportive and meaningful. This helps them "buy-in" to the larger system of values that public education represents.

The goal for our students is for them to understand and internalize behavioral expectations that make for more successful school and life experiences. The goal for our teachers is to see their students as having unlimited potential for academic success and productive citizenship. The goal for our parents is to see our schools as institutions that embrace them and their concerns in a more responsive environment.

Our discipline policies are equitable across racial, gender, disability, and sexual orientation classifications. They comply with state, federal and local legislation and they reflect community values. We have written behavioral expectations for activities in classrooms and hallways, on the school bus, for walking to and from school, and for the acceptable use of online resources. And, our consequences vary by category across a range of severity by infraction.

One objective of the disciplinary policies and procedures is to create a culture highly supportive of teaching and learning. We use the Positive Behavior Interventions and Supports (PBIS) as the districtwide behavior management system to reinforce positive behaviors and sustain instructional environments with reduced disruption or behavioral

concerns. Our educational professionals are trained with PBIS strategies to use at school - from the classroom to the lunchroom, from the playground to the gym. Each school has a PBIS team that includes teachers, the principal, and the school social worker. Together they review data entered into an online reporting system (SWIS) that gives easy access to information they can use, for example, to identify specific behavioral expectations that need re-teaching. The data also may be used to identify students most at risk and who need additional supports or a behavioral intervention plan.

Many District 65 schools have been recognized by the state for our implementation of PBIS. Several schools were identified as model sites for official state and national visitors. And, one of our schools was selected a few years ago to host a visit from the Assistant Secretary of the Office of Special Education and Rehabilitation Services from the U.S. Department of Education. The Assistant Secretary met with staff, students and families, and took back to Washington DC what he learned.

We understand the important role that parents have in successful school experiences. Our district participates in the John Hopkins parent involvement model to create more supportive home-school relationships. We also involve parents in the alternative to suspensions (ATS) program that provides services and supports to reduce or prevent out-of-school suspensions. If a student and a parent commit to participate in counseling services, the child's suspension is held in abeyance. A school social worker holds counseling sessions and gives the students and their family a chance to discuss things that might be causing behaviors that result in disciplinary action and to identify strategies to avoid these behaviors in the future. A copy of the ATS program materials is available on the District 65 website (http://www.district65.net/parentsandstudents/handbook/)

Another way we are attempting to address the disparate impact of discipline is through sensitivity awareness training for staff. This year faculty and staff will participate in the "Mosaic Experience: A Thoughtful Conversation about Cultural Diversity in the Classroom." Mosaic Experience is a local organization that helps other organizations find a culture of team-building and collaborative approach to creatively problem-solve and address challenges.

The District 65 board of education takes an active role in reviewing suspension data for students. They, like Secretary Duncan, have raised concern about a disproportionate number of African American students facing disciplinary action in public education. District policies are designed to equitably address school expectations. I have included an appendix with a list of current policies related to disciplinary matters. These policies are available on the District 65 website (http://district65.net/boardofed/goals_policy). District's programs are intended to help students understand their role in creating a climate and culture where learning is not impeded by behaviors that interfere with a positive and productive learning environment.

***

Hardy Murphy, Ph.D., Statement (continued)

Appendix A

Evanston/Skokie District 65 Student Discipline Policies

Rochester Public Schools
Independent School District #535
615 7th Street SW
Rochester, Minnesota 55902-2052
Office of the Superintendent • Telephone (507) 328-4256 • FAX (507) 328-4121

Hertica Martin, Ph.D.
Presentation to the Commission on Civil Rights
February 11, 2011
Washington, DC

The new initiative the Department of Education is undertaking to study the racially disparate impact of discipline policies on students is a critical step to alert school district personnel across the nation of their civil rights and responsibilities in disciplining students fairly without regard to skin color.

Our district has been under reform for the last four years when the Superintendent commissioned the work of Education Development Center (EDC) to conduct an educational audit in the district. This report indicated a need for Rochester Public Schools to ensure that all students experience a sense of belonging in their school community; assure that all students benefit from high expectations and fair treatment; and create an open and welcoming culture for all families. This report, on pages 26-29, further revealed the following:

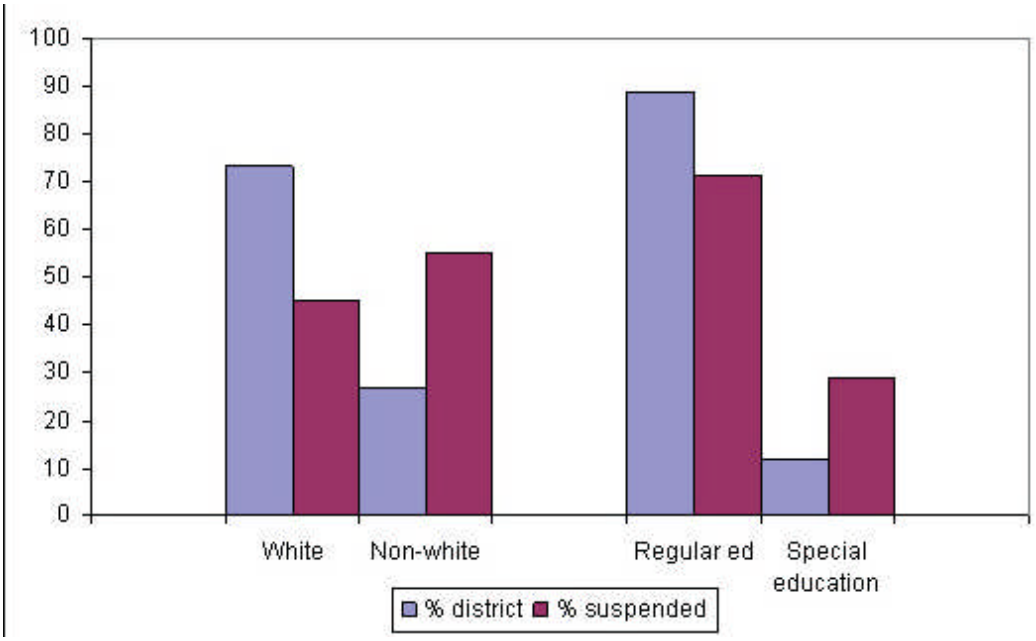
> "The data revealed that there is an overrepresentation of African-American males who are expelled from school. Parents of color raised the issue of inconsistent implementation of disciple as well as the impact of some disciplinary measures on learning. Students also spoke to the issue of the unfair application of school rules."

> "Data affirmed the accuracy of parents' and students' perceptions. Figure 24 in the report showed that suspension rates are disproportionate to the overall student population, both by race and by disability status. While students of color make up 29 percent of the population, they make up more than 50 percent of all those students suspended. In contrast, White students make up more than 70 percent of the population, but are only 45 percent of those who are suspended. Similarly, students with disabilities make up 12.4 percent of all students, but almost 30 percent of all suspensions. Given that students with disabilities are disproportionately Black (especially in the Developmental Cognitive Disabilities - Mild/Moderate (DCD-MM), Developmental Cognitive Disabilities - Severe/Profound (DCD-SP) and Emotional/Behavioral Disorders (EBD) categories, which are also the categories with the highest suspension rates), this group of Black students deserves greater attention from a number of angles, such as identification

processes, discipline issues, least restrictive setting, and access to grade-level curriculum."

"Suspension rate data for 2007–2008 showed that for this year, through November, 82 of 288 out-of-school suspensions have been students with disabilities (29 percent), and of those, 44 are Emotional/Behavioral Disorder (15 percent of all suspensions) and 22 are students with learning disabilities (8 percent). These percentages are almost identical to those for 2006–07."

Figure 24 from the EDC Report. Suspension Rates by Race/Ethnicity and Special Education Status, 2006–2007 (n = 734)



"A lack of fairness of treatment in areas other than discipline was also mentioned by students. As noted earlier, while all students interviewed were able to speak of important adults in their school who made a difference for them, they also recognized that "some teachers relate to 'different' students but the majority don't." One student suggested that "more connections between students and teachers" would help more students succeed. A bi-racial student suggested that her school needed help to "be more open to diversity," perhaps through greater adult diversity and student diversity within challenging courses."

"While efforts have been undertaken since the 1990s to address the changing face of Rochester, there is still an underlying feeling today, as voiced in the September stakeholders meeting, that "hostility to diversity is present" and that there is a tendency among district members "to blame children and their families." White parents, parents of color, and newcomer parents expressed the belief that there are

> "some deep-seated prejudices and hostilities within the community but that, for the most part, people know what the appropriate 'politically correct' responses are and so do not present these in public.""
>
> "Students and families have markedly different experiences in the RPS culture. Across many stakeholder groups—community, business, parents, and students—we identified the shared perception that RPS has been struggling with the changes in the make-up of its students for some time and still has important, deeply-rooted issues of diversity and equity to resolve in its policies, procedures, and culture. Many serious concerns and questions were raised about whether and how RPS responds to the needs of students and families from culturally and linguistically diverse populations, and from families with low incomes. At the same time, there appeared to be some renewed hope that this will be the time when "action will be taken and not just talk." There is a growing appreciation that the district has made it a priority to deal with the systemic inequities that compromise the quality of life and educational experiences of many RPS students. To address this priority successfully, it will be imperative to engage all adults in the system (administrators, teaching staffs, and all support staff) in mindfully working together to create a culture of diversity that is pervasive across the district."

From the educational audit outlined in the EDC report, a 5-Year Strategic Plan was developed and implemented to close the opportunity gap and to bring all students to proficiency. This Five-Year Plan led to the identification of our District's five focused initiatives for the year. These five strategies below are researched-based, deeply rooted in the 5-Year Plan and drove the development and refinement of the District in Need of Improvement Plan (DINI). This plan addresses the inequities in the system and the disproportionality in achievement and discipline.

- **Equity**: Equity is defined as "Raising the achievement of all students while narrowing the gaps between the highest and lowest performing students and eliminating the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories (Singleton, 1997). The District is continuing its commitment to district-wide, systemic equity training. The district equity leadership team (DELT) is developing plans for the district to promote and embed equity training, plans, and cultural competency for the District's educators. Site equity leadership teams (SELT) are in the process of learning more about developing site equity plans and embedding processes to develop equity-focused goals to support the development of their site integrated improvement plans.

- **Efficacy**: The belief that all children can learn is fundamental to the success of all students. It is also critical that all staff use a common data analysis system. District Efficacy Coaches provide embedded staff development and on-site support for these two major Efficacy concepts. It is expected that all staff use the Self Directed Improvement System™ in the work setting by 2011. Grade level, subject area teams are expected to develop Essential Outcomes and Common Formative Assessments and analyze such data using the Data/Feedback/Strategy Method, a central component

of the SDIS. The proficiency level at which administrators and teacher teams currently operate using the Data/Feedback/Strategy Method from the SDIS varies from site to site. In 2010-2011, Efficacy Coaches will work more closely with building administrators and site based coaches to ensure that instructional staff members are proficient in using the Data/Feedback/Strategy Method to analyze reading and math data for the purpose of informing instruction.

- **Strengthening the Core**: The purpose of Strengthen the Core is to improve student achievement by systematically focusing on curriculum, instruction, assessment, and student engagement. This will be accomplished by articulating and documenting standards and benchmarks being taught; ensuring that curriculum, instruction, assessment, and student engagement are equity-focused; aligning curricular outcomes and expectations with balanced assessments; utilizing research-based instructional practices to ensure student proficiency and understanding; using effective research-based student engagement strategies; participating in collaborative planning both vertically and horizontally; and engaging in critical reflection about individual and collaborative planning and instruction. RPS is committed to ensuring that systems are in place to ensure that the core curriculum is implemented in a manner in which all students will succeed.

- **Positive Behavior Intervention Supports**: PBIS is a systems approach to preventing and responding to classroom and school discipline problems. PBIS develops school-wide systems that support staff to teach and promote positive, appropriate behavior in all students. Schools are using this systems approach to improve student behavior and decrease behavior incidents, including suspensions and expulsions, while eliminating the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories. Training of all site teams in the PBIS framework will be completed by the end of the current school year. All sites have received the foundational training necessary to begin PBIS at their site. In addition, many of the site teams completed a booster session this past August to further their depth of knowledge regarding implementation and sustainability of PBIS. All sites have received training in the use of School-Wide Information System (SWIS), a detailed discipline tracking system to assist with analyzing data related to referrals.

- **Interventions**: The District has identified and invested in research-based interventions in the area of reading and math to meet the needs of learners who have not reached proficiency. Read 180, Language!, System 44, Project Read, Mathletics, Voyager, Pinpoint and iSucceed provide support to students across the District. Additional sites and grade levels have been added this year to expand the number of students who are receiving intervention support. The District is carefully analyzing achievement data to determine appropriate student placements in specific intervention programs, as well as continuing to provide implementation support to staff. At the high school level, a new math intervention, I CAN Learn, is being implemented for students who receive special education services. The District remains committed to providing intensive, research-based, high-quality instructional programs to accelerate the learning of our students who are not yet meeting proficiency.

As a result of analyzing our discipline data and the disproportionalities which exist, our schools have implemented a number of strategies in the site's Integrated Improvement Plans and the Site in Need of Improvement Plans to decrease the number of referrals for our black and brown students. The implementation of these strategies has resulted in a decrease of 363 suspensions and expulsions from 2007-2008 to 2009-2010 school years. Additionally, our district's involvement in the Urban Special Education Leadership Collaborative (USELC) provided us with the opportunity to participate in national trainings, such as Positive Behavior Intervention Support (PBIS) model. With the full implementation of the PBIS model, the schools have the following in place: behavior expectations shared with students and staff; referral process; identification of major and minor infractions; consequences; recognition programs; and resources for parents.

Additionally, our data indicated that with the implementation of the PBIS system, discipline referrals have been decreased. However, when the suspension data was disaggregated, the black and brown students were disciplined disproportionally. Since the inception of PBIS, each building has developed an intentional plan to address these disparities in discipline and to decrease the number of referrals to the office.

In order to track the data, the district utilizes the following data bases: Skyward, the School-Wide Information System (SWIS), Student Plans, and the Disciplinary Incident Reporting System (DIRS). Here is a description of these data bases:

1. Skyward is a Student Information System. This fully integrated district-wide data base is designed specifically for K-12 schools and is all inclusive for state reporting. The current program includes the complete student management solution which includes student information, attendance, discipline, gradebook and email message center.

2. School-Wide Information System (SWIS) is used to collect, track, manage and analyze discipline data, specifically to support the implementation of the Positive Behavior Intervention Systems (PBIS). SWIS is a web-based information system for data entry and report generation. School personnel have the capability to analyze data on an individual student, groups of students, according to specific settings, as well as specific times of day. This data is discussed and disaggregated by our Site Equity Leadership Teams (SELT) and the District's Equity Leadership Team (DELT) to drive our decisions.

3. Student Plans is used as the on-line due process reporting system for special education. It generates and stores student Individual Educational Plans, Evaluations, Functional Behavioral Assessments, Behavior Intervention Plans, Team Meeting Notices, and Progress Reports. It allows our school district to store information, run reports, and cross check data for child count purposes. Student Plans receives data from Skyward, which is imported on a nightly basis. It is housed

and supported by Central Minnesota Educational Research and Development Council, located in Shoreview, Minnesota.

4. Disciplinary Incident Reporting System (DIRS) is a state reporting system for schools to enter suspension and expulsion data.

Over the last three years, the district has provided training to administrators and teachers in the following areas to ensure our staff and students are treated equitably with dignity and respect and to ensure that each building has a safe and welcoming environment where all students can flourish, grow, to ensure that we are in compliance with federal law:

- Equity
- Efficacy for staff and parents
- Courageous Conversations about Race
- Positive Behavior Intervention Support (PBIS)
- Life Space Crisis Intervention (LSCI)
- Efficacy Coaches
- Collaborative Learning Teams
- Instructional Coaching

At the administrative level, both at the central office and school sites, the lack of diversity clearly impedes the development of new ways of thinking and limits the district's ability to make use of fresh viewpoints to challenge existing beliefs and practices. When discipline is not applied fairly and consistently, the culture of diversity is undermined.

Singling out misbehaving students for humiliation or excluding them from classroom sometimes starts with a referral to the principal's office and sometimes escalates to the removal from school through suspension. These strategies effectively deny these students access to instruction and the opportunity to learn and do little to enable students to learn from their mistakes and develop a sense of responsibility for their behavior.

I firmly believe that all students must be turned on to learning and must have equal access to educational opportunities, including a college preparatory curriculum, advanced courses, STEM or science, technology, engineering and mathematics courses so that they are prepared to compete internationally. Turning students on to learning can help to reduce the likelihood that they will be targeted for repeated punishments.

We hope we have provided you a snapshot of our efforts in Rochester Public Schools to provide an equitable, safe, nurturing and supportive environment for all our students.

Hertica Y. Martin, Ed.D.
Executive Director of Elementary and Secondary Education
Rochester Public Schools
615 7th Street, SW
Rochester, MN 55902-2052

Douglas Wright

Statement of Douglas Wright, Ph.D.

San Juan School District (SJSD) lies at the heart of some of the world's most spectacular vistas and boasts a rich cultural tradition that includes American Indian, Hispanic, and Pioneer (Caucasian) heritages. The District encompasses approximately 8,000 square miles, an area roughly the size of Connecticut and Rhode Island combined, and is located in southeastern corner of Utah forming the north western corner of the Four-Corners. The population density is less than two people per square mile. The District contains the Utah portion of the Navajo Nation and also a portion of the Ute Mountain Ute Reservation, creating a situation where the District answers to three separate sovereign nations. SJSD serves approximately 2900 students in 12 small schools, 6 elementary, 1 middle, and 5 high schools. SJSD student ethnicity is 48% American Indian, 48% Caucasian, 3% Hispanic, and 1% Other.

Attachment A: School Demographics

In addressing discipline issues within our schools, SJSD has attempted to put into effect policies and practices that serve to address the behavior in the least oppressive manner possible to assure that students are protected and able to experience an effective learning environment. Our experience shows that suspending and expelling students virtually assures their failure to obtain an education and to be prepared for the lives they will face. With this fact in mind, we have attempted to implement preventative programs to avoid the need for disciplinary measures.

One program we use is POSITIVE BEHAVIOR SUPPORT (PBS): Because prevention and positive behavior support is more effective and leads to greater student success than punitive disciplinary action, SJSD has placed great emphasis on putting preventative measures in place. PBS is an evidence-based, data-driven approach proven to reduce disciplinary incidents, increase a school's sense of safety, improve attendance rates and support improved academic outcomes. PBS is based on the premise that continual teaching, modeling, recognizing and rewarding of positive student behavior will reduce unnecessary discipline and promote a climate of greater productivity, safety and learning. PBS schools apply a multi-tiered approach to prevention, using disciplinary data and principles of behavior analysis to develop school-wide, targeted and individualized interventions and supports to improve school climate. Implementing PBS has been shown to improve school climate and helps keep students and teachers in safe and productive classrooms. Some of our schools have adopted the Utah Behavior Initiative (UBI) program which uses the Positive Behavior Support (PBS) model as a proactive framework for creating and sustaining safe and effective schools. Other district schools plan to join this program as UBI allows other schools to become involved.

Information on the PBS Model is found on the US Department of Education website: http://www.pbis.org/school/what_is_swpbs.aspx

Research showing the effectiveness of the PBS program:
http://www.pbis.org/research/default.aspx then click on Download Word Document

Also, this year we are in the process of implementing the Olweus Bullying Prevention Program (Olweus) in all our schools. Olweus is a schoolwide program designed to prevent or reduce bullying throughout the school setting. The multi-component approach involves individuals, classrooms, entire schools, as well as parents and communities, to successfully address bullying in schools. Research has shown that the program can help school significantly reduce the incidents of students being bullied and bullying others. It also can lead to significant reductions in student reports of general antisocial behavior such as school bullying, vandalism, school violence, fighting, theft, and truancy. Improvements in the classroom social climate as reflected in students' reports of improved order and discipline, more positive social relationships, and more positive attitudes toward schoolwork and school are results that will we seek and will assist us in preventing the types of behaviors that lead to disciplinary action being necessary.

Information on Olweus is found at the following website:
http://www.olweus.org/public/bullying_research.page?menuheader=3

COMPREHENSIVE GUIDANCE COUNSELING: Guidance counselors play a key role in helping to assure PBS and similar programs are implemented properly and are successful. Recognizing that early training and support is essential, SJSD wrote and received a grant allowing us to hire four counselors to serve in our elementary schools. This grant is ending this year and we are searching for funds to be able to retain the positions. In the past, the grant was renewable, but the Department of Education has changed that practice and we are now not eligible to rewrite, even though we has seen much success.

Attachment B: Elementary School Counseling Demonstration Program-External Evaluation Report

Within our secondary schools, we have attempted to restructure the job duties of the counselors to come in line with the Comprehensive Guidance model which is also designed to be proactive in meeting students various needs and addressing concerns before students make negative choices. The counselors play a key role in establishing and reinforcing proper behavior and preventing behavior which would require disciplinary action. The counselors also assist with parental outreach and communication assuring that the school and parents work together in the best interest of the child.

SAFE SCHOOLS POLICY REVISION: We acknowledge that despite our best efforts at prevention, there are times when discipline is required. SJSD has a practice of reviewing its policy and procedures on a regular basis to assure that we stay current with best practices and in compliance with changing law and regulations. Our Safe Schools Student Discipline policies were extensively revised in April of 2008 and other smaller revisions have been enacted since then. A key component of the major revision was to create a discipline procedure that establishes a hierarchy of expectations for proper disciplinary actions depending on the nature of the incident requiring discipline. The policy outlines the serious

offenses which require a recommendation for suspension or expulsion based on existing laws, but also notes other types of negative behaviors for which less severe disciplinary action is warranted. While zero tolerance of certain behaviors is required to be in compliance with the Safe and Drug-Free Schools and Communities Act of 1994 (SDFSCA), SJSD is aware of evidence that shows that "zero tolerance" policies may be counterproductive to meeting the goal of safer schools. We desire that our practices use the lowest level of discipline necessary to mold behavior and to provide a safe learning environment for all students.

In 2002, the Navajo Nation Police Department wrote and received a Department of Justice COPS grant. The grant began a cooperative arrangement between the District and the Navajo Nation to provide School Resource Officers in our schools located on the Navajo nation. San Juan County Sheriffs' Office and the Monticello City Police have also provided SROs on a limited basis in our schools. While the officers have proven to be helpful, we have seen instances when their involvement may have raised the discipline to a higher level than was prudent given the circumstances of the incident.

Schools within the SJSD have been provided some discretion in establishing rules and procedures based upon community values and standards. This practice has been shown to create some areas of concern and SJSD is looking carefully at the possible need to reduce the level of discretion allowed. These rules and procedures are reviewed and approved by the School Board to assure compliance with Board policy and state and federal statute and to attempt to provide a consistency across the schools.

TRAINING PROVIDED TO ADMINISTRATION, FACULTY, AND STAFF: SJSD provides a variety of required trainings and in-services to assure that employees are aware of and follow policy and procedure. In addition, professional development opportunities are provided that can enhance an employee's knowledge and understanding of issues associated with the students we serve. Upon hire, all employees are provided with three days of training which includes a policy and procedure review. Cultural training known as Respecting Ethnic and Cultural Heritage (REACH) is also provided to all employees to help them come to a greater understanding of the need to respect and honor the cultural diversity which exists within the SJSD. In addition, SJSD sponsors an annual Heritage Language Conference in which we provide additional cultural awareness training as well as help teachers enhance their skills and abilities in working with Native American students. In addition to the cultural training, other in-service is provided on important areas such as preventing bullying and harassment, PBS practices as described above, learning styles, and child development. These trainings may be provided by SJSD employees or by consultants and other experts brought in to assist in this effort.

FUTURE PLANS: In May of this year, SJSD was notified of its selection by the United States Department of Education Office of Civil Rights (OCR) for a compliance review under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq. OCR is examining whether SJSD "discriminates against female students by disciplining them more frequently and more harshly than similarly-situated male students. The review will include issues such as whether female students are referred for discipline more frequently than male students or

for less egregious conduct than male students, and whether discipline consequences are assigned differently based on the sex of the student." The process of responding to this review has provided SJSD the opportunity to look carefully at its disciplinary records and to study what is happening within our schools. The OCR review along with this request from the U.S. Commission on Civil Rights will also allow us to continue to looking at our practices for areas of different treatment and/or disparate impact and to take appropriate steps should we find areas of concern.

SJSD is dedicated to constant improvement. And we are dedicated to providing quality education to all of our students. We appreciate the opportunity to examine our practices and enhance them to better meet student needs. We trust that the information provided in here will be helpful in your efforts to improve educational experiences for students.

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Summary of Law and Background Materials

OCR Jurisdiction under the Civil Rights Act of 1964 and regulations promulgated pursuant to the Act

In the Commission's briefing, Mr. Soto of the Office for Civil Rights in the U.S. Department of Education testified that his office pursues school discipline cases under the authority of both disparate treatment and disparate impact regulations. OCR's disparate impact regulations provide generally that a recipient of federal education funds (meaning, for example, a public school) may not either directly or indirectly use criteria or methods of administration that have the effect of subjecting individuals to discrimination because of race, color or national origin, or have the effect of defeating or substantially impairing the objectives of a program based on race, color or national origin.[16]

The disparate impact regulations were promulgated in the same year as the passage of the Civil Rights Act of 1964, under the authority of Sections 601 and 602 of the Act, and since amended only in minor part.[17] Section 601 provides that no person shall be excluded from participation in or subjected to discrimination under any program receiving federal funding; Section 602 authorizes federal agencies to effectuate the provisions of Section 601 by issuing regulations. The statute itself contains no language addressing disparate impact.

Although in *Alexander v. Sandoval* the U.S. Supreme Court questioned in dicta the authority of agencies to promulgate disparate impact regulations under Title VI, over nearly 50 years of their existence the Supreme Court has not squarely addressed the issue.[18] At issue in *Sandoval* was whether Title VI authorized a private right of action to enforce disparate impact regulations against English-only policies. The Court concluded that it did not.[19] It specifically reserved the question of whether regulations "promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601," further noting that "§ 601 permits the very behavior that the regulations forbid."[20]

The Department's Office for Civil Rights in its written submission cited continuing Justice Department support for the use of disparate impact regulations, including a DOJ guidance memorandum reinforcing their use, and noting the absence of Court precedent that would require OCR to enforce only those of its regulations that treat intentional discrimination.[21] OCR also cited two Department of Education administrative decisions supporting its disparate impact regulations, the first dated 1987 and styled *In the Matter of Dillon County*

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[16] *See* 34 C.F.R. § 100.3; 34 C.F.R. §100.3 (b) (2).
[17] Civil Rights Act of 1964, 42 U.S.C. §2000d; Non-discrimination in Federally Assisted Programs of HEW, 29 F.R. 16298 (Dec. 4, 1964).
[18] *Alexander v. Sandoval, 532 U.S. 275,* 281 (2001).
[19] *Id.*
[20] *Id.* at 286, ft. 6.
[21] *See* written statement of Mr. Ricardo Soto, U.S. Department of Education Office for Civil Rights at 55-56 above.

School District No. 1[22] (hereafter *Dillon*); the second styled *In the Matter of Maywood School District #89* (hereafter *Maywood*), dated 1990.[23]

In *Dillon,* OCR claimed that the school district's practice of assigning students to fixed groups on the basis of ability resulted in racial disproportionality and had no educational justification. The administrative law judge (ALJ) did not address the relation of disparate impact regulations to the authorizing statute. He found the district's grouping practice pretextual in the face of what he viewed as a sound alternative causing less disproportionality, which was to assign students on the basis of mathematics and reading test scores for placement in related classes only. The administrative appeals body (Civil Rights Reviewing Authority) upheld the ALJ's order against the District.

The 1990 *Maywood* decision involved a suburban Cook County, Illinois school district whose 11 schools included two with largely majority-white populations that OCR alleged were the result of facially neutral but effectively discriminatory school assignment practices. The *Maywood* ALJ rejected the District's assertion that it was not in violation of Title VI because it had not intentionally discriminated in assignments. The Civil Rights Reviewing Authority upheld the use of disparate impact, relying on the fractured *Guardians Association v. Civil Service Commission*[24] as did the Secretary of Education in the final appeal, although he reversed on other grounds.[25] Both *Dillon* and *Maywood* were decided before *Alexander v. Sandoval*, as was *Guardians*.

Scholarly Articles

In considering school discipline and racial disproportionality, Commissioners and staff consulted several scholarly articles from two prominent authors in the field, Russell Skiba and Richard Arum. Russell Skiba is Professor in Counseling and Educational Psychology at Indiana University and also Director of the Equity Project. Along with co-authors he has written, among other things, "The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment"[26] (hereafter *Color of Discipline*) and "Safety without Suspensions."[27] Richard Arum is Professor of Sociology and Education at New York

[22] In the Matter of Dillon County School District No. 1, Lake View, South Carolina, and South Carolina State Department of Education, Docket No. 84-VI-16, April 17, 1987, Administrative Proceeding in the U.S. Department of Education (Provided as Exhibit F by OCR on the day of the briefing).
[23] *In the Matter of Maywood School District #89* and *Illinois State Board of Education*, Docket No. S-125, Administrative Proceeding in the U.S. Department of Education and National Science Foundation, May 22, 1990 (Provided as Exhibit G by OCR on the day of the briefing).
[24] *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983). The appeals board also cited *Alexander v. Choate*, 469 U.S. 287 (1985) (concerning Section 504 of the Rehabilitation Act of 1973) as additional support for this ruling.
[25] The Secretary of Education ruled that the school district had not been given the opportunity to make rebuttal arguments or to supply supporting evidence. *In the Matter of Maywood School District #89* at 11.
[26] Skiba et al., 34 Urban Review 317 (No. 4, December 2002). *See also* his publication list at http://education.indiana.edu/ProfilePlaceHolder/tabid/6210/Default.aspx?u=skiba#publications. (accessed Sept. 20, 2011).
[27] Skiba, R and Sprague, J., 66 The Positive Classroom at 38-43 (Vol. 66, No. 1, Sept. 2008).

University. He has written, among other things, "Law and Disorder in the Classroom"[28] (hereafter *Law and Disorder*) and "Class and Racial Differences in U.S. School Disciplinary Environments" (hereafter *Class and Racial Differences*).[29]

In *Safety without Suspensions* Professor Skiba examined exclusion policies, including what are commonly termed "zero-tolerance" policies that generally require fixed disciplinary sanctions for enumerated violations of school codes that cannot be altered by school authorities. Exclusion policies have apparently resulted in a considerable increase in out-of-school suspensions and expulsions that are racially disproportionate and that he asserts are not due to higher rates of misbehavior by black students. He recommends use of a program called "School-wide Positive Behavior Support;" (PBS, or PBIS) an approach supported by many of the briefing's speakers. PBS has three components that include prevention, positive reinforcement from many sources inside the school (such as reward coupons), and reliance on data instead of ad hoc imposition or creation of discipline policies. Professor Skiba views evidence gained from participating schools as thoroughly supporting the effectiveness of PBS in reducing disciplinary referrals, although it apparently has not eliminated racial disproportionality.

Professor Skiba in *Color of Discipline* looked at one year's data from an urban middle school that showed disproportionality and discussed possible explanatory hypotheses. One hypothesis that controlled for socio-economic status did not eliminate disparities. This led him to hypothesize that African-American students were treated differently at the classroom level for subjectively-determined infractions of rules, although the data did not allow firm conclusions. He stated that he was unaware of studies using direct observation of student behaviors that could establish that African-American students misbehave at a significantly higher rate. His study also found that once students of any race were referred to an administrative office, from that point there were virtually no disproportionalities in discipline. Rather, the disproportion stemmed from more classroom referrals for what a reader might view as largely disruptive behavior (disrespect, excessive noise, threat and loitering) compared to other violations that were destructive, self-destructive or offensive such as smoking, truancy, obscene language and vandalism that might occur more out of class or disrupt class somewhat less. Professor Skiba found no other explanations for large and consistent racial disparities in discipline and concluded that bias could not be ruled out.[30]

Professor Arum in *Law and Disorder* surveyed the legal landscape over the last 40 years, and credits the considerable increase in parental litigiousness for the heavy reliance of schools on school security guards, uniformed police, technical surveillance and zero-tolerance policies at the expense of the judgment of school administrators and teachers. He views reliance on authoritarian zero-tolerance mandates as ill-suited to support the moral authority of teachers and administrators in the socialization of young people.[31]

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[28] Arum, R. and Preiss, D., Education Next, p. 68, Fall 2009; *See also* http://sociology.fas.nyu.edu/object/richardarum.html for a list of publications.
[29] Chapter in *Improving Learning Environments in Schools: Lessons from Abroad.* (Forthcoming: Palo Alto, Stanford University Press).
[30] Skiba et al. at 338.
[31] Arum and Preiss at 65.

In *Class and Racial Differences*, Professor Arum observed that administrators' and teachers' maintenance of school order and appropriate student behaviors and norms contribute to the overall disciplinary climates. He reviews academic racial gaps and also management and organizational difficulties shown by studies of high levels of heterogeneity in class, race, ethnicity, language and religion in schools. For example, he notes that in one recent school year, "85 percent of public schools monitored or locked doors during school hours."[32] His study compares racial gaps in cognitive performance with differences in discipline and violence and finds that economically disadvantaged schools are strongly associated with lower test score performance and dysfunctional disciplinary climate. He also finds that there are more disciplinary rules in schools with a high concentration of African-American students and more severe punishment.[33]

Professor Arum, unlike Professor Skiba, examines variation in cognitive outcomes as either a predictor or a result of school discipline climate, using several databases. Other predictors he finds are variation in school resources, teacher expectations, peer composition, summer learning, family composition and social psychological factors associated with the test process. None, in his view, account fully for the test score gap between African Americans and others. Other researchers have found smaller test gaps in schools with orderly discipline climates. Discipline gaps have grown overall, according to researchers cited in Professor Arum's work. Results from data indicate to him that African-American students attain lower test scores in economically disadvantaged schools with dysfunctional discipline, although these are correlational, not causational findings. His models suggest that black students perform better in schools with greater discipline.[34]

Professor Arum states, in consonance with Professor Skiba, that race is more predictive than class status in analyzing school disciplinary climates. He finds that African-American students receive higher levels of disciplinary sanctions, but states that this may be caused by greater exposure to schools with higher disorder, violence and safety problems, and ineffective discipline.[35] An interesting finding is that in those schools studied having high levels of discipline, racial test gaps did not exist, although the reasons were not clear.[36] He recommends that school administrators ensure that discipline imposed is perceived as fair in order to enhance their moral authority that is at the core of effective school discipline.

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[32] Arum and Velez at 17.
[33] *Id*. at 27.
[34] *Id*. at 33.
[35] Various State Advisory Committee reports have documented the disproportionate rate of discipline for minority students, and its asserted relation to later incarceration. See Michigan, Florida, Kentucky and Tennessee SAC reports available from the U.S. Commission on Civil Rights, Robert S. Rankin Memorial Library. *See* http://www.usccr.gov/pubs/KY-report-2011.pdf; http://www.usccr.gov/pubs/TN-report-2011.pdf.
[36] *Id*. at 36.

Public Comments

The Leadership Conference on Civil and Human Rights (Conference) submitted a public comment that endorsed the use of disparate impact analysis to enforce civil rights law in cases of disciplinary disparities. The Conference regards actions under intentional treatment analysis alone as inadequate to reach disturbing and harmful increases in disciplinary differentials between racial groups. The Conference's letter, along with CEO/ACRI's letter described below, is included in this report in the Appendix under the heading "Public Comment Letters."

The Conference praises behavior management programs such as School-Wide Positive Behavior Supports (SWPBS) as effectively reducing disparities while maintaining school safety and good academic outcomes. The Conference considers that exclusionary discipline is harmful to the perpetrators of minor violence, whose behavior could be controlled in ways that would not lead to later violations of law and incarceration as adults.

The Center for Equal Opportunity (CEO) and the American Civil Rights Institute (ACRI) submitted a copy of a letter to the Civil Rights Division of the U.S. Department of Justice dated February 14, 2002.

The CEO/ACRI letter asserts that DOJ does not have the authority under Title VI to employ a disparate impact approach in enforcing the prohibition against national origin discrimination as applied to limited English proficiency persons (LEP). In support of this assertion, the letter quotes the Department's policy guidance that acknowledges that Title VI on its face prohibits only intentional discrimination, a view supported in dicta by *Sandoval*.[37] The letter distinguishes *Alexander v. Choate*,[38] which involved the Rehabilitation Act of 1973, and *Lau v. Nichols*[39] (whose interpretation of Section 601 as reaching beyond intentional discrimination was rejected in *Sandoval*[40]) as inapplicable, and concludes that the only guidance that can be drawn from the Supreme Court's discussion of disparate impact regulations under Title VI in *Sandoval* makes it clear that at least five justices view the validity of disparate impact regulations as resting on dubious authority.

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[37] *Alexander v. Sandoval*, 532 U.S. 275 (2001).
[38] *Alexander v. Choate*, 469 U.S. 287 (1985).
[39] *Lau v. Nichols*, 414 U.S. 563 (1974).
[40] *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) ("it is similarly beyond dispute – and no party disagrees – that § 601 prohibits only intentional discrimination.").

Summary of School District Response Letters

Seventeen school districts responded to the Commission's letter requesting information on discipline and disparate impact. One declined to supply information (Charleston County schools, Charleston, SC). The letters are reprinted in the Appendix.

Responding school districts include Anderson County in Clinton, TN; Hamilton County in Chattanooga, TN; Berkeley County in Moncks Corner, SC; Dorchester schools in Summerville, SC; Charles County in La Plata, MD; Baltimore City schools in Baltimore, MD; Cook County School District 65 in Evanston, IL; Lansing schools in Lansing, MI; Ypsilanti schools in Ypsilanti, MI; Winner schools in Winner, SD; Nash-Rocky schools in Nashville, NC; Winston-Salem/Forsyth schools in Winston-Salem, NC; Rochester schools in Rochester, MN; San Juan schools in Blanding, UT; Tucson schools in Tucson, AZ; San Diego schools in San Diego, CA; and Jefferson County schools in Louisville, KY.

Nine of the 17 schools reported using a program praised also by Commission briefing speakers, Positive Behavior Intervention Support (PBIS), in addition to varied supplemental measures developed by the schools.[41] Two schools reported also using the Olweus Bullying Prevention Program.[42] Most schools reported using or developing a detailed school conduct code, some including teacher conduct expectations. The Rochester, MN schools, for example, report using the Self-Directed Improvement System (SDIS)[43] in addition to PBIS. Ypsilanti, MI schools report initiating a practice of randomly choosing schools to check for possible disciplinary irregularities. La Plata, MD schools report using cultural competence courses to train teachers in classroom management. The San Juan schools in Blanding, UT include comprehensive guidance counseling in addition to other programs. As a result of a recent mandate from the state legislature, the Winston-Salem/Forsyth County schools have reduced out of school suspensions to 5 days, and require schools to use positive behavior intervention strategies. The district had already eliminated out-of-school suspensions for truancy and consideration of prior disciplinary sanctions for unrelated infractions in assigning punishment. They also allow for mitigating factors. Early reports indicate that the new policies have markedly reduced disparities.

A program started in the Tucson, AZ schools is targeted to African American male students transitioning from middle to upper school. Aside from its focus on African Americans, this concept is not unlike that of one of the Commission's briefing panelists, Mr. Edward Gonzalez, who began a program called Men's Alliance, an intervention class targeted to at-risk male students of any race that he stated has shown promise in reducing infractions. The Evanston, IL school district 65, (K-8) offers sensitivity training and classes in cultural diversity in addition to PBIS to help teachers better understand their students.

[41] See http://www.pbis.org/ (accessed September 23, 2011).
[42] See http://www.olweus.org/public/index.page (accessed September 23, 2011).
[43] Website apparently unavailable.

Commissioner Statements

Statement of Chairman Martin R. Castro And Commissioners Roberta Achtenberg And Michael Yaki

School administrators and teachers face tough choices when it comes to maintaining a positive school climate. Schools find themselves having to balance their duty of providing students with a safe learning environment with their responsibility to provide equal educational opportunities for all students. Disruptive students can negatively affect a classroom's climate and raise concerns for both parents and school personnel. In response to these concerns, almost 90% of U.S. public schools have established and implemented some sort of zero-tolerance policy[1] according to the U.S. Department of Education. The enforcement of these policies has resulted in a substantial increase in the number of expulsions[2] and out-of-school suspensions[3] currently being imposed by schools, especially against students of color.[4]

Concern over this substantial increase recently led to the establishment of a federal initiative that examines differences in discipline outcomes between students of color and other similarly situated students. This initiative aims to identify whether the application of exclusionary[5] discipline policies is having a disparate impact on students of color. The use of the disparate impact-based enforcement by the U.S. Department of Education, Office of Civil Rights (DOE OCR) has raised concerns among our conservative colleagues over whether this enforcement will impose a very heavy burden on schools. The belief that education civil rights enforcement does not require a disparate impact theory, due to the fact that schools and OCR have access to data, fails to take into consideration that using a disparate-impact analysis provides everyone with the ability to look beyond the numbers. This analysis holds schools accountable for the disciplinary policies that disproportionately exclude students of color from the school environment. It also provides school districts with the opportunity to identify alternative disciplinary practices that are designed to address and improve the school climate.

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[1] A zero tolerance policy assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.

[2] Expulsion refers to a procedural removal of a student, for a longer period of time, typically involving a decision by the superintendent and school board. Schools sometimes expel students for a semester, a year, or longer.

[3] Suspension refers to a short-term removal of a student from school for a disciplinary infraction.

[4] Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis, Civil Rights Project* (Los Angeles, CA: The Civil Rights Project, September 2010), 2.

[5] These policies are called exclusionary because they remove students from the learning environment without access to any educational content.

School suspensions have risen steadily since the 1970s and have recently reached an all time high. According to the U.S. DOE 2006 Civil Rights Data Collection,[6] more than 2.34 million students were estimated to have been suspended at least once. The same 2006 survey estimated that 102,077 students were expelled at least once. These numbers are almost double the rate reported in the early 1970s, with racial minorities experiencing the greatest increase. According to the DOE data, the gap between the Black and White students more than tripled between the 1970s and 2006, rising from 3 percentage points to 10 percentage points.[7] Many view the rise in suspension rates as a necessary response to the increasing school violence, as well as, a teacher's need to maintain order and safety. However, current data contradicts this belief. According to data reported by the National Center from Education Statistics (NCES), from 1992 to 2008 the rate of nonfatal[8] incidents of crime against students 12 to 18 years of age at school declined by 67 percent.[9] Further inquiry by the American Psychological Association (APA) has determined that zero tolerance policies fail to make schools safer.[10] Yet, schools continue to enforce these draconian practices. Nationwide, case studies[11] completed on school suspension indicate that the majority of suspensions are for offenses that are nonviolent, subjective or discretionary in nature and, at times, trivial.[12] This finding was supported by the briefing testimony of Mr. Ricardo Soto, Principal Deputy Assistant Secretary for OCR, Suzanne Maxey, Principal at T.C. Williams High School, and Joseph Oliveri, former principal for the Austin Independent School District (AISD). All three panelists indicated that a high number of suspensions were for minor infractions. In addition, Mr. Soto indicated that he views the increasing numbers of disciplinary sanctions for subjective offenses as an indication that rules are not imposed

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[6] Since 1968, DOE has been collecting data on out-of-school suspension and expulsions. A biennial survey is administered by OCR, which typically includes one-third to one-half of all U.S. public schools and districts. Under this survey, schools are instructed to count each suspended student only once, regardless of how many suspensions a student received throughout the year. This, coupled with the fact that the data does not capture the length of the suspensions, yields a conservative estimate of the amount of time that students spend out of school.

[7] Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice (*Boulder, CO: National Education Policy Center, October, 2011), 5.

[8] Nonfatal crime includes theft and all violent crime; violent crime includes serious violent crime (rape, sexual assault, robbery, and aggravated assault) and simple assault.

[9] In 1992, the rate of student-reported nonfatal crimes against students between the ages of 12 and 18 years old was 144 per 1,000 students. By 2008, the rate had fallen to 47 per 1,000 students. Simone Robers, Jijun Zhang, Jennifer Truman, and Thomas D. Snyder, *Indicators of School Crime and Safety: 2010*, NCES 2011 – 2012/NCJ 230812 (Washington, DC: National Center for Education Statistics, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 2010).

[10] Russell Skiba et al., "Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force," *American Psychologist* 63, no. 9 (December 2008): 852-862.

[11] Research of a large urban school district found that attendance issues, insubordination and classroom disruption were leading causes of suspension; An analysis of suspensions across one Midwestern state indicated that weapons and drug offenses made up only 5 percent of suspensions. *See*, Child Trends (2011). *Multiple Responses, Promising Results: Evidence-Based Non Punitive Alternatives to Zero Tolerance*. Retrieved from http://www.childtrends.org/Files/Child_Trends-2011_03_01_RB_AltToZeroTolerance.pdf

[12] Schools have suspended or expelled students of all ages for possession of "weapons" such as paper clips, nail files, and a toy ax used in a Halloween costume by a Kindergarten student; drugs, including aspirin, Midol, and white-out; and, general behavior such as humming and tapping on a desk, classified as "defiance of authority." *See*, Adira Siman, "Challenging Zero Tolerance: Federal and State Legal Remedies for Students of Color," *Cornell Journal of Law and Public Policy* 14, no. 327, (Summer 2005) 4.

fairly.[13] Among the investigations that have been conducted by OCR, OCR has found disparate impact in the imposition of discipline for lesser, or discretionary violations.[14] Mr. Soto's statement supports what researchers and advocacy organizations alike have already documented, that the use of zero-tolerance policies has skyrocketed for minor incidents. Supporters of zero tolerance policies believe that the policies' "one size fits all" approach removes the effects that a multitude of background variables can have on punishment assignment. In other words, they believe the policies result in fair treatment of all students. However, available statistics strongly suggest that these policies are disproportionately impacting male, African American, and Latino students. A recent analysis of nationwide data showed that students from African American families were 2.19 (elementary) to 3.78 (middle school) times as likely to be referred to the office for disciplinary problems as their white peers.[15] In addition, the results also indicated that students from African American and Latino families were more likely than their white peers to receive expulsion or out-of-school suspension as consequences for the same or similar problem behavior. In a recent longitudinal study of all Texas students conducted by the Council of State Governments Justice Center, African American students were found to be disproportionately removed from their classrooms for disciplinary reasons.[16] The study conducted a multivariate analysis which controlled for 83 different variables in isolating the effect of race alone on disciplinary actions. The study found that African American students had a 31 percent higher likelihood to receive a disciplinary action in comparison to similarly situated white and Hispanic students.[17]

Our Southern Region State Advisory Committees (SACs)[18] recently examined the issue of school discipline in their particular states. Their studies set out to systematically examine the effectiveness of the local school systems' exclusionary practices to ensure that such policies were providing a safe school environment while not unnecessarily pushing students out of the educational system. The results of their studies indicate that African American students are being disproportionately disciplined in comparison to their white peers. In Tennessee, the SAC study found that during the 2008-2009 school year African American students made up 33 percent of the total student population in the Hamilton County School District but received nearly 60 percent of all out-of-school discipline referrals, a discipline rate that is almost twice that of their proportion of the total student population.[19] Similar to Tennessee,

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[13] USCCR, "Briefing on Disparate Impact In School Discipline," transcript of business meeting and briefing, Feb. 11, 2011, testimony of Mr. Ricardo Soto, Principal Deputy Assistant Secretary in the Office for Civil Rights, p. 139.

[14] USCCR, Soto, 160.

[15] R. J. Skiba, R.H. Horner, C. Chung, M.K. Rausch, S.L. May and T. Tobin, "Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline," *School Psychology Review*, 40 no. 1, (2011): 85-107.

[16] Fabelo, T., Thompson, M.D., Plotkin, M., Carmichael, D., Marchbanks, M.P. III, & Booth, E.A.,. *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (New York: Council of State Governments Justice Center, 2011).

[17] Ibid.

[18] The U.S. Commission on Civil Rights maintains 51 State Advisory Committees (SACs), one for each state and the District of Columbia. The Southern Regional Office (SRO) is composed of Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

[19] Tennessee Advisory Committee to the U.S. Commission on Civil Rights, "School Discipline: Are School Discipline Practices Pushing Too Many African American Children out of School?" June 2011 at 12.

African American students in Kentucky's Jefferson County School District made up 36 percent of the total student body during the 2008-2009 school year and received 61 percent of all district discipline referrals.[20] In Florida, African American students in the Duval County Public School system received disciplinary referrals at a rate that was 202 percent of their total enrollment during the 2008-2009 school year. In comparison, white students had a referral rate that was 80 percent of their total enrollment.[21] Although the African American and white student population was found to be statistically equal,[22] 72 percent of African American students received out-of-school suspensions in comparison to 20 percent of white students in Duval County.[23] These numbers strongly suggest that zero tolerance policies are significantly impacting students of color. Yet, they do not explain causation nor do they measure the consequences that these policies have on students.

During our briefing, some panelists indicated that race and socio-economic status contribute to the disproportionate amount of disciplinary problems that exist in schools, with African American students exhibiting the greatest disciplinary problems due to their socio-economic background and home life. Current research contradicts this belief. In a 2010 study African American students were found to be more likely to be sent to the office for disciplinary reasons, even when teacher ratings of student misbehavior were controlled.[24] This racial disparity is especially evident when it comes to suspension referrals for subjective offenses, such as disrespect or excessive noise. Studies have shown that African American students are referred more often for these behaviors than their white peers, who tend to be referred for behaviors that are objective, such as smoking, vandalism, and using obscene language.[25] Researchers have concluded that there is no evidence that racial disparities in school discipline can be explained by more serious patterns of rule-breaking among African American students. Although poverty has been found to correlate with an increased risk for suspension, studies have also shown that even when socio-economic status is controlled, race continues to make a significant and independent contribution.[26]

In spite of the research, few school districts have taken steps to curtail or reverse the continuous and escalating implementation of these policies and to minimize the disparate results associated with them. In fact, these policies have led school administrators to relinquish their authority over disciplinary infractions to law enforcement, including School

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[20] Kentucky Advisory Committee to the U.S. Commission on Civil Rights, "School Discipline in Kentucky: An Examination of School Discipline in the Jefferson County Public School District," June 2011 at 11.
[21] Florida Advisory Committee to the U.S. Commission on Civil Rights, "School Discipline in Florida: Discipline Practices Leave Many Behind," December 2010 at 10.
[22] The white and African American populations are essentially equal with 42 percent and 43 percent respectively.
[23] Florida Advisory Committee at 6.
[24] Data from 6,988 children in 381 classrooms at 21 elementary schools was used to conduct an analysis. The analysis indicated that even after controlling for the student's level of teacher-rated behavior problems, teacher ethnicity, and other classroom factors, Black students were significantly more likely than White students to receive disciplinary referrals to the office. *See* C.P. Bradshaw, M.M. Mitchell, L.M. O'Brennan, & P.J. Leaf, "Multilevel Exploration of Factors Contributing To the Overrepresentation of Black Students in Office Disciplinary Referrals." *Journal of Educational Psychology*, 102 no. 2, (2010): 508-520.
[25] R.J. Skiba, R.S. Michael, A.C. Nardo & R.L. Peterson, "The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment," *Urban Review*, 34 (2010): 317-342.
[26] Skiba supra 17 at 86.

Resource Officers (SROs), found patrolling local schools nationwide. This has resulted in students being arrested for disorderly conduct, including at least one for swearing.[27] Under these policies a student can now conceivably be arrested and charged with "disruption of a school activity" for burping in class.[28] Doodling on a school desk has recently resulted in an arrest rather internal discipline methods such as having the Principal order the student to remove the doodle with cleaning detergent.[29]

Nationally, our law enforcement and juvenile justice systems currently lack the ability to centrally track the number of students that are arrested or referred to the juvenile justice system directly from schools. This also impedes the ability to identify whether students of color are being disproportionately arrested by SROs. However juvenile justice data does show that youth of color are disproportionately arrested when compared to their white peers.[30] At the state level, data does show that students of color are being disproportionately referred to law enforcement by schools. In South Carolina, approximately 90% of disorderly conduct charges were referred to law enforcement by schools during the 2000-2001 school year. Black students represented 75% of the students charged and referred to law enforcement even though they represented approximately 42% of the student enrollment during that year.[31] In Florida, during the 2008 – 2009 school year Black male and female students accounted for almost half (49%) of all school related juvenile justice referrals, while only representing 22% of the youth age 10-17 in Florida.[32]

The negative outcomes associated with the zero tolerance policies extend far beyond the individual students and into the schools themselves. Research indicates that a negative relationship exists between the use of exclusionary discipline practices and school wide academic achievement, even when socioeconomic status is controlled for.[33] In fact, higher suspension rates have been found to be correlated to lower school-wide academic achievement and standardized test scores.[34] The widespread reliance on zero-tolerance policies has also served to widen the achievement gap that currently exists in our public schools. Nationwide, 28 percent of African American male middle school students and 16 percent of Hispanic male middle school students are currently being suspended each year,

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[27] In Wake County, NC a 16-yr old student was arrested and charged with disorderly conduct when she verbally argued with other students and used profanity in the hallway. WRAL News, "Cary Teen Taken to Jail For Swearing," October 13, 2011. www.wral.com/news/local/story/1055548/.

[28] Fox News, "Lawsuit Filed After New Mexico Teen Arrested for Burping in Class," December 1, 2011. http://www.foxnews.com/us/2011/12/01/lawsuit-filed-after-new-mexico-teen-arrested-for-burping-in-class/

[29] CNN, "Girl's Arrest for Doodling Raises Concerns about Zero Tolerance," February 18, 2010 . http://articles.cnn.com/2010-02-18/justice/new.york.doodle.arrest_1_zero-tolerance-schools-police-precinct?_s=PM:CRIME.

[30] National Council of Crime and Delinquency, *And Justice for Some* (Washington, DC: National Council on Crime and Delinquency, 2007).

[31] South Carolina Public Schools, *School Crime Incident Report*, School Year 2000-2001.

[32] Florida Department of Juvenile Justice. *Delinquency in Florida's Schools: A Five-Year Study (2004-05 to 2008-09)*.

[33] American Psychological Association Zero Tolerance Task Force, "Are Zero Tolerance Policies Effective in the Schools? – An Evidentiary Review and Recommendations," *American Psychologist*, 63 no. 9 (December 2008), p. 852 – 862, 854.

[34] R. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice* (Bloomington, IN: Education Policy Center Indiana University, 2000).

compared to 10 percent of White male students. Studies have shown that students suspended in 6th grade are far more likely to be suspended again[35] and research indicates that suspensions and expulsions are, in turn, correlated to an increased risk of dropping out.[36] A research study has also shown that students who are suspended three or more times by the end of their sophomore year of high school are five times more likely to drop out or graduate later than students who had never been suspended.[37]

It is apparent that the enforcement of harsh disciplinary practices requires an immediate and substantive response from both OCR and the school districts themselves. For some school districts, change has already been implemented. Nationwide, some schools have adopted alternatives to exclusionary practices, which have not only improved school climate and increased student engagement but have also resulted in fewer suspensions and expulsions. During the briefing Dr. Murphy, Dr. Wright and Dr. Martin spoke about building an area of support within the schools, to not only reduce discipline concerns, but to also increase student academic success. According to some panelists, positive, preventative techniques such as Positive Behavior/Intervention Supports (PBIS), restorative justice, conflict resolution and peer mediation, have improved school climate, reduced suspensions and expulsions for subjective offenses, and have resulted in keeping students in school and engaged. In addition, the public statement submitted by the Leadership Conference on Civil and Human Rights on behalf of a coalition of diverse education and civil rights groups and advocates, indicates that "some schools are blending evidence-based practices like School-Wide Positive Behavior Supports (SWPBS) with focused efforts to address racial bias and improve culturally relevant pedagogy."[38] In states such as Illinois and Indiana, implementation of these practices has resulted in a reduction in out-of-school suspension rates and a narrowing of the disparities between discipline and achievement.[39]

It is our hope that the new initiative implemented by the U.S. DOE Office of Civil Rights will delve deeper into why disparities exist and whether the use of exclusionary policies are even justifiable. Mr. Soto assured the Commission that school districts will be able to offer alternatives to remedies suggested by OCR during enforcement proceedings. Schools will also be allowed flexibility, during the early stages of the investigation, to provide input before OCR invokes a more formal disciplinary process. This level of cooperation and communication will play an important role in enhancing the legitimacy and efficacy of any resolution agreement that is adopted. In addition, this approach will provide school districts with an opportunity to analyze whether there are more effective, productive and less discriminatory discipline practices that can be implemented that will ensure continued safety, along with, equal educational opportunities for all students.

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[35] Daniel J. Losen, *School Discipline – What the Research Tells Us: Myths and Facts*, National Education Policy Center Resource Sheet.

[36] The Massachusetts Department of Education published a report which highlights the high risk for dropouts and the need for earlier interventions, citing "numerous suspensions" as among the leading indicators. *See* Losen, supra note 7, at 11.

[37] National Center for Education Statistics. (June 1, 2006). *The Conditions of Education 2006*, Table 27-2. http://nces.ed.gov/pubs2006/2006071.pdf.

[38] Leadership Conference on Civil and Human Rights (LCCHR) record letter, March 11, 2011, p. 4.

[39] Matt Cregor & Damon Hewitt, Dismantling the School-to-Prison Pipeline: A Survey from the Field," *Poverty & Race*, 20 no. 1, January/February 2011.

We commend OCR for trying to reinvigorate their efforts to make Dr. King's dream of a colorblind society a reality.[40] It is our understanding that as part of their efforts, OCR will be expanding their civil rights data collection set which will now include, for the first time, zero-tolerance expulsions, referrals to law enforcement, and school-related arrests.[41] All of the data will be disaggregated by race, ethnicity, sex, disability and limited English proficient status. The new data will be made available to the public in Fall 2011.[42] This expanded data will serve to highlight what DOE believes to be the most important civil rights issue facing schools today, student discipline disparities.[43] It will also serve to expand OCR's ability to effectively implement a disparate impact analysis to school discipline.

In light of *Sandoval*, it is important for OCR to become more strategic in their complaint investigation process. Under the new initiative, OCR should not only provide schools with the necessary guidance to implement any required changes under a corrective action plan, they should also actively monitor each school district's progress throughout the implementation of the plan. Requiring a corrective action plan without post-implementation monitoring serves no purpose and diminishes any positive impact that can be achieved through the enforcement process.

One thing is painfully clear about the disparate state of school discipline imposed on students of color: it creates a highway from the schoolhouse to the jailhouse. When a student is the recipient of disproportionate discipline, he is more likely to drop out of school. Students who drop out of school are more likely to become involved with the juvenile or criminal justice system.[44] Once they are part of the criminal justice system, those same former students of color find they are victims of disproportionate punishment[45] (but that is a topic for another day).

It is apparent that the continuous removal of students of color for minor offenses represents a violation of civil rights protections that were developed as a result of *Brown v. Board of Education*. It is therefore time to make certain that these protections are consistently applied for the sake of all of our children and their educational and economic future.

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[40] USCCR, "Briefing on Disparate Impact In School Discipline," transcript of business meeting and briefing, Feb. 11, 2011, testimony of Mr. Ricardo Soto, Principal Deputy Assistant Secretary in the Office for Civil Rights, p. 134.
[41] US DOE Civil Rights Data Collection, *Questions and Answers Regarding the CRDC* at http://ocrdata.ed.gov/faq.aspx.
[42] US DOE Civil Rights Data Collection at http://ocrdata.ed.gov/Whats_New.aspx.
[43] US DOE Press Release issued June 30, 2011 at http://www.ed.gov/news/press-releases/new-data-us-department-education-2009-10-civil-rights-data-collection-show-conti.
[44] Robert Belfanz et al., "High Poverty Secondary Schools and the Juvenile Justice System," *Deconstructing the School-to-Prison Pipeline* (San Francisco: Jossey-Bass, 2003), 77-78.
[45] Moeller, Margaret, "Reauthorizing the Juvenile Justice and Delinquency Prevention Act: the Impact on Latino Youth," National Council of La Raza White Paper, Feb. 2011, p. 1.

Statement of Vice Chair Abigail Thernstrom

In a joint news release of July 21, 2011 Attorney General Eric Holder and Secretary of Education Arne Duncan announced a new initiative to address what they called the "school-to-prison pipeline." The initiative, they said, would support "good discipline policies and practices that "foster safe and productive learning environments in every classroom."

To that end, they promised to bring together government, law enforcement, academic, and community leaders to make sure "school discipline policies are enforced fairly and do not become obstacles to future growth, progress, and achievement."

The federal government is much practiced in the art of making empty educational promises. In 1965 when the Elementary and Secondary Education Act (ESEA) was passed President Lyndon B. Johnson said the act would provide the one sure "passport" to a better life for children in poverty – their means of escape. It was not a civil rights measure per se, but it disproportionately affected black children, half of whom lived in poverty in 1965. As the Education Department itself admitted in the waning days of the Clinton administration, the statute has not made a significant difference in the lives of children whose futures seemed bleak. Head Start was also launched in 1965 and promised to put children growing up in poverty "on an even footing with their classmates." It was another feel-good idea that was hugely expensive and hugely unsuccessful.

Subsequent federal educational initiatives have fared no better, and it is a very safe bet that the latest fantasy of ensuring that the educational system become "a doorway to opportunity – and not a point of entry to our criminal justice system" – is little more than appealing rhetoric. Attorney General Holder and Secretary Duncan describe that aim as "a critical and achievable goal." "Critical," okay, but "achievable" . . . surely they do not believe that in schools across the nation in every demographic setting (in the entire "educational system") they can magically transform the current school discipline picture.

We can all agree that, proportionate to their school population, black children are much more likely than their white or Asian peers to be disciplined for behavior the schools find intolerable. I hope we can also acknowledge that whites are twice as likely to be disciplined as Asians. We *should* also be able to agree that disciplinary actions are taken in response to real discipline problems. But can we come to a consensus on a solution? The clear answer is, no.

Indeed, the likelihood of a constructive response to the problem of school discipline policies that have a disparate impact on non-Asian minority group members is probably diminished by framing the issue in civil rights terms. Labeling an issue one that involves civil rights usually implies a problem of bigotry – racial animus. But racial animus cannot account for the magnitude in disparity that we see in looking at group differences in school discipline. That same disparity shows up in school systems run by black superintendents, schools in which the principal is black, and classrooms in which the teacher is black.

In her concept paper urging a study of disparate impact and discipline, Commissioner Heriot notes that "students from one-parent families are disproportionately likely to misbehave in school, and that African-American students disproportionately come from one parent families." Much evidence supports her point. But where does it lead us? What public policy can solve the problem of the collapse of the black family in the last four-to-five decades?

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Statement and Rebuttal of Commissioner Todd Gaziano

The Department of Education's policy that threatens to sanction schools whose disciplinary policies unintentionally have a greater impact on students of certain races than others is flawed both as a matter of law and policy.

The Education Department's Legal Errors

Title VI of the Civil Rights Act of 1964 at Section 601 provides that no person shall, "*on the ground of race, color, or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (emphasis added). Simply put, section 601 prohibits intentional discrimination by school officials on the basis of race, color, or national origin. That's what it means to act "*on the ground of* race, color, or national origin."

Yet, the Department of Education's regulations go much further, prohibiting recipients from using "criteria or methods of administration which *have the effect of* subjecting individuals to discrimination because of their race, color, or national origin." 34 C.F.R. § 100.3 (emphasis added). As Deputy Assistant Secretary of Education for Civil Rights Ricardo Soto explained in his statement to the Commission, the Department's regulations prohibit "race-neutral policies, practices, or procedures that have a disparate impact on the basis of race, color or national origin."

Although this phrasing has been part of the executive branch's lexicon for some time, it is still worth pausing a moment on the Orwellian doublespeak of anything having a "disparate impact on [a] basis" to show how hard the Department must strain to use some of the words of the statute in service of the opposite of what they provide. Because a disparate impact is usually understood as an unintended effect, and may include many unintended effects, this formulation awkwardly attempts to equate unintended "impacts" with the actual basis (or ground) for the action. Putting aside this nonsensical use of the English language, Soto's testimony accurately described the Department's disparate-impact theory and its subjective test relating to whether the Department thinks the educational reason for the action is both legitimate and substantial, and has no other reasonable alternatives:

> Unlike cases involving different treatment, cases involving disparate-impact theory do not require that a school had the intent to discriminate. Rather, . . . the pertinent inquiry is whether the evidence establishes that a facially neutral discipline policy, practice, or procedure causes a significant disproportionate racial impact and lacks a substantial, legitimate educational justification. Even if there is a substantial, legitimate educational justification, a violation may still be established under disparate impact if the evidence establishes that there are equally effective alternative policies, practices, or procedures that would achieve the school's educational goals while having a less significant, adverse racial impact.

Where does this authority come from? The text of Section 601 most certainly does not prohibit unintended effects. If an action has an unintended racial effect, then the action was not taken "on the ground of race." Section 602 authorizes regulations to enforce the prohibition in section 601, but does not authorize rules to enforce other prohibitions agency officials deem desirable.

The prohibition in Title VI contrasts with other federal civil rights laws in which Congress explicitly placed restrictions on actions or policies that have a disparate racial impact. Although some of these provisions have raised constitutional questions as applied to the states, at least there is no doubt that Congress forced the issue. For example, the 1991 amendments to Title VII explicitly authorized a "disparate impact" cause of action and set forth the burden of proof necessary to establish an "unlawful employment practice based on disparate impact." 42 U.S.C. § 2000e-2(k)(1)(A).

Under Section 2 of the Voting Rights Act (VRA), one circumstance which may be considered in determining whether political processes violate the Act is the "extent to which members of a protected class have been elected to office in the State or political subdivision." 42 U.S.C. § 1973(b). Thus, Congress put in place at least a partial effects test in which the process is judged in part by its outcome, even if the process was not intended to discriminate on the ground of race.

The Americans with Disabilities Act (ADA) prohibits "using qualification standards, employment tests or other selection criteria *that screen out or tend to screen out* an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity." 42 U.S.C. § 12112 (emphasis added).

As the above examples show, Congress knows how to prohibit unintended policies or effects. The VRA and the ADA do not use the term "disparate impact" or even the word "effect" but they turn on the outcome of the actions at issue. There is nothing like that anywhere in Title VI. Indeed, the opposite is so. Congress prohibited actions taken "on the ground of" race, color, or national origin, and no fair reading of that clause can turn it into an outcome or effects test.

In the most recent opinion from the Supreme Court on the subject, five justices seemed to agree that the Education Department's disparate impact regulations in Title VI were invalid, although the Court's holding did not resolve that question. In *Alexander v. Sandoval*, the Court wrote that it is "beyond dispute—and no party disagrees—that § 601 prohibits only intentional discrimination." 532 U.S. 275, 280 (2001). The Court chose to rest its opinion in *Sandoval*, however, on whether private plaintiffs could sue to enforce disparate impact regulations issued under section 602. The Court held that there was no private cause of action to enforce disparate-impact regulations, *id.* at 291, and so there was no reason to reach whether the regulations themselves were invalid. Nevertheless, the majority's discussion of the disparate impact regulations is an unmistakable indication that five justices thought the disparate impact regulations were invalid.

The Court twice noted that section 602 only grants federal agencies authority to "effectuate the provisions of [Section 601] of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability." And it repeatedly stated that section 601 only prevented intentional discrimination, see *id*. at 280-81. Section 602 does not by its terms empower agencies to issue regulations that go beyond prohibiting the intentional discrimination forbidden in Section 601. Thus, there is no textual argument that section 602 authorizes the disparate impact regulations.

The Department's only defense is to rely on the now thoroughly discredited notion that federal agencies are empowered to enact any regulations that effectuate the broad *purposes* of the underlying statute rather than the statute's actual terms. The Supreme Court in *Sandoval* pointed out that it has abandoned support for that approach and had begun the process of invalidating regulations that had no other basis in law. *Id*. at 287. The reason the *Sandoval* Court assumed that the disparate impact regulations were valid in deciding that case is more complicated than is worth explaining here, but the current Court often chooses a narrower ruling if that will dispose of the case, and one was available in *Sandoval*. Nevertheless, the five-justice majority's most telling indication of what it thinks about the validity of the Title VI disparate impact regulations is contained in this passage:

> We cannot help observing [in the dissent] how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' § 601, when § 601 permits the very behavior that the regulations forbid. See *Guardians*: "If, as five Members of the Court concluded in *Bakke*, the purpose of Title VI is to proscribe *only* purposeful discrimination …, regulations that would proscribe conduct by the recipient having only a discriminatory *effect* … do not simply 'further' the purpose of Title VI; they go well *beyond* that purpose."[1]

Given the Supreme Court's helpful warning, the executive branch should have shown similar restraint, reexamined the legality of its disparate impact regulations, and abandoned them since they were unauthorized. But there was no serious reexamination of the power that the federal agencies had claimed for themselves, at least there is none the Department has drawn to the Commission's attention. Instead, there was a series of pronouncements that the Supreme Court had not expressly overturned the regulations. These statements are bereft of analysis but declare that the federal government will continue business as usual. In short, the agency officials and bureaucrats doubled down on their own claim of power. Their pronouncements regarding the precise holding of *Sandoval* are accurate, but the legal foundation for the regulations themselves after *Sandoval* is more flimsy than ever.

Intentional Discrimination in the Name "Fairness"

Even if a disparate-impact regulation is authorized by Title VI, reliance on this "theory" is bad policy. In almost any real-world setting, one cannot ensure both equality of treatment and equality of results. Trying to ensure equality of result when the underlying merit is decidedly

[1] Alexander v. Sandoval, 532 U.S. 275, 286 n.6 (2001) (full citations omitted; ellipsis and emphasis in the original quote).

uneven—or in this situation, the underlying misconduct is uneven—can only be achieved by engaging in intentional discrimination.

In at least some school districts, the law of averages dictates that some groups of students will merit more discipline than their proportionate share of the student population. If children from certain backgrounds (e.g., fatherless homes or neighborhoods with lots of gang members) misbehave at a higher rate and such children are not evenly distributed among all racial and ethnic groups, there is even more reason to expect differences in the level of misbehavior among different groups of students, whether that is potentially violent or just disruptive of learning. If discipline is meted out in proportion to who deserves it, a disparate impact will be found. The only way to "fix" the disparate impact is to intentionally discriminate. As Roger Clegg has written, "Under the guise of combating the problem of 'unintended discrimination,' the [disparate impact] theory demands deliberate discrimination."[2]

Concentrating on disparate impacts in each school or district will lead, sadly but inevitably, to discriminatory treatment of similarly-situated students in violation of the law. Teachers who try to get their numbers "right" by ensuring that discipline is evenly distributed among students of all races and ethnicities will have to treat individual students unequally. The converse is also true: Teachers who are careful to treat all students the same, regardless of race, gender, or ethnicity, will inevitably observe some disparate impacts if behavior meriting discipline is not perfectly distributed among those groups. The only exception to the above is if no discipline is ever meted out.

Differences in family structure are one reason why students may misbehave at different rates. The estimated out-of-wedlock birth rates in the United States in 2010 were 17% for Asian or Pacific Islander, 29% for non-Hispanic whites, 53.3% for Hispanics, 65.6% for American Indians or Alaska Natives, and 72.5% for non-Hispanic blacks.[3] The rates of children estimated to be living in single-parent families in 2009 were 16% for Asian and Pacific Islanders, 24% for non-Hispanic whites, 40% for Hispanics, 53% for American Indians, and 67% for blacks.[4] Growing up in single-parent families puts children at greater risk of dropping out of school and becoming a teen parent.[5] It is associated with much higher

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[2] Roger Clegg, *Disparate Impact in the Private Sector: A Theory Going Haywire*, BRIEFLY . . . PERSP. ON LEGIS., REG., & LITIG., NAT'L LEGAL CENTER FOR THE PUB. INT., Vol. 5, No. 12, at 11 (Dec. 2001).

[3] BRADY E. HAMILTON, JOYCE A. MARTIN & STEPHANIE J. VENTURA, U.S. DEP'T OF HEALTH & HUMAN SERV., CENTERS FOR DISEASE CONTROL & PREVENTION, NAT'L CENTER FOR HEALTH STATISTICS, NAT'L VITAL STATISTICS REPORTS, VOL. 60, NO. 2, BIRTHS: PRELIMINARY DATA FOR 2010, Table 1 (Nov. 2011).

[4] THE ANNIE E. CASEY FOUND., KIDS COUNT DATA CENTER, DATA ACROSS STATES: CHILDREN IN SINGLE-PARENT FAMILIES BY RACE (PERCENT) – 2009.

[5] *See* MARK MATHER, POPULATION REFERENCE BUREAU, U.S. CHILDREN IN SINGLE-MOTHER FAMILIES (May 2010).

incidents of child neglect.[6] As the report notes on page 75, scholars cite family composition as a predictive factor in cognitive performance.[7] Sadly, data from Wisconsin also suggests that "the probability of incarceration for juveniles in families headed by never-married single mothers [is much] higher than for juveniles in the two-parent family."[8] In sum, family structure does not dictate the result for any child, but it does affect the odds of certain negative outcomes and behaviors.

When determining whether a school district may have discriminated on the basis of race, the Department examines the rates of discipline for the different races of students in the district. Briefing Transcript at 158, 160-61 (Soto Testimony). Data alone may trigger an investigation. *Id.* at 185. Given this method of triggering the investigation, it is unlikely the Department would ever detect that a district is disciplining a group too little in order to get its numbers right. The Department notices disparities; a school district with disciplinary actions equally distributed among groups will not be noticed. The incentive for school districts, principals, and teachers is to make sure there are no disparities in discipline among races of students so as to avoid an investigation by the Department, which would be costly and time consuming for the school district.

The report and the testimony of the witnesses demonstrated that administrators and teachers are very concerned about disparities in discipline. A teacher from the suburban Washington, DC area testified that her district monitors the disciplinary rates in her classes for African-American and Hispanic students relative to the other students. The district's expectation is that there will not be disparities, and she is held to account if there are.[9]

Two school districts told the Commission they have changed their discipline policies in order to reduce racial disparities in discipline. The Winston-Salem/Forsyth County Schools in North Carolina revised its discipline policies to "address the disproportionate discipline of African-American students in the district."[10] The Tucson Unified School District outlined the "shift" in its discipline policies with the goal "to ensure . . . the reduction of disciplinary incidents" for African American students. Expected outcomes for African American students are "[r]educed discipline referrals to the office" and "[r]educed suspensions and

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[6] *See* DIANE DEPANFILIS, U.S. DEP'T OF HEALTH & HUMAN SERV., CHILDREN'S BUREAU, OFFICE ON CHILD ABUSE & NEGLECT, CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT AND INTERVENTION, Chapter 4 (2006) (citation omitted).

[7] Richard Arum and Melissa Velez, *Class and Racial Differences in U.S. School Disciplinary Environments*, at 4, *chapter in* IMPROVING LEARNING ENVIRONMENTS IN SCHOOLS: LESSONS FROM ABROAD (Forthcoming: Palo Alto, Stanford University Press).

[8] PATRICK FAGAN, HERITAGE FOUND., CONGRESS'S ROLE IN IMPROVING JUVENILE DELINQUENCY DATA (March 10, 2000).

[9] Report at 28-29 (Written statement of Jamie Frank).

[10] Letter from Donald L. Martin, Jr., Superintendent, Winston-Salem/Forsyth County Schools to Lenore Ostrowsky (Dec. 10, 2010).

expulsions."[11] I do not know whether the original discipline polices were sound or not, but changing them solely to affect a racial outcome serves no educational purpose, and racial balancing for its own sake is not constitutional.

Of the 17 school districts that responded to the Commission, nine reported using the Positive Behavior Intervention Support (PBIS) program, a "systems approach to preventing and responding to classroom and school discipline problems." One goal of the PBIS program is to "eliminate[e] the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories."[12] Artificially decreasing the discipline of misbehaving students or artificially increasing the discipline for goody-two-shoes students who are the best behaved is not a sound educational or civil rights policy. For the well-behaved students, it can only breed resentment, or worse, a desire to live "down" to the lowered expectation.

The Counterproductive Effect on Minority Students

Of course, there is nothing wrong with schools implementing programs to improve student behavior, which may eventually result in less disparity in discipline among different groups. The danger is that schools will weaken disciplinary measures in order to equalize the disciplinary rates, which will only increase disruptive behavior.[13] Such a change will harm well-behaved students the most by interfering with the productive learning environment they deserve. This may be especially harmful to minority students who, as Arum and Velez point out, "are exposed to school environments with high levels of disorder, violence and concerns over safety" and who therefore "face the disparate impact of inadequate and ineffective discipline in U.S. schools." "Significantly," they go on to say, "in schools with higher levels of disciplinary administration, we . . . have found that the gap between African-American and white student test performance does not exist."[14] In short, an increase in the use of disparate impact investigations is likely to cause substantial harm to minority students about whom the Department professes concern.

Rebuttal to Other Commissioner Statements

Statements by Commissioners Castro, Achtenberg and Yaki are unclear on some seemingly important points, or at least some points that seem important to them. Their joint statement begins with a condemnation of zero-tolerance policies, but the remainder of their statement is

[11] Letter from Augustine Romero, Director of Academic and Student Equity, and Jimmy Hart, Director of Academic Equity for African American Studies, Tucson Unified School District to Martin Dannenfelser (Dec. 13, 2010).

[12] Letter from Romain Dallemand, Superintendent, Rochester (MN) Public Schools, to Martin Dannenfelser (Nov. 30, 2010).

[13] My own view is that the risks associated with too little discipline are greater than those with too much, and thus, any approach that lessens the proper level of discipline are worse than the converse, even if applied fairly across the board.

[14] Arum and Velez at 35-36, *supra* Gaziano note 7.

much more concerned with the exercise of discretion in discipline by school administrators. There is no acknowledgement of the contradiction between these two positions. The only easy way to harmonize them is to assume the authors advocate no discipline, but that is not supported by other portions of the joint statement. It is a puzzle.

As for most zero-tolerance discipline policies, I'll register my opposition here, especially when they are used to sanction a kindergartener who makes a finger gun, grade school boys who draw pictures of soldiers, and others who bring nail clippers to school. Conservative and libertarian thinkers are the leading voices against crazy, zero-tolerance rules.[15]

Although Commissioners Castro, Achtenberg and Yaki bemoan the increase of zero-tolerance policies,[16] one of the main drivers of this increase is the kind of accusations leveled against school administrators in the rest of their joint statement, i.e., that administrators' discretionary decisions are racially discriminatory. School administrators also may fear private litigation over their exercise of discretion, but there should be little doubt that the accusation of racial injustice from the federal government and others would be a powerful force encouraging the growth and blind application of zero-tolerance policies.

The only conclusion a careful reader might draw from such a mish-mash is the importance these commissioners attribute to getting the racial percentages right, regardless of anything else. It would be unfortunate in the extreme, however, if their racial bean-counting contributes to the entrenchment of zero-tolerance policies, especially if such policies have the counterproductive effect that my fellow commissioners attribute to them.

Turning to their central claim, Commissioners Castro, Achtenberg and Yaki are relatively clear in their assertion that the disparities among racial groups in school discipline have a significant racial explanation, i.e., that schools are unfairly disciplining blacks and Hispanics relative to whites and Asians due to their race and not because of other relevant factors. This is an extraordinary claim that calls for extraordinary, or at least very carefully documented, evidence. Yet, there appears to be very little evidence supporting that contention, certainly not the studies cited in their statements, which are either seriously flawed or easily distinguished. More scholarly study would be helpful, but it should be more rigorous and carefully designed than that relied upon by the activists who try to use simple disparities to prove something malevolent.

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[15] Prominent critics of zero-tolerance rules have included my colleagues at The Heritage Foundation, see, e.g., HERITAGE FOUND., CASE STUDIES: CRIMINALIZING KIDS I: TRUE TALES OF ZERO TOLERANCE OVERCRIMINALIZATION (Dec. 2003) (high school senior arrested, suspended from school, and not allowed to attend graduation ceremonies for having a kitchen knife in her car in the school parking lot); HERITAGE FOUND., CASE STUDIES: CRIMINALIZING KIDS II: MISDEMEANOR MISTAKES AND FELONY FORGETFULNESS (describing arrests of children for minor offenses pursuant to zero-tolerance policies); and *Reason* magazine, see, e.g., Charles Oliver, *No Hugging, No Learning*, REASON HIT & RUN (Nov. 10, 2011) (middle school students suspended for briefly hugging); Radley Balko, *Further Adventures in Zero Tolerance*, REASON HIT & RUN (Feb. 3, 2011); Radley Balko, *Zero Tolerance Follies*, REASON HIT & RUN (March 5, 2010).

[16] In the first paragraph of their joint statement, they report that "almost 90% of U.S. public schools have established and implemented some sort of zero-tolerance policy … result[ing] in a substantial increase in the number of expulsions and out-of-school suspensions currently being imposed by schools."

The activists are not unlike those who think that differences in the racial composition of the prison population are proof of discriminatory treatment in the criminal justice system. Simplistic analyses of the offenses charged and sentences imposed compound the problem if they do not control for other important factors, including an offender's past criminal history. Any criminology graduate student can debunk the poorly designed studies by demonstrating how the introduction of additional factors eliminates the supposed proof of discrimination. Unfortunately, the simplistic and faulty "studies" continue to fuel the myth of a racist criminal justice system. When all the relevant factors are taken into account: "[T]here is almost no reliable evidence of racial bias in the criminal justice system's handling of ordinary violent and non-violent offenses. Rather, the facts overwhelmingly show that blacks go to prison more often because blacks commit more crimes."[17]

As is the case with pseudo-studies of racism in the criminal justice system, so it is with poorly designed studies of school discipline. One study cited by Commissioners Castro, Achtenberg and Yaki found differences in punishment for students sent by teachers to the principal's office for committing supposedly similar offenses. Black and Hispanic students were more likely to receive suspension or expulsion relative to white students for similar offenses.[18] But the study's authors admitted they did not take into account which students committed prior infractions, "a variable that might well be expected to have a significant effect on administrative decisions regarding disciplinary consequences."[19] More importantly, the authors' own data showed that blacks were 2.19 times as likely to be referred for misbehavior as whites in grades K-6 and 3.79 times as likely as whites in grades 6-9,[20] making it much more likely that the black students were repeat offenders in any particular encounter. Since repeat offenders may rightly receive more punishment, the study cannot tell us whether administrators unfairly punished anyone.

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[17] AMY L. WAX, RACE, WRONGS, AND REMEDIES 91(noting some admitted anomalies with certain drug offenses). Professor Wax continues:

> As a noted criminal law scholar sympathetic to black concerns stated in an exhaustive summary of the literature, "[v]irtually every sophisticated review of social science evidence on criminal justice decision making has concluded, overall, that the apparent influence of the offender's race on official decisions concerning individual defendants is slight." With respect to arrests, "few or no reliable, systematic data are available that demonstrate systematic discrimination." Rather, "arrests can by and large be taken as reasonable reflections of the involvement in serious crime of members of different racial groups." Likewise, . . . blacks are not singled out for stricter or more frequent prosecution. Nor do they receive longer sentences once criminal history and other sentencing factors are taken into account.

Id. (citing MICHAEL TONRY, MALIGN NEGLECT 50, 71, 79).

[18] *See* Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, SCH. PSYCHOL. REV., Vol. 40, No. 1, at 85, 95 (2011) [hereinafter Skiba, *Race is Not Neutral*].

[19] *Id.* at 103.

[20] *Id.* at 93.

A Texas study, also cited by Castro, Achtenberg and Yaki, found that "African-American and Hispanic students were more likely than white students to experience repeated involvement with the school disciplinary system for multiple school code of conduct violations."[21] The paper noted that the "reader should not discount the possibility of overrepresentation of African Americans among students who are repeatedly disciplined flows from the previous finding that African-American students are disproportionately involved in the discipline system in the first place."[22]

The Texas study included a multivariate analysis in an attempt to compare students of different races who were otherwise from similar backgrounds, including socioeconomic background. But it did not isolate whether the students came from a single parent household, which is likely far more important than other socioeconomic factors. Instead, acknowledging the importance of family structure, the analysis included as a variable the percentage of families in the student's *county* headed by a single parent.[23] This crude variable does not remotely capture the family structure of an individual student. The analysis thus classified many students as coming from similar backgrounds when they differed with regard to their family situation.

The statement of Commissioners Castro, Achtenberg, and Yaki cites a different study for the proposition that black students tend to be referred for discipline more often for "subjective offenses, such as disrespect or excessive noise," while white students tend to be referred more often for "behaviors that are objective, such as smoking, vandalism, and using obscene language."[24] An examination of the study itself reveals that black students were also more often referred for "threat" or "loitering," while white students were more often referred for "leaving without permission."[25] The subjective offenses have elsewhere been termed "defiance."[26] All such offenses could be serious, but threatening behavior—even if subjective—should be viewed as more serious than skipping class.

Moreover, threats and other forms of defiance might well be more disruptive in a classroom setting than obscene language. None of these behaviors will be helpful for the student later in

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[21] TONY FABELO ET AL., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER; PUBLIC POLICY RESEARCH INSTITUTE 42 (2011).

[22] *Id.* at 42 n.80.

[23] *Id.* at 94.

[24] Statement at 81.

[25] Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, THE URBAN REV., Vol. 34, No. 4, at 317, 332 (Dec. 2002).

[26] Skiba, *Race Is Not Neutral*, *supra* Gaziano note 18, at 101. In contrast, a 2010 study of elementary students cited by Commissioners Castro, Achtenberg, and Yaki did not find that black students were more likely than white students to receive an office disciplinary referral for defiance. *See* Catherine P. Bradshaw et al., *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, J. EDUC. PSYCHOL., Vol. 102, No. 2, at 508, 513 (2010) (hereinafter Bradshaw et al.).

life; teachers should try to stop them all. But teachers and principals need discretion to deal appropriately with each situation. Crude generalizations about subjective offenses (that may include threats) versus objective offences are not helpful. They will either encourage the administrators to ignore so-called subjective offenses or to try to formulate a zero-tolerance rule that converts such subjective offenses into defined, objective offenses.

Finally, one study of elementary students was cited by Commissioners Castro, Achtenberg, and Yaki for the proposition that black students receive office disciplinary referrals at a higher than expected rate after controlling for various factors.[27] The study had another interesting finding, however: that black male students in classrooms with black teachers were more likely to receive office disciplinary referrals than the other students.[28] Perhaps all the findings in this study of 21 elementary schools were anomalous, idiosyncratic, or explained by some other factor that further review and study would reveal. Yet the authors suggest that the "findings do not suggest that a cultural or ethnic match between students and their teachers reduces the risk of [office disciplinary referrals] among Black students."[29]

The study suggests four possibilities to me: (1) the black teachers in the study were biased against black male students compared to other students and wanted black males punished at higher rates, (2) the black teachers in the study were biased in favor of reforming black male students as compared to other students, (3) the black teachers were more concerned about the negative effect of misbehaving black male students on others in the class, or (4) none of the above. In any event, the study does not easily support the simple message of racial hostility or indifference by a majority white establishment against minority students.

In the end, however, the biggest difference between at least four of us on the commission and Commissioners Castro, Achtenberg and Yaki is our disagreement with their predictable call for an "immediate and substantive" intervention by the federal civil rights enforcers at the U.S. Department of Education. At best, such intervention will be merely unlawful, costly, and bureaucratic. In addition, I believe it will likely be counterproductive and make matters worse for minority students in schools with the most serious discipline problems.[30]

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[27] Bradshaw et al. at 511, *supra* Gaziano note 26.

[28] *Id.* at 514.

[29] *Id.* at 515.

[30] See also "Dissent and Rebuttal Statement of Commissioners Gaziano and Kirsanow" in U.S. Commission on Civil Rights, Peer-to-Peer Violence and Bullying: Examining the Federal Response at 163-68 (Sept. 2011), regarding the likely counterproductive effects of greater federal involvement aimed at preventing student bullying and harassment.

Statement and Rebuttal by Commissioner Gail Heriot

On March 8, 2010, Secretary of Education Arne Duncan stood on the Edmund Pettus Bridge in Selma, Alabama. The occasion was the forty-fifth anniversary of the confrontation known as "Bloody Sunday" between peaceful civil rights demonstrators and state and local police. There he delivered an emotional address in which he declared that the previous administration had been guilty of a lack of vigilance in combating discrimination and promised that he would "reinvigorate civil rights enforcement."

The emotion that Duncan felt was understandable in view of the site of his speech. But Duncan's words had the ring of a general rallying his troops to fight the last war. His strategy–a frontal attack on what he evidently regards as hidden race discrimination—bears little relation to the problems schools, especially schools that primarily serve minority children, actually face. Instead of promising to cut through the layers of bloated bureaucracy that smother innovative schools and teachers at all levels, he promised to use the Department of Education's bureaucracy to double down on schools. His Department of Education would be conducting "compliance reviews" and issuing "a series of guidance letters to school districts and postsecondary institutions that will address issues of fairness and equity." [1] One media report later said that rather than "waiting for cases to come in the door," Duncan's Department of Education "plans to use data to go find [civil rights] problems."[2]

Disciplinary actions will be a special concern in carrying out Secretary Duncan's vow to root out subtle discrimination and disparate impact. He told the crowd, "African-American students without disabilities are more than three times as likely to be expelled as their white peers" and "African-American students with disabilities are over twice as likely to be expelled or suspended as their white counterparts." The Department of Education's plan, which had been in the works well before his speech, is to keep schools under careful surveillance: "We will review whether districts and schools are disciplining students without regard to skin color. We will collect and monitor data on equity," he said.

The danger should be obvious: What if an important reason African-American students were being disciplined more often than white or Asian students is that more African-American students were misbehaving? And what if the cost of failing to discipline those students primarily falls on their fellow African-American students who are trying to learn amid classroom disorder? Will unleashing the Department of Education's Office for Civil Rights and its army of lawyers cause those schools to eliminate only that portion of the discipline gap (if any) that was the result of race discrimination? Or will schools react more heavy-handedly by tolerating more classroom disorder, thus making it more difficult for students who share the classroom with unruly students to learn?

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[1] Crossing the Next Bridge: Secretary Arne Duncan's Remarks on the 45th Anniversary of "Bloody Sunday" at the Edmund Pettus Bridge, Selma, Alabama (March 8, 2010), available at http://www.ed.gov/news/speeches/crossing-next-bridge-secretary-arne-duncan's-remarks-45th-anniversary-bloody-sunday-ed.

[2] Paul Baskin, "Education Department Promises Push in Civil Rights Enforcement," *The Chronicle of Higher Education*, March 8, 2010.

There are two sides to the "disparate impact" coin. Secretary Duncan focuses only upon the fact that, as a group, African-American students are suspended and expelled more often than other students.[3] By failing to consider the other side of the coin—that African-American students may be disproportionately victimized by disorderly classrooms—his policy could easily end up doing more harm than good to the very group he is attempting to help.[4]

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[3] In this respect, the controversy over disparate impact in school discipline may have parallels to the controversy over the death penalty. For many years, some opponents of the death penalty argued that it should be abolished because it has a disparate impact on African-American male offenders. According to Department of Justice figures, 34.6% of all offenders executed between 1976 and 2011 were black, 6.87% were Hispanic and 56.6% were white. This constitutes an overrepresentation of blacks, who made up around 12% of the American population during that period. Such an overrepresentation may seem troubling until one learns that Department of Justice figures over that period also record that 52.2% of all homicide offenders are black. Indeed, some studies have found that if there is a problem with the death penalty, it is not that black offenders appear to be discriminated against; it is that black *victims* appear to be discriminated against. Most homicides are within race. According to Department of Justice statistics, 46.9% % of all homicide victims are black, yet only 14.2% of those executed for homicide killed black victims. Some empirical studies have attempted to explain this as the result of a lack of value placed upon black lives by prosecutors. See Theodore Eisenberg, Death Sentence Rates and County Demographics: An Empirical Study, 90 Cornell L. Rev. 347 (2004)(citing studies suggesting that it is black victims who are discriminated against and arguing instead that such murders may simply be more likely to take place in places dominated by voters who oppose the death penalty). Those who advocate more lenient school discipline (or just different methods of school discipline) may or may not have a point, just as those who oppose the death penalty may or may not have better arguments regarding the death penalty controversy. But insofar as they premise their argument on the supposed disparate impact of the policies they oppose, they must recognize that there is another side to the coin. Efforts to reduce the number of African-American offenders who are subject to the death penalty are likely to exacerbate the disparate impact on African-American victims, which in the view of many is just as bad if not more so. Ultimately, it is to be hoped that policy over the death penalty and over school discipline matters can be decided over considerations that transcend race, gender or ethnicity.

[4] I agree with Commissioner Gaziano that Title VI simply does not permit the Department of Education to proceed against schools on a disparate impact theory and that the Department's regulation nonetheless adopting that theory, 34 C.F.R. sec. 100.3, is therefore unauthorized by law. It requires actual discrimination. See Section 601 (Title VI) of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000d (No person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"). See also Alexander v. Sandoval, 532 U.S. 275 (2001). I also agree with Commissioner Gaziano that the problem with disparate impact analysis is not simply that it goes beyond what Congress authorized in Title VI; it actually contradicts Title VI. If one group receives more school discipline than another because (for whatever reason) its members violated more school rules than the other, race-conscious efforts to alter the "disparate impact" are usually themselves discriminatory.

Commissioner Yaki makes it clear that he would like to see disparate impact analysis used more widely. He calls the "revival of disparate impact analysis in [Title VI] enforcement" a "particularly commendable" development—although at least in the draft of his statement that was made available to me, he did not attempt to explain why the law permits the Department of Education to pursue such a legal strategy. Among the racial and ethnic disparities that he believes are in need of remedying are "a wide achievement gap, disparate dropout rates, and skewed placement in special education or gifted and talented programs." Commissioner Yaki is, of course, right to be concerned with these matters, which he concedes are not necessarily the result of "conscious discriminatory intent." I would add that discrimination, either conscious or unconscious, has very little to do with these problems or their solutions. The sooner that is recognized, the sooner the problems can be solved.

There are many theories as to why some students misbehave in schools and others do not. While both misbehaving and model students come from every walk of life, no one should be surprised to learn that students from households below the poverty line tend to present more discipline challenges than others. Since according to the U.S. Census 27.4% of blacks live below the poverty line, while 26.6% of Hispanics, 9.9% of whites and 12.1% of Asians do, one should not be astonished to find that racial groups are not disciplined at the same rates.[5] Similarly, though probably not unrelatedly, 72% of African American and 53% of Hispanic children are now being born outside of wedlock, as opposed to 29% of white and 17% of Asian/Pacific Islander children.[6] Given that much research has found that children born outside of wedlock or living in single-parent households are more likely to engage in anti-social behavior than other children, it would be naïve to expect rates of discipline to be equal across races.[7] One cannot infer race discrimination from the differing discipline rates.

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[5] To the contrary, if living below the poverty line were the sole determinant of who misbehaves inside or outside of the classroom (which it is surely not), one would expect African American students to be disciplined at roughly 2 to 3 times the rate for white students—which is exactly what Secretary Duncan's figures showed. Non-Hispanic white and Asian households also have higher median incomes than black and Hispanic households. According to the Census Bureau, in 2010 non-Hispanic white households had a median income of $54,620 and Asian households $64,308; black households had a median income of $32,068 and Hispanic households $37,759. See U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage 2010*. See also Ellen Brantlinger, Social Class Distinctions in Adolescents' Reports of Problems and Punishments in School, 17 Behavioral Disorders 36 (1991).

[6] Child Trends Data Bank, "Births to Unmarried Women," available at http://www.childtrendsdatabank.org/?q=node/196.

[7] See, e.g., William S. Comanor & Llad Phillips, The Impact of Income and Family Structure on Delinquency, J. App. Econ. 209 (2002); Susan C. Duncan, Terry E. Duncan, Lisa A. Strycker & Nigel R. Chaumeton, Relations Between Youth Antisocial and Prosocial Activities, 25 J. Behavioral Med. 425 (2002); Lela Renee McKnight & Ann Booker Loper, The Effects of Risk and Resilience Factors in the Prediction of Delinquency in Adolescent Girls, 23 School Psychology Int'l 186 (2002); Amy L. Anderson, Individual and Contextual Influence on Delinquency: The Role of the Single Parent Family, 30 J. Crim. Justice 575 (2002); Stephen Demuth & Susan L. Brown, Family Structure, Family Processes and Adolescent Delinquency: The Significance of Parental Absence Versus Parental Gender, 41 J. Res. Crime & Delinquency 58 (2004); Todd Michael Franke, Adolescent Violent Behavior: An Analysis Across and within Racial/Ethnic Groups, 8 J. Multicultural Social Work 47 (2000); Marcia J. Carlson & Mary E. Corcoran, Family Structure and Children's Behavioral and Cognitive Outcomes, 63 J. Marriage & Family 779 (2001). But see Mallie J. Paschall, et al., Effects of Parenting, Father Absence, and Affiliation with Delinquent Peers on Delinquent Behavior Among African-American Male Adolescents, 38 Adolescence 15 (2003)(finding no delinquency difference in a non-random sample of 260 African-American, adolescent males between those who reported living with a father or father figure and those who did not).

One of the witnesses at our briefing, teacher Patrick Walsh, made it clear that it was his opinion that the racial disparities in discipline were largely the result of poverty and family structure and not related to race per se. He stated: "It's not the African American girls on their way to UVa or William & Mary [who disproportionately are disciplinary problems at school]; it's not the black girls from Ghana or Sierra Leone or Ethiopia who come here to live the American dream, but it's the black girls who are products of what Colbert King in a great article that everybody should read that was in the Post last Saturday called an inter-generational cycle of dysfunction. Girls who have no fathers in their homes, who often are born to teen mothers. They're a small group, but the fact is they cause enormous problems in school … and it's the same with the boys." Transcript at 26-27. Walsh openly acknowledged that this cycle of dysfunction likely had roots in a history of racial discrimination. He was not, however, optimistic that the disparity would disappear before "the problems of poverty and teen pregnancy and

Indeed, given that schools with African-American principals and mainly African-American teachers are just as likely as schools with white principals and mainly white teachers to have a large "discipline gap,"[8] it is unlikely that anything other than differing rates of misbehavior contribute significantly to the differing rates of discipline. Those who claim to have demonstrated that discrimination and racism are at work are simply scandalmongering.[9]

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lack of fathers can be reduced or solved." Id. See Colbert I. King, Celebrating Black History as the Black Family Disintegrates, Washington Post (February 4, 2011)(the article to which Walsh was referring).

Efforts to suggest that the differences in the rates of discrimination between blacks and whites are anomalous (in the sense that they cannot be accounted for in large part by factors such as socio-economic class or fatherless homes) tend to fall short of the mark. Consider, for example, Breaking Schools' Rules: A Statewide Study on How Schools Discipline Relates to Students' Success and Juvenile Justice Involvement—a report issued by the Justice Center of the Council of State Governments and the Public Policy Research Institute of Texas A&M University. That study purports to find that even after 83 different variables (including a measure of economic disadvantage) are taken into account, African American students are still 31.1% more likely than white students to have been the subject of discretionary disciplinary action in the 9th grade. The implication, at least to some readers, was that perhaps some teacher reports of misbehavior by African American students were false or misleading. But the presence of both parents in the student's home was not taken into account. And the method used to control for economic disadvantage was rudimentary. Rather than control for household income, parents' educational attainment or other markers of socio-economic status, the study controlled only for whether the student is eligible for free or reduced-price lunch or other public assistance. A binary classification system of this type does not convey the whole picture. It treats a student whose parents earns a penny more than the eligibility cut-off the same as a student whose parents are both wealthy, well-educated professionals. Similarly, it treats a student whose parents earn the maximum allowable for reduced-price lunch benefit ($40,793 for a family of four in 2010), because they are both attending graduate school, the same as a homeless child being shuffled from one shelter to another. It is not clear from the Texas A&M study that students of different races with truly similarly-situated family and socio-economic status will have differing rate of school discipline problems. Moreover, it is certainly not clear that the African-American students (or the students of other races) looked at by the study had not committed the infractions for which they were disciplined or that they did not deserve to be disciplined in the particular way the school authorities chose to discipline them.

[8] Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks III and Eric A. Booth, Breaking Schools' Rules: A Statewide Study on How Schools Discipline Relates to Students' Success and Juvenile Justice Involvement (2011)("Texas A&M study"). See also Catherine P. Bradshaw, Mary M. Mitchell, Lindsey M. O'Brennan, Philip J. Leaf, Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals, 102 J. Educ. Psych. 508 (2010).

[9] See, e.g., Russell Skiba, Robert H. Horner, Choong-Geun Chung, M. Karega Rausch, Seth L. May & Tary Tobin, Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline, 40 School Psych. Rev. 85 (2011)("Skiba-Horner"). Skiba-Horner purports to find that African-American students tend to be punished more harshly for the same general categories of behavior. But the actual data behind the study do not support such a finding. The authors readily admit that, in making their comparisons, their data failed to take into consideration whether the student was in any way a repeat offender—a variable that they further admit "might well be expected to have a significant effect on administrative decisions regarding disciplinary consequences. Skiba-Horner at 103. But this is no hypothetical possibility. Elsewhere in the Skiba-Horner analysis they find that "students from African-American families are 2.19 (elementary) to 3.78 (middle) times as likely to be referred for problem behavior as their White peers." Id. at 85. In other words, their own data point strongly in the direction that African-American students are in the aggregate much more likely to be repeat visitors to the principal's office. This is a study at war with itself.

Skiba-Horner attempts and fails to draw support for its conclusion by citing a number of earlier studies. Consider, for example, "Student Suspension: A Critical Reappraisal," which Skiba-Horner describes as having

found "no significant difference in [disciplinable] behavior between African-American and white students." See Shi-Chang Wu, William Pink, Robert Crain & Oliver Moles, Student Suspension: A Critical Reappraisal, 14 Urb. Rev. 245 (1982). In that article, the authors asked both black and white students eight questions designed to determine whether their propensity for anti-social behavior such as "Would you cheat on a test (if you could get away with it)?" and do you agree or disagree or are you undecided about whether if "you want to get ahead, you can't always be honest?" They found that among students with similar answers, black students tend to get suspended more than white students. This, of course, is not the same thing as finding "no significant differences in behavior between African American and white students." First, there was no finding that African American and white students gave similar answers to the questions; the study did not make such a comparison and instead simply compared African American students to white students *who gave similar answers*. Second, even among students who gave similar answers, there is no reason to believe they engaged in the same level of bad behavior. If, for example, the average white student with a high number of anti-social answers had greater reason to believe he would be punished by his mother and father if he engaged in bad behavior at school and got caught than an equivalent African American student, the anti-social white student could be expected to behave better. (Indeed, one of the main problems with the Department of Education's policy is that it deprives minority students of the opportunity to develop the discipline they need to succeed—something that white, middle-class students will often adequately learn at home.) In short, Skiba-Horner was off-base for citing this article as evidence that African-American students engage in misbehavior at the same rates as white students.

An earlier effort by the lead author in Skiba-Horner was similarly flawed. Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment, 34 Urb. Rev. 317 (2002)("Skiba-Michael"). It purports to provide evidence that part of the reason that African-American students in the middle schools in the school district under study get referred for discipline a little over twice as often as white students is race discrimination on the part of teachers. It does so by demonstrating that *among students who are referred for discipline*, African-American students are proportionately more likely to be referred for "Disrespect," "Excessive Noise," "Threat," and "Loitering," while white students are proportionally more likely to be referred for "Smoking," "Left without Permission," "Vandalism," and "Obscene Language." Apparently, there were no statistically significant differences in the proportions on matters of "Fighting," "Endangering," "Conduct Interference," "Throw/Propel Objects," "Gambling," "Sexual Acts," "Indecent Exposure," "Minor Offenses," "Spit," "Truancy," and a few unspecified reasons for discipline referral. Skiba-Michael at 332-333, Table 5.

Note that this is emphatically not the same thing as a finding that white students actually commit or are referred for committing "Smoking," "Left without Permission," "Vandalism," or "Obscene Language" more often than African-American students. Given that African-American students are referred for discipline at rates more than twice that of white students, it may well be (indeed it may be likely) that the rate of African-American referrals for these behaviors is higher than the rate of white referrals across the board. Skiba-Michael studiously avoids presenting data on that point and instead argues that because a somewhat higher percentage of the total African-American referrals are for conduct that is subjective in nature (compared to the percentage of total white referrals for that kind of conduct), teachers are likely being harsh on African-American students on account of their race.

Even if this were the most plausible explanation for the different proportions, it is unclear that it would explain more than a very small proportion of the overall differences in rates of referral. More important, however, it is not the most plausible explanation for the higher proportion of referrals for subjective misbehavior among African-American students. Given that the overall rates of referrals for misbehavior are more than twice as high for African-American students as for white students, the number of African-American students who are repeatedly referred for misbehavior is undoubtedly much higher. It is perfectly sensible for teachers to be quicker to refer students for "subjective misbehavior" if the student already has a track record of misbehavior. If the best behaved student in the class says something that could plausibly be interpreted either as a threat or as a lame joke, teachers may be inclined to give him the benefit of the doubt; if a student who attacked another student last week says the same thing, it is more than reasonable to interpret his behavior less favorably.

I strongly suspect one would find similar results if one looked at the arrest and prosecution records of adult parolees. Those who have never been arrested or convicted of a crime normally they get the benefit of the doubt

I do not purport to know the best way to maintain discipline in the nation's classrooms or to cause students to adopt the self-discipline they will need to live happy and useful adult lives.[10] I strongly doubt that there is a "one size fits all" best way. That is why the Constitution does not confer upon the federal government the authority to set school discipline policy, and Congress does not even purport to confer such authority on the Department of Education. These are matters best left to individual schools and local school districts. As a nation, we are better off having a variety of approaches to school discipline in order to foster experimentation and adaptation to local needs. For the same reason, education policy in general is best left to individual schools and local school districts.[11]

It is not, therefore, my intention to take sides in the general debate over whether suspension and expulsion rates are too high or whether more effective alternatives to current disciplinary policies can be found.[12] It may well be true, for example, as critics of current

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when it comes to misconduct that requires the police officers subjective judgment; parolees are less likely to. Consequently, the proportion of parolees who get prosecuted for offenses that might be viewed as subjectively defined would likely be higher than the proportion of first-time offenders who get prosecuted for such offenses. But that would be true regardless of the offender's race. Skiba-Michael has uncovered no evidence that one would not expect to find under well-functioning school discipline policy where it happens to be the case that African-American students misbehave at higher rates than white students. The authors' conclusions to the contrary are unwarranted.

[10] A sometimes spirited debate over general school discipline policy has been going on for over a century. On the one hand, there is the Progressive view mostly closely associated with John Dewey who argued that strong disciplinary methods only served "to cow the spirit, to subdue inclination" and to foster "indifference and aversion" to schools. John Dewey, On Democracy and Education: An Introduction to the Philosophy of Education 129 (1916). On the other, there are conservatives who argue that Progressive methods have been a disservice to students, especially those born into family environments that fail to instill self-discipline into each new generation. See, e.g., Jackson Toby, *The Schools* in Crime (James Q. Wilson and Joan Petersilia, eds. 1995). See also Gerald Grant, The World We Created at Hamilton High (1988). It is unnecessary for me to weigh in on that debate in order to make the points that (1) classrooms must be reasonably orderly in order for students to learn; (2) it is not the federal government's responsibility to decide what sort of discipline policy will best promote that orderliness or even what level of orderliness is to be sought; and (3) issues of race should not drive the debate.

[11] Indeed, one can go somewhat further: Even if one size could potentially fit all, it would be hard to know what that size is. The success of education policy, including discipline policy, is something that is hard to measure. In the short run, it is very difficult to tell what is working and what is not, and sometimes even in the long run, separating good practices from bad can be tough. As a consequence, education is prone to fads and fashions, not all of which have turned out to be in the best interests of students. A good example is the New Math. See Morris Kline, Why Johnny Can't Add: The Failure of the New Math (1973). Similarly, a debate raged for some time between advocates of the phonetic approach to literacy and those who favor the "sight-word" or "whole language" approach. It is doubtful that the last word has been written on this topic. Let us hope that the nation's children will be able to read it when it comes. See Rudolph Flesch, Why Johnny Can't Read—And What You Can Do About It (1955); Marilyn Jager Adams, Learning to Read: Thinking and Learning About Print (1990). In the end, the best defense against the risk created by faddishness is a decentralized system of decision-making about education. Schools that march in lockstep have been known collectively to march off a cliff.

[12] One issue I am willing to take a stand on is the gross misuse of statistics. In their draft statement provided to me, Commissioners Castro, Achtenberg and Yaki wrote, "One thing is painfully clear about the disparate state of school discipline imposed on students of color: it creates a highway from the schoolhouse to the jailhouse." In their view, a student who receives "disproportionate discipline" is "more likely to drop out of school." Statement of Chairman Martin R. Castro and Commissioners Roberta Achtenberg and Michael Yaki at 84. The

practices argue, that because suspensions take misbehaving students out of the classroom, they have the effect of putting those students further behind their peers.[13] This is part of the price that has been paid for eliminating corporal punishment in most states and in severely limiting the use of "staying after school" as a method of dealing with student misbehavior.[14] Whatever the other virtues and/or vices of these approaches to instilling discipline in children, they did not have the effect of removing them from instruction for significant periods of time.[15]

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theory that African Americans are dropping out or turning to crime *because* they have been disciplined by schools is a fashionable one these days. Commissioners Castro, Achtenberg and Yaki appear to be committed to it. See id. at 6 ("Studies have shown that students suspended in 6th grade are far more likely to be suspended again and research indicates that suspensions and expulsions are, in turn, correlated to an increased risk of dropping out. A research study has also shown that students who are suspended three or more times by the end of their sophomore year of high school are five times more likely to drop out or graduate later than students who had never been suspended")(citations omitted). But their theory runs headlong into Occam's Razor. A far simpler theory is that students who tend to misbehave when they are younger also tend to misbehave when they are older. The only thing that is "painfully clear" is that the correlation Commissioners Castro, Achtenberg and Yaki cite does not prove causation.

[13] Commissioner Yaki also complains that too many students are being arrested for offenses that are best dealt with outside the criminal process. Statement of Commissioner Yaki at 119. He may be well be right. See, e.g., Kathryne Solove, Student Arrested for Burping During Class, ABC News (December 2, 2011). But a large part of the reason that too many trivial incidents are being treated as criminal matters is that school districts are hiring police officers (known as school resource officers ("SROs")) to patrol school hallways rather than relying on traditional school administrators to keep order. Problems are inevitably defined by the tools we use to deal with them. If police officers are hired to deal with school discipline issues, the issues will be viewed as criminal. In turn, the reason so many school districts hire police officers to keep order is the COPS in Schools program, which is funded through the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (1994). COPS in Schools provides up to $125,000 per officer per year for three years to schools willing to hire such officers.

This is not a race problem. It won't be cured by the "revival of disparate impact analysis" that Commissioner Yaki lauds. Statement of Commissioner Yaki at 119. The way to stop the problem is for Congress to terminate the COPS in Schools program and for school districts to return to relying on more traditional school administrators focusing on discipline. Of course, that may not be as easy as it sounds. Once a program and the jobs that go with it are in place, it is devilishly difficult to get rid of them. That is why government should think twice and then twice again before creating a program. I note that the Violent Crime Control and Law Enforcement Act of 1994 was the brainchild of now-Vice President Joseph Biden and was a thoroughly bipartisan effort from start to finish. These are the kinds of programs that can cause the greatest problems. Nobody on either end of the political spectrum thinks them through until it is too late. If it becomes clear that they are not working well, the solutions offered (e.g. by Commissioner Yaki) consist of yet more federal intervention. At some point, it would be helpful for federal authorities to stop thinking of themselves as the solution to every local problem and thus to stop the cycle.

[14] These are not the only ways in which the art of maintaining order in the classroom and of helping students to internalize self-discipline has had to change with the times. At one point, teachers were encouraged to have one-on-one relationships with their students. These days, teachers are discouraged from being in the same room alone with a student on account of concerns over sexual harassment and sexual harassment laws.

[15] Many schools apparently take the position that without parental consent they cannot keep a student after school. It is not clear to me why the state has the authority to compel a student to attend school during regular school hours, but has no authority to compel a misbehaving student to spend an hour or two after school unless the school has cleared this with the student's parents. Of course, that authority should only be exercised in a reasonable manner. Working out a model procedure that would permit this seems to me like a more useful

Rather than try to resolve all questions of school discipline policy,[16] I will stick to two points that should be obvious, but which seem to have gotten lost in this debate.

First, in general, disorderly students mean disorderly classrooms. And disorderly classrooms make learning less likely to occur—something that both teachers and students recognize.[17] The problem may be significant in many places, but it is particularly acute in inner-city schools and other low-income areas.[18] An article in the *San Francisco Chronicle*,

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project than Secretary Duncan's effort to force the problem into a "race discrimination" paradigm. This is a surmountable problem. Student who are sent home are more likely to fall further behind in school and to get into trouble than students who are kept after school. That is true regardless of the race of the students who are suspended or expelled.

[16] Commissioners Castro, Achtenberg and Yaki argue that zero-tolerance policies have contributed to the high number of suspensions and expulsions of minority students and that these policies should be reined in. By removing discretion from teachers, principals and other school authorities, such policies are designed to prevent discrimination, not promote it. Zero-tolerance policies can therefore sometimes be good policies. But no one can accuse me of being a fan of over-the-top zero-tolerance policies that are practiced in schools today. It is important, however, not to forget that many schools enacted zero tolerance policies at least in part due to federal pressure. See the Gun Free School Zones Act of 1996 (P.L. 104-208.)

When the Department of Education issued its policy declaring that school districts that don't control sexual harassment would face stiff consequences, school districts understandably adopted policies designed to remove discretion from teachers and principals. See 6-Year-Old Boy Accused of Sexual Harassment, WSPA-7-On-Your-Side (April 4, 2008); Yvonne Bynoe, Is that 4-Year-Old Really a Sex Offender?, The Washington Post (Oct. 21, 2007); Scott Michels, Boys Face Sex Trial for Slapping Girls' Posteriors, ABC News (July 24, 2007); Gitika Ahuja, First-Grader Suspended for Sexual Harassment: Boy's Mother Says He's Too Young to Even Understand the Accusation, ABC News (February 9, 2006). These incidents were not isolated. According to the Maryland Department of Education, 166 elementary school students were suspended in the 2007-2008 school year for sexual harassment, including three pre-schoolers, 16 kindergarteners and 22 first graders. In Virginia, 255 elementary students were suspended for offensive sexual touching in that same year. Juju Chang, Alisha Davis, Cole Kazdin and Olivia Sterns, First-Grader Labeled a Sexual Harasser: Has Zero-Tolerance for Sexual Harassment in Schools Gone Too Far?, ABC News (Feb. 19, 2009). And if over forty Maryland pre-schoolers, kindergarteners and first-graders have been suspended for sexual harassment, can you imagine how many middle and high school students have been suspended for antics, real or imagined, that they never should have been suspended for? Schools cannot afford to be found out of compliance by the Department of Education or liable to a private litigant (who might use the failure to discipline any sexually harassing student as evidence of indifference). I fully expect the Department of Education's new policy on bullying will result in similar zero-tolerance rules. Things are thus likely to get worse rather than better. That, of course, brings me back to Commissioners Castro, Achtenberg and Yaki. They have vigorously supported the Department of Education's new bullying policy. See U.S. Commission on Civil Rights, Peer-to-Peer Violence and Bullying: Examining the Federal Response 90, 100, 214 (2011). Their enthusiasm for the Department of Education's sexual harassment policy appears to be no less vigorous. See id. But their support for these policies cannot be easily squared with their concern over zero-tolerance rules. The latter is the result of those policies.

[17] All of the teachers who testified before the Commission were in substantial agreement on this point. See, e.g., Statement of Louise Seng at 30; Transcript at 26 (Patrick Walsh testifying); Transcript at 115 (Principal Suzanne Mackey stating that schools slide into chaos without enough discipline).

[18] Is it possible to overstate the degree to which classroom disorder is affecting middle- and high-income areas? Of course it is, and some people have. One careful scholar—New York University professor of sociology and education Richard Arum—reports that there is "little evidence supporting the contention that the level of disorder and violence in public schools has [generally] reached pandemic proportions." But, he writes, it is "indeed the case in certain urban public schools," various factors have combined "to create school environments

entitled "Students Offer Educators Easy Fixes for Combating Failure," had this to say on the topic:

> Thousands of learned men and women gathered in Sacramento this week to chew over the vexing question of why black and Latino students often do poorly in school, someone had a fresh idea: Ask the students.
>
> So they did. Seven struggling students - black, brown and white - spent an hour Wednesday at the Sacramento Convention Center telling professional educators what works and doesn't work in their schools. It was the only one of 125 panels at the two-day Achievement Gap Summit convened by state schools chief Jack O'Connell where students had their say.
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> "If the room is quiet, I can work better - but it's not gonna happen," said Nyrysha Belion, a 16-year-old junior at Mather Youth Academy in Sacramento County, a school for students referred for problems ranging from truancy to probation.
>
> She was answering a question posed by a moderator: "What works best for you at school to help you succeed?"
>
> Simple, elusive quiet.
>
> Nyrysha said if she wants to hear her teacher, she has to move away from the other students. "Half our teachers don't like to talk because no one listens."
>
> The others agreed. "That's what made me mess up in my old school - all the distractions," said Imani Urquhart, 17, a senior who now attends Pacific High continuation school in the North Highlands suburb of Sacramento."[19]

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that are particularly chaotic, if not themselves crime producing." Unless the problem is solved, students in these schools will continue to be shortchanged in their education. See Richard Arum, Judging School Discipline: The Crisis of Moral Authority 2 (2003). This underlines my earlier point that Secretary Duncan's efforts may disproportionately harm the very students he is attempting to help.

[19] Natasha Asimov, "Students offer educators easy fixes for combating failure," *The San Francisco Chronicle*, November 15, 2007. These students' stories match up well with complaints that students gave in response to a 1998 study, entitled "Strategies to Keep Schools Safe." "Some of my classes are really rowdy," a student from Seattle told the researchers, "and it's hard to concentrate." "They just are loud and disrupting the whole class," a student from Chicago similarly said about some of her classmates. "The teacher is not able to teach. This is the real ignorant people." Sasha Volokh and Lisa Snell, "Strategies to Keep Schools Safe," Policy Study No. 234, January 1998, available at http://reason.org/files/60b57eac352e529771bfa27d7d736d3f.pdf.

Second, viewing the issue through the prism of race and poring over school discipline data in search of disparate impact is likely to create more heat than light. School districts don't need one discipline policy for African-American and another for white students and still others for Hispanic and for Asian-American students. They need one fair and effective policy that applies to everyone, letting the chips fall where they may. If schools should be modifying their discipline policies, it should not be because there are more students of one race than of another that are misbehaving in school. It should be because they have made a sincere judgment—free from federal coercion—that it is in the best interests of their students that they do so.[20] Given that federal law confers no authority upon the Department of

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This point was also brought home in an unusual manner at the Commission's briefing during a discussion about the effectiveness of detentions as a punishment. "The irony is that they [unruly students] *like* the detentions," teacher Allen Zollman testified. "The detentions are a haven of tranquility apart from the mayhem that's going on in the school…. I think they're behaving just badly enough to earn the detention." (Emphasis supplied.) Teacher Louise Seng also said she agreed with Zollman's remarks. Transcript at 52. Seng retired in 2006 from teaching at Harrison-Morton Middle School in Allentown, Pennsylvania, a majority-minority school where many students came from poor backgrounds. Seng testified at our briefing that she was not then aware of efforts at Harrison-Morton or other majority-minority Allentown schools to lower disparities in discipline, but that she thought that any such efforts would have a negative effect on classrooms. An article in the Allentown Morning Call published eight months after Seng gave her testimony —Steve Esack, "Teachers Say Discipline Code Giving Students Upper Hand," *The Morning Call*, October 7, 2011— indicates that Seng's concerns may have been warranted. According to the article, Allentown recently adopted a new code of conduct that makes it more difficult for teachers to suspend students. A month after the new policy went into effect, teachers told *The Morning Call* that they believed that under the new policy, "students have the upper hand." See also Steve Esack, Parent Says Behavior at Allen High Out of Control, The Morning Call, October 13, 2011 ("Bathrooms are unsafe and trashed, detentions get ignored, study halls are a zoo, and school was dismissed 10 minutes early, without parental notification, last Wednesday to quell a potential gang fight with bricks and bats, [parent Karen Santone] said.").

Two months later, the Morning Call reported that in the view of teachers and city residents "a culture of defiance" had set in at area schools." "Some have worried," it wrote, "that the district's staff cuts and a new discipline code, which seeks to reduce school suspensions so students don't miss class have contributed to the outpouring of incidents both on and off school grounds." Devon Lash & Steve Esack, Allentown School District Pays for Extra Police Coverage, The Morning Call, December 21, 2011.

These articles do not mention racial disparities as impetus for this new policy. Nor do they mention the Department of Education's new initiative. But they do mention that the new approach in Allentown is rooted in Positive Behavioral Interventions and Supports, a popular decision-making framework that many of the school districts at our briefing said that they are using to try to curb disciplinary disparities. It would not be surprising if Allentown adopted the PBIS program at least in part as a response to the Department of Education's initiative.

[20] It is interesting to note that last month the Department of Education released a pair of guidances—one for colleges and universities and another for elementary and secondary schools—instructing them on when and how they can give preferential treatment to minority students in admission in order to produce a racially diverse class. In those documents, the Department emphasized that the Supreme Court was willing to defer to their academic judgment that diversity is a compelling purpose. It seems odd that the Supreme Court would defer to school in a case involving actual intent to discriminate on the basis of race, while the Department of Education is unwilling to defer to the same school's academic judgment on what disciplinary policies are best. It is the former that involves actual race discrimination and hence raises serious equal protection issues, while the latter involves only racial disparate impact with no suggestion, much less proof, that any student is being treated differently on account of race.

Education's to formulate general discipline policy, it should play no role in the formulation of that policy.

Real racial discrimination—or "disparate treatment," the rather bloodless term now in vogue—is another matter. There is no question that if a school were to administer discipline one way for misbehaving white students and another way for similarly misbehaving African-American students on account of their race, that would be a violation of Title VI, which the Department of Education has some responsibility for enforcing.[21] Similarly, if a school were to administer discipline to misbehaving students whose victims were Hispanic differently from the way it would have administered it if the victims had been Asian, that would be a violation of the law. Of course, ordinarily school administrators and school district administrators know to take action when discrimination of that kind occurs without any prodding from the Department of Education. The country has changed a lot since Bloody Sunday. But there have been serious lapses even in recent years.[22] When administrators fail to act, school boards have a responsibility to act, and when they fail, state education or civil rights authorities should do so. When these institutions default, the federal government has a responsibility to act.

But Secretary Duncan's policy has little to do with allegations of actual discrimination. His program is to sift through data looking for evidence of disparate impact. If he does so, he is almost certain to find it. Indeed, if he were to sift through data looking for disparate impact of discipline policies on boys vs. girls or Japanese Americans vs.

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[21] For public schools, such discrimination would also be a violation of the Constitution. See U.S. Const. amend. xiv.

[22] See, e.g., G.W. Miller III, Asian Students Under Assault: Seeking Refuge from School Violence, Philadelphia Weekly (September 1, 2009)(detailing allegations that Asian students in inner city Philadelphia high schools had been subject to racially-motivated, student-initiated violence about which high school administrators did little or nothing); Asha Beh, Attacks Against Asian Students Prompt Private Meeting, NBC Philadelphia (December 14, 2009)("The students—and adult advocates—claimed that staff allowed this to happen on their watch and added taunts of their own"). In this case, both the U.S. Department of Justice and the Pennsylvania Human Relations Commission eventually stepped in. See Justice Department Reaches Settlement with Philadelphia School District on Anti-Asian Harassment, Asian American Legal Defense and Education Fund in the News (December 15, 2010).

Not all federal investigations into allegations of actual discrimination involve incidents of equal gravity. In response to a document request from the Commission, the Department of Education turned over correspondence with school districts regarding both disparate treatment and disparate impact discipline complaints that the Department had investigated within the last few years. One such letter, for example, contained an allegation that a Chicago Public Schools teacher discriminated against a student on the basis of race by "not giving Student A a glue stick for an in-class assignment, and then punishing the student by making him stay after class when he could not complete the in-class assignment because he did not get a glue stick." Letter from Don Ray Pollar of the Office for Civil Rights to Arne Duncan, Superintendent of the Chicago Public Schools, Re: OCR Docket 0581103 (July 15, 2008). After an investigation, the Department of Education concluded that there was insufficient evidence of discrimination to take further enforcement action. It is not clear to me that this investigation was a good use of the Department of Education's scarce resources, and it is tempting to wonder what the delegates to the 1787 Constitutional Convention in Philadelphia would have thought about the modern reach of the federal government they had created. At least one can say, however, that the Department had received an actual complaint from someone who felt the student had been discriminated against on account of his race.

Vietnamese Americans, he is almost certain to find that too. Secretary Duncan does not explain why he regards higher rates of discipline referrals for African-American over white students to be a problem and not higher rates of boys over girls or whites over Asians. Middle-school students are more likely to be disciplined for bullying (or victimized by bullying) than are elementary or high school students. But if my observations as a middle-school student from 1969 to 1971 are any guide, it is because more middle-school students are bullies, not because of age discrimination. Disparate impact is not the same as actual discrimination, and it would difficult to find any education policy or practice that has no disparate impact based on race, national origin, gender, or some other protected classification. Seating students in alphabetical order has a disparate impact on Chinese Americans, since they have a disproportionate number of surnames beginning with the letters W, X, Y and Z.

No doubt Secretary Duncan would argue that his discipline initiative will not assume that all disparate impact is a violation of Title VI. Only that part of a school district's discipline gap that cannot be explained and justified by the school district will form the basis of a finding of non-compliance with Title VI. But this reflects a lack of understanding of the nature of bureaucracy, the kinds of situations for which it is useful and the kinds of situations where it ordinarily does more harm than good.

The edicts of bureaucracies are usually devoid of nuance by the time they reach the foot soldiers on the ground (in this case, classroom teachers). "Don't do X unless you have a good reason to do X" is naturally understood by school district administrators as "Don't do X unless you are confident that you can persuade some future federal investigator whose judgment you have no reason to trust that you had good reason to do X." In turn, this is communicated to principals as "Don't do X unless you jump through the following time-consuming procedural hoops designed to document to the satisfaction of federal investigators whose judgment you have no reason to trust that you had good reason to do X." Finally, this is communicated to the teacher as simply "Don't do X; it will only get us in trouble."[23]

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[23] Teacher Allen Zollman testified that teachers in his school district already have to fill out a three-page form showing that they have exhausted all reasonable alternatives before finally referring a disruptive student to the principal's office:

> Before the student can be removed and placed in 'time out', the teacher must prepare a disciplinary referral—what many of us used to call a 'pink slip'. This is a two-page form with space for three offenses—not just one—and a checklist of measures taken by the teacher before issuing this referral. These measures include a private conference with the student, a change of seat location, a lunch time or after-school detention, or a phone call to a parent. Sometimes the foregoing strategies are effective, but often they are not. What is important to note here is that in order to get a disciplinary referral for disruption in my school, there must be three infractions and they must be documented in writing BEFORE the student can be removed from the classroom.

All of this comes at a real cost: the need for documentation makes it harder to teachers to discipline students *at the moment of the disruption*, rather than days or weeks after the fact. Meanwhile, other students must suffer while the disruptive behavior continues:

Effectively administering school discipline is an enterprise that requires attention to the individual situation. This cannot be done well by distant bureaucracies.[24] It must be done by the actual principals and teachers, under the supervision of local school district administrators and school boards. And the Department of Education's policy makes their effectiveness less likely.[25]

> [F]or mere disruption, it is no simple thing to have a student removed at the time of the disruptive behavior. This means that for extended periods of time, it can happen that very little teaching and learning will take place in a given classroom… [T]he need to build up a case to refer a misbehaving student and then wait for action at a higher level leaves me dealing with the problem myself for a while or, more often, persuades me to let things continue as they are without issuing a referral, in other words, teach through chaos. Indeed, because of behavior problems, there are times when very little teaching or learning takes place.
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> In such an environment, students see few meaningful consequences for their actions, so they not only continue to misbehave but the behaviors get more brazen, with more and more students joining in the fun, until even the quote-unquote 'good' kids are acting out. They often become cynical, reminding teachers that nothing will happen to them.

Jamie Frank offered a similar account of the problems with overly bureaucratic discipline in her school:

> You have to contact - we have a computer form where you have to check off the same thing. Three times you have to contact the parent before you can send them to the administrator, and then once it's at the administrative level you don't know what's going to happen to that child. You refer the child and it's up to the administration to determine what's going to happen. It's most likely that that child will be back in school if they are a minority student, if they are a minority. Transcript at 50.

Ms. Frank drew the same lesson as Mr. Zollman about how bureaucracy leads to lenience, which in turn leads to disorder: lack of discipline "sends the message that nothing's really going to happen to these students." A typical student will think to herself, "If I do the same thing, if I misbehave again, nothing will really happen."

[24] The abundance of statistical information collected to assist federal and state authorities in setting disciplinary policy often obscures more than it illuminates, thus underlining the need for local control. For example, one much-cited report conducted by UCLA's Civil Rights Project and the University of Colorado's National Education Policy Center reports data showing African-American first-time offenders are suspended for dress code violations more often than their white counterparts. It does not appear to have taken into consideration that not all dress code violations are equal. A student who is suspended for wearing prohibited street gang colors or insignia is not the same as a student who is told to put on a sweater and given a warning for wearing a blouse that is too revealing. See Daniel J. Losen, Discipline Policies, Successful Schools and Racial Justice (2011). The only way to do justice is to pay close attention to the particular facts of each case. That simply cannot be done well at the federal level.

[25] Commissioner Kladney argues that the evidence presented at our briefing that "paperwork requirements interfered with [teachers'] ability to mete out discipline in the classrooms or would result in no disciplinary actions being taken" is merely "anecdotal." "Relying on anecdotal evidence that teachers will not discipline students, because there is paperwork involved is wrong," he wrote. Statement of Commissioner Kladney at 116.

If the local authorities had been engaging in a pattern of resistance to the Constitution or federal authority, the situation might well benefit from the intervention of federal authorities despite the lack of nuance that such an intervention would inevitably entail.[26] But such situations are rare. Far more common, however, are the day-to-day situations that

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There are several responses to that argument. To begin with, as David Hume once observed, the level of evidence necessary to persuade a reasonable person of the truth of a claim must be proportional to the claim. Extraordinary claims require extraordinary evidence. Ordinary claims … not so much. See David Hume, An Enquiry Concerning Human Understanding 114-16 (1748).

No claim can be any more ordinary than "if you place costs on a particular human activity, you will get less of it; similarly, if you reward that conduct, you will get more of it." School disciplinary policies are themselves built on the widespread conviction that punishing bad behavior will result in students' doing less of it. The same thing is true applied to teachers. If you make teachers jump through procedural hoops before they can impose discipline, they will be less likely to impose that discipline. Indeed, the very purpose of Secretary Duncan's discipline initiative is to reduce the level of discipline currently administered to minority students, and the school districts that I have discussed infra at 111-112 have adopted that purpose. It seems strange and naïve to take the position that it will be ineffective in its aim.

But just in case someone does want more outside evidence (in addition to that provided by sworn testimony of our panel of teacher witnesses) that bureaucratic procedures slow down and ultimately reduce activity in the school discipline context, there is plenty of it. Nationwide, 70% of public middle- and high-school teachers told pollsters in 2004 that "[r]educ[ing] the paperwork & formal documentation required to take disciplinary action would either be a "very effective" or "somewhat effective" solution to the discipline and behavior problems found in the nation's public schools. This poll was conducted by Public Agenda, an organization dedicated to research on public policy issues founded by Carter Administration Secretary of State Cyrus Vance and the well-respected pollster Daniel Yankelovich. The Public Agenda, Teaching Interrupted: Do Discipline Policies in Today's Public Schools Foster the Common Good? 38 (2004). It was not the respondents' favorite way to deal with the problem, but it garnered a very strong majority of teachers. The two favorites—garnering 94% support each— were (1) "Find ways to hold parents more accountable for their kids when they misbehave in school," and (2) "Treat special education students who misbehave just like other students—unless their misbehavior is related to their disability." These methods are, of course, also at odds with the Department of Education's school discipline initiative. Sadly, given the legal environment in which schools must operate, these teachers did not seem to agree that the paperwork requirements in effect then were unnecessary. But a strong majority (57%) of those of those answering the question on these requirements said they go "beyond common sense" and "mostly exist to protect the schools for parental or legal challenges." See also Richard Arum, Judging School Discipline: The Crisis of Moral Authority (2003).

An additional troubling aspect of Commissioner Kladney's arguments is that it appears to place the burden of persuasion on the wrong side. Commissioner Kladney is defending a new policy that essentially wrests the power to control discipline from local hands and places it in federal hands. While "radical" is a much overused word, it is one that may be fairly be applied here. If the Department of Education can use its clout to require local schools to justify their discipline policies because of their disparate racial impact, then it can use that clout to require local schools to justify all their policies and decisions, since all policies have a disparate impact on some racial, national origin, gender, or disability group. See supra at 11 (pointing out that seating students alphabetically has a disparate impact on Chinese Americans, since a disproportionate number of Chinese surnames begin with the last four letters of the alphabet). In public policymaking, incomplete evidence is the rule, not the exception. It is part of the human condition. As a result, citizens ordinarily require the advocates of new initiatives to carry the burden of persuasion. To be adopted, an initiative should affirmatively be a good idea. It is insufficient to say, "I support this policy, because its opponents have not proven to my satisfaction that it is bad."

[26] See, e.g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964).

require discretion on the part of those closest to the situation.[27] Outside of cases in which there is credible evidence that a student has been treated differently in a disciplinary matter on account of his race or ethnicity—which should, of course, receive attention from local authorities and (sometimes, if necessary) from state and federal authorities—Secretary Duncan's initiative is likely to do more harm than good.[28]

Meanwhile, there is already evidence that the Department of Education's discipline policy may be pushing schools in a troubling direction.[29] Consider, for example, the Tucson

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[27] The tragedy of such policies, of course, is that there was no reason to believe the classroom teacher's judgment was in any way inferior to the federal investigator's concerning when it is appropriate or inappropriate to do X. Left to her own devices, she probably would have acted in a way the Department of Education would have approved of most of the time. Indeed, given the fact that she is there on the ground and hence privy to all the facts, she is likely to get it right more often than the federal investigator. But in the overly bureaucratized world of education, her judgment is discounted. Her role is reduced.

[28] Dr. Richard Arum has argued that the legal movement of the late 1960s and early 1970s toward greater students' rights (characterized by cases like Goss v. Lopez, 419 U.S. 565 (1975)) has had a significant and not altogether salutary effect on schools across the country.

> "Educational litigation increased dramatically during the late 1960s and early 1970s, a period we will term the *student rights contestation period*. While the volume of litigation has subsequently stabilized or moderately declined, both the threat of legal challenges to school authority and the effects of litigation on school practices remain."

Richard Arum, Judging School Discipline: The Crisis of Moral Authority 5 (2003).

According to Arum, "[t]oday's schools inherit from that period a historical legacy" in which (1) "students have developed a sense of legal entitlement" that "has produced skepticism about the legitimacy of school disciplinary practices as well as a general familiarity with resorting to legal avenues to contest such practices"; and (2) schools have responded by "forms, practices, and cultures—including wide-spread normative taken-for-granted assumptions about the necessity of organizing school discipline in particular ways" that are not necessarily in the best interests of students.

I don't know if Dr. Arum is correct. But if he is right, he has demonstrated that a small government agency can have a significant and deleterious effect on the discipline culture of schools across the country. He convincingly demonstrates that "the major institutional actor advancing legal challenges to public school disciplinary practices" during the late 1960s and early 1970s "was the Legal Services Program established by the Office of Economic Opportunity." Id. at 8. "In 1967, the OEO Legal Services Program … employed nearly 1,200 lawyers; by 1972, the program … employed over 2,000 lawyers." According to Arum, by 1972, these lawyers spent 7.7% of their time challenging educational practices. Id. at 9. Let us hope that history is not repeating itself with a federal agency—this time the Department of Education—again having a significant and deleterious effect on discipline culture. See also Gerald Grant, The World We Created at Hamilton High (1988)(providing evidence for Dr. Arum's thesis at a New York high school).

[29] A typical school district receives eight percent of its funding from the federal government. See the U.S. Department of Education, 10 Facts About Education, available at http://www2.ed.gov/about/overview/fed/10facts/index.html. In a district with many high poverty schools eligible for grants under Title I, the percentage of its budget coming from the federal government is likely to be even higher. See, e.g., Marty Strange, "Rural schools lose in funding formula," May 21, 2010, available at http://www.dailyyonder.com/rural-school-lose-funding-formula/2010/05/10/2738 (a brief account of how the Title I funding formula works and why inner-city schools are disproportionately likely to fare well under it).

Unified School District plan under which teachers and principals are expected to "striv[e] for no ethnic/racial disparities."[30] Elaborate procedures were set out requiring an "Equity Team" to ensure "social justice for all students" in discipline matters. The plan specifically sets out as its "goal" that the district "*will* reduce the disproportionate number of suspensions of African American and Hispanic students." (Italics added.) It states that one of "the expected outcomes" of the implementation of its new procedures, which includes a requirement that all long-term suspensions be reviewed by the "Director of Student Equity," will be a decline in out-of-school suspensions "especially with regard to African American and Hispanic students."[31]

The Tucson Unified School District does not state why it believes that greater attention to fairness in discipline will yield a reduction in suspensions "especially with regard to African American and Hispanic students." Perhaps it is supposed to be taken on faith. If, however, in moving towards its goal and expected outcome, the school district ends up consciously or unconsciously doing exactly what the law forbids—doling out discipline on the basis of a student's race or ethnicity—it will be in violation of the law, not in some sort of heightened compliance with it owing to its efforts to respond to disparate impact. This policy was likely adopted at least in part as a result of the belief that the Department of Education would regard its racial disparities in discipline to be evidence of a violation of Title VI.

Dr. Hertica Martin, Executive Director for Elementary and Secondary Educations of the Rochester Public Schools in Olmstead County, Minnesota, testified both in person and in response to our inquiries by letter. She stated in her letter:

> As a result of analyzing our discipline data and the disproportionalities which exist, our schools have implemented a number of strategies … to decrease the number of referrals for our black and brown students. The implementation of these strategies has resulted in a decrease of 363 suspensions and expulsions from 2007-2008 to 2009-2010 school years.[32]

The Winston-Salem/Forsyth County School District was also forthright in explaining to the Commission that its reasons for reducing discipline overall is specifically to reduce racial disproportionality in discipline:

No superintendent is eager to tell parents and teachers that she will be forced to cut her district's budget by eight percent or more next year. The Department of Education never need come close to actually revoking federal dollars; the mere possibility that such a funding cut could befall a district is often enough to send local administrators scurrying to do the federal government's bidding.

[30] Tucson Unified School District Governing Board, Post-Unitary Status Plan 25 (July 30, 2009).

[31] Id. at 26.

[32] Letter from Dr. Hertica Y. Martin to Lenore Ostrowsky of the U.S Commission on Civil Rights, January 12, 2011.

> *To address the disproportionate discipline of African-American students in the district* [italics added], the WS/FCS [Winston-Salem/Forsyth County] discipline policies were revised this year to specifically disallow administrators from aggravating disciplinary sanctions based on prior, unrelated misconduct. Further, minor code of conduct infractions occurring in prior school years may not be considered *at all* [italics in original] when assigning disciplinary sanctions. Administrators are also able to use mitigating factors in assigning discipline, and may consider circumstances such as a student's truthful statement, a student's positive history, and a student's respectful cooperation during the discipline process.[33]

Perhaps Rochester's and Winston-Salem's new, more lenient policies will work better at keeping order than the old ones did. But I am not optimistic. The fact that their administrators seem to be driven by concerns about disparities in and of themselves rather than by concerns that the old policies were generally unsatisfactory is not a good sign. Moreover, a disciplinary system like Winston-Salem's that forbids teachers and principals from considering a student's past misbehavior in determining the proper response to the student's current misbehavior is wrongheaded in the extreme.[34]

These school districts are not alone. In Dorchester, South Carolina, school authorities write, "The superintendent has established a Discipline Task Force to examine and ensure that policies and procedures are equitable for all students and lead to reduction in racial disparities in school discipline particularly among African American males."[35] But it is unclear why they believe that fairness and a reduction of racial disparities in discipline are

[33] Letter from Donald Martin, Superintendent of the Winston-Salem Forsyth County Schools, to Lenore Ostrowsky of the U.S. Commission on Civil Rights, December 10, 2010, reproduced at page 248 in this report. In the same letter, Winston-Salem stated that it has also changed its policy regarding suspensions. Before, short-term suspensions could last ten days at most; now, the maximum is eight. Also, no student can now receive an out-of-school suspension for truancy. For these latter two changes, the district mentions only "fairness and consistency" as its motive, which in context might be readily interpreted to mean "fairness" to all racial and ethnic groups.

[34] The general intuition that repeat offenders should be punished more harshly than first offenders runs throughout federal and state sentencing law. See, e.g., U.S. Sentencing Guidelines Manual sec.4A1.1 ("The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. sec. 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of grater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence."); Cal. Pen. Code 667 et seq. (codifying what is sometimes popularly called the "three strikes law," which provides that a defendant with two or more prior felony convictions will be sentenced to life imprisonment.) A New York Times article published in 2010 states that twenty-five other states also have some version of the three strikes law. Emily Bazelon, Arguing Three Strikes, The New York Times (May 21, 2010).

[35] Memorandum to U.S. Commission on Civil Rights at 2 attached to Letter from Joseph R. Rye, Superintendent of Dorchester School District Two dated December 13, 2010.

compatible goals. They do not appear to be suggesting that, up to now, their schools have been engaging in discrimination. Rather, they appear to be assuming that fairness and a reduction in racial disparities are one and the same.

In Washington, D.C., concerns about racial disparities also led to repeals of policies that prohibited students from receiving credit for courses if they are absent from class too frequently. In the view of Jamie Frank, a teacher witness at the Commission's briefing, rescinding this policy actually disproportionately harmed minority students by taking away a previously strong incentive to attend class. Without such incentive, Ms. Frank said, too many minority students give into the temptation not to attend class and miss out on valuable learning.[36]

No one should imagine that the reactions of these schools to the Department of Education's initiative are a victory for African-American students struggling their way through inner city schools. To the contrary, the primary beneficiaries of this ill wind will likely be the businesses and activist groups who provide computer software aimed at tracking school discipline and training programs for teachers and administrators aimed at reducing disparities as well as the additional school administrators hired to carry out the new policies.

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[36] Statement of Jamie Frank at 28-29.

Statement of Commissioner David Kladney

Many schools and school districts face serious challenges as they carry out their responsibilities to provide all of their students a quality education in a safe and orderly environment. The U.S. Department of Education ("the Department") has an important role in helping to ensure students have equal access to such an education. The Department has many means by which it can carry out its mission. In the context of school discipline, I believe that as a matter of policy it would be most productive for the Department to focus its resources on assisting school districts to locate and adopt discipline programs which have strong records of success. However, individual school districts should make the choice as to which program (if any) they choose to partake in.

Both the frequency of disciplinary actions and the disproportionality of their application have increased since the 1970s.[1] In addition to continued racial bias and misunderstandings, some of this rise is undoubtedly due to socio-economic factors. Increased rates of single-parent households[2] and households in which both parents are employed full-time (or in multiple jobs), have led to many children being raised in environments that are not conducive to good manners or conduct-control, which in turn results in more acting out in class. Many factors disadvantage children growing up in low- and lower-income neighborhoods, among them: inappropriate or negligent parenting before children enter school (and during their school years), a basic lack of socialization with other children with supervision, bad neighborhood influences (of the sort dramatically portrayed in the fact-based television program, "The Wire"), poor nutrition, a lack of a pre-school environment, and no one at home who can teach children how to study or provide a good study environment.

The U.S. Department of Education cannot address all these issues. The local school districts have to. There is wide agreement that school discipline needs to be carried out in order to allow students to have a safe and calm environment in which to learn. Should we revert to the ruler, the principal's office and/or the belt?[3] Some people will probably say, "Yes, punishment is what's needed, along with a strong family ethic." To some degree these people may be right—if the families and communities of today are as they were 50 years ago. But they are not.

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[1] For example, in 1973, 6% of African-American students received out of school suspensions, as compared with 3.1% of white students. Students of other races had even smaller suspension rates. According to the most recent survey statistics published by the U.S. Department of Education, nation-wide, roughly 15% of African-American students and 6.8% of Latino students received out of school suspensions, as compared to 4.8% of white students and 2.7% of Asian/Pacific Islander students. See, Daniel J. Losen & Russell J. Skiba, *Suspended Education* (2010) available at http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf.

[2] Since the 1970s, the rate of single-parent households has increased by more 50%. See, U.S. Census Bureau 2012 Statistical Abstract, available at http://www.census.gov/compendia/statab/2012/tables/12s1337.pdf. As noted by the National Poverty Center, single-parent households have a substantially higher rate of poverty. See http://www.npc.umich.edu/poverty/#4.

[3] This Commissioner remembers the wooden type bar stool in the corner of the classroom, a yardstick, swat board with holes drilled in it, among other in-class disciplinary devices, the principal's office and the dreaded parental notification and subsequent home based discipline.

Fortunately there are new and more sophisticated methods of providing discipline in our schools. As the members of the school administrator panel testified at our briefing, there are several nationally-tested programs which thousands of schools have adopted. As the panelists noted, these schools have found the preventative approach of programs like positive behavior supports significantly reduce disparities in school discipline interventions,[4] reduce the total number of behavioral incidents for all races and genders and, most importantly, reduces repeated behavioral incidents by the same student.

Common features of the programs[5] discussed by the panelists include:

- Clearly defined expectations for student behavior communicated to the student
- Clearly defined consequences for good and bad behavior communicated to the student
- A preventative approach to discipline in which all students are instructed in positive behavior, as opposed to a remedial approach largely directed at students who have misbehaved
- Comprehensive and consistent school-wide discipline policies
- Support teams composed of administration and fellow faculty to assist teachers in the use of consistent and effective discipline practices
- Collection and use of enforcement data to ensure consistent and effective interventions

Some may note that the implementation of these discipline programs is not cost-free. That is undoubtedly true, but then there's a cost to be paid—by schools, students, and society at large—by the status quo in many schools and by the misapplication of disciplinary actions. As a number of the Commission's State Advisory Committees have recently noted, bad school discipline policies can result in not just bad educational outcomes, but also future entanglement in the criminal justice system.

Some may also note that a couple of members of the teachers' panel at our briefing complained that paperwork requirements interfered with their ability to mete out discipline in their classrooms or would result in no disciplinary actions being taken. There was further suggestion that attention to disproportionate disciplinary practices might further burden teachers. Relying on anecdotal evidence that teachers will not discipline students because there is paperwork involved is wrong. Such speculation is too malleable for any type of accurate or reliable decision making. This is especially true when only one or two "stories" are presented where thousands of schools and tens of thousands of students and teachers are involved. In trying to grapple with how best to improve safety and good order in schools

[4] Obviously, the purpose of these types of approach is not to stop discipline because there is currently a disparate impact according to the numbers; rather, it is to institute discipline that has a positive impact on students so they continue with appropriate conduct in the classroom.

[5] Most of the administrator panelists and many of the district response letters indicated that they had in place variations of School-Wide Positive Behavior Supports. Several school districts had also adopted the Olweus Bullying Prevention Program as well as programs to better train teachers to better appreciate their students' diverse racial and ethnic backgrounds.

nationwide, only a body of actual evidence with statistics lead to logical conclusions and the truth. Anything else is mere noise adding to the sound machine for purposes of feeding one's own beliefs or just plain fear-mongering.

Teachers and administrators should be expected to provide well-disciplined classes, both by their supervisors, school boards, and by parents and the public. Additionally, it is unfortunately sometimes necessary for investigations by the U.S. Department of Education. Based on the testimony of our briefing panelists, it fortunately seems however that wider adoption of well-established preventative programs can reduce both the incidence of behavioral problems in our schools and subsequent investigations by the Department.

The Department should continue to maintain its Office of Special Education Program's Technical Assistance Center on Positive Behavior Intervention & Supports.[6] It should also examine and publicize the effectiveness and cost-effectiveness of existing commercially available training/consulting programs. By serving as a clearinghouse for such information, the Department could provide school districts additional information with which to make the school districts' own informed choices as to which programs, if any, to choose which would best meet their needs.

In order to maximize the benefits of an orderly school, it is important to ensure not only that discipline is being imposed, but it is being imposed appropriately. Schools and school districts should strive to create environments of effective discipline in which disciplinary actions take place less often—because disciplinary actions mean that misbehavior has already occurred. When disciplinary actions are taken—an inevitability given that there are tens of millions of school children—teachers, schools and school districts should strive to ensure that the actions taken against students are both appropriate in whom they are directed (i.e. that the student is being disruptive) and appropriate in the severity of the disciplinary action (i.e. that the student is not removed from class or from school unless his or her presence endangers the safety or good order of the school), and effective in that the disciplined student learns, is taught, the rules of conduct necessary for him/her to continue and flourish as a student. Schools have an obligation to try to provide an education to all of their students and to teach students appropriate conduct the school environment expects of its students and the reasons the rules are in place. Principals and teachers need to be taught the best methods to impose discipline that will result in a successful educational experience for all.

In summary, the Department of Education should continue to collect and publish disciplinary metrics it receives from schools throughout the country. The Department should provide school districts seeking information on the different types of disciplinary programs being offered throughout the country. Furthermore, Department should enter into a long term study to determine the cost effectiveness of these discipline programs regarding, among other things, attendance, graduation rates, test scores and adult success in seeking employment and higher education. School Districts must choose for themselves the type of student disciplinary programs, if any, they wish to use within their districts. School districts must also continue to encourage parents and family to become part of the solution regarding

[6] http://www.pbis.org/default.aspx

discipline and study.

Before showing students the door and sending them to the scrap heap of life, schools should use the best methods available to create a safe and orderly learning environment.

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Statement of Commissioner Michael Yaki

Racial and ethnic disparities are pervasive in American education, and take many forms. The disproportionate use of out-of-school suspensions and expulsions against minority students is one of several interrelated[i] civil rights problems that include a wide achievement gap, disparate dropout rates, and skewed placement in special education or gifted and talented programs. These disparities effectively deny many minority students an equal opportunity in education, whether or not there was conscious discriminatory intent. Worse still, these problems, particularly disparities in school discipline, put youth at risk for a host of negative, non-education outcomes that include involvement in the juvenile justice system.[ii] The so-called "school-to-jailhouse" pipeline has become a geyser, with recent school-based arrests almost tripling in states like Pennsylvania.[iii] The potential of our children is being lost, devastating their future and the justice and prosperity of our entire society.

Addressing the disparate impact of school discipline must be a critical element in a comprehensive response to disparities in our education system. I strongly support renewed efforts by the Department of Education (and the Department of Justice) to use all available tools to address this problem. Although more needs to be done, Secretary Duncan and Assistant Secretary for Civil Rights Russlynn Ali have courageously brought federal technical expertise and legal enforcement techniques to bear on this complex problem, working with school districts and states to detect and redress disparities. The revival of disparate impact analysis in Title IV enforcement is particularly commendable. Obviously, racial discrimination is not the only cause of statistical disparities in school punishment, but neither can the pivotal role of race be ignored. Regression analyses show that other, non-racial explanations cannot explain away these disparities. My colleagues may rightly say that research is incomplete in this area and we don't know all the causes underlying such racial disparity. But, the fact is, there is a failure somewhere, and whatever the cause, the impact falls squarely on minority students.

Existing[iv] research does indicate that these racially disparate rates of expulsions and suspensions:

- Are not due to minority students causing more safety-threatening behavior—the disparities aren't because kids of one race are simply more dangerous.[v]

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[i] See, e.g., summary of research findings in Russell Skiba, Lauren Shure, and Natasha Williams, *What Do We Know about Racial and Ethnic Disproportionality in School Suspension and Expulsion?* The Equity Project at Indiana University, at 4, (September 2011). *Draft of article available online at* www.indiana.edu/~atlantic/wp.../12/CollaborativeBriefingPaper.pdf (cited by permission).

[ii] Id. at 13.

[iii] See Test, Punish, and Push Out: How "Zero Tolerance" and High Stakes Testing Funnel Youth into the School-To-Prison Pipeline, The Advancement Project, at 18 (March 2010). Available online at http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf.

[iv] For a review of research on these points, see endnote 1, above, at 5-9.

[v] Some research suggests, instead, that disparate outcomes may stem from subjective evaluations of minority students' offensive behavior, e.g. as "defiance." Id. at 7.

- Are not just about students' socioeconomic status—this isn't just a problem of poor kids or poor schools.[vi]
- Are higher among elementary school children than kids in secondary school, and among black and white girls than boys.[vii]
- Are not merely a result poor academic achievement—race is still a predictor after accounting for GPA.

Unfortunately, full, disaggregated data has not been available to researchers, creating a nearly insurmountable obstacle to a detailed understanding of the causes underlying disparate rates. The Department of Education's Office of Civil Rights (OCR) should expand its collection of disaggregated data, working with states and school districts.

Moreover, despite knowing for decades about the problem of racially and ethnically disparate school punishments—and having developed methods for improving school discipline generally—there is little evidence-based research today on how to reduce disparities.[viii] Combining School-wide Positive Behavior Supports (SWPBS), restorative justice, and other programs with culture-specific interventions may prove to be most effective. Promising studies have been done, e.g., on incorporating Native American and Chinese cultural values into SWPBS programs.[ix] But, the research is still too thin. More federal research funding needs to be directed specifically toward the development and diffusion of interventions to reduce racial and ethnic disparities in school discipline. The Department of Education's Office of Special Education Programs could also expand the mandate of its commendable Technical Assistance Center on Positive Behavioral Interventions and Supports[x] to specifically address use of culturally responsive interventions.

In the end, progress in redressing racial and ethnic disparities in school discipline may require a fundamental restructuring of the accountability structure of schools. The pending Congressional reauthorization of the Elementary and Secondary Education Act (ESEA) provides a unique opportunity for a comprehensive review of what success in the nation's public schools means. Are standardized test scores the best measure of success when so many of the most at-risk students are being disproportionately suspended and expelled, or even arrested in our schools? Should the disciplinary practices of a school and/or their equal treatment of minority students play a greater role in assessing school performance? The problem of disparate outcomes in America's schools, whether in discipline or achievement, is undoubtedly complex, as the varied perspectives at this and other Commission briefings have shown. However, as a nation we can and must do better at ensuring that children of every race, national origin, and gender are treated equally.

[vi] In fact, while absolute rates of suspension appear to be highest in poor urban districts, black-white student disparities are greatest in better resourced suburban districts. Id. at 2.
[vii] Again, absolute rates of suspension and expulsion are higher in secondary school and among black and white boys, but not the disparities. Id. at 3.
[viii] Id. at 16-17.
[ix] Id. at 20-21.
[x] For more information on the Center and its mission, visit http://www.pbis.org/about_us/default.aspx.

As policymakers focus on the next iteration of ESEA, I hope they give particular attention to improving the research, funding, mandates, and incentives necessary to change the way school discipline is being meted out. We can't wash our hands and say "not our problem." Not now. Not ever.

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Speaker Biographies

Allen Zollman
Biographical Statement

- Teacher of English as a Second Language (ESL), grades K-8, six years
- Instructional Technology Specialist and classroom computer teacher at a school for deaf children ages 2 – 18, 21 years
- Educational Media Specialist (media producer) at a school for mentally retarded children and adults, 4 years
- Teacher of high school French, one year
- Tutor of homebound students, grades 8 - 12, in mathematics, English, world history, world cultures, Western Civilization, and public speaking,
- First generation American
- Native speaker of English with Advanced level proficiency in French and American Sign Language

Andrea Smith
Biographical Statement

Andrea Smith, Sixth Grade Teacher, joined the E.L. Haynes staff in November, 2008. She has ten years of experience teaching in Washington, D.C. public and charter schools. Prior to teaching in the classroom, she worked as a Legislative Research Assistant for the *Education Trust*, an advocacy organization committed to the high academic achievement of all students. A native of Fostoria, Ohio, Ms. Smith holds a Bachelor of Arts Degree in Political Science and History. She earned a Master's Degree in Education from Trinity College.

Jamie Frank
Biographical Statement

Jamie Frank has been a secondary social studies teacher for the past eleven years. She has taught a myriad of subjects, including Advanced Placement courses in Government and Psychology, On-level and Honors courses in U.S. and World History, and a variety of elective courses. Ms. Frank has taught in three prominent school systems in the DC Metropolitan area. Currently she serves as a member of several teachers' advisory boards, including the Bill of Rights Institute and the Council for Teaching and Learning. She holds a Masters in Secondary Education from George Mason University.

Louise Vincentine Seng
Biographical Statement

TEACHER (Retired 2006)

Mrs. Seng taught eighth grade social studies at Harrison Morton Junior High/Middle School, Allentown School District, Pennsylvania for 34 years, and retired in 2006.

EDUCATION

Kutztown University (State College) Master's Degree in Education, graduated with honors.
East Stroudsburg University (State College), BA, graduated with honors.
Lehigh County Community College, Associates Degree, graduated with honors

FAMILY

Mrs. Seng has been married for 34 years to Michael J. Seng, teacher and SFC Retd. USA. She has two daughters: Staff Sgt Theresa E Seng, USMC, and Staff Sgt Ann V Seng USAF. Both of her daughters are combat veterans, and are scheduled to be redeployed.

Patrick Welsh
Biographical Statement

Patrick Welsh has taught English at T.C. Williams High School in Alexandria, Virginia since 1970. His essays on education and the youth culture have appeared in The Washington Post, USA Today, the New York Times and other publications. He is author of the book *Tales Out of School* (Viking/Penguin).

Suzanne Maxey
Biographical Statement

Immediately before coming to T.C. Williams High School in June 2010, Suzanne Maxey was a mentor to new and struggling middle and high school principals in Montgomery County, MD. Prior to that, she was widely credited with improving test scores, raising staff morale, and energizing students at Seneca Valley High School in Montgomery County.

Ms. Maxey began her career in 1973 as a high school social studies teacher. She first became an administrator in 1993 as vice principal of Laurel High School, and two years later was named Dean of Academic and Student Affairs. Ms. Maxey served as principal of Bowie High School in Prince Georges County from 2000–2003 before moving to Seneca Valley. She holds a Bachelor of Arts in Secondary Education from the University of Rhode Island, and a Master of Arts in Political Science from the University of Maryland.

In 2007, Ms. Maxey won the Washington Post Distinguished Educational Leadership Award for Montgomery County Public Schools. In his nomination letter for the award, Montgomery Councilmember Michael Knapp wrote, "With her innovative approach to academics and administration, Suzanne has worked hard to foster cooperation between the school and community. Fully understanding that a school should not only be a participant in the surrounding community but its hub, Suzanne launched an outreach program to educate parents about the school, and help them get involved with their students and with the Seneca Valley community."

Ms. Maxey, her husband Bob, and Mattie, their black lab–Australian cattle dog mix, live in Alexandria City. They also have two grown sons.

Osvaldo Piedra, Ed.D.
Biographical Statement

Dr. Osvaldo Piedra has over twenty years of public school teaching experience in elementary, middle and high school. As an assistant principal in both the middle and high school levels, Piedra served students, parents, and teachers in grades six through twelve. As a school based administrator, Dr. Piedra devised an after school credit recovery program designed to ensure a high graduation rate by maximizing instructional time. Analyzing the school's discipline data to determine trends in student discipline that lead to increased out of school suspensions and decreased academic performance, Piedra strategized approaches to minimize student disciplinary disruptions to increase teacher-student contact time. Working collaboratively with the school staff, Piedra has implemented new school-wide positive behavior strategies that increased teacher-student contact time. As a former elementary, middle, and high school teacher, Piedra is able to see the continuing curriculum, K-12. He has facilitated inter-grade level articulation leading to higher student academic gains. Dr. Piedra enjoys working cooperatively with parents, students, and faculty and possesses a genuine commitment to student success and highest student achievement. Osvaldo Piedra received his Doctorate degree in educational leadership from the University of South Florida.

Joseph P. Oliveri
Retired Administrator, Austin, ISD
Biographical Statement

Mr. Oliveri served in the Peace Corps where he taught English and helped organize a weavers' cooperative in Peru. He earned Bachelor's degree from Purdue University and his Masters degree in Curriculum and Instruction from Yeshiva University. He taught in an inner city school in Brooklyn, New York. He worked with the Agency for International Development and the Peace Corps in Honduras, Guatemala, and the Dominican Republic as Director of Education Programs and Acting Peace Corps Director. In Austin, Mr. Oliveri directed a Veterans' Upward Bound Program and the Migrant Attrition Prevention Program at St. Edwards University. He was the principal of the Alternative Learning Center and

Director of Alternative Education for the Austin Independent School District, serving students in grades K-12, and co-chair of the Joint City of Austin/AISD Steering Committee on Gang Activity. He also proudly served as state president of the Texas Association for Alternative Education (2001-2003). He has been active on the Board of Big Brothers/Big Sisters and Literacy Austin, as well as on the board of his congregation.

Edward C. Gonzalez
Biographical Statement

Mr. Gonzalez is a 29-year veteran educator with extensive classroom and administrative experience in public schools. He is a five-time recipient of the *Who's Who Among America's Teachers* honor, and was chosen as the inaugural *National School Administrator of the Year* by the School Library Journal in 2003. Mr. Gonzalez believes that high expectations, relationship development and community interaction are essential for the academic, social, and emotional well-being of our youth. A former small school district Superintendent, Mr. Gonzalez is currently the Associate Superintendent in charge of the Department of Prevention and Intervention in Fresno Unified School District, the 4th largest school district in California.

Ricardo Soto
Deputy Assistant Secretary, Office for Civil Rights,
U.S. Department of Education
Biography

Ricardo Soto is the deputy assistant secretary for the Office of Civil Rights at the U.S. Department of Education. He has served in this position since October 2009. In his position, Soto provides senior leadership concerning enforcement, policy and operational activities at OCR.

Prior to arriving at the Department, Soto was a private attorney in San Diego where he represented school districts in education and employment issues. From 2005 to 2007, he served as assistant secretary and legal counsel in the Office of the Secretary of Education for the state of California where he advised the secretary and the governor on legal and policy issues related to elementary, secondary and postsecondary education. For eight years, Soto served as in-house counsel for the San Diego Unified School District and represented the superintendent, school board and senior staff in education and employment matters.

Soto began his legal career at California Rural legal Assistance in Oceanside, Calif., and represented migrant farmworkers in education and employment issues statewide.

Soto earned a Juris Doctor from the University of Wisconsin Law School, Madison, Wis. He earned a bachelor's degree from Marquette University, Milwaukee. Soto is a native of Chicago.

Dr. Hardy Murphy
Superintendent of Schools
Evanston/Skokie School District 65
Biographical Statement

Career

- 1999– Current - Superintendent of Schools, Evanston/Skokie CC School District 65 (K-8 district serving approximately 7,000 students) Evanston, IL
- 1979-1999 – Fort Worth Independent School District (K-12 district with 113 schools) Fort Worth, TX. During the twenty years at FWISD, served in a variety of administrative positions including Assistant and Associate Superintendent.
- Also practiced as a licensed psychologist for a number of years.

Education and Community Service

Superintendent Hardy Murphy earned his Ph.D. in Educational Psychology from the University of Texas at Austin, a Master's degree in Education from Southwest Texas State University and a Bachelor's degree in Sociology from New Mexico State University

Accomplishments

Accomplishments during my tenure with District 65 include noteworthy improvements in the areas of student achievement, staff management and leadership, fiscal responsibility, and the creation of innovative programs. Achievement demonstrates a multi-year trend of improvement in mathematics and reading for all student groups. Students who historically struggle in public education demonstrate higher levels of achievement, as do students who historically excel. Illustratively, standardized test scores have improved in reading and mathematics in all grade levels for student subgroups, e.g., African Americans, Hispanics, students with Individual Education Plans (IEP), Limited English Proficient (ELP) students, low-income students, etc. Under my leadership, the district and schools have been recognized at the state and national level for the implementation of Positive Behavioral Interventions and Supports (PBIS) as an initiative to improve student behavior and peer relationships. In this past year, an Alternative to Suspension program was successfully implemented to provide counseling for students and families to reduce student suspensions.

During Dr. Murphy's tenure, student achievement has significantly improved. The years of his Superintendency are characterized by the alignment of programs and strategies that reflect best practices in school reform with the district's planning documents. One of the recent major initiatives, a redesigned teacher appraisal system that incorporates student growth, is in its second year of implementation. This appraisal system that anticipated new directions in the field of education has been presented to groups at the local and national level. Evanston/Skokie Community Consolidated School District 65 is the first district in the state of Illinois to implement such a system.

Hertica Y. Martin
Biographical Statement

Hertica Martin received her Bachelor of Arts degree in Elementary Education from the College of the Virgin Islands, her Master of Arts in education degree from Seattle University in Curriculum & Instruction/Special Education, her principal's credentials from Pacific Lutheran University and an Ed.D degree from Fielding Graduate Institute in California.

Dr. Martin, a 1996 Milken Educator, is currently the Executive Director for Elementary and Secondary Education in Rochester Public Schools in Rochester, MN. She has been a public school educator for 30 years, serving as a regular education teacher in the Virgin Islands, a special education teacher in Tacoma Public Schools, a Principal in North Thurston Public Schools, Director of Curriculum Development and Implementation, and Director of Professional and Organization Development in Tacoma Public Schools. Under her leadership, her school received recognition for school restructuring, multicultural integration, inclusion service model for special needs students.

Dr. Martin believes that "our children are the *Diamonds of the World*; they are precious; they are durable; they are invaluable; they possess high character and outstanding qualities; they are the bonds that bind us to the next generation." Her goal as an educator is to not only attract good employees but also to motivate them to become aware that each child is indeed a diamond, precious gem, to be lifted and filled with knowledge, skills, and attitudes that the future will demand of them---true gems for us to adore and admire.

Douglas E. Wright
Biographical Statement

Dr. Douglas E. Wright is the Superintendent of Schools for the San Juan School District, Blanding, Utah. Prior to being named Superintendent in 2002, Dr Wright taught English, served as an Assistant Principal, and Director of Human Resources. He earned a BA in English from Utah State University and an MA in English from Fort Hays State. He received a Vice President's Fellowship for Research from Utah State University focusing his dissertation research on Early High School Graduation and the type of student who use it to accelerate their education. He was awarded an EdD in Curriculum and Instruction, with emphasis on Educational Leadership from Utah State University. He is endorsed in English as a Second Language and has worked at the forefront of distance education efforts within the State of Utah.

Appendix A

Summary of Public Comment

Mrs. Julie A. Worley, President of Tennesseans for Non-Violent School Discipline, forkidsake.org, and Volunteer with Parents and Teachers Against Violence in Education (PTAVE) sent multiple emails objecting to the use of corporal punishment in schools.

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Public Comment Letters

The Leadership Conference
on Civil and Human Rights

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March 11, 2011

Lenore Ostrowsky, Acting Chief, Public Affairs Unit
Office of the Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Dear Ms. Ostrowsky:

On behalf of the undersigned education and civil rights groups and advocates, we are pleased to offer the following statement to be included in the record of the U.S. Commission on Civil Rights' briefing, "Disparate Impact in School Discipline Policies," held on February 11, 2011.

Introduction

The use of exclusionary school discipline practices such as suspension, expulsion, and school-based referrals to law enforcement has reached an all-time high. And as the rate of discipline increases, racial, gender, and disability-related disparities only continue to widen. Maintaining a safe and healthy school environment is a critical responsibility of schools. Yet, relying on suspension, expulsion, and arrest has not been found to make schools safer, more orderly, or more productive. Instead, reliance on exclusionary discipline has been found to harm academic achievement and increase the likelihood that students will drop out of school. In this way, improper use of school discipline undermines the educational mission of our nation's schools.

Fortunately, there are proven and promising methods that improve academic achievement and school safety, while reducing both excessive discipline and its related disparities. Where schools have disparities and fail to implement these commonsense alternatives, they must be held accountable. Disparate impact analysis under Title VI of the Civil Rights Act of 1964 is a vital means to identifying and addressing disparities in school discipline and in other aspects of education more generally. By addressing these disparities and guiding school districts to use more effective and less discriminatory approaches, disparate impact analysis is essential to ensuring equitable opportunities for all students.

The Leadership Conference

Rising School Disciplinary Rates and Widening Disciplinary Disparities

Current disciplinary rates are the highest the U.S. Department of Education has ever recorded, and are roughly double those of its first disciplinary data collections in the 1970s.[1] Each year, over 100,000 U.S. public school students are expelled and over 3,000,000 are suspended from school at least once.[2] This rise in exclusionary discipline correlates to the proliferation of harsher disciplinary policies whose severity has little to no educational justification. As Advancement Project notes in *Test, Punish, and Pushout*: "In Akron, Ohio, a student can be expelled for being late to class, having cigarettes, or uttering profanity. In St. Louis, Missouri, under the 2008-09 Student Code of Conduct, tardiness could result in a 10-day suspension; 'disruption' or 'disrespect' could lead to a 10-day suspension and placement in an alternative school; and the potential consequences for 'physical displays of affection' and dress code violations include expulsion. In Houston, Texas, district policy permits the placement of a student in an alternative school for smoking, defiance of authority, fighting, 'disrespect,' use of profanity, or name-calling."[3]

As troubling as they may seem, these excessive examples only tell half of the story. Rising disciplinary rates and disparities are even more troubling given the wealth of research on the harms of exclusionary practices. The American Academy of Pediatrics found that suspension and expulsion jeopardize children's health and safety and may exacerbate academic failure.[4] The Centers for Disease Control found that out-of-school youth are more likely to be retained a grade, drop out of school, become teen parents, and engage in delinquent behavior.[5] Research shows that a first-time arrest doubles the odds a student will drop out.[6] Indeed, a 2003 study by Robert Balfanz found that school suspension is a top predictor for those students incarcerated by ninth grade.[7] The American Psychological Association (APA) found that, beyond impacting those excluded, zero tolerance policies fail to make schools safer and that schools with high suspension rates score worse on standardized tests.[8]

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[1] Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, *in*, NEW DIRECTIONS FOR YOUTH DEVELOPMENT (NO. 99; DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE) 9-15 (2003).
[2] U.S. Department of Education Office of Civil Rights, 2006 Data Collection (2008), at ocrdata.ed.gov/ocr2006rv30/ (charts on file with author).
[3] ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSHOUT: HOW "ZERO-TOLERANCE" AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE "SCHOOL-TO-PRISON PIPELINE" 14 (2010), *available at* http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf
[4] American Academy of Pediatrics Committee on School Health, *Policy Statement: Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206 (2003).
[5] Centers for Disease Control, *Health Risk Behaviors among Adolescents Who Do and Do Not Attend School – United States, 1992*, 43 MORBIDITY AND MORTALITY WEEKLY REPORT, Mar. 4, 1994 at 129.
[6] Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 24 JUSTICE QUARTERLY 462 (2006).
[7] Robert Balfanz, *High Poverty Secondary Schools and the Juvenile Justice System*, *in* DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE (Johanna Wald & Daniel Losen, eds., 2003).
[8] RUSSELL SKIBA ET AL, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? A REPORT BY THE AMERICAN PSCYHOLOGICAL ASSOCIATION TASK FORCE (2006).

And as disciplinary rates rise, racial disparities in discipline only continue to widen. According to the U.S. Department of Education, nationally, African American students are nearly 3 times as likely to be suspended and 3.5 times as likely to be expelled as their white peers.[9] Latino students are 1.5 times as likely to be suspended and twice as likely to be expelled as their white peers.[10] Moreover, racial and gender disciplinary disparities may be at their worst in the middle grades. A review of the disciplinary data of all middle schools participating in the U.S. Department of Education's Civil Rights Data Collection (CRDC), found that 28.3% of African American male students and 16.3% of Latino male students were suspended at least once, compared to only 10% of white male students, in the 2005-06 school year.[11] And 18% of African American female middle school students and 8.5% of Latina middle school students were suspended at least once, compared to only 3.9% of white female students, that same year.[12]

Disparities in discipline encompass all of our nation's historically disenfranchised youth. The American Psychological Association found that students with disabilities are disciplined at a rate roughly twice that of their non-disabled peers.[13] Among students with disabilities, those classified as emotionally disturbed were the most likely to receive exclusionary discipline. They are 7.5 times as likely to be suspended or expelled as other students receiving special education and 12 times as likely to be suspended or expelled as their non-disabled peers.[14] In December 2010, the New York Times reported that gay and lesbian students receive harsher punishment than their straight peers in school disciplinary matters as well.[15]

Addressing Disciplinary Disparities through Disparate Impact Analysis under Title VI

Applying disparate impact analysis to disciplinary disparities and addressing them through Title VI is essential for securing the implementation of fair and educationally sound disciplinary policies and practices for all students. Part of the Civil Rights Act of 1964, Title VI prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance, including public schools, and allows for both intentional and disparate impact analyses of discrimination. While there are many clear examples of intentional discrimination in school discipline,[16] relying on an intentional discrimination standard alone handcuffs enforcement

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[9] U.S. Department of Education Office of Civil Rights, 2006 Data Collection (2008), at ocrdata.ed.gov/ocr2006rv30/ (charts on file with author).

[10] *Id.*

[11] DANIEL LOSEN & RUSSELL SKIBA, SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS, 5 (September 2010), available at http://www.indiana.edu/~equity/docs/Losen_Skiba___Suspended_Education.pdf.

[12] *Id.*

[13] Russell Skiba, et al, Are Zero Tolerance Policies Effective in the Schools? A Report by the American Pscyhological Association Task Force, (2006), available at http://www.apa.org/pubs/info/reports/zero-tolerance.pdf.

[14] *Id.* (*citing* SID COOLEY, SUSPENSION/EXPULSION OF REGULAR AND SPECIAL EDUCATION STUDENTS IN KANSAS: A REPORT TO THE KANSAS STATE BOARD OF EDUCATION (1995)).

[15] Tara Parker-Pope, *Schools and Legal System Mistreat Gays, Study Says*, N.Y. TIMES (Dec. 6, 2010).

[16] Some have suggested that racial disparities in discipline result from African American students misbehaving more often. To the contrary, the research suggests that African American students are often punished more severely for the same offenses. The U.S. Department of Education Office for Civil Rights must continue to vigorously investigate such suspected "different treatment" in discipline. *See, e.g.,* Russell Skiba et

authorities from addressing the harmful, disturbing patterns described above. Disparate impact review of a district's policy or practice examines whether students from protected groups (race/ethnicity, gender, language minority status or disability status) are negatively impacted by the policy or practice in a substantial or significant manner. If the policy or practice in question is not educationally justifiable, or if the district has failed to pursue less discriminatory means to achieve the same educational goals, the disparities may be regarded as evidence of a violation of Title VI.

Given the academic and social harms of exclusionary discipline, it is quite difficult to find an educational justification for the frequent and disparate use of suspension, expulsion, and arrest to punish minor misbehavior. A wealth of evidence demonstrates that there are less discriminatory alternatives to over-reliance on exclusionary practices.[17] Such alternatives begin with better transparency on, and accountability for, disciplinary rates and disparities, and encompass numerous commonsense, positive, preventative techniques – such as conflict resolution, teacher conferences, peer mediation, and restorative justice – that improve school climate and keep students in school.

To reduce discipline rates and disparities, some schools are blending evidence-based practices like School-Wide Positive Behavior Supports (SWPBS) with focused efforts to address racial bias and improve culturally relevant pedagogy. SWPBS is an evidence-based, data-driven framework proven to reduce disciplinary incidents, increase a school's sense of safety, and support improved academic outcomes.[18] Over 9,000 U.S. schools are implementing SWPBS and saving countless instructional hours otherwise lost to school discipline. After being cited for racially disproportionate placements in special education, Eau Claire Public Schools in Wisconsin melded its SWPBS efforts with cultural diversity trainings and trainings in culturally responsive pedagogy. The district's disciplinary rates and racial disparities are down significantly.[19] Similarly successful efforts are underway in Illinois and Indiana.[20]

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al, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URBAN REVIEW 317 (2002).

[17] Some have argued that a Title VI investigation on disparate discipline would lead to the suspension of more white students. This perspective fails to appreciate that the remedy in a disparate impact challenge is to exchange an unsound or less effective policy with one that is more effective. Therefore, the replacement for a facially neutral discipline policy that was found to be too harsh in its impact on African American students could never be to suspend more white students, but rather, could include the implementation of practices like SWPBS that have been shown to reduce racial and disciplinary disparities and unnecessary disciplinary referrals, while supporting improvements in academic achievement and school safety.

[18] Robert Horner et al, *A Randomized, Wait-List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, JOURNAL OF POSITIVE BEHAVIOR INTERVENTIONS (forthcoming 2009); Jeffrey R. Sprague & Robert H. Horner, *School Wide Positive Behavioral Supports*, *in* THE HANDBOOK OF SCHOOL VIOLENCE AND SCHOOL SAFETY: FROM RESEARCH TO PRACTICE (Shane R. Jimerson & Michael J. Furlong, eds., 2007). For additional research on PBS, please visit www.pbis.org.

[19] Matthew Cregor, Kent Smith, and Milaney Leverson, Bridging the Racial Discipline Gap and Schoolwide PBS. Presentation at the 2010 PBIS National Forum in Chicago, IL (October, 2010) *at* http://www.pbis.org/presentations/chicago_forum_10.aspx

[20] Alton Middle School in Illinois combined similar practices along with restorative justice training to reduce its out-of-school suspension rate and its discipline and achievement disparities are narrowing. Illinois PBIS Network, *Illinois Schools Address Inequitable Discipline Practices,* UPDATE NEWSLETTER, Dec. 2009, at 1. Indiana

The Leadership Conference

Conclusion

Our nation's skyrocketing discipline rates and ever-widening disparities are doing indelible harm to the educational futures of hundreds of thousands of male and female students of color, students with disabilities, and LGBT students. Widespread reliance on exclusionary practices can only spur a permanent achievement gap in U.S. public schools and leave our nation further behind in an increasingly global economy. Limiting liability to an intentional discrimination standard fails to capture the multitude of harms that follow from the current reliance on exclusionary discipline. Applying disparate impact analysis to school discipline Title VI investigations is essential, not only to addressing disciplinary disparities, but also to securing the implementation of educationally sound practices that improve the learning environment for all.

Thank you for your entering our statement into the briefing record and for your consideration of these issues. If you need any additional information or have any questions, you can contact Matthew Cregor at the NAACP Legal Defense and Educational Fund, Inc. (mcregor@naacpldf.org) or Deborah J. Vagins at the ACLU Washington Legislative Office (dvagins@dcaclu.org).

Sincerely.

Advancement Project
American Association for Affirmative Action
American Association of People with Disabilities
American Civil Liberties Union (ACLU)
American Association of University Women (AAUW)
American Federation of Teachers
Asian Pacific American Labor Alliance, AFL-CIO
Bazelon Center for Mental Health Law
Dignity in Schools Campaign
Disability Rights Education and Defense Fund
Education Rights Center at Howard University School of Law
Gay, Lesbian and Straight Education Network
Human Rights Campaign
Labor Council for Latin American Advancement (LCLAA)
Lawyers' Committee for Civil Rights Under Law
Daniel J. Losen, Senior Education Law and Policy Associate, The Civil Rights Project at UCLA
Mexican American Legal Defense and Educational Fund (MALDEF)
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Center for Transgender Equality

University's Equity Project is piloting similar efforts toward Culturally Responsive PBIS in Indiana schools. *See* THE EQUITY PROJECT AT INDIANA UNIVERSITY at http://www.indiana.edu/~equity/index.php

The Leadership Conference

National Disability Rights Network
National Economic and Social Rights Initiative
National Organization for Women
National Women's Law Center
Gary Orfield, Co-Director, The Civil Rights Project at UCLA
Poverty & Race Research Action Council
Sikh American Legal Defense and Education Fund (SALDEF)
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center
The Children's Defense Fund
The Leadership Conference on Civil and Human Rights
The Woodhull Freedom Foundation

cc: Kim Tolhurst, Delegated the Authority of the Staff Director

Public Comment Letter from the Center for Equal Opportunity

February 14, 2002

Ms. Merrily Friedlander
Chief, Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Friedlander:

We are writing to submit comments on the Justice Department's republication of its policy guidance on Title VI's prohibition against national original discrimination as it affects limited English proficient persons.

The guidance is principally a discussion of the four-part balancing test that is set out for determining the required scope of accommodations for limited English proficient persons in federally funded programs (especially the Justice Department's). Our comments, however, take issue with the premise that such accommodations can or ought to be required under Title VI in the first place.

The validity of our comments is buttressed by a Supreme Court decision, *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001), that was handed down since the guidance first became effective on the last full day of the Clinton administration, January 19, 2001. The events of last September 11 also make this a good time to reassess the wisdom of executive-branch pronouncements that inevitably encourage the balkanization of the nation into ethnic enclaves.

Title VI of the Civil Rights Act of 1964 prohibits "discrimination under any program or activity receiving Federal financial assistance" against any person in the United States "on the ground of race, color, or national origin." The guidance acknowledges that "On its face, Title VI prohibits only intentional discrimination." *Sandoval* reaffirms the Supreme Court's earlier pronouncements that Title VI bans only disparate treatment, not actions that have only disproportionate effects on this or that racial or ethnic group.

There is obviously a problem, then, if a federal agency promulgates regulations purporting to implement Title VI but that ban not only disparate treatment (which Title VI is aimed at) but also actions with only disproportionate effects (which the Supreme Court has said that Title VI allows). The Court has long recognized that the difference between disparate treatment and disparate impact is one of kind, not just degree. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976). Since a federal agency cannot even ban intentional discrimination without statutory authority, see *NAACP v. FPC*, 425 U.S. 662 (1976), then it would certainly seem to lack authority to ban actions that are not intentionally discriminatory when they have no statutory authority to do so.

While the *Sandoval* decision did not invalidate Title VI disparate-impact regulations—the Court concluded that the issue had not been presented to it—five justices on the Court strongly hinted that they might vote to do so in a future case. The *Sandoval* majority noted, "We cannot help observing … how strange it is to say that disparate-impact regulations" properly implement Title VI when the statute "permits the very behavior that the regulations forbid." The Court also noted that Title VI "limits agencies to 'effectuat[ing] rights already created by" it. *See* 121 S. Ct. at 1516-17, 1519 n.6, 1521. *See also* Thomas A. Lambert, *The Case against Private Disparate Impact Suits*, 34 Ga. L. Rev. 1155, 1211-21 (2000) (discussing, inter alia, the Court's "general rule that agency regulations may not be more prescriptive than the enabling statutes under which they are promulgated," *id.* at 1214).

Since Congress cannot transform a disparate-treatment ban into a disparate-impact ban, *see City of Boerne v. Flores*, 521 U.S. 507 (1997), it seems fair to conclude that a federal agency also lacks this authority. The Court in *Boerne* said that Congress's font of authority, Section 5 of the Fourteenth Amendment, does not give it authority to make this fundamental transformation; *a fortiori*, an agency's font of authority, Title VI, does not give *it* authority to make this fundamental transformation. *See* Lambert, 34 Ga. L. Rev. at 1218-21.

Such a transformation is additionally problematic because a ban on disproportionate effects will in fact *encourage* race-consciousness and disparate treatment—the very behavior that Congress sought to ban. *See Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 652-53 (1989); *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 992-94 & n.2 (1988) (plurality opinion); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 449 (Blackmun, J., concurring in judgment).

Finally, to the extent that Title VI regulations are applied to states (as they frequently are), problems are raised under *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985), because Congress has not approved such incursions on state authority, let alone approved them "unequivocally." And were Congress to have given agencies authority to rewrite the statute actually passed, problems are raised under the nondelegation doctrine as well.

The justification for the disparate-impact approach in the republished guidance is in one sentence in Appendix B and its accompanying footnote. The sentence reads, "The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects." The footnote cites three Supreme Court decisions, but the authority provided by each is quite problematic.

Only two majority opinions are cited in footnote 5. The first, *Alexander v. Choate*, 469 U.S. 287, 293-94 (1985), was not a case about Title VI or its regulations; instead, it involved the Rehabilitation Act, which the Court was at pains to assert might well give agencies broader authority to promulgate disparate-impact regulations. The other majority opinion cited in footnote 5 is *Lau v. Nichols*, 414 U.S. 563, 568 (1974), but there is no discussion in this case at all of any regulation's validity and, in any event, when *Lau* was decided the Court had not yet determined that Title VI banned only disparate treatment, so

the divergence between the statute's ban and the regulations' could not have been authoritatively addressed.

The other case cited in footnote 5 (and discussed by the majority in *Alexander v. Choate*) is *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983). But to find in *Guardians* a bare majority for the proposition that agencies may promulgate disparate-impact regulations under Title VI, one must add the opinion by Justice White to Justice Marshall's dissent and to Justice Stevens' dissent (joined by Justices Brennan and Blackmun). Four members of the Court—Burger, Rehnquist, Powell, and O'Connor—explicitly rejected this view. Furthermore, Justice White actually voted to affirm the holding below denying the plaintiff compensatory damages, and also thought that the statute itself reaches disparate impact, so "[t]he question whether agency regulations under Title VI may forbid only disparate impact … thus remains open." Lambert, 34 Ga. L. Rev. at 1207; *see also id.* at 1203-25 (discussing why disparate-impact regulations are invalid under the Court's precedents).

In all events, whatever tenuous authority these three decisions might have had was snapped by last year's decision in *Sandoval* (and, earlier, by the Court's *City of Boerne* decision). Clearly there are at least five justices who view the validity of disparate-impact regulations promulgated under Title VI as very much an open question and, indeed, indicated rather clearly that the regulations rest on dubious authority.

And even if in some future case the Supreme Court rules that federal agencies have authority to write disparate-impact regulations, that would not mean that they *should* do so, especially given the many bad consequences that the disparate-impact approach has had for civil-rights law. Thus, the administration ought to be reassessing the use of the disparate-impact approach in all areas not required by statute, and that includes Executive Order 13166.

Indeed, the disparate-impact approach is especially untenable in the language area. It equates the use of English with national-origin discrimination, which is absurd. Ability to speak English and ethnicity are obviously distinct qualities. Some people of a particular national origin will not be able to speak English well, but others will. Conversely, some people *not* of that particular national origin will *also* not be able to speak English well. Thus, the courts have overwhelmingly rejected claims that employers with a preference or even a requirement for speaking English—practices that go much further than the mere failure to make the positive accommodations that the guidance would require—are discriminating on the basis of national origin. (These cases are collected and discussed in Barnaby Zall, *English in the Workplace* (2000) (published by the Center for Equal Opportunity).)

The Supreme Court's decision in *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973), is also instructive. It held there that it was not national origin discrimination when an employer refused to hire a noncitizen. The Court—per Justice Marshall, with Justice Douglas the only dissenter—endorsed an early EEOC opinion that "`national origin' refers to the country from which the individual or his forbears came …, not whether or not he is a United States citizen" (*id*. at 94). The Court had noted, "Certainly the plain language of the statute

supports [that] result" (*id*. at 88), and that Title VII's legislative history "suggest[ed] that the terms 'national origin' and 'ancestry' were considered synonymous" (*id*. at 89). What's more, the Court expressly rejected the EEOC's attempt to ban discrimination against foreigners by arguing that it would have a disparate impact on the basis of national origin (*id*. at 92-95). It would seem to follow that discrimination against all foreign languages doesn't violate the law; only discrimination against a language associated with a particular national origin.

While it is of course possible that a particular Title VI recipient might choose not to make its programs available in a language other than English as a way of discriminating against a particular ethnic group, it seems fair to assume that the overwhelming majority of Title VI recipients use only English not out of any illicit motive but simply because of ease, convenience, and thrift. Thus, it is much fairer for the government to limit itself to going after recipients it suspects of disparate treatment—especially since that is all the underlying statute prohibits. There is no reason to assume recipients who use only English are guilty until they can show their good faith and a business necessity for their policy. Nor is there any reason to assume that, unless the federal government is requiring recipients to make programs available in English, that they will not do so. Many recipients will indeed accommodate non-English-speakers; but the decision of whether and how to do so should be and is theirs to make, not the federal government's.

The last sentence in the republished guidance asserts that "DOJ's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences." No doubt. But Congress has not enacted an affirmative mandate that recipients "overcome[e] barriers resulting from language differences"; it has banned discrimination on the basis of ethnicity, which is very different.

Worse, the guidance endorses the notion that America ought to be a multilingual nation, and removes important incentives for all Americans to learn English. A common tongue becomes more, not less, important as our nation grows more multiracial and multiethnic. We must be able to communicate with one another, and it is very damaging if the federal government is sending the message that learning English is not necessary for being an American. In short, as dubious as Executive Order 13166 is as a matter of law, it is much worse as a matter of policy.

Executive Order 13166 ought to be revoked. Furthermore, all agency regulations and guidance promulgated under Title VI that rely on the disparate-impact approach should be revoked as well.

Sincerely,

Edward Blum
Director of Legal Affairs
American Civil Rights Institute

Roger Clegg
Vice President and General Counsel
Center for Equal Opportunity

Appendix B

USCCR Letter to Schools

Dear School District Administrator:

The U.S. Commission on Civil Rights is charged with the responsibility to study and collect information relating to discrimination or denial of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.[171]

In fulfillment of this statutory obligation, the Commission has recently undertaken to study the on-going Department of Education initiative to reduce racial disparities in school discipline. We hope that the Commission will be able to issue a report sometime in 2011.

Secretary of Education Arne Duncan explained the Department of Education initiative in a speech commemorating the 45th anniversary of the "Bloody Sunday" march in Selma, Alabama. In it, he noted that it is well-established that African-American students are disproportionately the subject of discipline in schools across the country. This includes expulsions, suspensions and sanctions of many varieties. He also specifically stated that Dr. Martin Luther King Jr. would have been "dismayed to learn of schools that seem to suspend and discipline only young African-American boys."

Assistant Secretary of Education for Civil Rights Russlynn Ali has said that she plans to initiate compliance reviews regarding this matter in 38 school districts in various parts of the country. Districts that are not in compliance with federal law must formally agree to correct unlawful practices, or else face litigation and/or the loss of federal funds.[172]

We seek to hear directly from school district administrators about the steps that their school districts have taken or plan to take to ensure that they are in compliance with federal law. In particular, how have or will your discipline policies change in response to concerns about racial disproportionalities in school discipline? Also of interest to us is how teachers are trained in implementing discipline policies. If you have not taken and do not plan to take any new steps, we would appreciate hearing from you about why you believe that no action is necessary.

If you have any opinions about the Department of Education's initiative—whether positive, negative or somewhere in between—we would appreciate hearing from you about those too.

On behalf of the Commission, I ask that you send us a letter containing your responses to these questions by December 15, 2010. A copy of this letter should be sent by e-mail to

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[171] 42 U.S.C. 1975(a).
[172] "Civil Rights in Education," *The New York Times*, March 15, 2010.

*****@usccr.gov or by fax to ********** by that date. As a result of post-9/11 federal procedures, our mail does not reach us until it has been irradiated for anthrax.

***

School District Response Letters

Office of the Director of Schools
101 South Main Street, Suite 501
Clinton, Tennessee 37716
Office: (865) 463-2800, x 2801
Fax: (865) 457-9157

Larry Foster, Director of Schools

December 15, 2010

To Whom It May Concern:

The Anderson County School System reviews all policies annually, including discipline which is addressed in our Code of Student Conduct. A team consisting of principals and directors meets to review and monitor the implementation of each aspect of the document. Also, our Parent Advisory Council participates in the review before our Board of Education approves the final procedures for the upcoming school year. Each month our board receives a disciplinary report with an annual report at the close of the school year.

Before the beginning of school, administrators are trained on policy and changes and how those changes will impact their schools. It is the administrator's responsibility to train teachers and monitor compliance in their building.

We have a very small minority population enrolled in the Anderson County district and our data does not indicate racial, gender, disability or any other disparities with discipline. However, in an effort to be transparent with discipline in our schools, future annual disciplinary reports will disaggregate data by school, gender, age, race and disability.

Any specific data is available upon request.

Regards,

Larry Foster

==========

Some people say education is expensive. We say it's priceless.

BALTIMORE CITY
PUBLIC SCHOOLS

January 5, 2011

Martin Dannenfelser
Staff Director
U.S. Commission on Civil Rights

Dear Mr. Dannenfelser:

I am writing in response to your letter regarding an ongoing Department of Education initiative to reduce racial disparities in school discipline. Baltimore City Public Schools (City Schools) has taken great steps to provide healthy learning environments, engaging instruction, respect among students and staff, and welcoming and safe buildings. We realize that every member of the school community, including students, parents, teachers, principals and community partners, plays a role in ensuring that federal law is followed and that our discipline policies are fair to all students.

To guide staff in this effort City Schools distributes a code of conduct each school year. This year's code, *Creating Great Schools Communities,* is a collaboration that reflects ideas and values of students, parents, teachers and the City Schools community. The code clearly describes expectations that all stakeholders must honor to ensure that our students engage in behavior that supports success in school and in society. Specifically, the code describes behavioral expectations in the school environn1ent. The code includes student principles, student rights and responsibilities, staff and principal rights and responsibilities, central office rights and responsibilities, and parent/guardian rights and responsibilities. It also provides intervention strategies and responses that are appropriate and acceptable, thereby guaranteeing that all students are disciplined equally and that no students are penalized based on race.

Teachers and other school-based staff receive intensive year-round professional development on implementation of the code of conduct. Schools are encouraged to establish clear behavioral expectations for students and to ensure that the code is always used fairly and without discrimination based on race, ethnicity, national origin, gender, sexual orientation, 504 plans or religion. Additionally, the Office of Suspension Services consistently monitors suspensions and provides additional training for schools when support is needed. In particular, a conscious e!Iort is made to provide additional support to schools for disciplining students with disabilities.

For the past several years City Schools has been diligent in ensuring that discipline procedures are fair and student-focused. Teachers are encouraged to teach correct behavior to students and reward good and non-disruptive behavior. City Schools is totally committed to providing school environments in which students feel safe, welcome and are able to succeed.

Sincerely,

Andrés A. Alonso, Ed.D.
Chief Executive Officer

#3672

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GREAT SCHOOLS

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Berkeley County School District

BERKELEY COUNTY SCHOOL DISTRICT

Dr. Anthony Parker, Superintendent

December 13, 2010

Martin Dannenfelser
Staff Director
U.S. Commission on Civil Rights

Dear Mr. Dannenfelser:

The following information is in response to the request from the U.S. Commission on Civil Rights. This letter outlines the Berkeley County School District's awareness of the matter of reducing racial disparities in regards to school discipline.

The focus of our school district is on continuous improvement and pro-active interventions for our students. This improvement is primarily addressed in our monthly staff development workshops and through our Professional Learning Communities. In the area of school discipline, we have emphasized multiple strategies.

A major component of our staff development plan is the implementation of Positive Behavioral Interventions and Supports (PBIS). This program gives administrators and teachers strategies for classroom management, student interventions and support for all students. This program also has a strong parental involvement component. PBIS is in year four of training for our district through our staff development and is ongoing.

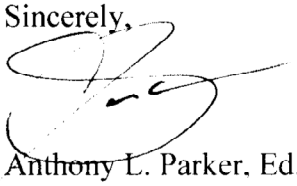
Other strategies include the study of Ruby Payne's book Framework for Understanding Poverty and Robert Marzano's book Classroom Management That Works. To understand the role of poverty in regards to student learning and discipline, teachers, staff members and administrators are learning new skills to implement strategies to reduce discipline. Resources from these proven best practices are especially relevant given the current economic times of our state.

Currently, our high schools have joined Josten's Renaissance Recognition Program. The Renaissance rewards students for positive behavior, good grades and attendance. A key component of the program includes strategies to include at-risk students that demonstrate improvement in the above mentioned areas. Our schools have been recognized on the state and national level for outstanding Renaissance Programs.

229 E. Main Street, P.O. Box 608 | Moncks Corner, South Carolina 29461 | 843-899-8601 | Fax 843-899-8780

These areas of focus play a major role in the decline of discipline incidents since implementation and we expect continued improvement not only in behavior but student performance as well.

Sincerely,



Anthony L. Parker, Ed. D.
Superintendent

229 E. Main Street, P.O. Box 608 | Moncks Corner, South Carolina 29461 | 843-899-8601 | Fax 843-899-8780

CHARLES COUNTY PUBLIC SCHOOLS

JAMES E. RICHMOND
Superintendent of Schools

RONALD G. CUNNINGHAM
Deputy Superintendent of Schools

December 14, 2010

Mr. Martin Dannenfelser, Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Dannenfelser:

I am in receipt of your request that school districts respond as to their compliance with federal law concerning discrimination. Charles County Public Schools does not discriminate on the basis of race, color, religion, national origin, sex, age or disability in its programs, activities or employment practices, or in the administration of justice.

Charles County Public Schools has not changed discipline policies or practices in response to concerns about racial disproportionalities in school discipline. Charles County Public Schools complies with federal and state laws and follows procedures outlined by the Maryland State Department of Education in its discipline policies and practices. Administrators and staff in Charles County Public Schools periodically review data on discipline trends in schools including offenses, locations of offenses, and sex and race of the students being disciplined. Student Support Teams can provide interventions, including education and pro-social behavioral support to reduce these trends. Schools also use a matrix of offenses, which in part dictates the nature of the consequence applied to various infractions. Many schools in Charles County employ Positive Behavioral Interventions and Supports, which uses positive practices to change school climate and improve student behavior.

All faculty and staff in Charles County Public Schools are required to take a cultural competence course. This allows staff to determine how to achieve equity on a day to day basis in the school and challenges staff to look at minority student data and present practices.

Efforts to reduce disproportionality in school discipline include, but are not limited to, these ongoing efforts to ensure behavior is appropriate for the educational setting. Please contact me if you require further information.

Sincerely,

James E. Richmond
Superintendent of Schools

JER:PV:cm
H:\FORMS\Letterhead.doc

JAMES H. CORNETTE
Assistant in School Administration and Operations

PATTY L. DORSEY
Assistant in School Administration and Operations

PATRICIA VAIRA, Ph.D., NCSP
Director of Student Services

School Administration and Operations: 301-934-7364 or 301-934-7316
Student Services: 301-392-7510 or 301-934-7326
System Hotline / 24 Hour Recorded Information: 301-934-7410
System Website: www.ccboe.com

Dorchester School District Two
JOSEPH R. PYE
Superintendent
102 GREEN WAVE BOULEVARD • SUMMERVILLE, SC 29486 • (843) 873-2403 • FAX (843) 873-4053

December 13, 2010

Mr. Martin Dannenfelser
US Commission on Civil Rights
Washington DC 20425

RE: Your request of November 8, 2010

Dear Mr. Dannenfelser:

Included with this fax, please find our response concerning steps that Dorchester School District Two has taken to ensure that we are in compliance with the federal laws referred to in your letter of November 8.

If we can provide any further information, please do not hesitate to contact our office.

Sincerely,

Joseph R. Pye
Superintendent

United States Commission on Civil Rights

Response Due: December 15, 2010

1. **What steps has the school district taken or plans to take to ensure that the district is in compliance with federal law relating to discrimination?**

Dorchester School District Two prides itself with rigorous academics and a safe orderly environment. The district strives to be proactive in ensuring equity, fairness and due process for all students. The district receives correspondence, advice and guidance from legal advisors, the South Carolina School Board Association as well as the National School Board Association pertaining to policies and updates.

Dorchester School District Two has enacted the following polices to ensure that the district is in compliance with federal law related to discrimination, race –and-ethnicity-conscious practices:

Policy Number	Title of Policy	Last Revised Date
AC	Nondiscrimination/Equal Opportunity	August 2001
ACG	Resolution of Discrimination Complaints	January 2002
BDF	Advisory Committees	September 2001
GBA	Open Hiring/Equal Employment Opportunity And Affirmative Action	June 2000
GCE	Professional Staff Recruitment	July 2002
GCEC	Posting and Advertising of Professional Staff Vacancies	October 2000
GCF	Professional Staff Hiring	March 2006
GDEA	Posting and Advertising of Support Staff Positions	October 2000
GDF	Support Staff Hiring	March 2006
IHA	Basic Instructional Program	June 2001
IHAK	Character Education	November 2005
IIA	Performance Grouping for Instruction	December 2001
JA	Student Policies Goals/Priority Objectives	October 2000
JB	Equal Educational Opportunity/Nondiscrimination	July 2006
JFAA	Admission of Resident Students	November 2000
JFAB	Nonresident Students	December 2001
JI	Student Rights and Responsibilities	October 2000
JIB	Student Involvement in Decision Making	October 2000
JIC	Student Conduct	February 2004
JICDA	Code of Conduct	May 2001
JII	Student Grievances	February 2001
JJA	Student Organizations	February 2001
JJAB	Limited Open/Closed Forum	May 2001
JK	Student Discipline	February 2001
JKA	Corporal Punishment	May 2001
JKC	Probation of Students	February 2001
JKD	Suspension of Students	February 2001
JKE	Expulsion of Students	May 2001

2. **How have or will the district's discipline policies and procedures change in response to concerns about racial disproportionalities in school discipline?**

   - The School Board regularly reviews, evaluates and refines all policies particularly in response to community concerns.
   - Schools review discipline data on a monthly basis to analyze trends and identify focus areas to address.
   - The district reviews semi-annually all discipline referrals to the District Hearing Officer monitoring age, gender, ethnicity, race, socio-economic status, reading ability, and length of time in school district.
   - The superintendent has established a Discipline Task Force to examine and ensure that policies and procedures are equitable for all students and lead to reduction in racial disparities in school discipline particularly among African American males. Recommendations will be shared with the district administration and School Board to be considered in policy changes and/or staff development needs.
   - A mentoring program at Summerville Elementary School supported by the Black Business Owners and Managers of America along with community and church members will begin January 2011.
   - The superintendent has established a Community Liaison to focus on diversity.
   - The district has established a Pyramid of Interventions to include both academic and behavioral screenings and strategies for all students as a district initiative. The district has hired Academic and Behavioral Specialists to implement the Pyramid of Interventions and establish a system of support for all students.

3. **How teachers are trained in implementing discipline policies and procedures?**
   - The superintendent has received diversity training at the Riley Institute through Furman University and as a result has made diversity a priority.
   - The district and schools have regularly scheduled meetings with each school administration, PTA President and School Improvement Council Chairman to encourage diverse parent involvement and empowerment in school decision making.
   - Staff development is conducted at the beginning of the school year to discuss discipline policies, revisions to policies, and procedures at all school sites.
   - Through the use of whole faculty discussions, faculty and staff discuss what should or should not constitute a discipline referral.
   - Teachers are coached on how to de-escalate a defiant student and to know the difference in major and minor offenses along with how to word disciplinary referrals.

- Teachers are coached on how to communicate and conference with parents both in person and via phone.
- New teachers meet frequently with their school mentors and discuss classroom management and discipline.
- The administrative team and the Positive Behavior Interventions and Supports (PBIS) team conduct an initial training for school personnel.
- The district and school faculty handbooks are reviewed and updated annually to reflect changes in discipline procedures.
- PBIS team presents discipline data monthly at faculty meetings.
- PBIS team assists administration in developing trainings, implementation, and communication to families.
- School administrators conduct quarterly meetings with each grade level to present discipline data and set goals.
- Faculty and staff are given a copy of the Dorchester School District Two Student Handbook, which contains district discipline policies.
- Each teacher receives a matrix of rules and expectations for areas of the school and bus. They are provided a script of one or two sentences for each area to ensure the language is consistent school wide.
- Faculty meetings include a focus on instruction, behavior and classroom management.
- Schools meet by grade level to determine developmentally appropriate behavior expectations for instructional and non-instructional times of the school day.
- Schools and district support staff meet regularly to discuss students who are repeat offenders to discuss interventions and a student action plan.
- The following list of book studies have been held in our schools:
    - A Framework for Understanding Poverty
    - Do you Know Me Well Enough to Teach Me?
    - What Great Teachers Do Differently
    - Teaching With Love and Logic
    - Strategies That Work
    - Have You Filled a Bucket Today?
    - How Full is Your Bucket?
- The following list of workshops have been held in our schools:
    - Movie: Waiting for Superman
    - Behavior Strategies for Difficult Students

- School wide Positive Behavior Interventions System (PBIS): Positive "Consequences" - Classroom Consequences That Are Consistent with PBIS
- An Alternate Route: School-Wide Positive Behavioral Interventions and Supports on the Bus
- Building Effective Classrooms
- Positive Behavior Supports and Functional Behavior Assessment/Behavior Improvement Plans
- What You Say Matters...Fine Tuning Acknowledgements
- The Big Six (this is regarding the 6 critical elements of PBIS)
- Managing Behavior in the Classroom
- Check In- Check Out: An Intervention for at-risk Students
- Ruby Payne's "A Framework for Understanding Poverty"

- The following list of workshops have been held in the district for administrators:
  - Professional Learning Community: Alternatives to School Removal
  - Determining Manifestation
  - Seclusion/Restraint

Evanston/Skokie
1500 McDaniel Avenue
School District 65

Office of the Superintendent
Evanston, IL 60201-3976
www.district65.net
847 859-8000

December 10, 2010

Mr. Martin Dannenfelser
Ms. Lenore Ostrowsky
U.S. Commission on Civil Rights
Washington, D.C. 020425

Dear Mr. Dannenfelser and Ms. Ostrowsky:

This letter is in response to your compliance inquiry for school district administrators regarding disproportionality in school district student disciplinary actions. We keep all policies in compliance with Federal, State and local laws, and aligned with the Illinois School Code through administrative monitoring and Board policy committee oversight. They are reviewed on a recurring basis, and meet quarterly with the Board Policy Committee to implement both required and suggested changes. This review process promotes the opportunity to ensure that discipline policies are equitable across racial, gender, disability and sexual orientation classifications, and provides opportunities to develop interventions as necessary.

District 65 offers programs and training opportunities for administrators and teachers in the implementation of discipline policies. We have had great success with our Positive Behavioral Interventions System (PBIS) discipline management system. This programmatic initiative enables us to monitor and address school discipline in an equitable data-based manner. In addition to the database maintained in the PBIS system, we maintain and review disciplinary data by race and cohorts for Board of Education reports and state reporting. PBIS effectively address disparity in disciplinary suspensions. We offer family and/or individual counseling by school social workers as an alternative to out of school suspensions.

Additionally, our district has provided sensitivity training on both districtwide and school level basis through outside agencies and the social work staff. For example, early next year we are providing teachers and staff a professional development opportunity entitled, "Mosaic Experience: A Thoughtful Conversation about Cultural Diversity in the Classroom."

Please contact me should you require additional information.

Sincerely,

Hardy Murphy, Ph.D.

Superintendent of Schools

HAMILTON COUNTY DEPARTMENT OF EDUCATION
3074 Hickory Valley Road
Chattanooga, Tennessee 37421
423.209.8600 • Fax 423.209.8601

Jim Scales, Ph.D.
Superintendent

December 13, 2010

Lenore Ostrowsky, Attorney Advisor
Office of the Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

RE: Reduction of Racial Disparities in School Discipline

Dear Attorney Ostrowsky:

In response to Martin Dannenfelser's letter dated November 8, 2010, I am pleased to share information and initiatives that the Hamilton County Department of Education (HCDE) is using to deter negative student behaviors and foster a healthier school climate across the system.

School-Wide Positive Behavior Support is a system approach of adopting and implementing a continuum of evidence-based interventions to achieve positive academic and behavioral outcomes for all of our students. By teaching, reteaching and reinforcing appropriate behaviors, this method is a way of applying equal sanctions, and it also makes provisions for training teachers on behavioral issues. We have seen a noticeable improvement in student behavior as measured by a decrease in office disciplinary referrals.

HCDE has also established the Olweus Bullying Prevention Strategy throughout the system which has a goal of providing a comprehensive approach to prevent and reduce antisocial bullying behaviors. By being proactive in addressing such behaviors, school personnel are diminishing disciplinary action required for these types of negative offenses.

Our Exceptional Education department has provided training to all principals, assistant principals and Exceptional Education case managers on 10-day suspension regulations for Students With Disabilities (SWD) for a school year. In addition, they have provided alternatives to suspension that include:

- Behavior Support Teams
- Nonviolent Crisis Intervention training – CPI Training

- Training on completion of Functional Behavior Assessments and development of Behavior Improvement Plans
- Intensive behavior support classrooms for students with Autism and mental health conditions
- Collaboration and support to 504 teams
- Training for Individual Educational Program teams in manifestation determinations
- In-School Suspension and Evening School programs
- Parent training to improve behavior at home and maintain appropriate behaviors in school and in the community

I have attached a three-year view of Hamilton County's discipline count which reflects a reduction in all disciplinary actions that remove students from the main instructional stream. While we are pleased to see this progress, we do realize that we must be vigilant in applying interventions and in training our teachers how to react in order to diffuse negative behaviors. Teachers receive training from their school administrators or from consultants specializing in student behavior as part of their professional development activities. Our Students Taking A Right Stand (STARS) director provides training to teachers in the Olweus Bullying Prevention Strategy and School-Wide Positive Behavior Support initiatives.

Our school system also receives support from various community and religious organizations to address the prevention of gang activity and criminal offenses.

Society brings many issues into our schools that must be handled in order to get our students to a place where they can focus on learning. We believe addressing preventive measures and reinforcing positive behavior in order to prevent negative student behavior is the best way to avoid racial disparity in applying disciplinary measures. As you know, we also must adhere to federal guidelines regarding discipline of students with disabilities.

I am enclosing Hamilton County Board policies which deal with Tennessee's Zero Tolerance Code of Conduct and with student goals which address applying sanctions fairly and in a constructive manner.

I hope this information is helpful as you study reducing racial disparity in school disciplinary measures. Please let me know if you have any questions.

Sincerely,

Jim Scales, Ph.D.
Superintendent

Hamilton County Department of Education
Behavior Report for 2008 to 2010

		Year														
		2007-2008					2008-2009					2009-2010				
		Discipline Description					Discipline Description					Discipline Description				
		Suspension	In-School Suspension	Remanded	Expulsion	Total	Suspension	In-School Suspension	Remanded	Expulsion	Total	Suspension	In-School Suspension	Remanded	Expulsion	Total
		Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count
Grade	Total	8503	8366	1181	506	18556	7940	7727	1429	505	17601	6144	4607	753	421	11925
	6th	1264	2056	95	41	3456	1194	1994	125	54	3367	969	1253	63	60	2345
	7th	1719	3057	162	80	5018	1302	2130	124	73	3629	1064	1151	78	66	2359
	8th	1526	2210	153	133	4022	1383	1903	180	103	3569	1065	872	103	91	2131
	9th	1918	517	348	114	2897	1863	737	407	148	3155	1360	417	188	87	2052
	10th	1103	255	226	78	1662	1093	493	336	60	1982	847	505	199	65	1616
	11th	596	160	121	41	918	678	272	136	43	1129	499	237	73	38	847
	12th	377	111	76	19	583	427	198	121	24	770	340	172	49	14	575
Gender	Female	3007	2767	382	144	6300	2588	2464	423	147	5622	1936	1513	236	110	3795
	Male	5496	5599	799	362	12256	5352	5263	1006	358	11979	4208	3094	517	311	8130
Ethnicity	Asian	28	19	0	3	50	14	16	1	1	32	13	10	1	0	24
	African-American	5222	4956	917	278	11373	4742	5311	1173	350	11576	3611	2698	597	274	7180
	Hispanic	177	150	15	13	355	190	94	17	15	316	168	119	13	14	314
	American Indian	6	15	1	0	22	7	8	0	0	15	8	4	0	0	12
	Pacific Islander	2	1	1	0	4	1	3	0	0	4	1	0	0	0	1
	White	3067	3225	247	212	6751	2984	2295	238	139	5656	2343	1776	142	133	4394
Income Status	Non ED	1790	1546	155	129	3620	1625	1214	168	81	3088	1378	1004	116	95	2593
	ED	6713	6820	1026	377	14936	6315	6513	1261	424	14513	4766	3603	637	326	9332

Source: SASI ADIS Files

HAMILTON COUNTY DEPARTMENT OF EDUCATION
3074 Hickory Valley Road
Chattanooga, Tennessee 37421
423/209-8400

PARENTAL/STUDENT NOTIFICATION FORM

Parents/guardians are requested to sign and date this form. A signature acknowledges receipt of the Hamilton County Schools' Student Code of Acceptable Behavior and Discipline pamphlet.

If parents/guardians have questions regarding the content of this pamphlet, please contact the school that your student(s) attends.

Each school administration shall ensure that the contents are understood by students attending their school.

Students in grades six (6) through twelve (12) shall sign this form. A signature acknowledges that the student understands the content of the code.

Students shall return this notification form to their school.

Date _____ Signature of Parent or Guardian _____

Date _____ Signature of Student (Grades 6-12) _____

Print Name of Student _____

HAMILTON COUNTY DEPARTMENT OF EDUCATION
3074 Hickory Valley Road
Chattanooga, Tennessee 37421
423/209-8400

Dear Parents and Students:

As Superintendent of the Hamilton County Schools, I believe a safe and secure learning environment is important for our students, parents, teachers and staff in the school system. Student achievement is our primary focus, and it is my expectation that our classrooms will be places where students can learn without disruption.

In order to maintain a climate conducive to learning, guidelines for student behavior are outlined in this Student Code of Acceptable Behavior and Discipline. The Hamilton County Board of Education supports these measures to promote a safe environment where effective instruction can take place.

All of us have a responsibility to follow these rules and show respect to our peers, teachers and those in authority. I ask that parents read this code, discuss it with your child, sign the attached Parental /Student Notification Form, and return it to your child's school. Additionally, students in grades 6-12 are also asked to read the code and sign the attached form before returning it to your school.

Together, we can work to provide an environment where children feel safe and where learning takes place. We solicit your support of our principals and teachers as we continue our journey toward excellence.

Thank you for your support of this effort to keep our schools safe.

Sincerely,

Jim Scales, Ph.D.
Superintendent

Rev. 7/10

The following are summary descriptions regarding the Code of Conduct, zero tolerance offenses, major and other offenses, and suspensions and appeals.

CODE OF CONDUCT

Hamilton County students are expected to behave in a way that does not interrupt the education of other students, or endanger other students or themselves. Violence, bullying, non-attendance or tardiness, substance abuse, protests, and other unacceptable behavior are not permitted.

The Code is designed to create a safe and secure environment on school campuses, school buses, and at school functions. The code's objective is to establish an environment which encourages student interaction and school pride. It will support and recognize positive behavior.

ZERO TOLERANCE OFFENSES

According to state and federal law, a student who commits a zero tolerance offense is expelled for one calendar year, unless modified by the Superintendent. This includes offenses on school properties, including buses and at school-sponsored activities. All violations will be reported to local law enforcement officials.

The following are zero tolerance offenses:

- possession of a firearm, explosive, poison gas device, bomb or similar device.
- illegal possession of a controlled substance or drug.
- striking a teacher, principal, administrator or any other employee of the Hamilton County Department of Education, or an SRO.

The following offenses may result in at least a calendar year suspension:

- possession of a knife or any device capable of inflicting injury to another individual.
- possessing, transfering or receiving drug paraphernalia, non-prescription drugs or "look-alike" drugs.

MAJOR OFFENSES
(resulting in short-term suspension or possible expulsion)

Alcoholic Beverages
Selling of alcoholic beverages.
Incident will be reported to local law enforcement officials.
First offense – suspension of up to 85 days.
Second offense – may result in expulsion.

Possession and/or use of alcoholic beverages.
Incident may not be reported to law officials.
First offense suspension of at least 20 days.
Second offense – suspension of 85 days or more.
Third offense – expulsion.

Arson
Setting fire to or burning, or initiating the burning of any school property.

Aggravated Assault/Battery
Physically attacking another person which results in bodily injury.

Fighting
Injuring or offensively touching another student during a fight.

Gang Activity
Gang-related activity at school or any school function.

Interference With Government Operations
Spreading false rumors of a bombing, fire or another emergency. This includes bomb threats.

Robbery
Taking another person's possessions or money by force or fear.

Sexual Offenses
Conduct of a sexual or indecent nature towards another person that is accompanied by actual physical force.

Threats
Threatening a person with the intent to take their money or property, or causing them to do anything against their will. Any threat to do harm to self or others will be taken seriously.

Trespassing
Unlawfully entering a public school, grounds, or school bus.

Vandalism
Damaging or defacing any property belonging to the state, county, city, or to another person on school grounds or at a school function.

There are other state and federal violations that have not been listed. Violations of all laws will be reported to law enforcement officials when necessary. Appropriate discipline will be initiated by the school.

OTHER OFFENSES
(resulting in short or long-term suspension)

Bullying/Harassment/Intimidation (defined as a repeated, intentional, and hurtful behavior directed to another placing a student in reasonable fear and causing a hostile educational environment) is a violation of HCDE School Board Policy. Claims of bullying/intimidation/harassment are to be directed to the building administrator for investigation without the fear of reprisal or retaliation. False accusations as a means of reprisal or retaliation will be disciplined in accordance with district policies, procedures, and agreements.

Harassment (Sexual, Racial, Ethnic, Religious)
Words, gestures, threats, or any other conduct which interfere with another student's educational environment or place another student in fear of his/her safety.

Pagers & Cellular Phones
Unauthorized use of a pager or cellular phone while on school property, including buses, or at a school-sponsored event, without the permission of the school principal or his/her designee.

Stealing
Taking another person's property without their permission or knowledge.

Parental Rights Under "No Child Left Behind"

- Learn how well your child's school is performing.
- Transfer your child if it's not meeting specific criteria by reviewing annual district and state report cards on school performance.
- Learn about the school safety record; the school prevention plans including policies for disciplining students, security procedures, student codes of conduct, and the school crisis management plan.
- Transfer your child to a safer public school in your district if your child attends a school that is identified as persistently dangerous or if your child becomes a victim of a violent crime while on school property.

MISCONDUCT
(resulting in discipline at the discretion of the principal)

Attendance
Skipping school or leaving school without permission or tardiness.

Parents and guardians are responsible for their students' attendance. There are penalties for parents and guardians who break this law.

Tobacco Use on School Property
Student will be cited to Juvenile Court.

Indecent Language

Disrespect To Teachers/Administrators

Failure To Serve Detention Or Attend Saturday School

Forging An Official Note To/From School

Improper Conduct

Improper Dress, Cleanliness and Grooming
Dress or grooming that is or could be disruptive of others' education shall not be permitted. Hats or other types of headwear are not permitted without the principal's approval. Students are expected to follow the dress or uniform code of the school.

Littering On Campus

Off-Campus Conduct
A student may be suspended for conduct away from school, if the conduct could disrupt the education process at his/her school.

CORPORAL PUNISHMENT

Corporal punishment is defined as physical discipline. Corporal punishment must be approved as policy for the school by the principal, and students must be notified what misconduct could result in this type of discipline. It is not intended to be used as a first method of discipline, but after several other methods have been used to modify a student's behavior. Corporal punishment must be witnessed by a second school official or teacher. A parent can then request a written explanation of the reasons for the punishment and the name of the witness.

SEARCHES

Students have the right to be safe and secure at school and pursue their education in a disciplined environment conducive to learning. Therefore, students and all their property will be subject to random administrative searches. Refusal to cooperate with a reasonable request may result in disciplinary action.

LOCKER USE

The school has the authority and control over the locker and may gain access to it at any time. Any lock to which the school does not have the key or combination will be removed by the school.

STUDENT VEHICLES ON SCHOOL PROPERTY

Students of driving age are permitted to operate their own vehicles on campus if they have proof of liability insurance coverage and pay required parking fees. However, a student shall permanently lose the privilege to have a vehicle on school grounds if the student is involved in any manner with drugs or drug paraphernalia, other controlled substances including alcohol or possession of a weapon. A principal may prohibit a student from driving a vehicle on school property for a specific period of time for violation(s) of any school regulations. Vehicles parked on school property are subject to search. Parking fees will not be refunded at any time. The school system is not liable for any loss or damage.

SCHOOL BUS TRANSPORTATION

By law, school bus transportation is a privilege and not a right. A student shall be prevented from using school bus transportation if his/her behavior physically endangers other riders, causes problems on the school bus or when he/she breaks state and/or local rules and regulations pertaining to school bus transportation.

SUSPENSION PROCEDURES

Short-Term Suspension Of Ten Days Or Less

The student will be informed of the reason for suspension prior to serving the suspension. If the student denies the charge, he/she will be given an informal hearing where an explanation of the evidence is given and the student is afforded an opportunity to respond. If a student's presence in the school is posing any danger to other students or school officials, or a continual interruption of student education, the student will be removed from the school immediately. In this case, the notice, information hearing, and parent notification will follow as soon as possible. The matter may be referred to local law enforcement officials.

When a student is suspended, the principal will notify the parent or guardian and the Superintendent of the suspension, cause and condition for readmission within 24 hours.

If the suspension is more than five days, the principal will develop a behavior modification plan which will be reviewed by the Superintendent upon request.

A short-term suspension of ten days or less cannot be appealed beyond the school level.

Long-Term Suspension and Expulsion

School administrators will notify the parent or guardian and the Superintendent of a student suspension of more than ten days, the cause and conditions for readmission within 24 hours. The administrator will give written notice to the parent or guardian of the suspension and their rights to appeal. The notice will be sent by mail or be hand delivered.

The administrator will develop a behavior modification plan for the student, which will be reviewed by the Superintendent upon request.

APPEALS PROCEDURE
(for long-term suspension or expulsion)

Appeals will be filed with the administrator who suspended the student, orally or in writing, within five calendar days of the notice.

The first level of appeals for a non-zero tolerance offense is to a committee of three school administrators. The hearing will be held not later than ten school days after the first day of the suspension. A school representative and the parent/student will be allowed to present the case to the committee regarding the suspension. Either party may have an attorney present as a silent witness.

The committee may:

1. decide in favor of the school administrator
2. override the suspension
3. assign the student to an alternative program
4. suspend the student for a specified length of time

The decision may be appealed to the second level, which is the Superintendent or his/her designee, orally or in writing within five calendar days. The Superintendent or his/her designee has the right to any of the same four options as the appeals committee. The first level appeal for a zero-tolerance offense is the Superintendent or his designee.

The decision may be appealed to the third level, which is the Board of Education. The Superintendent must be notified in writing within five calendar days. The Board may act upon a review of the record or may conduct a hearing.

Only the Superintendent can modify a suspension for a zero-tolerance offense.

NOTE: This code will be implemented in compliance with the requirements of applicable Federal and State statutes and accompanying regulations governing the appropriate discipline of students suspected or identified as having a disability.

It is the policy of the Hamilton County Board of Education not to discriminate on the basis of sex, race, national origin, creed, religion, age, marital status, or disability in its educational programs, activities, or employment policies.

A complaint may be filed by anyone who has a grievance regarding discrimination as set forth in one of the following statutes: (1) The Rehabilitation Act of 1972, Section 504; (2) Title VI of the Civil Rights Act of 1964; or (3) Title IX of the Educational Amendments of 1972. Sheryl Randolph is the Title VI and Title IX coordinator for Hamilton County Schools. Mrs. Randolph may be reached by calling (423) 209-8654.

HAMILTON COUNTY TENNESSEE SCHOOLS

HAMILTON COUNTY SCHOOLS

CODE OF ACCEPTABLE BEHAVIOR AND DISCIPLINE

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Code of Behavior and Discipline**	**6.300**	
		Rescinds:	Issued:

The director of schools shall be responsible for the overall implementation and supervision of the Board's Code of Behavior and Discipline and shall ensure that students at all schools are subject to a uniform and fair application of the Code.

The principal of each school shall be responsible for implementation and administration in his/her school and shall apply the Code uniformly and fairly to each student at the school without partiality and discrimination.

The Board delegates to the director of schools the responsibility of developing more specific codes of behavior and discipline which are appropriate for each level of school, namely, elementary, middle, junior high and senior high. The development of each code shall involve principals and faculty members of each level of school and shall be consistent with the content of the Board's Code.

A copy of the Code shall be posted at each school and guidance counselors shall be supplied copies for discussion with students. The code shall be referenced in all school handbooks. All teachers, administrative staff and parents shall be provided copies of the Code. [1]

Legal Reference:

1. Student and Employee Safe Environment Act of 1996 ; TCA49-6-4011, et. al.

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Rights and Responsibilities**	**6.301**	
		Rescinds:	Issued:

The Board expects all school staff, students and parents to assume the responsibility for appropriate behaviors in the school.

Each student has the right to:

1. Have the opportunity for a free education in the most appropriate learning environment;
2. Be secure in his/her person, papers and effects against unreasonable searches and seizure;
3. Expect that the school will be a safe place;
4. Have an appropriate environment conducive to learning;
5. Not be discriminated against on the basis of sex, race, color, creed, religion, national origin or disabilities [1]; and
6. Be fully informed of school rules and regulations.

Each student has the responsibility to: [2]

1. Know and adhere to reasonable rules and regulations established by the Board;
2. Respect the human dignity and worth of every other individual;
3. Refrain from libel, slanderous remarks, and obscenity in verbal and written expression;
4. Study and maintain the best possible level of academic achievement;
5. Be punctual and present in the regular school program;
6. Dress and groom in a manner that meets reasonable standards of health, cleanliness, modesty and safety;
7. Maintain and/or improve the school environment, preserve school and private property, and exercise care while using school facilities;
8. Refrain from behavior which would lead to physical or emotional harm or disrupts the educational process;
9. Respect the authority of school administrators, teachers and other authorized personnel in maintaining discipline in the school and at school-sponsored activities;
10. Obey the law and school rules as to the possession or the use of alcohol, illegal drugs and other unauthorized substances or materials; and
11. Possess on school grounds only those materials which are acceptable under the law, Board policy and school rules and accept the consequences for articles stored in one's locker or vehicle.

Legal References:

1. 20 U.S.C. § 1703
2. TCA 49-6-3401

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Procedural Due Process**	**6.302**	
		Rescinds:	Issued:

Prior to the enactment of procedural due process, notice of the rules, regulations, and penalties are provided to students and parents. All students receive a written copy of this policy. Students who enroll during the school year also receive the policy.

Before school authorities administer disciplinary measures, reasonable inquiry shall be made to determine the truth of what happened. [1] The nature of this inquiry will vary in degree with the seriousness of the offense and the consequence attached thereto. [2]

For minor offenses where corrective measures are taken by the classroom teacher, no formal procedure is required. An inquiry into the incident to ensure that the offender is accurately identified, that he understands the nature of the offense, and that he/she knew the consequences of the offense for which he is accused.

In case of severe offenses where there is a possibility of suspension, the student shall be advised of the nature of his/her misconduct, questioned about it, and allowed to give an explanation.

If the principal determines that the offense is of such nature that the student's continued presence would be detrimental to the school or persons within the school, he/she shall suspend the student for an appropriate number of days. [3]

Legal References:

1. *Ingraham v. Wright*, 430 U.S. 651 (1977)
2. *Goss v. Lopez*, 410 U.S. 565, (1975)
3. TCA 49-6-3401

Cross References:

Interrogations and Searches 6.303

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Interrogations and Searches**	**6.303**	
		Rescinds:	Issued:

INTERROGATIONS BY SCHOOL PERSONNEL

Students may be questioned by teachers or principals about any matter pertaining to the operation of a school and/or the enforcement of its rules. Questioning must be conducted discreetly and under circumstances which will avoid unnecessary embarrassment to the student being questioned. Any student answering falsely, evasively or refusing to answer a proper question may be subject to disciplinary action, including suspension.

If a student is suspected or accused of misconduct or infraction of the student code of conduct, the principal may interrogate the student, without the presence of parent(s)/guardian(s) or legal custodians and without giving the student constitutional warnings.

INTERROGATIONS BY POLICE (AT ADMINISTRATOR'S REQUEST)

If the principal has requested assistance by the police department to investigate a crime involving his/her school, the police shall have permission to interrogate a student suspect in school during school hours. The principal shall first attempt to notify the parent(s)/guardian(s) or legal custodians of the student of the intended interrogation, but the interrogation may proceed without attendance of the parent(s)/guardian(s) or legal custodians. The principal or his/her designee shall be present during the interrogation.

The use of police women or female staff members is desirable in the interrogation of female students.

POLICE-INITIATED INTERROGATIONS

If the police deem circumstances of sufficient urgency to interrogate students at school for unrelated crimes committed outside of school hours, the police department shall first contact the principal regarding the planned interrogation, inform him/her of the probable cause to investigate within the schoolThe principal shall make reasonable effort to notify the parent(s)/guardian(s) or legal custodians of the interrogation, but the interrogation may proceed without attendance of the parent(s)/guardian(s) or legal custodians. The principal or his/her designee shall be present during the interrogation.

SEARCHES BY SCHOOL PERSONNEL

Any principal, or his/her designee, having reasonable suspicion may search any student, place or thing on school property or in the actual or constructive possession of any student during any organized school activity off campus, including buses, vehicles of students or visitors *(Notice shall be posted in the school parking lot that vehicles parked on school property by students or visitors are subject to search for drugs, drug paraphernalia or dangerous weapons)*, and containers or packages if he/she receives information which would cause a reasonable belief that the search will lead to the discovery of:

1. Evidence of any violation of the law;
2. Evidence of any violation of school rules or regulations or proper standards of student or faculty conduct;
3. Any object or substance which, because of its presence, presents an immediate danger of harm or illness to any person.

A student using a locker that is the property of the school system does not have the right of privacy in that locker or its contents. All lockers or other storage areas provided for student use on school premises remain the property of the school system and are provided for the use of students subject to inspection, access for maintenance and search. *Notice shall be posted in each school that lockers and other storage areas are school property and are subject to search.*

A student may be subject to physical search or a student's pocket, purse or other container may be required to be emptied because of the results of a locker search, or because of information received from a teacher, staff member or other student if such action is reasonable to the principal. All of the following standards of reasonableness shall be met:

1. A particular student has violated policy;
2. The search could be expected to yield evidence of the violation of school policy or disclosure of a dangerous weapon or drug;
3. The search is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;
4. The primary purpose of the search is not to collect evidence for a criminal prosecution; and
5. The search shall be reasonably related to the objectives of the search and not excessively instrusive in light of the age and sex of the student, as well as the nature of the infraction alleged to have been committed.

A student, his/her possessions or room may be searched while the student is on a school-sponsored field trip. The reason for the search must be based on reasonable information or evidence that the student has violated or is violating a rule related to the trip. Students shall be advised of the above prior to the trip.

USE OF METAL DETECTORS

In view of the escalating presence of weapons in the schools, the Board of Education authorizes the use of hand-held or walk-through metal detectors to check a student's person or personal effects as follows:

School officials or law enforcement officers may conduct metal detector checks of groups of individuals if the checks are done in a minimally-intrusive, nondiscriminatory manner (e.g., on all students in a randomly selected class; or every third individual entering an athletic event). Metal detector checks of groups of individuals may not be used to single out a particular individual or category of individuals.

If a school official or a law enforcement officer has reasonable suspicion to believe that a particular student is in possession of an illegal or unauthorized metal-containing object or weapon, s/he may conduct a metal detector check of the student's person and personal effects.

A student's failure to permit a metal detector check as provided in this policy will be considered grounds for disciplinary action including possible suspension.

The director of schools shall develop prodedures for use of metal detectors.

SEARCHES BY POLICE

If public health or safety is involved, upon request of the principal who shall be present, police officers may make a general search of students' lockers and desks, or students' or nonstudents' automobiles for drugs, weapons or items of an illegal or prohibited nature.

If the principal has received reliable information which he/she believes to be true that evidence of a crime or of stolen goods, not involving school property of members of the school staff or student body, is located on school property and that any search for such evidence or goods would be unrelated to school discipline or to the health and safety of a student or the student body, he/she shall request police assistance; and procedures to obtain and execute a search warrant shall thereafter be followed.

Anything found in the course of the search conducted in accordance with this policy which is evidence of a violation of the law or a violation of student conduct standards may be:

1. Seized and admitted as evidence in any hearing, trial, suspension or dismissal proceeding. It should be tagged for identification at the time it is seized and kept in a secure place by the principal or the principal's designee until it is presented at the hearing. At the discretion of the principal, the items seized may be returned to the parent or guardian of a student or, if it has no significant value, the item may be destroyed, but only with the express written permission of the director of schools.

2. Any seized item may be turned over to any law enforcement officer. Any dangerous weapon or drug as defined in TCA 49-6-4202 shall be turned over to an appropriate law enforcement official after completion of an administrative proceeding at which its presence is reasonably required.

Whenever the possibility of uncovering evidence of a criminal nature exists, the principal or his/her designee may request the assistance of a law enforcement officer to:

1. Search any area of the school premises, any student or any motor vehicle on the school premises; or

2. Identify or dispose of anything found in the course of a search conducted in accordance with this policy.

The involvement of law enforcement officials is encouraged when there is reasonable cause to suspect that criminal evidence is about to be uncovered.

In order to facilitate a search, dogs or other animals trained to detect drugs by odor or other means may be used in conducting the search.Such animals shall be used only to pinpoint areas required to be searched and shall not be used to search the persons of students or visitors.

Legal References:

1. TCA 49-6-4202 through TCA 49-6-4212

Cross References:

Procedural Due Process 6.302
Child Abuse and Neglect 6.409

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Student Discrimination/Harassment and Bullying/Intimidation**	**6.304**	**08/01/05**
		Rescinds: **6.304**	Issued: **01/19/06**

Discrimination/Harassment (Sexual, Racial, Ethnic, Religious)

Students shall be provided a learning environment free from sexual, racial, ethnic and religious discrimination/ harassment.[1] It shall be a violation of this policy for any employee or any student to discriminate against or harass a student through disparaging conduct or communication that is sexual, racial, ethnic or religious in nature. The following guidelines are set forth to protect students from discrimination/harassment.

Student discrimination/harassment will not be tolerated[2]. Discrimination/harassment is defined as conduct, advances, gestures or words either written or spoken of a sexual, racial, ethnic or religious nature which:

1. Unreasonably interfere with the student's work or educational opportunities; or
2. Create an intimidating, hostile or offensive learning environment; or
3. Imply that submission to such conduct is made an explicit or implicit term of receiving grades or credit; or
4. Imply that submission to or rejection of such conduct will be used as a basis for determining the student's grades and/or participation in a student activity.

Bullying/Intimidation

Students shall be provided a safe learning environment. It shall be a violation of this policy for any student to bully, intimidate or create a hostile educational environment for another studentBullying and intimidation are defined as either physically harming a student or damaging his/her property, or knowingly placing the student in reasonable fear of such, or creating a hostile educational environment. The policy addresses conduct taking place on school grounds, at any school-sponsored activity, on school-provided transportation, or at any official school bus stop immediately before boarding and immediately following deboarding.[3]

Alleged victims of the above-referenced offenses shall report these incidents immediatelyto a teacher, counselor or building administrator.[4] Any allegations shall be fully investigated by a complaint manager.

The privacy and anonymity of all parties and witnesses to complaints will be respected. However, because an individual's need for confidentiality must be balanced with obligations to cooperate with police investigations or legal proceedings, to provide due process to the accused, to conduct a thorough inves - tigation or to take necessary action to resolve a complaint, the identity of parties and witnesses may be disclosed in appropriate circumstances to individuals with a need to know.

A substantiated charge against an employee shall result in disciplinary action up to and including termination. A substantiated charge against a student may result in corrective or disciplinary action up to and including suspension.

There will be no retaliation against any person who reports harassment or participates in an investigation. However, any employee who refuses to cooperate or gives false information during the course of any investigation may be subject to disciplinary action. The willful filing of a false report will itself be considered harassment and will be treated as such.

An employee disciplined for violation of this policy may appeal the decision by contacting the Federal Rights Coordinator or the director of schools. Any student disciplined for violation of this policy may appeal the decision in accordance with disciplinary policies and procedures.

This policy shall be published in the parent/student handbook distributed annually to every student.

Building administrators are responsible for educating and training their respective staff and students as to the definition and recognition of discrimination/harassment.

Legal References:

1. TCA49-6-3109
2. Title VII; 29 CFR §1604.11;
   Davis v. Monroe County Board of Education , No. 97-843
   (U.S. Sup. Ct. May 24, 1999)
3. TCA 49-6-1014-1019
4. Title IX (20 U.S.C. §§ 1681-1686)

Cross References:

Appeals To & Appearances Before The Board 1.404

Hamilton County Board of Education

Monitoring:	Descriptor Term:	Descriptor Code:	Issued Date:
Review: Annually, in April	**Alcohol and Drug Use**	**6.307**	
		Rescinds:	Issued:

In order to protect the rights of students, to safeguard the learning environment, and to contribute to a "Drug Free" community, the Board's plan for dealing with alcohol and drug [1] shall include the following:

1. Appropriate ways for handling alcohol/drug-related medical emergencies;
2. Guidelines for reporting alcohol/drug incidents and illegal activities;
3. Guidelines for referral of students who may have an alcohol/drug problem and/or are considered "high risk" to agencies and other sources of appropriate help;
4. Effective working relationships with appropriate community agencies, such as alcohol/drug service providers, law enforcement agencies and judicial officials.

Through the use of state guidelines the director of schools shall be responsible for:

1. Developing and implementing an appropriate curriculum on alcohol and drug education for students;
2. Providing adequate information and training for all staff personnel as appropriate to their responsibilities;
3. Implementing the relevant portions of the Drug-Free Youth Act [2] by:
   a. Informing all students in grades seven (7) through twelve (12) of its provisions;
   b. Distributing to all such students a pamphlet describing the law;
   c. Including the teaching of the components of the law in the annual pre-school year in-service training for teachers and principals; and
4. Developing administrative rules and guidelines for the school system to effectively respond to alcohol and drug situations that may occur at school or school-sponsored events.

Students will not possess, distribute or be under the influence of illegal drugs or alcoholic beverages in school buildings or on school grounds, in school vehicles or buses, or at any school-sponsored activity at any time, whether on or off school grounds.

Students will not market or distribute any substance which is represented to be or is substantially similar in color, shape, size or markings to a controlled substance in school buildings or on school grounds, in school vehicles or buses, or at any school-sponsored activity at any time, whether on or off school grounds.[3]

Upon information that a student is suspected of violating this policy, the principal of the school shall be notified immediately. If it is determined that board policy has indeed been violated, the principal shall notify the student's parent or guardian and the appropriate law enforcement officials. [4] A student who unlawfully possesses any narcotic, stimulant,prescription drug or other controlled substance shall be subject to suspension for a period of not less than one (1) calendar year. The director of schools shall have the authority to modify this suspension requirement on a case-by-case basis. [5]

Legal References:
1. TRR/MS 0520-1-3-.08(2)(d)
2. TCA 55-10-701 et seq.
3. TCA 39-17-417
4. TCA 49-6-4209
5. TCA 49-6-4018

Cross References:
Drug-Free Workplace 1.804

Administrative Offices
VanHoose Education Center
P.O. Box 34020
Louisville, KY 40232-4020
(502)485-3011

Jefferson County Public Schools
Shaping the Future

December 15, 2010

Mr. Martin Dannenfelser
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Dannenfelser:

Attached is a summary of Jefferson County Public Schools' district strategies in response to your correspondence of November 8, 2010, regarding the suspension of African-American students. The District has a longstanding commitment to diversity as evidenced by our nationally recognized effort in the area of student assignment.

The summary includes strategies related to discipline organized in three areas: Procedures/Monitoring, Instruction/Leadership, and Culturally Responsive Practices. I trust that the description provides a clear picture of Jefferson County Public Schools' intensive and extensive work to reduce student suspensions, particularly African-American students.

Please contact me should you desire further information. You have my support as we work together to address the civil rights of all of our students.

Sincerely,

Sheldon H. Berman, Ed.D.
Superintendent

SHB/sd

JEFFERSON COUNTY PUBLIC SCHOOLS

JCPS Response for the United States Commission on Civil Rights Regarding the Suspensions of African American Students

Dr. Sheldon Berman, Superintendent
Jefferson County Public Schools

December 15, 2010

Overview:

Jefferson County Public Schools (JCPS) has comprehensive and long-standing strategies in place to address the high numbers of suspensions for all students and specific efforts targeted for minority students. District strategies focus on three areas: **Procedural/Monitoring, Instruction/Leadership, and Culturally Responsive Practices**. This document will describe each strategy, highlight current activities, and outline future plans.

Dana Collins of Middleton & Reutlinger, P.S.C., recently conducted a literature review regarding race and discipline. The literature review offered the following strategies to improve disproportionate disciplinary practices in schools: (1) examine suspension and expulsion data, (2) develop an analysis of the data and a plan to address it, (3) adopt early intervention strategies, (4) encourage programs that rely on positive behavioral interventions and supports, (5) create smaller and more personalized learning environments, (6) set up community-based intervention programs, (7) encourage parent involvement, and (8) adopt clear referral procedures that are consistent district-wide, and (9) rewrite discipline policy to reflect proactive content consistent with models of positive behavioral support and a clear description of behaviors (see reference below). The District is implementing all of these suggestions in its effort to monitor suspensions of African American students.

Russell Skiba, "Disproportionality: A complex issue of equity in schools," Leadership Insider, pp. 10-1, November 2006; "NSBA Council of Urban Board of Education Survey Report on Overrepresentation of Minorities in Special Education," p. 21, Minnesota Department of Education, "Disproportionate Minority Representation in Suspension and Expulsion in Minnesota Public Schools, " (2010); "Out of School Suspensions," 2008 Kentucky KIDS COUNT Data Book; Pamela Fenning and Jennifer Rose, "Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy," 42 Urban Educ. 6 (Nov. 2007), Anne Gregory, Russell J. Skiba and Pedro A. Noguera, "The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?" 39 Educational Researcher Vol. 1, pp. 59-68 (2010).

I: Procedural/Monitoring

Current Strategies:

- Data Analysis:
  - District leaders analyze suspension data on a monthly basis, including the Superintendent, Assistant Superintendents and District Department Directors. The data is disaggregated by level, school, race, and gender and discipline offense.
  - The Elementary Assistant Superintendent and Designees review suspension data monthly and conference with Elementary Principals to develop plans to reduce suspensions. Additionally, targeted principals address suspension reduction in their Personal Growth Plans.
  - The Assistant Superintendent of High Schools requires each principal's growth plan to include data targets for addressing racial disparities in Quality Indicators at the individual school level.
- District Policy on School Discipline
  - The JCPS Strategic Plan includes goals and action steps regarding suspension. The Plan is updated annually and monitored by Quality Indicator data points for suspension.

- The Student Code of Conduct outlines the procedural requirements regarding disciplinary actions for all students to ensure equity and consistency. The document is revised on an annual basis. Administrators receive annual professional development on discipline procedures.

- The JCPS Code of Conduct for elementary schools addresses suspension in the *Alternative to Suspension Protocol "…suspension of primary students shall be considered only in exceptional cases where there are safety issues for the child or others."* Further, the protocol outlines proactive measures for suspension reduction as well as reflection points to consider during a crisis episode.

- JCPS has a no expulsion policy in place and no student is required to leave the district regardless of the behavioral concern. As a result, students may accumulate a higher number of suspension days over the school year as school/district staff work to ensure students receive appropriate programming options.

- Staffing Resources
  - The District provides multiple staff positions that support schools when addressing students with intensive behaviors *(i.e. Positive Outreach Program (POPs), Teachers and Learners Collaborating for Success (TLC), Behavior Coaches)* requiring ongoing communication with families and an alignment of community/district services.

Future Strategies:

- The District will continue strategies to collect and analyze suspension data, district policies specific to student discipline, and staffing supports.
- The District will continue to use Quality Indicators to inform decision making and as schools to track progress, identify trends, and identify successes and challenges.
- The District will use the Quality Indicator data points to determine which student groups are meeting their goals and which student groups are not, specifically African Americans. This will be tracked for individual schools and students. Intervention decisions will be based on the results of analyzing the Quality Indicators.

II: Instruction/Leadership

Current Strategies:

- Early Intervention
  - The District is in year three of Response to Intervention (RtI) programming for reading, math and social development/behavior. RtI for behavior is part of the multi-year implementation timeline across Elementary, Middle and High School. In the area of social development/behavior, the District offers a menu of research-based Tier 2/3 interventions to assist schools in supporting students with moderate and intensive behavioral concerns. During the 2010 school year, three elementary schools, three middle schools and three high participated in a pilot training program including extensive professional development and technical assistance for administrators and teachers.

- Positive Behavioral Supports
  - JCPS is implementing a multi-year roll out of CARE for Kids, a character education curriculum. This program offers community building, social skills instruction and interventions for all students as a Tier 1 early intervention core program. CARE for Kids provides instructional opportunities for students in social skill development and building a strong community of learners. Implementation is widespread in elementary schools and a few middle schools. The long term District goal is the development and implementation of CARE for Kids across all grade levels. District staff provide professional development training in the summer and throughout the school year.
  - Ten elementary schools receive technical assistance in the Teachers and Learners for Success Program (TLC). Staff implement a "series of interventions" promoting the effective utilization of interventions, tracking the impact on performance, and maintaining ongoing communication with the families of the most at-risk students.
  - Student Relations Departments provide support to schools, administrators, teachers, students and families including professional development, technical assistance/consultation, program development, behavioral coaching, referral to counseling services, individual assessment, one-on-one student case management, and linkages to community resources and substance abuse support.

- School Configuration
  - Several JCPS high schools are implementing Freshman Academies to provide support and structure for students transitioning to high school. Further, the Advisor/Advisee program provides guidance and mentoring services to students. The focus of Freshmen Academies and Advisory/Advisee is the reduction in suspensions, increase in achievement and readiness for college.
  - Eleven elementary schools participate in the small class size magnet program or redesign schools program. The goal is higher levels of engagement, quality of instruction, and meaningful relationships through small class size and a higher teacher to student ratio.
  - Two alternative high schools provide programming for students needing a safe, structured, achievement-oriented setting for students needing a non-traditional high school program. In addition, Breckinridge Metropolitan High School and Buechel Metropolitan High School offer programming options for students involved in serious violence; chronic dangerous/disruptive behavior; weapon/drug violations; and adjudicated youth assigned by the courts system.

- Staffing Resources
  - Thirty elementary schools are approved to hire an instructor level position to focus on addressing the social emotional/behavioral needs of struggling students in order to reduce suspensions and prevent the need for a referral to special education.
  - Thirteen middle schools are approved to hire home/school liaison to focus on building connections between parents, students and the school. The goal is to increase student achievement and attendance, reduce suspensions, and lessen need for more intensive services such as special education.

- Coordination of Programming
    - The District recently established a committee to study current systems that address behavioral issues and suspensions. This committee will make specific recommendations to the Superintendent regarding structural changes to improve supports to schools, teachers, students and families.

Future Strategies:

- The District will continue to provide professional development and technical assistance for Principals and Assistant Principals regarding proactive supports for student behavior and alternatives to suspension.
- The District will continue the CARE for Kids Program with a focus on proactive interventions for students with intensive behavioral concerns.
- The District will expand RtI programming for Social Development/Behavior by adding schools participating in behavioral interventions and by providing professional development and technical assistance for Tier2/3 interventions for all RtI schools.
- The District will secure a national expert in the area of adolescent instruction and behavioral strategies to provide consultation and professional development in the area of behavioral supports for middle and high school students.
- The District will expand teacher training opportunities in the area of discipline, culturally responsive instructional practices and addressing the needs of students in an urban school setting.

III: Culturally Responsive Practices:

Current Strategies:

- District Goals
    - The Jefferson County Board of Education and District leaders set ambitious goals to reshape the District's culture through the development of systemic building blocks for promoting and practicing cultural competence including:

        - Vision and Mission Statement reflecting the Core Beliefs, and Theory of Action,
        - Goals and Strategies,
        - JCPS Leadership/Teaching Competencies.

- Professional Development and Technical Assistance
    - From 2007 to present, the JCPS Department of Diversity, Equity, and Poverty Programs offers professional development entitled, *The Institute for Cultural Competence and Courageous Practice: Working Together for Inclusion, Equity, and Excellence*. The institute, designed for teachers and administrators, presents the theory and practice of cultural competence. The institute requires a four-day commitment by at least three people or more and focuses on "training the trainer" and building cultural competence leadership teams in each school. Principals or Assistant Principal must serve as a member of the school team. Gary Howard, author of *We Can't Teach What We Don't Know: White Teachers, Multiracial Schools* (Teachers College Press, 2nd ed., 2006),m facilitates the institute. Moving beyond

cultural awareness and multicultural content, Howard focuses on personal, professional, and systemic transformation for the purpose of achieving social justice and equity in our schools. Institute participants receive the *Leadership Manual for Inclusion, Equity, and Excellence* which serves as the foundation for building the internal capacity for cultural competence leadership teams to deliver high-quality, long-term, and systemic professional development. The manual provides professional development materials and a four-year implementation plan to support schools in creating a process that fits their school's culture and specific needs. An expected outcome of *The Institute for Cultural Competence and Courageous Practice* is to strengthen the internal capacity of schools to deliver high-quality professional development that is related to inclusion, equity, and excellence.

- The Department of Diversity, Equity, and Poverty Programs collaborates with the Jefferson County Teacher's Association (JCTA) in the implementation of the National Education Association (NEA) National Diversity Training Seminars. The NEA Diversity Training helps teachers recognize the value of diversity in the classroom, workplace, and society. NEA offers a train the trainer model. As a result, a Diversity Training Cadre of nine JCPS teachers provides diversity training for JCPS staff. The diversity training curriculum consists of five basic two hour sessions: Understanding Cultural Diversity, Developing Cultural Identity, Reacting to Differences, and Valuing Diversity. For more information go to the following link: http://www.jcta.org/uploads/file/Diversity%20one-pager.pdf

- Elementary and middle school principals participate in ongoing professional development and technical assistance in *Cultural Competence and Courageous Practice* to promote "leadership for inclusion, equity, and excellence." Multiple elementary schools are replicating professional development on cultural competence to extend the learning in this important area.

- Elementary school communities are creating professional development opportunities connecting cultural competence to classroom practice promoting personal awareness, diversity awareness, knowledge of core concepts, and acquisition of cross-cultural skills at the classroom and organizational levels.

Future Strategies:

- The District has outlined very specific strategies within the Comprehensive District Improvement Plan to continue to focus on eliminating disparities with our most vulnerable students.
- Below are illustrations which demonstrate our commitment to this work.

The District is committed to advancing learning outcomes of all students. The graphic to the left illustrates our belief in the connectiveness of our social and academic efforts.

The District has established four key committees to drive our work. The System Support Coordination Group is currently focusing on ensuring that a coordinated system is in place to address the social/emotional/behavior needs of our most vulnerable learners.

Lansing School District, Lansing, Michigan

December 10, 2010

Mr. Martin Dannenfelser
U.S. Commission on Civil Rights
Washington, D.C. 40425

Re: Lansing School District Civil Rights Policies

Dear Sir:

In a communication to this office dated November 8, 2010, you have requested a report from this office concerning the District's compliance with the enforcement of the federal civil rights policies. We are pleased to do so. The District has over 13,500 students who speak 40 different languages. Our magnet schools teach Chinese and Spanish as primary languages. The Board has adopted a policy on Multiracial Understanding to "promote cultural awareness, inter-group relations, and the understanding and racial and ethnic groups within the District."

The District has 6 collective bargaining agreements and a personnel policy manual. Each of these documents articulates the District's commitment to follow the letter of the law concerning both state and federal civil rights acts. Thus, in this District, an employee may not only rely on the various administrative entities for support, but also each employee has the right to file a grievance with the District concerning any claim of a civil rights violation.

Furthermore, the Board has adopted an anti discrimination policy in its published Board policies and, has, of course, has published all policies as required by the EEOC. The Board has established an independent complaint policy appointing the Superintendent to directly review all complaints involving sex, race, color, national origin religion, height, weight, age or marital status discrimination. With regard to the federal complaints which may arise out of IDEA, FAPE, or Sec. 504 of the Rehabilitation Act, the Director of Special Education is to personally review all non-compliance complaints. (Policy 5030).

Every new employee of the District is required to attend an in service presentation by the Human Resources Department to review with the new employees the expectations of employment. This meeting specifically includes a discussion of the civil rights acts and the need for strict compliance to the acts. It includes an explanation of what these employees can do if they feel they are discriminated against or have observed what they believe to be violations of the acts.

On a monthly basis, the administrators, i.e. department heads, principals, and assistant principals meet with the Administration to discuss any new procedures and rules and review any concerns with may be raised concerning employment matters.

On at least an annual basis or more frequently as necessary, the legal counsel to the District reviews all of the current policies of the District and reviews that language to make sure it is in compliance with any changes which may have been published by way or regulation or court decision. The legal counsel then publishes and sends to all impacted administrators/teachers an analysis of any change in the regulations/statutes and explains the differences.

With regard to student discipline, each building has a School Improvement Team (pursuant to a collective bargaining agreement) comprised of the building administrator and selected teachers which is responsible to review among other things "the student discipline process". Of course, by statute, some discipline is set regardless of race, sex, nationality of religion (MCL 380.1311a (1) requires the expulsion of a student who assaults a school employee for a defined period of time).

The District provides to each student a Code of Conduct which, among other things, lists examples of behavior, in and out of the school, which constitutes grounds for discipline. The Code includes corrective actions to be taken: snap suspension, snap suspension guidelines, building suspensions, suspensions to student services, expulsions and state-mandated expulsions and non-mandatory expulsions.

As you can see from this response, the District has taken very strong actions to establish a District which provides at all levels steps to ensure that no student, employee or parent is discriminated against based on race or any other illegal factor. This policy includes a strong commitment to the employment of minorities from the administration, to teachers and non-teaching staff. The Administration, in its monthly meetings with its administrators, will emphasize the concerns raised by the Department and continue to maintain records on discipline. It will be placing on the agenda for all School Improvement Teams a presentation on the need to ensure fairness and equality in all of our disciplinary actions at the building level. Each new teacher is provided a "mentor" to rely on in making serious decisions, and we will review with the teaching staff our concerns to ensure fairness is employed at all levels including non disparate application of our policies.

As you know, the doctrine of disparate treatment is based on facially neutral rules applied in an unequal manner. It is a legal theory under the discrimination statutes and regulations. Thus, even with this District's evidence of establishing and maintaining policies to avoid discriminatory practices, the Civil Rights Department now wants us to "train" teachers to apply them in a non-disparate basis. The training is to emphasize non discriminatory practices and emphasize (as we already do) the importance of non discriminatory practices.

With this in mind, the District intends to review randomly disciplinary actions taken by building over a 60 day period. It is envisioned that the District will identify one high

school, one middle school and one elementary school for review. This should provide some basis to determine what issues need to be addressed, if any. It will then pick another group of schools for a 60 day review, and so on. It is envisioned that this will take over a year before we get an accurate picture. Nevertheless, in light of state and local budget cutting forcing the reduction in staff, this procedure will provide, in our opinion, an accurate measure of our success in dealing with student discipline.

The District is proud of the fact that there have been no previous claims of disparate treatment or claims that the rules have been applied not taking the best interests of the students in consideration. We believe that monitoring this on a random basis at random schools will give the District a better idea of how to proceed in the future. The results will also be discussed with both administrators and teachers.

Sincerely yours,

Peter C. Jensen
Legal Counsel

c. TCWallace

NASH-ROCKY OUNT
PUBLIC SCHOOL SYSTEM
Richard A. McMahon
Superintende

December 13, 2010

Mr. Martin Dannenfelser
Staff Director
U. S. Commission on Civil Rights
Washington, DC 20425

Dear Mr. Dannenfelser:

We appreciate the opportunity to share our efforts to ensure that we are in compliance with federal law. An evaluation of school discipline procedures is a focus for our system and we continuously evaluate practices and procedures that ensure our compliance with federal law. All decisions related to student behavior are guided by the board's educational objective to teach responsibility and respect for cultural and ideological differences to create safe, orderly and inviting schools.

Specifically, we are working with building administrators and implementing new board policies adopted in June 2010. Our revised policies and procedures reflect our ongoing effort to respond to this concern. School level administrators are charged with discussing the new policies and becoming innovative in their approach to have school plans for management of student behavior. School level administrators discuss new policies with their staff.

Periodic data collection and discussion sessions are held throughout the year to ensure continuous compliance of the policies. In addition, beyond the reports required by our state department of instruction on discipline/safety, principals and central office staff participate in data analysis sessions. Data on school discipline led to school and system-wide alternatives to suspension initiatives. Project Hope is a community partnership with the Opportunities Industrialization Center that is used to reduce suspension days. Additionally, we have arranged for young African American boys to have mentors, participate in group sessions and to use our faith based institutions to assist in being proactive in decreasing suspensions,

Training for our staff is a priority. All schools in our system have been trained and participate in Positive Behavior Intervention Support (PBIS) procedures and strategies.

)30 Eastern Avenue • Nashville • North Carolina 27856 • (252) 462-2511 • fax (252) 459-8011 • www.nrms.k12.nc.us

NASH-ROCKYMOUNT
PUBLIC SCHOOL SYSTEM
Richard A. McMaho
Superintende

December 13, 2010

Mr. Martin Dannenfelser
Staff Director
U. S. Commission on Civil Rights
Washington, DC 20425

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930 Eastern Avenue • Nashville • North Carolina 27856 • (252) 462-2511 • fax (252) 459-8011 • www.nrms.k12.nc.us

We have offered cultural diversity training for staff members. Professional Learning Communities (PLCs) for staff collaboration is a focus in our school district. All data from school discipline is used to set smart goals for discipline and academic improvement.

Sincerely,

Richard A. McMahon
Superintendent

Rochester Public Schools
Independent School District #535
615 7th Street SW
Rochester, Minnesota 55902-2052
Office of the Superintendent ▪ Telephone (507) 328-4256 ▪ FAX (507) 328-4121

November 30, 2010

Dear Martin Dannenfelser,

This letter is in response to your communication of November 8, 2010 regarding Rochester Public School's attempts to reduce the disparities in school discipline. Our district has been under reform for the last four years when the Superintendent commissioned the work of Education Development Center (EDC) to conduct an educational audit in the district. This report indicated a need for Rochester Public Schools to ensure that all students experience a sense of belonging in their school community; assure that all students benefit from high expectations and fair treatment; and create an open and welcoming culture for all families.

From the EDC report, a 5-Year Strategic Plan was developed and implemented to close the opportunity gap and bring all students to proficiency. This 5-Year Plan lead to the identification of our District's five focused initiatives for the year. These five strategies below are researched-based and are deeply rooted in the 5-Year Plan and drove the development and refinement of the District in Need of Improvement Plan (DINI). This plan addresses the inequities in the system and the disproportionality in achievement and discipline.

- **Equity**: Equity is defined as "Raising the achievement of all students while narrowing the gaps between the highest and lowest performing students and eliminating the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories (Singleton, 1997). The District is continuing its commitment to district-wide, systemic equity training. The district equity leadership team (DELT) is developing plans for the district to promote and embed equity training, plans, and cultural competency for the District's educators. Site equity leadership teams (SELT) are in the process of learning more about developing site equity plans and embedding processes to develop equity-focused goals to support the development of their site integrated improvement plans.
- **Efficacy**: The belief that all children can learn is fundamental to the success of all students. It is also critical that all staff use a common data analysis system. District Efficacy Coaches provide embedded staff development and on-site support for these two major Efficacy concepts. It is expected that all staff use the Self Directed Improvement System™ in the work setting by 2011. Grade level, subject area teams are expected to develop Essential Outcomes and Common Formative Assessments and analyze such data using the Data/Feedback/Strategy Method, a central component of the SDIS. The proficiency level at which administrators and teacher teams currently operate using the Data/Feedback/Strategy Method from the SDIS varies from site to site. In 2010-2011, Efficacy Coaches will work more closely with

building administrators and site based coaches to ensure that instructional staff members are proficient in using the Data/Feedback/Strategy Method to analyze reading and math data for the purpose of informing instruction.

- **Strengthening the Core**: The purpose of Strengthen the Core is to improve student achievement by systematically focusing on curriculum, instruction, assessment, and student engagement. This will be accomplished by articulating and documenting standards and benchmarks being taught; ensuring that curriculum, instruction, assessment, and student engagement are equity-focused; aligning curricular outcomes and expectations with balanced assessments; utilizing research-based instructional practices to ensure student proficiency and understanding; using effective research-based student engagement strategies; participating in collaborative planning both vertically and horizontally; and engaging in critical reflection about individual and collaborative planning and instruction. RPS is committed to ensuring that systems are in place to ensure that the core curriculum is implemented in a manner in which all students will succeed.
- **Positive Behavior Intervention Supports**: PBIS is a systems approach to preventing and responding to classroom and school discipline problems. PBIS develops school-wide systems that support staff to teach and promote positive, appropriate behavior in all students. Schools are using this systems approach to improve student behavior and decrease behavior incidents, including suspensions and expulsions, while eliminating the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories. Training of all site teams in the PBIS framework will be completed by the end of the current school year. All sites have received the foundational training necessary to begin PBIS at their site. In addition, many of the site teams completed a booster session this past August to further their depth of knowledge regarding implementation and sustainability of PBIS. All sites have received training in the use of School-Wide Information System (SWIS), a detailed discipline tracking system to assist with analyzing data related to referrals.
- **Interventions**: The District has identified and invested in research-based interventions in the area of reading and math to meet the needs of learners who have not reached proficiency. Read 180, Language!, System 44, Project Read, Mathletics, Voyager, Pinpoint and iSucceed provide support to students across the District. Additional sites and grade levels have been added this year to expand the number of students who are receiving intervention support. The District is carefully analyzing achievement data to determine appropriate student placements in specific intervention programs, as well as continuing to provide implementation support to staff. At the high school level, a new math intervention, I CAN Learn, is being implemented for students who receive special education services. The District remains committed to providing intensive, research-based, high-quality instructional programs to accelerate the learning of our students who are not yet meeting proficiency.

As a result of analyzing our discipline data and the disproportionalities which exist, our schools have implemented a number of strategies in the site's Integrated Improvement Plans and the Site in Need of Improvement Plans to decrease the number of referrals for our black and brown students. The implementation of these strategies has resulted in a decrease of 363

suspensions and expulsions from 2007-2008 to 2009-2010 school years. Additionally, our district's involvement in the Urban Special Education Leadership Collaborative (USELC) provided us with the opportunity to participate in national trainings.

One of these trainings is the Positive Behavior Interventions Support (PBIS) model. With the full implementation of the PBIS model, the schools have the following in place: behavior expectations shared with students and staff; referral process; identification of major and minor infractions; consequences; recognition programs; and resources for parents. Additionally, our School-Wide Information System (SWIS) manages and tracks our data. This data is discussed and disaggregated by our Site Equity Leadership Teams (SELT) and the District's Equity Leadership Team (DELT) to drive our decisions.

Over the last three years, the district has provided training to administrators and teachers in the following areas to ensure our staff and students are treated equitably with dignity and respect and to ensure that we are in compliance with federal law:

- Equity
- Efficacy for staff and parents
- Courageous Conversations about Race
- Positive Behavior Intervention Support (PBIS)
- Life Space Crisis Intervention (LSCI)
- Efficacy Coaches
- Collaborative Learning Teams
- Instructional Coaching

We hope we have provided you a snapshot of our efforts in Rochester Public Schools to provide an equitable, safe and nurturing environment for all our students. If you need additional information, please do not hesitate to ask.

Sincerely,

Romain Dallemand, Ed.D.
Rochester Public Schools
Superintendent

San Diego Unified
SCHOOL DISTRICT

LEGAL SERVICES
ANDRA M. DONOVAN
Interim General Counsel
619.725.5630
Fax 619.725.5639
adonovan@sandi.net

December 15, 2010

Via Electronic Mail

Martin Dannenfelser, Staff Director
U.S. Commission on Civil Rights
Office of Staff Director
Washington D.C. 20425

RE: Your Letter Dated November 8, 2010 Regarding Discipline Discrimination

Dear Mr. Dannenfelser:

Your letter dated November 8, 2010 directed to Superintendent Kowba, has been referred to our office for reply and we provide the following response.

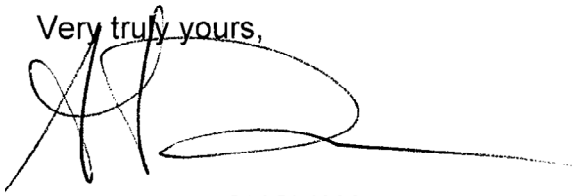
The Board of Education has adopted Governance Policies and Operational Expectation No. 3 (OE-3) relates to "Learning Environment Treatment of Students/Discipline." In particular, we direct your attention to sections 2, 3 and 4 of OE-3. A compliance report was recently provided to our Board and a copy of the report and attachments are also attached for your information.

Our Administrative Procedures relating to suspension and expulsion are in the process of being reviewed and revised, however, we do not believe any changes are being suggested as a result of a concern about racial disproportionalities. We attach the most recent versions for your review.

Finally, we have forwarded your request to our Race/Human Relations Department and will provide their response once we receive it.

Please feel free to contact us if you need further information from us. Note that our offices will be closed for mandatory furlough days and holidays from December 20, 2010 through January 2, 2011. We will return to the office on Monday, January 3, 2011.

Very truly yours,



ANDRA M. DONOVAN
Interim General Counsel

AMD:dmh
Enclosures

Students/OCR/ccr re discipline discrimination 121510.doc

San Diego Unified
SCHOOL DISTRICT

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REVISED: **11-15-10**

ADMINISTRATIVE PROCEDURE

CATEGORY: **Students, Discipline**
SUBJECT: **Suspension**

A. PURPOSE AND SCOPE

1. To outline district policies and procedures governing suspension of students.

2. **Related Procedures:**

B. LEGAL AND POLICY BASIS

1. **Reference:** Board policy: A–3700, F–6000, H–2100, H–5000, H–6000, H–6800, H–6940, H–6950, I–1370, I–4400; Education Code Sections: 46300, 48900 *et seq.*, 48911, 48915.5, 49079; 20 U.S.C. Section 1415(k).

2. All students shall comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of the schools (Education Code Section 48908).

C. GENERAL

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Placement and Appeal Office, Student Services Division, Deputy Superintendent of Academics.

2. **Definitions**

   a. **Principal's designee**: An administrative employee designated by the principal, in writing, to assist with disciplinary procedures. A second person also shall be designated by the principal, in writing, to serve as designee when the principal and the primary designee are absent from the school site. These names must be on file in the principal's office. The principal must annually record designations.

   b. **Superintendent's designee**: For purposes of this procedure, the Placement and Appeal Legal Specialist or Director, unless specified otherwise within this procedure.

   c. **Serious Offense**: Includes possession of a firearm, knife, explosive, or any other dangerous object in school; a third incident of fighting that inflicts injury

in one year; causing serious physical injury to another person, except in self-defense; a third incident of possession and/or use of any controlled substance; robbery or extortion; assault or battery upon any school employee. "Dangerous object" is defined as any object used in a threatening manner even if it is not ordinarily used as a weapon.

d. **Suspension**: Temporary removal of a student from ongoing instruction at the school site for the purposes of adjustment. The following *do not* constitute formal suspension:

(1) Reassignment to another educational program or class at the same school.

(2) Referral to a district employee designated by the principal to advise students.

(3) Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or designee for appropriate action. Removal from a particular class shall not occur more than once every five (5) school days. (Education Code Section 48910)

(4) Reassignment to an independent study program pursuant to Procedure 4316.

e. **Expulsion**: Removal of a student from the immediate supervision and control, or general supervision, of school personnel as outlined in Procedure 6295. An expelled student may not participate in any district program or activity, including any independent study program; however, the student may be eligible to attend a community day school program.

f. **Day**: One calendar day unless specified otherwise.

g. **School day**: A day when schools of the district are in session, or weekdays during summer recess.

3. **Suspension from school** is a serious and, by its very nature, controversial act to be applied with prudence and restraint after careful investigation *and in the absence of reasonable alternatives*. It is not only a necessary tool to maintain order, but a valuable educational device. At the same time, students involved must be afforded due process. In *Goss v. Lopez* (419 U.S. 565 [1975]) the United States Supreme Court held that students have a constitutional right to due process of law in connection with imposition of a short-term suspension from school. Specific procedures required by the Supreme Court are embodied in California law. Strict compliance with this procedure will ensure that students are not denied their constitutional rights.

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It is incumbent upon the suspending authority to ensure that both the letter and spirit of the law are strictly observed, including time limits within which specified tasks must be accomplished.

4. **Grounds for Suspension.** A student shall not be suspended from school or recommended for expulsion unless the superintendent or principal of the school in which the student is enrolled determines that the student has committed any of the following acts:

		Code No.*
a.	**Assault/Battery**. Includes caused, attempted to cause physical injury, or threatened to cause physical injury to another person (including school employees); willfully used force or violence upon the person of another, except in self-defense; also included are attempted sexual assault, sexual assault, and sexual battery.	01
b.	**Weapons**. Possessed, sold, or otherwise furnished any firearm, replica firearm, knife, explosive, or other dangerous object or used any object in a threatening manner.	02
c.	**Alcohol/Intoxicants/Controlled Substances**. Includes unlawfully possessed, used, sold, or furnished, or under the influence of alcohol, intoxicants, or controlled substances.	03
d.	**Substance in Lieu of Alcohol/Intoxicants/Controlled Substance**. Delivered, furnished, and/or sold items that were claimed to be alcohol, intoxicants, or controlled substances but were not such items.	04
e.	**Robbery/Extortion**. Committed or attempted to commit robbery or extortion.	05
f.	**Damage to Property**. Caused or attempted to cause damage to school property or private property.	06
g.	**Theft to Property**. Stole or attempted to steal school property or private property, or received stolen property.	07
h.	**Tobacco or Nicotine Products**. Possessed, furnished, or used tobacco, or any item containing tobacco or nicotine products. A fourth offense requires an expulsion referral.	08

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i.	**Obscenity/Profanity/Vulgarity**. Committed an obscene act or engaged in habitual profanity or vulgarity.	09
j.	**Drug Paraphernalia**. Possessed, offered, arranged, or negotiated to sell any drug paraphernalia.	10
k.	**Disruption/Defiance**. Disrupted school activities or willfully defied the authority of school personnel.	11
l.	**Sexual Harassment (Grades 4 to 12)**. Made unwelcomed sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature sufficiently severe, or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment.	13
m.	**Hate Violence (Grades 4 to 12)**. Caused, threatened to cause, attempted to cause, or participated in acts of hate against persons or property.	14
n.	**Threats and Intimidation**. Harassed, intimidated, or threatened a pupil who is a witness in a disciplinary proceeding to prevent the pupil from being a witness or as retaliation against the pupil for being a witness; written or verbal threat against school official, or threats to cause major property damage; bullying (including electronic acts).	15
o.	**Harassment (Grades 4 to 12)**. Harassed, intimidated, or threatened a pupil or group of pupils or school personnel with the actual or expected effect of disrupting class work, or creating substantial disorder or creating an intimidating or hostile educational environment.	17
p.	**Hazing.** Engaged in, or attempted to engage in, hazing as defined in subdivision (b) of Section 245.6 of the Penal Code.	18

* Numbers used on "Report on Suspension" (E.1.-E.5.) to indicate cause for suspension.

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5. **A student may be suspended** for those acts listed above and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

   a. While on school grounds

   b. While going to or from school

   c. During lunch period, on or off campus

   d. During, or while going to or from, a school-sponsored activity

   Note: If a student is arrested off campus, he/she may be suspended at that time or upon return to campus.

6. **Substance-Related Suspensions.** Under certain circumstances, some portion or all of a suspension involving alcohol, tobacco, or other drugs (C.4.c., C.4.d., C.4.h., and C.4.j.) may be waived by the principal if the student and his/her parent/guardian agree to the student's participation in specified substance intervention programs (Procedure 6298).

7. **Truancy, Tardiness, and Absence.** Truancy, tardiness, and other absence from assigned school activities are not cause for suspension; alternatives to suspension should be considered.

D. IMPLEMENTATION

1. **Teacher's Authority to Suspend** (Education Code Section 48910)

   a. A teacher may suspend any student from the teacher's class for any of the acts enumerated in C.4., for the day of the suspension and the day following.

      (1) Teacher shall:

         (a) Immediately report suspension to principal of school and send student to principal or designee for appropriate action. (If that action requires continued presence of student at school site, student shall be under appropriate supervision.)

         (b) Immediately consult with principal or designee concerning due process conference.

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(2) As soon as possible, teacher or principal shall ask parent/guardian of student to attend a parent-teacher conference about the suspension. Whenever practicable, a school counselor or school psychologist shall attend conference; school administrator shall attend conference if teacher or parent/guardian so requests.

(3) Principal or designee ensures that during period of suspension student shall not be returned to class from which he/she was suspended without concurrence of teacher of class and principal.

(4) Principal or designee ensures that a student suspended from a class shall not be placed in another regular class during period of suspension. However, if student is assigned to more than one class per day, suspension shall apply only to other regular classes scheduled at the same time as the class from which student was suspended.

(5) Principal or designee determines whether the requirements under this subsection (D.1.) have been met. In addition, the principal or designee shall plan for the completion and distribution of the regular suspension form and assigns duties as necessary.

b. A teacher also may refer a student to principal or designee for consideration of suspension from school for any of the acts enumerated in C.4. Should the principal or designee decide to suspend the student from school, the procedures under D.2. must be met.

Note: An informal suspension has no status and cannot be recognized; all suspensions require completion of a "Report on Suspension" form (E.1-E.5).

2. **Suspension by Principal or Designee**

a. Principal or designee may suspend a student from school for a maximum of five (5) consecutive school days for any single cause enumerated in C.4.

b. Suspension by principal or designee shall be preceded by an informal conference conducted by principal or designee between student and, whenever practicable, teacher, supervisor, or school employee who referred student to principal or designee. *At this conference student shall be informed of reason for disciplinary action and evidence against him/her and shall be given opportunity to present his/her version and evidence in his/her defense.*

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c. Principal or designee may elect to waive some portion or all of a suspension for substance abuse (see C.5.) if student and parent/guardian agree to participate in substance abuse intervention program.

d. Principal or designee may suspend a student without affording student an opportunity for a conference *only* if principal, principal's designee, or superintendent determines that an emergency situation exists.

(1) "Emergency situation" means a situation determined by principal, principal's designee, or superintendent to constitute a clear and present danger to the lives, safety, or health of students or school personnel.

(2) If a student is suspended without a conference prior to suspension, both parent/guardian and student shall be notified of student's right to a conference and of student's right to return to school for purpose of a conference.

(3) A conference shall be held within two (2) school days unless student waives this right or is physically unable to attend for any reason including, but not limited to, incarceration or hospitalization. The conference then shall be held as soon as student is physically able to return to school for the conference.

e. When any student is recommended for suspension for any reason requiring police notification as specified by "Report on Suspension" form (E.1-E.5), principal or designee shall:

(1) Call School Police (619-291-7678) and request an officer be dispatched to investigate incident and obtain event number.

(2) Detain student at school, when feasible and without physical force, until a police officer arrives. Following investigation, if police officer determines a criminal act occurred and an arrest is warranted, police officer will determine an appropriate disposition for student. Disposition may include releasing student back to school, releasing student to a parent/guardian, or placing student into protective custody.

(3) If student is arrested by police officer, may suspend student at that time or upon his/her return to campus.

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f. If, upon hearing student's version of events and after receiving any evidence he/she wishes to present, principal or designee determines that suspension is unwarranted, he/she may return student to his/her regular placement or refer student to an alternative placement.

g. At the time of suspension, a school employee shall make a reasonable effort to contact student's parent/guardian in person or by telephone.

h. Within one school day of the beginning of any suspension, principal or designee:

(1) Initiates and signs "Report on Suspension" (E.1-E.5) and enters suspension on SIS Discipline History Screen.

(2) In case of waiver of all or part of a substance abuse suspension, completes "Substance Use Intervention Contract" (E.6. [formerly "Alternative to Suspension Contract"]) and enters additional data on SIS Discipline History Screen.

(3) Mails a notice to parent/guardian of suspended student ("Report on Suspension" [E.1-E.5]). Insofar as is practicable, the notice shall be in primary language of student's parent/guardian. The notice shall include:

(a) A statement of facts leading to decision to suspend.

(b) Date and time when student will be allowed to return to school.

(c) A statement of right of student or parent/guardian to request an appeal of the suspension by contacting the Placement and Appeal Office at 619-725-5660.

(d) A statement of rights of parent/guardian or student to have access to the student's records.

(e) A request that parent/guardian meet with school officials on or before the third consecutive day of any period of suspension, at which time, causes, duration, relevant school policy, and other matters pertinent to the suspension shall be discussed. A notice that state law requires parents/guardians to respond to such requests without delay is incorporated on "Report on Suspension" (E.1-E.5).

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i. Parent/guardian of any student shall respond without delay to any request from school officials to attend a conference regarding his/her child's behavior.

j. In a case where expulsion from any school or suspension for the balance of the semester from a continuation school (independent learning center) is being processed by the Board of Education, superintendent or designee, in writing, may extend a suspension until such time as Board of Education makes a decision in the action or an interim alternative school placement is made.

(1) An extension may be granted only if the superintendent or designee determines, following a meeting in which the student and the student's parent/guardian are invited to participate, that the presence of the student at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process.

(2) If the student or the student's parent/guardian has requested a meeting to challenge the original suspension, the superintendent or designee also may decide upon the extension of suspension order in conjunction with the initial meeting on the merits of suspension.

k. **Suspension for first offense**. Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, upon a first offense, a student may be suspended for reasons set forth in C.4., *if principal or the superintendent determines that:*

(1) Student violated C.4.a., C.4.b., C.4.c., C.4.d., or C.4.e.; *or*

(2) Student's presence causes a danger to persons or property; *or*

(3) Student's presence threatens to disrupt the instructional process.

l. **Suspension of elementary school students who commit a serious offense but not recommended for expulsion.** All elementary school students who commit a serious offense, but are not recommended for expulsion, must be suspended in accordance with the suspension guidelines for the specific offense. In addition, elementary school principals must convene a multi-disciplinary team at the elementary school to determine if additional interventions are necessary to address the student's conduct or behavior. A report of the multi-disciplinary team's determinations must be made by the principal to the Area Superintendent.

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Area Superintendents must monitor compliance with these procedures by each elementary school. A quarterly report will be made to the Board of Education by the Placement and Appeal Office with information concerning the number of students suspended under this section at each elementary school.

m. **Students with exceptional needs or eligible for services under Section 504 of the Rehabilitation Act of 1973**

(1) A student with previously identified exceptional needs or eligible for services under Section 504 of the Rehabilitation Act of 1973 may be suspended for not more than ten (10) consecutive school days. A special education pupil may be suspended again in the same school year, with each suspension period limited to ten (10) consecutive days or less, as long as the suspension does not constitute a change of placement. A change of placement occurs if (a) the removal is for more than 10 consecutive school days, or (b) the student has been subjected to a series of removals that constitute a pattern. A pattern occurs if (a) the series of removals total more than 10 school days in a school year; (b) the student's behavior is substantially similar to the behavior in the incidents that resulted in the series of suspensions, taken cumulatively, is determined to be a manifestation of the student's disability; and (c) because of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(2) An individualized education program (IEP) team or instructional study team (IST) should be convened when a student's cumulative days of suspension in a school year approaches ten (10) school days to determine the relationship of the behavior to the disability. The team must consider (a) whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (b) if the conduct in question was the direct result of the district's failure to implement the IEP or ISP. If the team determines the behavior was not related to the disability, discipline is applied as with any other student. If the team determines the behavior was caused by the disability or was the direct result of the district's failure to implement the IEP, a Functional Behavioral Assessment must be conducted and a Behavioral Intervention Plan must be developed.

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(3) If a special education pupil is suspended more than once in a school year, the total number of days that the pupil is suspended can be more than ten (10) days. However, if the total number of days of suspension in a school year is more than ten (10) days, services must be provided to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the IEP. School personnel must consult with at least one (1) of the student's teachers to determine the extent to which services are needed during the time of removal and ensure that the services are provided.

n. **Completion of work missed by suspended student**. The teacher of any class from which a student is suspended may require that student to complete assignments and tests during the period of suspension. Any student on suspension may request class assignments and tests during suspension.

3. **Appeal of Initial Suspension**

a. During required parent conference under D.2.b., principal or designee shall inform student and parent/guardian of their right to appeal a suspension and advise the student or parent/guardian that they may pursue the appeal process by contacting the Placement and Appeal Office at 619-725-5660.

b. Student or parent/guardian may initiate the appeal process by contacting the Placement and Appeal Office in writing within three (3) weeks of the information school conference with the principal or designee.

c. The Placement and Appeal Office will mail to the student or parent/guardian the "Request for Suspension Appeal" with instruction that this form must be completed and returned so that it is received no later than three (3) weeks after the date of the principal's decision.

d. The Placement and Appeal Legal Specialist/Director will determine from the information provided whether or not the principal or designee suspended the student properly and followed all applicable procedures in regard to the suspension. The Placement and Appeal Legal Specialist/Director will also consider the reasons the student/parent/guardian feel that the suspension was incorrect or inappropriate. The Placement and Appeal Legal Specialist/Director, as he/she may deem necessary, may contact either of the parties for the purpose of clarifying information provided.

e. Based on the information submitted or requested, the Placement and Appeal Legal Specialist/Director has the authority as the superintendent's designee to make the following decisions regarding the suspension:

(1) May uphold the suspension.

(2) May uphold the suspension but expunge the suspension records at the end of the semester in which the offense occurred if the student has no further discipline/behavior problems in the district.

(3) May determine that the suspension was not within district guidelines and overturn the suspension and order that all records and documents regarding the disciplinary proceedings and suspension be immediately destroyed. No information regarding the suspension shall be placed in the student's permanent record or file, or communicated to any person not directly involved in the disciplinary proceedings.

(4) May determine that the penalty imposed was inappropriate for the violation, and order that all records and documentation concerning the suspension shall be revised to indicate only those facts leading to the penalty imposed by the school.

f. The Placement and Appeal Legal Specialist/Director will mail a copy of the decision to the student and/or parent/guardian within five (5) days of issuing the decision. A copy of this decision will also be mailed to the school principal.

4. **Long-Term Suspension Not Pending Expulsion**

a. The Board of Education may suspend a student from school for any of the acts enumerated in C.4., for any number of school days within the following limits:

(1) Except as provided in subdivision (g) of Section 48911 and in Section 48912 of the California Education Code, the total number of days for which a pupil may be suspended from school shall not exceed twenty (20) school days in any school year, unless for purposes of adjustment, a pupil enrolls in, or is transferred to, another regular school, opportunity school or class, or a continuation education school or class, in which case the total number of school days for which the pupil may be suspended shall not exceed thirty (30) days in any school year.

(2) The Board of Education may suspend a student enrolled in a continuation school (independent learning center) or class for a period not longer than the remainder of the semester.

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b. Unless a request has been made pursuant to D.3.c., if the Board of Education is considering suspension of, disciplinary action against, or any other action (except expulsion) against any student, the board shall hold closed sessions if a public hearing upon that question would violate the privacy of student records.

c. Before calling a closed session to consider these matters, the Board of Education shall, in writing and by registered or certified mail or by personal service, notify student and student's parent/guardian, or student if student is an adult, of the intent to call and hold a closed session.

(1) The hearing to consider these matters shall be conducted by the Board of Education in closed session unless student or student's parent/guardian requests, in writing and within 48 hours of receipt of written notice of board's intention, that the hearing be held as a public meeting.

(2) If a written request is submitted to the clerk or secretary of the Board of Education, the meeting shall be public, *except* that any discussion at that meeting which may be in conflict with the right to privacy of *any student other than the student requesting the public meeting* shall be in closed session.

5. **Notification to Teacher of Students Whose Actions Are Grounds for Suspension**

a. The principal or designee shall inform the teacher of each student who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in C.4., including at other schools. The principal or designee shall provide the information to the teacher based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency, regarding a student described in this paragraph.

b. The district, or district officer or employee, is not civilly or criminally liable for providing information in conformance with D.5.a. unless it is proven that the information was false and that the district, or district officer or employee, knew or should have known that the information was false, or the information was provided with a reckless disregard for its truth or falsity.

c. An officer or employee of the district who knowingly fails to provide information about a student who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in C.4. is guilty of a misdemeanor.

SUBJECT: **Suspension**	NO:	**6290**
	PAGE:	**14** OF **14**
	EFFECTIVE:	**1-29-62**
	REVISED:	**11-15-10**

d. Any information received by a teacher pursuant to D.5.a. shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

E. FORMS AND AUXILIARY REFERENCES

1. Report on Suspension, English version (Attachment 1)
2. Report on Suspension, Spanish version (Attachment 2)
3. Report on Suspension, Tagalog version (Attachment 3)
4. Report on Suspension, Somali version (Attachment 4)
5. Report on Suspension, Vietnamese version (Attachment 5)
6. Substance Use Intervention Contract (Attachment 6) - see Procedure 6298
7. Student Discipline Policies, available on the district website at: http://www.sandi.net/21802072114619197/site/default.asp?21802072114619197Nav=|&NodeID=4483&20451072011458950Nav=|&NodeID=4872

F. REPORTS AND RECORDS

1. Schools immediately process "Report on Suspension" form; send copy to parent/ guardian; enter suspension data on SIS Discipline History Screen.
2. Short-term suspension records and information shall be maintained by each school.
3. Notation of suspension is not retained on student's permanent record.

G. APPROVED BY

General Counsel, Legal Services
San Diego Unified School District

San Diego Unified School District

REPORT ON SUSPENSION
Admin Procedure 6290

School: _____ Phone: _____

NOTE TO PARENTS: Please read the important parental rights information attached to this form.

Student Name: Student ID#: **INCIDENT DATE**:

Age: Sex: Grade: Ethnic Code: VEEP? ☐Y ☐N Special Education? ☐Y ☐N 504? ☐Y ☐N

Address:

Parent/Guardian Name: Phone:

PERIOD OF SUSPENSION: Start Date: End Date: Number of Days: May return to school on:

In person parent conference to be held on _____ (date) at _____ (time). Parent declined meeting? ___ yes ___ no

Conference attendees: _____

☐ **IF THIS BOX IS CHECKED, THE SITE ADMINISTRATOR IS RECOMMENDING THE STUDENT BE EXPELLED. PARENT WILL BE CONTACTED REGARDING THE RECOMMENDATION FOR EXPULSION BY THE PLACEMENT AND APPEAL OFFICE**

01 Assault/Battery/Mutual Combat
- ☐ a. Caused, attempted, or threatened to cause physical injury
  - ☐ 1st fight
  - ☐ 1st fight
  - ☐ 3rd fight ★ •
- ☐ c. Willfully caused minor injury, except in self-defense •
- ☐ d. Willfully caused serious injury, except in self-defense ★ •
- ☐ f. Assault or battery on a school employee ★ •
- ☐ h. Sexual assault or sexual battery ★ •
- ☐ k. Aids or abets the infliction or attempted infliction of physical injury (suspension only, unless convicted by court)

02 Weapons, Explosives, Dangerous Objects, Imitation Firearms
- ☐ g. Possessed, sold, or furnished a firearm, knife, explosive, or dangerous object ★ •
  - ☐ **firearm or explosive +**
- ☐ h. Brandished a knife ★ •
- ☐ i. Possessed, sold or furnished fireworks other than M80's or cherry bombs
- ☐ j. Possessed imitation firearm ★ •

03 Controlled/Prohibited Substances
- ☐ a. Possessed / Used / Under the Influence
  - ☐ 1st offense ▲ •
  - ☐ 2nd offense ▲ •
  - ☐ 3rd offense ★ •
- ☐ d. Furnished or sold ★ •
- ☐ e. Possession of amount for more than personal use ★ •
- ☐ h. Soma – offered, arranged or negotiated to sell, or sold •

04 "In Lieu Of" Substance
- ☐ b. Delivered, furnished, or sold •

05 Robbery/Extortion (includes attempts)
- ☐ a. Robbery ★ •
- ☐ b. Extortion ★ •

06 Property Damage
- ☐ a. Attempted to cause damage
- ☐ b. Caused minor damage
- ☐ c. Caused major damage •

07 Property Theft
- ☐ a. Attempted to steal •
- ☐ b. Stole •
- ☐ c. Receipt of stolen property •

08 Tobacco/Nicotine Product
- ☐ a. Possessed/Used
  - ☐ 1st offense ▲
  - ☐ 2nd offense ▲
  - ☐ 3rd offense ▲ •
  - ☐ 4th offense ★ •

09 Obscenity
- ☐ a. Obscene act
- ☐ b. Habitual profanity / vulgarity

10 Drug Paraphernalia
- ☐ a. Unlawful possession ▲ •
- ☐ b. Unlawfully offered, arranged or negotiated to sell ▲ •

11 Disruption/Defiance
- ☐ a. Minor disruption / defiance
- ☐ b. Major disruption / defiance

13 Sexual Harassment (Grade 4-12 only)
- ☐ a. Verbal/Visual
- ☐ b. Physical contact (non-intimate)
- ☐ c. Continued sexual harassment

14 Hate Incidents (Grades 4-12 only)
- ☐ a. Mutual combat •
- ☐ b. Offensive comment, intent to harm •
- ☐ c. Use of physical force, minor injury •
- ☐ d. Use of physical force, serious injury ★ •
- ☐ e. Threat of violence •
- ☐ f. Vandalism or graffiti •

15 Threats and Intimidation
- ☐ a. Harassed, threatened or intimidated a student witness
- ☐ c. Terroristic threats•
  - ☐ school official (death or great bodily injury)
  - ☐ school property (over $1000)
- ☐ d Bullying (including electronic acts)

17 Harassment (grades 4-12 only)
- ☐ a. Harassed, intimidated, or threatened pupil or district personnel

18 Hazing
- ☐ a. Hazing •

Description of incident:

Date you interviewed the student:

Previous interventions attempted:

Date Prepared: By: Title:

Parent/Guardian telephoned by: Date: Time: AM ☐ PM ☐

PRINCIPAL SIGNATURE: _____ Date:

• MUST call School Police Services: 619-291-7678 / Event #: + **MUST call San Diego Police Dept. in addition to School Police**

★ Principal must recommend expulsion, pursuant to Administrative Procedure 6295

▲ Suspension Waiver: Principal may waive a portion or all of a suspension for specific substance violations. Refer to Substance Use Intervention Contract (22A4500)

ELEMENTARY: Principal may do an in lieu of expulsion for all offenses except for the following: 01h, 02g (only firearm or explosive), 02h, and 03d (only selling)

ORIGINAL TO: Parent/Guardian DUPLICATE TO: Cum File INPUT INTO ZANGLE & MAIL TO PARENT WITHIN 24 HOURS FORM 22-R-2220
Revised 8/2010 23-17.5M903-1

To the Parent:

This suspension has been issued in accordance with California Law and San Diego Unified School District Administrative Procedure No. 6290.

(1) During the period of this suspension, the student is to remain at home during school hours or under the direct supervision of the parent and is prohibited from entering upon premises of San Diego Unified School District (except in connection with an authorized or official meeting or other proceeding related to this suspension).

(2) The parent or guardian of the student has the right to attend a meeting with school officials at which time the causes, duration, school policy involved, and other matters pertinent to the suspension shall be discussed. The parent or guardian can call the school at the number listed on the front of this form and make an appointment to discuss this suspension.

(3) If a student had been recommended for expulsion, a five (5) day suspension will be issued due to the seriousness of the offense.

(4) The parent or guardian has a right to review all the student's school records.

(5) The pupil or the pupil's parents or guardian have the right to request an appeal of the suspension. The written appeal must be submitted within fifteen (15) school days of the first day of suspension. For information related to a suspension appeal and/or to receive a Suspension Appeal Form, please call (619) 725-5660.

Distrito Escolar Unificado de San Diego

REPORTE DE SUSPENSIÓN
Procedimiento Administrativo 6290

Escuela: _____ Teléfono: _____

NOTA A LOS PADRES: Por favor lea la importante información sobre derechos de los padres anexa en esta forma.

Nombre del estudiante: Identificación #: **FECHA DEL INCIDENTE**:

Edad: Sexo: Grado: Código Étnico: ¿VEEP? ☐Sí ☐No ¿Educación Especial? ☐ Sí ☐No ¿504? ☐ Sí ☐No

Domicilio:

Nombre del padre/madre/tutor: Teléfono:

PERÍODO DE SUSPENSIÓN: Fecha de inicio: Fecha de terminación: Número de días: Puede volver a la escuela el:

Entrevista en persona con los padres a realizarse el _____ (fecha) a las _____ (time). ¿Los padres declinaron la entrevista? ___ sí ___ no

Asistentes a la entrevista: _____

☐ **SI ESTE CUADRO ESTÁ MARCADO, EL ADMINISTRADOR DEL PLANTEL RECOMIENDA QUE EL ESTUDIANTE SEA EXPULSADO. LA OFICINA DE ASIGNACIÓN Y APELACIONES LLAMARÁ A LOS PADRES PARA INFORMARLES SOBRE LA RECOMENDACIÓN PARA EXPULSION**

01 Asalto/Agresión/Combate Mutuo
- ☐ a. Causó, intentó o amenazó con causar daño físico
  - ☐ 1ª pelea
  - ☐ 2ª pelea
  - ☐ 3ª pelea ★ •
- ☐ c. Causó intencionalmente lesiones leves, excepto en defensa propia •
- ☐ d. Causó intencionalmente lesiones graves, excepto en defensa propia ★ •
- ☐ f. Asaltó o agredió a un empleado de la escuela ★ •
- ☐ h. Asalto sexual o agresión sexual ★ •
- ☐ k. Auxilia o incita a infligir o intentar infligir daño físico (sólo suspensión a menos que sea declarado culpable en un tribunal)

02 Armas, Explosivos, Objetos Peligrosos, Imitación de Armas de Fuego
- ☐ g. Poseyó, vendió o distribuyó arma de fuego, navaja, explosivos, u objetos peligrosos ★ •
  - ☐ **arma de fuego o explosivo +**
- ☐ h. Blandió una navaja o cuchillo ★ •
- ☐ i. Poseyó, vendió o distribuyó fuegos artificiales que no sean M80 o *cherry bombs*
- ☐ j. Poseyó una imitación de arma de fuego ★ •

03 Sustancias Controladas/Prohibidas
- ☐ a. Poseyó, usó, estuvo bajo su influencia
  - ☐ 1ª ofensa ▲ •
  - ☐ 2ª ofensa ▲ •
  - ☐ 3ª ofensa ★ •
- ☐ d. Distribuyó o vendió ★ •
- ☐ e. Posesión de una cantidad mayor a la de uso personal ★ •
- ☐ h. Soma – ofreció, arregló o negoció para vender o vendió •

04 "En lugar de" Sustancias (sustancias que aparentan ser otras)
- ☐ b. Entregó, distribuyó o vendió •

05 Robo/Extorsión (incluye intentos)
- ☐ a. Robo ★ •
- ☐ b. Extorsión ★ •

06 Daño en Propiedad Ajena
- ☐ a. Intentó causar daño
- ☐ b. Causó daño menor
- ☐ c. Causó daño importante •

07 Robo de Propiedad Ajena
- ☐ a. Intentó robar •
- ☐ b. Robó •
- ☐ c. Recibió propiedad robada •

08 Tabaco/ Producto de Nicotina
- ☐ a. Poseyó/Usó
  - ☐ 1ª ofensa ▲
  - ☐ 2ª ofensa ▲
  - ☐ 3ª ofensa ▲ •
  - ☐ 4ª ofensa ★ •

09 Obscenidades
- ☐ a. Actos Obscenos
- ☐ b. Groserías / vulgaridades habituales

10 Parafernalia para Drogas
- ☐ a. Posesión ilegal ▲ •
- ☐ b. Ilegalmente ofreció, arregló o negoció para vender ▲ •

11 Interferencia/Desafío
- ☐ a. Interferencia/desafío menor
- ☐ b. Interferencia/desafío importante

13 Acoso Sexual (Sólo Grados 4-12)
- ☐ a. Verbal/Visual
- ☐ b. Contacto físico (no íntimo)
- ☐ c. Continuó el acoso sexual

14 Incidentes por odio (Sólo Grados 4-12)
- ☐ a. Combate mutuo •
- ☐ b. Comentario ofensivo, intento de dañar •
- ☐ c. Uso de fuerza física, herida leve •
- ☐ d. Uso de fuerza física, herida grave ★ •
- ☐ e. Amenaza de violencia •
- ☐ f. Vandalismo o grafiti •

15 Amenazas e Intimidación
- ☐ a. Acosó, amenazó o intimidó a un estudiante testigo
- ☐ c. Amenazas terroristas•
  - ☐ funcionario escolar (muerte o grave daño)
  - ☐ propiedad escolar (más de $1000)
- ☐ d Intimidación (incluso actos electrónicos)

17 Acoso (Sólo Grados 4-12)
- ☐ a. Acosó, intimidó o amenazó a un alumnos o miembro del personal del distrito

18 Novatada
- ☐ a. Novatada •

Descripción del incidente:

Fecha en que entrevistó al estudiante:

Previos intentos de intervención:

Fecha en que se preparó: Por: Título:

Llamada telefónica a padre/madre/tutor hecha por: Fecha: Hora: AM ☐ PM ☐

FIRMA DEL DIRECTOR: _____ Fecha:

• SE DEBE llamar a los Servicios de Policía Escolar: 619-291-7678 / Evento #: + **SE DEBE llamar al Depto. de Policía de San Diego además del aviso a la Policía Escolar**

★ El director debe recomendar la expulsión, de conformidad con el Procedimiento Administrativo 6295

▲ Exención de la Suspensión: El director puede exentar una porción o toda la suspensión para especificas violaciones de sustancias. Referirse al Contrato de Intervención de Uso de Sustancias (22A4500)

PRIMARIA: El director puede hacer algo en vez de la expulsión en todas las ofensas excepto en las siguientes: 01h, 02g (sólo arma de fuego o explosivo), 02h, y 03d (sólo venta)

ORIGINAL PARA: Padres/Tutores DUPLICADO PARA: Expediente INGRESAR EN ZANGLE Y ENVIAR A LOS PADRES POR CORREO EN 245 HORAS FORMA 22-R-2220
Revisado 8/2010 23-17.5M903-1

A los padres:

Esta suspensión ha sido expedida de acuerdo con la Ley de California y el Procedimiento Administrativo No. 6290 del Distrito Escolar Unificado de San Diego

(1) Durante el período de esta suspensión, el estudiante debe permanecer en casa durante el horario escolar o bajo la supervisión directa de sus padres, y tiene prohibida la entrada a los planteles de las Escuelas de la Ciudad de San Diego City (excepto en relación con una reunión oficial autorizada u otros trámites relacionados con esta suspensión).

(2) Los padres o el tutor del estudiante tienen derecho a asistir a una junta con los funcionarios de la escuela en la cual las causas, duración, política escolar implicada, y otros temas pertinentes a la suspensión serán discutidos. Los padres o el tutor pueden llamar a la escuela el número indicado al frente de esta forma y hacer una cita para discutir esta suspensión.

(3) Si se ha hecho la recomendación para expulsión de un estudiante, se expedirá una suspensión de cinco (5) días debido a la seriedad de la ofensa.

(4) Los padres o el tutor tienen derecho a revisar todos los informes escolares del estudiante.

(5) El alumno o los padres o tutores del alumno tienen derecho de solicitar una apelación de la suspensión. La apelación por escrito debe ser presentada dentro de los primeros quince (15) días de escuela a partir del primer día de la suspensión. Para información relacionada con una apelación de suspensión y/o para recibir una Forma de Apelación de Suspensión, por favor llame al (619) 725-5660.

San Diego Unified School District

ULAT SA PAGSUSPENDE
Admin Procedure 6290

Paaralan: _____ Phone: _____

Paunawa sa mga Magulang: Pakiusap na basahin ang mga mahahalagang kaalaman ng mga karapatan ng magulang na nakalakip dito.

Pangalan ng Mag-aaral: ID ng Mag-aaral #: **PETSA NG PANGYAYARI:**

Edad: Kasarian: Baitang: Lahi: VEEP? ☐Oo ☐Hindi Special Education? ☐Oo ☐Hindi 504? ☐Oo ☐Hindi

Tirahan:

Pangalan ng Magulang/Tagapag-alaga: Phone:

PANAHON NG SUSPENSIYON: Umpisa: Natapos: Ilang araw: Maaaring bumalik sa paaralan sa:

Dadalo sa panayam ng magulang sa _____ (petsa) sa _____ (oras). Tinanggihan ng magulang ang pulong? ___ oo ___ hindi

Mga dadalo sa panayam: _____

☐ **KAPAG ANG KAHONG ITO AY NAMARKAHAN, ANG TAGAPANGASIWA NG PAARALAN AY IMINUMUNGKAHING ANG MAG-AARAL AY MAPATALSIK. TATAWAGAN NG TANGGAPAN NG PLACEMENT AND APPEAL ANG MAGULANG TUNGKOL SA IMINUMUNGKAHING PAGPAPATALSIK.**

01 Pagsalakay/Pambubugbog/Damayang Laban
- ☐ a. Nilikha, sinadya, o pagbantang lilikha ng pananakit
  - ☐ Unang pakikipag-away
  - ☐ Pangalawang pakikipag-away
  - ☐ Pangatlong pakikipag-away ★ •
- ☐ c.Sinadyang di-lubhang pananakit, maliban sa pagtanggol sa sarili •
- ☐ d. Sinadyang malubhang pananakit, maliban sa pagtanggol sa sarili ★ •
- ☐ f. Pagsalakay o pambubugbog sa kawani ng paaralan ★ •
- ☐ h. Pagsalakay o pambubugbog sa kasarian ★ •
- ☐ k. Pagtulong o pagsulsol sa parusa o pagtangkang pagpapahirap ng katawan (sa suspensiyon lamang, maliban kong iginawad ng hukuman)

02 Sandata, Pampasabog, Mapanganib na mga Bagay, Kahawig ng mga Sandata
- ☐ g. Taglay, nagtinda, o nagkaloob ng sandata, kutsilyo, pampasabog, o mapanganib na bagay ★ •
  - ☐ **sandata o pampasabog** +
- ☐ h. Nag-amba ng kutsilyo ★ •
- ☐ i. Taglay, nagtinda o nagkaloob ng pampasabog maliban sa M80's o cherry bombs
- ☐ j. Taglay ng kagaya ng sandata ★ •

03 Pinipigilan/Bawal na Sangkap
- ☐ a. Taglay / Gumamit / Nasa kapangyarihan
  - ☐ Unang pagkakasala ▲ •
  - ☐ Pangalawang pagkakasala ▲ •
  - ☐ Pangatlong pagkakasala ★ •
- ☐ d. Namigay o nagtinda ★ •

04 "Kahaliling" Sangkap
- ☐ c. Taglay ang dami ng higit sa pansariling gamit ★ •
- ☐ h. Soma – nag-alok, nakipag-ayos o nagkasundong magtinda, o nagtinda •
- ☐ b. Pinadala, pinamigay, o itininda •

05 Nakaw/Namilit (kabilang ang pagtangka)
- ☐ a. Nakaw ★ •
- ☐ b. Namilit ★ •

06 Paninira ng Ari-arian
- ☐ a. Tangkang paninira
- ☐ b. Nagbunga ng maliit na pinsala
- ☐ c. Nagbunga ng malaking pinsala •

07 Pagnanakaw ng Ari-arian
- ☐ a. Tangkang magnakaw •
- ☐ b. Nagnakaw •
- ☐ c. Tumanggap ng nakaw na ari-arian •

08 Tabako/Produktong may Nokotina
- ☐ a. Angkin/Gumamit
  - ☐ Unang pagkakasala ▲
  - ☐ Pangalawang pagkakasala ▲
  - ☐ Pangatlong pagkakasala ▲ •
  - ☐ Pang-apat na pagkakasala ★ •

09 Kalaswaan
- ☐ a. Malaswang kilos
- ☐ b. Nakagawiang paglapastangan/ kabastusan

10 Drogang Paraphernalia
- ☐ a. Labag sa batas na pagkakaroon ▲ •
- ☐ b. Labag sa batas na pag-alok, pakikipag-ayos o pakipagkasundong magtinda ▲ •

11 Di pakikipag-isa/Pagsuway
- ☐ a. Di lubhang di pakikipag-isa / pagsuway
- ☐ b. Lubhang di-pakikipag-isa / pagsuway

13 Panliligalig sa Kasarian (Baitang 4-12 lamang)
- ☐ a. Salita/Paningin
- ☐ b. Pagdikit ng katawan (hindi kapalagayan)
- ☐ c. Patuloy na panliligalig sa kasarian

14 Pangyayaring nakakamuhi (Baitang 4-12 lamang)
- ☐ a. Damayang laban •
- ☐ b. Nakakagalit na salita, hangaring manakit •
- ☐ c. Paggamit ng katawan, di-lubhang panakit •
- ☐ d. Paggamit ng katawan, lubhang panakit ★ •
- ☐ e. Pagbanta ng karahasan •
- ☐ f. Paninira o graffiti •

15 Pagbanta at Pananakot
- ☐ a. Panligalig, pagbanta o pananakot ng mag-aaral na tatayong saksi
- ☐ c. Teroristang pananakot •
  - ☐ Pinuno ng paaralan (kamatayan o matinding pananakit)
  - ☐ Ari-arian ng paaralan (higit $1000)
- ☐ d Pananakot (kabilang ang gawang elektronik)

17 Panliligalig (Baitang 4-12 lamang)
- ☐ a. Niligalig, binantaan, or nanakot ng mag-aaral o kawani ng distrito

18 Pagpapahirap
- ☐ a. Pagpapahirap •

Paglalarawan ng pangyayari:

Petsang tinanong ang mag-aaral:

Nakaraang pamagitang sinubukan:

Petsang Inihanda: Ni: Titulo:

Tineleponohan ang magulang/tagapag-alaga ni: Petsa: Oras: AM ☐ PM ☐

LAGDA NG PUNONG-GURO: _____ Petsa:

• DAPAT tumawag sa School Police Services: 619-291-7678 / Pangyayari #: **+ DAPAT tumawag sa San Diego Police Dept. maliban sa School Police**

★ Ang punong-guro ay dapat magmungkahi ng pagpatalsik, sang-ayon sa Administrative Procedure 6295

▲ Magpaubaya sa suspensiyon: Ang punong-guro ay maaaring magpaubaya sa isang bahagi o ang lahat ng suspensiyon para sa paglabag sa partikular na sangkap. Sumangguni sa Substance Use Intervention Contract (22A4500)

ELEMENTARIYA: Ang punong-guro ay maaaring magbigay ng kapalit sa pagpapatalsik para sa lahat ng kasalanan maliban sa mga sumusunod: 01h, 02g (armas o pampaputok lamang), 02h, at 03d (pagtinda lamang).

ORIGINAL TO: Parent/Guardian DUPLICATE TO: Cum File INPUT INTO ZANGLE & MAIL TO PARENT WITHIN 24 HOURS FORM 22-R-2220
Revised 8/2010 23-17.5M903-1

Sa Magulang:

Itong suspensiyon ay iginawad sang-ayon sa California Law and San Diego Unified School District Administrative Procedure No. 6290.

(1) Sa panahon nitong suspensiyon, ang mag-aaral ay mananatili sa bahay sa oras ng pasukan o nasa pamatnubay ng magulang at bawal na pumasok sa kapaligiran ng paaralan (maliban sa kaugnayan ng isang pangasiwaan o isang tunay na pulong o ibang mga gawaing may kinalaman sa suspensiyong ito).

(2) Ang magulang o tagapag-alaga ng mag-aaral ay may karapatang dumalo sa isang pulong kasama ang mga pinuno ng paaralan kung saan ang mga dahilan, itatagal, may kinalamang mga pamalakad ng paaralan, at ibang mga bagay tungkol sa suspensiyon ay pag-uusapan. Ang magulang or tagapag-alaga ay maaaring tumawag sa paaralan sa mga numerong nakalista sa harap nitong papel at magtakda ng panahong makipagkita upang pag-usapan ang suspensiyon.

(3) Kapag ang isang mag-aaral ay inirekomenda para mapatalsik, ang limang (5) araw na suspensiyon ay ipinataw dahil sa kaselanan ng kasalanan.

(4) Ang magulang o tagapag-alaga ay may karapatang suriin ang lahat ng talaan ng mag-aaral sa paaralan.

(5) Ang mag-aaral o ang mga magulang o tagapag-alaga ng mag-aaral ay may karapatang humiling ng isang panawagan sa suspensiyon. Ang nakasulat na panawagan ay dapat maibigay sa loob ng labinlimang (15) araw sa simula ng suspensiyon. Sa mga kaalamang may kinalaman sa panawagan ng suspensiyon at/o upang makatanggap ng Suspension Appeal Form, pakiusap na tawagan ang (619) 725-5660.

San Diego Unified School District

WARBIXINTA ERISKA
Maamulka Tirsigiisu yahay 6290

Dugsiga : _____ Telefoonka: _____

XUSUUSIN WAALIDIINTA: Fadlan waxaad akhridaa warbixinta ku saabsan xuquuqda waalidiinta ee foomkan ku dhegan.

Magaca Ardeyga: Nambarka Aqoonsiga Ardeyga: **TAARIIKHDA DHACDADA:**

Da'da: Jinsi: Fasalka: Namarka Jinsiga: VEEP? ☐H ☐M Waxbarashadda Khaaska ah? ☐H ☐M 504? ☐H ☐M

Ciwaanka:

Magaca Waalidka/Qofka ilmaha masuulka ka ah: Telefoon:

WAKHTIGA ERISKA: Taariikhda uu bilaabmeyo: WAKHTIGA ERISKA: Taariikhda uu bilaabmeyo:

Tirada Maalmaha: Dugsiga ku soo laabaneyaa:

Wakhtiga waalidka shakhsiyan shirka loo qabaneyo _____ (taariikhda) ee _____ (saacada). Waalidku shirka miyuu diiday? ___ haa ___ maya

Conference attendees: _____

☐ **HADDII KHAANADAN LA CALAAMADEEYEY, MAAMULKA DUGSIGU WUXUU KU TALINEYAA IN ARDEYGA DUGSIGA GEBI AHAANBA LAGA CAYDHIYO. ARRIMAHA CAYDHISKAAS ARDEYGA KU SAABSAN WAXAA WAALIDKA KALA SOO XIDHIIDHI DOONA XAFIISKA MEELEYNTA IYO ABIIL QAADASHADA.**

01 Weerar kedis ah ku qaadid
☐ a. Sababid, isku dayid,ama ku hanjabid inaad dhaawac jidheed geysatid, waxaana ka mid ah hadal ama qoraal ku gaysatid, dhawwac yar ama mid weyn gaadhsiin
☐ dagaalka 1aad
☐ dagaalka 2aad
☐ dagaalka 3aad ★ •
☐ c. Si ulakac ah dhaawac fudud qof kale u geysasho, marka laga reebo • is difaacida•
☐ d. Si ula kac ah dhaawac halis ah u geysasho, marka laga reebo is difaacida ★ •
☐ f. Shaqaalaha dugsiga si kedis ah u weerarid ★ •
☐ h. Faraxumey qof kale ku la kicid ★ •
☐ k. Kaalmeynta ama ka qeyb qaadashada dhaawac qof kale loo geysto (eris keliya, ilaa ay maxkamad xukunto)

02 Hubka, Walxaha qarxa, Sheyada halista ah,, Waxyaabaha qoryaha u eg
☐ g. Haysashada, iibinta ama qalabeynta qoryaha, mindida, ama walxaha qarxa ★ •
☐ **Qoriga ama walxaha qarxa +**
☐ h. Mindi la calaamadeeyey ★ •
☐ i. Haysashada, iibinta ama qalabeynta ama ee aan ahayn M80 ama bambada farxada
☐ j. Haysashada wax qori loo ekeysiiyey ★ •

03 Waxyaabaha la xakameeyey ama manuucay
☐ a. haysashada/isticmaalka/khamri cabsanaanta
☐ dembiga 1aad ▲ •
☐ dembiga 2aad ▲ •
☐ dembiga 3aad ★ •
☐ d. Haysashada ama isticmaalka ★ •

04 "Beddelka "walxaha manuuca ah
☐ e. Haysashada istcmaalka in ka badan isticmaalka shakhsiga ★ •
☐ h. Soma –siin, maamulida ama Kula haeshiinta iibka, ama iibinta •
☐ b. Siinta, haysashada ama iibinta •

05 Boobka (Isku dayga ayaa ka mid ah)
☐ a. Boob ★ •
☐ b. Handadaad wax ku dhicid ★ •

06 Waxyeeleynta Hantida
☐ a. Isku dayga inaad waxyeelo geysatid
☐ b. Dhaawac yar gaadhsiin
☐ c. Dhaawac weyn gaadhsiin •

07 Xatooyada Hantida
☐ a. Isku dayid inaad wax xadid •
☐ b. Xadey •
☐ c. Qaadashada wax la soo xadey •

08 Waxyaabah tubaakada iyo Nikootiinka lag a sameeyo
☐ a. Haysashada/Isticmaalka
☐ Dembiga 1aad ▲
☐ Dembiga 2aad ▲
☐ Dembiga 3aad ▲ •
☐ Dembiga 4aad ★ •

09 Fisqiga
☐ a. Falka fisqiga
☐ b. Cayda diinta/edeb darada

10 Walxaha Maandooriyaasha lagu istimaalo
☐ a. Si sharci-daro ah u haysasho ▲ •
☐ b. Si sharci-daro ah u siin, maamulid ama inaad iibisid kula heshiin ▲ •

11 Rabshada/Madax-adayga
☐ a. Rabshad/Madax-adayg yar
☐ b. Rabshad/Madax-adayg weyn

13 Fara-xumeynta (Fasalada 4-12 oo keliya)
☐ a. Maqal/Muuqaal
☐ b. Taabashada jidhka qof yar (aan saaxiib ahayn)
☐ c. Sii wadista fara-xumeynta

14 Dhacdooyin Nacayb ah (Fasalada 4-12 keliya)
☐ a. Dagaalka ay laba qof xoog u dagaalamaan •
☐ b. Samey dembi waxyeelo leh •
☐ c. Isticmaalka xoog dhaawac fudud geysta •
☐ d. Isticmaalka xoog dhaawac culus geysta ★ •
☐ e. Handadaad rabshad xambaarsan •
☐ f. Kharribaad ama ku feegaarid dhismo •

15 Handadaad iyo cabsi gelin
☐ a. Handadaad iyo cabsi gelin ardey markhaati ah
☐ c. Caga-jugleynta argagaxisada •
☐ shaqaalaha dugsiga (dhimasho ama dhaawac weyn)
☐ hantida dugsiga ($1000 in ka badan)
☐ d U xoog sheegasho (taas oo ay ku jirto isticmaalka walxaha korontada ku shaqeeya)

17 Fara-xumeyn (fasalada 4-12 oo keliya)
☐ a. Handadaad ama cabsi gelin ardeyda iyo shaqaalaha dugsiga

18 Tashwiish-furid
☐ a. Tashwiish furid •

Qeexitaanka nooca dhacdada:

Taariikhda ardeyga la wareystay

Waxyaabihii hore ee la isku dayey in lagu xaliyo:

Taariikhda la diyaariyey: Diyaariye: Derajada:

Waxaa waalidka/qof masuul ah telefoon u direy: Taariikhda: Saacada:

Gelin hore ☐ Gelin dambe ☐

SAXIIXA MAAMULAHA: _____ Taariikhda:

• WAA IN la wacaa Adeegyada Booliiska: 619-291-7678 / Event #: + **WAA IN la wcaa Waaxda Booliiska taas oo dheeri ku ah wicitaanka**

Booliiska Dugsiyada

H ★ Maamuluhu waa inuu soo jeediyaa in gebi ahaanba dugsiga laga eryo, Taas oo la xidhiidha nidaamka maamulka ee tirsigiisu yahay 6295.

σ ▲ Ka Cafiyid Eriska: Maamulaha dugsigu wuxuu go'aan ka gaadheyaa inta uu erisku le'eg yahay, wuxuu ka cafiyi karaa qeyb ka mid ah ama dhammaan eriska ku saabsan dembiyo gaar ah oo la galay.. Waxaad fiirsaa Heshiiska loo Isticmaaley Dhex-gelista inta aan wax dhici (22A4500).

DUGSIGA HOOSE: Maamulaha dugsigu wuxuu eris ku beddeli karaa ciqaabo kale marka laga reebo dembiyadan soo socda oo ay shardi tahay in ardeyga dugsiga gebi ahaanba laga eryo.

01h, 02g (haysashada qoriga iyo waxyaabaha qarxa oo keliya),
02h, 03d (iibinta oo keliya)

NUQULKA ASALKA AH: Waalidka/Qofka ilmaha masuulka ah gudahooda la geliyaa FOOMKA 22-R-2220 NUQULA KOOBBIGA AH: Feylka Guud Waa in 24 saacadood

Waxaa dib loo eegay 8/2010 23-17.5M903-1

Somali version: suspension form (2010 update)

Ku Waalidiinta:

Dugsi ka caydhinta waxaa lagu soo sheegay sida uu dhigeyo Sharciga California iyo Dugsiyada Middoobey ee San Diego ee Nidaamka Maamulka tirsigiisu yahay No.6290 uu dhigeyo.

(1) Wakhtiga ardeyga dugsiga laga eryey waa inuu ardeygu guriga joogaa saacadaha dugsiga la dhiganeyo, waxaana loo baahan yahay inuu qof waalid ah la joogaa, waxaana manuuc ka ah inuu soo galo dhismeyaasha San Diego City Schools (marka laga reebo kullan rasmi oo ama oggolaansho madaxda ama waxyaabo kale oo la xidhiidha eriskii dugsiga laga eryey).

(2) Waalidiinta ama dadka ardeyda ka masuulka ah waxay xaq u leeyihiin inay madaxda dugsiga kala qeybgalaan shirarka lagaga wada hadleyo arrimaha ku saabsan eriska ardeyda, iyo waxyaabaha keena iyo wakhtiga eriskaba. Sidaas darteed, waa in waalidiinta ama dadka ardeyda masuulka ah ay isla markiiba soo wacaan dugsiga oo telefoonkiisu ku yaalo Foomak Eriska Ardeyda, waana inay ballan ka dhigtaan dugsiga si ay eriskaas uga wada hadlaan.

(3) Haddii la soo jeediyo in ardeyga dugsiga laga eryo gebi ahaanba, waxaa ardeyga dugsiga laga eryo doonaa muddo shan (5) maalmood ah, inta uu go'aanka sugayo taas oo ku xidhan hadba inta uu dembigu la eg yahay.

(4) Waalidka ama qofka ilmaha ka masuulka ahi wuxuu xaq u leeyahay inuu fiiriyo diiwaanada dugsiga ee ardeyga.

(5) Ardeyga iyo waalidka ardeyguba waxay xaq u leeyihiin inay codsadaan abiil ku saabsan eriskaa. Abiilkaas oo qoraal ah waa in dugsiga loogu soo gudbiyaa shan iyo toban (15 maalmaha dugsigu furan yahay ah. Warbixinada ku saabsan abiilka eriska /ama Foomka Abiilka Eriska ee aad heshay, fadlan waxaad wacdaa telefoonkan ah (619) 725-5660.

Học Khu Thống Nhất San Diego

BÁO CÁO VỀ VIỆC TẠM ĐUỔI HỌC
Thủ tục hành chánh 6290

Trường: _____ Điện thoại: _____

PHỤ HUYNH LƯU Ý: Xin đọc thông tin quan trọng về các quyền lợi của phụ huynh được đính kèm theo mẫu đơn này.

Tên học sinh: Thẻ ID#: **NGÀY VIỆC XẢY RA**:

Tuổi: Phái: Lớp: Sắc tộc: VEEP? ☐Có ☐Không Giáo dục đặc biệt? ☐Có ☐Không 504? ☐Có ☐Không

Địa chỉ:

Tên Phụ huynh/Giám hộ: Điện thoại:

THỜI GIAN TẠM ĐUỔI HỌC: Ngày đầu: Ngày cuối: Số ngày: Có thể trở lại trường vào:

Hội nghị giáp mặt với phụ huynh sẽ vào _____(ngày) lúc _____ (giờ). Phụ huynh từ chối đi họp? __Có __ Không

Những người có mặt tại buổi hội nghị: _____

☐ **NẾU KHUNG NÀY ĐƯỢC ĐÁNH DẤU, NHÂN VIÊN HÀNH CHÁNH TẠI TRƯỜNG KHUYÊN ĐUỔI THÁNG HỌC SINH. PHỤ HUYNH SẼ ĐƯỢC LIÊN LẠC VỀ QUYẾT ĐỊNH ĐUỔI HỌC CỦA VĂN PHÒNG SẮP XẾP VÀ KHÁNG CÁO (OFFICE OF PLACEMENT AND APPEAL)**

01 Hành hung/Đánh đập/Thỏa thuận đánh nhau
- ☐ a. Gây ra, toan tính hoặc hăm dọa gây thương tích
  - ☐ đánh nhau lần thứ nhất
  - ☐ đánh nhau lần thứ hai
  - ☐ đánh nhau lần thứ ba ★ •
- ☐ c. Cố tình gây thương tích nhẹ, trừ trường hợp tự vệ •
- ☐ d. Cố tình gây thương tích nặng, trừ trường hợp tự vệ ★ •
- ☐ f. Tấn công hoặc hành hung một nhân viên trường ★ •
- ☐ h. Tấn công hoặc đánh đập tình dục ★ •
- ☐ k. Giúp hoặc tiếp tay gây thương tích hoặc toan gây thương tích (chỉ bị tạm đuổi học, trừ phi bị kết án bởi tòa)

02 Vũ khí, Chất nổ, Vật nguy hiểm, Súng ống giả
- ☐ g. Sở hữu, bán hoặc cung cấp một khẩu súng, con dao, chất nổ hoặc vật nguy hiểm★•
  - ☐ **khẩu súng hoặc chất nổ +**
- ☐ h. Khua dao ★ •
- ☐ i. Sở hữu, bán hoặc cung cấp pháo bông ngoài các loại bom M80 hoặc cherry
- ☐ j. Sở hữu súng giả ★ •

03 Các Chất bị Kiểm soát/Ngăn cấm
- ☐ a. Sở hữu / Sử dụng / Dưới ảnh hưởng
  - ☐ Vi phạm thứ nhất ▲ •
  - ☐ Vi phạm thứ hai ▲ •
  - ☐ Vi phạm thứ ba ★ •
- ☐ d. Cung cấp hoặc bán★ •
- ☐ e. Sở hữu một số lượng nhiều hơn sự sử dụng cá nhân ★ •
- ☐ h. Soma – mời, dàn xếp hoặc điều đình để bán, hoặc bán •

04 "Thay thế cho" Chất liệu
- ☐ b. Giao, cung cấp hoặc bán •

05 Ăn cướp/Tống tiền (gồm cả các lần toan tính)
- ☐ a. Ăn cướp ★ •
- ☐ b. Tống tiền ★ •

06 Thiệt hại Tài sản
- ☐ a. Toan gây thiệt hại
- ☐ b. Gây thiệt hại nhẹ
- ☐ c. Gây thiệt hại nặng •

07 Ăn cắp Tài sản
- ☐ a. Toan ăn cắp •
- ☐ b. Ăn cắp •
- ☐ c. Toa trữ tài sản ăn cắp •

08 Sản phẩm Thuốc lá/Ni-cô-tin
- ☐ a. Sở hữu/Sử dụng
  - ☐ Vi phạm thứ nhất ▲
  - ☐ Vi phạm thứ hai ▲
  - ☐ Vi phạm thứ ba ▲ •
  - ☐ Vi phạm thứ tư ★ •

09 Tục tĩu
- ☐ a. Một hành động tục tĩu
- ☐ b. Tục tĩu thông thường / thô lỗ

10 Các loại Ma túy khác
- ☐ a. Sở hữu bất hợp pháp ▲ •
- ☐ b. Mời, dàn xếp hoặc điều đình để bán một cách bất hợp pháp▲ •

11 Quấy rối/Thách thức
- ☐ a. Quấy rối nhẹ / thách thức
- ☐ b. Quấy rối nặng / thách thức

13 Quấy nhiễu Tình dục (chỉ từ lớp 4-12)
- ☐ a. Bằng miệng/Bằng mắt
- ☐ b. Đụng chạm thân thể (không mật thiết)
- ☐ c. Tiếp tục quấy nhiễu tình dục

14 Biến cố Thù ghét (chỉ từ lớp 4-12)
- ☐ a. Thỏa thuận đánh nhau •
- ☐ b. Lời nói công kích, có ý định làm hại •
- ☐ c. Dùng sức mạnh, gây thương tích nhẹ •
- ☐ d. Dùng sức mạnh, gây thương tích nặng ★ •
- ☐ e. Hăm dọa bạo hành •
- ☐ f. Phá hoại hoặc vẽ bậy •

15 Hăm dọa và Dọa dẫm
- ☐ a. Quấy rầy, hăm dọa hoặc dọa dẫm một nhân chứng học sinh
- ☐ c. Các hăm dọa khủng bố•
  - ☐ nhân viên trường (chết hoặc thương tích nặng)
  - ☐ Tài sản của trường (trên 1000 đô)
- ☐ d Bắt nạt (gồm cả các hành động về điện tử)

17 Quấy rầy (chỉ từ lớp 4-12)
- ☐ a. Quấy rầy, dọa dẫm hoặc hăm dọa học sinh hoặc nhân viên của học khu

18 Bắt nạt
- ☐ a. Bắt nạt •

Mô tả sự việc:

Ngày phỏng vấn học sinh:

Các biện pháp ngăn ngừa đã được sử dụng:

Ngày làm báo cáo: Bởi: Chức vị:

Phụ huynh/Giám hộ được thông báo bằng điện thoại bởi: Ngày: Giờ:

AM ☐ PM ☐

CHỮ KÝ HIỆU TRƯỞNG: _____ Ngày:

• PHẢI gọi các Dịch Vụ Cảnh Sát: 619-291-7678 / Sự kiện #: + **PHẢI gọi cho Văn Phòng Cảnh Sát San Diego ngoài Văn Phòng Cảnh Sát Trường**

★Hiệu trưởng phải đề nghị vụ đuổi học, theo Thủ Tục Hành Chánh 6295

▲ Đặc Miễn Tạm Đuổi Học: Hiệu trưởng được phép đặc miễn một phần hoặc toàn số ngày tạm đuổi học cho một số vi phạm sử dụng các chất đặc biệt. Hãy xem Hợp Đồng Cho Việc Sử Dụng Các Chất (22A4500)

TIỂU HỌC: Hiệu trưởng được phép thay thế việc đuổi học cho tất cả các vi phạm trừ các điều sau: 01h, 02g (chỉ cho súng hoặc chất nổ), 02h và 03d (chỉ cho việc buôn bán)

BẢN CHÍNH: Phụ huynh/Giám hộ BẢN PHỤ: Hồ sơ CHO DỮ KIỆN LÊN ZANGLE & GỬI CHO PHỤ HUYNH TRONG VÒNG 24 TIẾNG MẪU 22-R-2220
Kiểm lại 8/2010 23-17.5M903-1

Kính gửi quý vị phụ huynh:

Việc tạm đuổi học này đã được thi hành đúng theo Luật pháp của tiểu bang California và Thủ Tục Hành Chính số 6290 của Học Khu Thống Nhất San Diego.

(1) Trong thời gian bị tạm đuổi học này, học sinh phải ở nhà trong những giờ trường học hoặc phải ở đưới sự giám thị trực tiếp của phụ huynh và không được lại gần các khu vực của Nha Học Chánh San Diego (trừ phi có một cuộc gặp gỡ được cho phép hoặc chính thức hoặc có sự tiến hành thủ tục nào khác liên quan đến việc tạm đuổi học này).

(2) Phụ huynh hoặc giám hộ của học sinh có quyền tham gia một buổi họp với các nhân viên của trường mà trong đó các lý do, thời hạn, chính sách tham gia của trường và các đề tài khác liên quan đến việc đuổi học sẽ được mang ra bàn thảo. Phụ huynh hoặc giám hộ có thể gọi số điện thoại của trường ở phía mặt trước của mẫu đơn này để làm một cuộc hẹn đến nói chuyện về việc tạm đuổi học này.

(3) Nếu một học sinh đã được đề nghị đuổi học, một giấy tạm đuổi học năm (5) ngày sẽ được ban ra vì tầm quan trọng của sự vi phạm.

(4) Phụ huynh hoặc giám hộ của học sinh có quyền xem xét các hồ sơ của học sinh ở trường.

(5) Học sinh hoặc phụ huynh hoặc giám hộ của học sinh có quyền lập thủ tục chống lại việc tạm đuổi học. Đơn kháng cáo phải được làm trong vòng mười lăm (15) ngày học tính từ ngày đầu bị đuổi. Để biết tin tức về cách lập thủ tục chống lại việc tạm đuổi học và/hoặc để nhận một Mẫu Đơn Kháng Cáo Việc Tạm Đuổi Học, xin gọi số (619) 725-5660.

Attachment 1

San Diego Unified School District

SUBSTANCE USE INTERVENTION CONTRACT*

(Procedure 6298)

Site

Suspension Code

NAME: _____ _____ _____ _____ _____
Last First Student I.D. Age Grade

Actual day(s) to be served: _____ Number of days waived: _____ Length of imposed suspension: _____

(Days waived and days served must equal length of imposed suspension).

This contract is to be used to formally refer your daughter/son for entry level substance intervention services. In some cases these services will accompany a formal suspension; in others, the administrator may wish to use the services outlined on this contract as an **alternative to suspension**. For first and second offenses, possession and use of alcohol and other drugs, student needs shall be identified and shall be addressed at the school of attendance, through one of the intervention classes listed below. Your site administrator will assist you with understanding what will be expected for the duration of this contract.

STUDENT EXPECTATIONS:

I understand that I am ineligible to hold student office or participate in interscholastic, co-curricular, or any other extracurricular activity. Summer vacations and holiday breaks do not count towards any school day loss of eligibility requirement.

❑ 30 school days – 1st offense from _____ to _____

❑ 90 school days – 2nd offense from _____ to _____

I will attend all intervention program classes:

- ❑ Tobacco Education (8 classes)
- ❑ Tobacco Cessation (8 classes)
- ❑ Insight (nine classes)
- ❑ Sober Support (nine classes)/**Limited to students who have completed the Insight program or outside treatment program**.
- ❑ Other (specify program and duration; proof of enrollment and completion must be provided to the Health Services Outreach Assistant at site) _____

_____

I understand the following consequences will occur if I fail to abide by the above expectation:

- My parents will be notified immediately.
- I will be suspended or my original suspension will be reinstated.
- Loss of eligibility to hold student office, and/or participate in sports and/or any extracurricular program will be increased according to District Procedure 6298.
- Probation, legal and/or court authorities will be notified, if appropriate.
- A referral for other appropriate disciplinary procedures will be made. Further action will be determined by the principal or designee.
- The site may initiate an alternative placement if I violate a second offense contract (other than tobacco). School Initiated Placement (SIP) shall be considered through the Placement and Appeal office, only when the intervention specified in the second contract has not been achieved.
- A referral for a comprehensive health assessment including a chemical substance screening may be made as required for a second offense.
- Other (specify consequence) _____

_____

I understand that for this contract to be successful, other school staff will be informed of the terms of this contract and will be asked to monitor my behavior until _____ (date to be determined by administrator).

SIGNED:

Student _____ Date _____

Parent/Guardian _____ Date _____

Principal/Designee _____ Date _____

*Formerly titled: Alternative to Suspension Contract

ORIGINAL TO: Parent/Guardian (by mail) DUPLICATE TO: School File INPUT INTO SIS DISCIPLINE HISTORY

This form must accompany original "Report on Suspension" form 22R2220

22A4500

07/19/01 j/alt-suspension

San Diego Unified
SCHOOL DISTRICT

Policy Type: Operational Expectations **OE-3**

Learning Environment/Treatment of Students/Discipline

Operational Result: The superintendent shall establish and maintain a learning environment that is safe, disciplined, respectful and conducive to effective learning.

The superintendent will:

1. Maintain a climate that is characterized by support and encouragement or high student achievement and personal development and well-being.

2. Establish and consistently enforce discipline policies to maintain safe and effective environments for all students.

3. Appropriately involve teachers, administrators, students and the community in developing student discipline policy;

4. Assure that teachers, students and parents are informed of the behavioral expectations of students.

5. Ensure that all policies and procedures regarding discipline are enforced consistently using reasonable judgment.

6. Assure that all confidential student information is properly used and protected.

The superintendent may not:

7. Tolerate any behaviors, actions or attitudes by adults who have contact with students that hinder the academic performance or the well-being of students.

8. Permit the administration of corporal punishment.

9. Permit unnecessary or irrelevant collection of student information.

Adopted: September 29, 2009

Monitoring Method: ***Internal report***
Monitoring Frequency: ***Annually in August***

San Diego Unified School District Board of Education

San Diego Unified
SCHOOL DISTRICT

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REVISED: **11-15-10**

ADMINISTRATIVE PROCEDURE

CATEGORY: **Students, Discipline**
SUBJECT: **Expulsion**

1. PURPOSE AND SCOPE

1. To outline district procedures governing expulsion of a student from school.

2. **Related Procedures:**

2. LEGAL AND POLICY BASIS

1. **Reference:** Board policy: A–3700, F–3100, F–6000, H–5000, H–6000, H–6800, H–6900, H–6940, H–6950, H–8900; Education Code Sections 48900 *et seq.,* 49079; California Code of Regulations, Title 5, Section 305; Penal Code Section 12001(b); 18 United States Code Section 921.

2. **District Policy.** The Board of Education will firmly and promptly support school principals, vice principals, counselors, teachers, and students in maintaining good discipline in schools and at all school-sponsored activities.

3. All students shall comply with the regulations, pursue the required course of study, and submit to the authority of teachers (Education Code Section 48908).

3. GENERAL

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Placement and Appeal Office, Student Services Division, Deputy Superintendent of Academics.

2. **Definitions**

   a. **Superintendent's designee**: For purposes of this procedure, the Placement and Appeal Legal Specialist or Director, unless specified otherwise within this procedure.

   b. **Principal's designee**: An administrative employee designated by the principal, in writing, to assist with disciplinary procedures. A second person also shall be designated by the principal, in writing, to serve as designee when the principal

and the primary designee are absent from the school site. These names must be on file in the principal's office. The principal must annually record designations.

c. **Suspension**: Temporary removal of a student from ongoing instruction at the school site for the purposes of adjustment, as outlined in Procedure 6290. The following *do not* constitute formal suspension:

(1) Reassignment to another educational program or class at the same school.

(2) Referral to a district employee designated by the principal to advise students.

(3) Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or principal's designee for appropriate action. Removal from a particular class shall not occur more than once every five (5) school days.

(4) Reassignment to an independent study program pursuant to Procedure 4316.

d. **Expulsion**: Removal of a student from the immediate supervision and control, or general supervision, of school personnel. An expelled student may not participate in any district program or activity, including any independent study program; however, the student may be eligible to attend a community day school program.

e. **Suspended expulsion**: Setting aside an expulsion contingent upon fulfillment of certain conditions. Upon recommendation of the Expulsion Review Panel, a student whose expulsion is suspended pursuant to Education Code Section 48917 may be assigned by the Board of Education to a school, alternative school, class, independent study program, or program deemed appropriate for the student's rehabilitation. During the period of the suspended expulsion, the student is deemed to be on probationary status. Upon satisfactory completion of the rehabilitation assignment by the student, the Board of Education shall reinstate the student in a district school and also may order the expungement of any and all records of the expulsion proceedings.

f. **Day**: One (1) calendar day unless specified otherwise.

g. **School day**: A day when schools of the district are in session, or weekdays during summer recess.

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3. **Grounds for Suspension and/or Expulsion.** A student shall not be recommended for expulsion unless the superintendent or principal of the school in which the student is enrolled determines that the student has committed one of the following acts:

		*Code No.
a.	**Assault/Battery**. Includes caused, attempted to cause physical injury, or threatened to cause physical injury to another person (including school employees); willfully used force or violence upon the person of another, except in self-defense; also included are attempted sexual assault, sexual assault, and sexual battery.	01
b.	**Weapons**. Possessed, sold or otherwise furnished any firearm, replica firearm, knife, explosive, or other dangerous object, or used any object in a threatening manner	02
c.	**Alcohol/Intoxicants/Controlled Substances.** Includes unlawfully possessed, used, sold, or furnished, or under the under the influence ofalcohol, intoxicants, or controlled substances.	03
d.	**Substance in Lieu of Alcohol/Intoxicants/Controlled Substance**. Delivered, furnished, and/or sold items that were claimed to be alcohol, intoxicants, or controlled substances, but were not such items.	04
e.	**Robbery/Extortion.** Committed or attempted to commit robbery or extortion.	05
f.	**Damage to Property**. Caused or attempted to cause damage to school property or private property.	06
g.	**Theft of Property**. Stole or attempted to steal school property or private property, or received stolen property.	07
h.	**Tobacco or Nicotine Products**. Possessed, furnished, or used any item containing tobacco or nicotine products. A fourth offense requires an expulsion referral.	08
i.	**Obscenity/Profanity/Vulgarity**. Committed an obscene act	09

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or engaged in habitual profanity or vulgarity.

j. **Drug Paraphernalia**. Possessed, offered, arranged or negotiated to sell any drug paraphernalia. 10

k. **Disruption/Defiance**. Disrupted school activities or willfully defied the authority of school personnel. 11

l. **Sexual Harassment (Grades 4-12)**. Made unwelcomed sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature sufficiently severe, or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. 13

m. **Hate Violence (Grades 4-12)**. Caused, threatened to cause, attempted to cause, or participated in such acts of hate against persons or property. 14

n. **Threats and Intimidation**. Harassed, intimidated, or threatened a pupil who is a witness in a disciplinary proceeding to prevent the pupil from being a witness or as retaliation against the pupil for being a witness; written or verbal threat against a school official, or threats to cause major property damage; bullying (including electronic acts). 15

o. **Harassment (Grades 4-12)**. Harassed, intimidated, or threatened a pupil or group of pupils or school personnel with actual or expected effect of disrupting class work, or creating substantial disorder, or creating an intimidating or hostile educational environment. 17

p. **Hazing**. Engaged in, or attempted to engage in, hazing as defined in subdivision (b) of Section 245.6 of the Penal Code. 18

* Numbers used on "Report on Suspension" (E.1-E.5) to indicate cause for suspension.

4. A student may be suspended or expelled for those acts listed above and related to school activity or attendance that occur at any time, including, but not limited to any of the following:

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a. While on school grounds.

b. While going to or from school.

c. During lunch period, on or off campus.

d. During, or while going to or from, a school-sponsored activity.

Note: If a student is arrested off campus, he/she may be suspended at that time or upon return to campus.

5. **Principal's Authority to Suspend.** (Procedure 6290)

6. **Extension of Period of Suspension.** When an expulsion is being processed by the Board of Education, the superintendent or other person(s) designated by the superintendent in writing, may extend a suspension until the Board of Education renders a decision in the action (Education Code Section 48911[g]). An extension may be granted only if the superintendent or designee has determined, following a meeting in which the student and the student's parent/guardian are invited to participate, that the student's presence at that school or in an alternative school placement would cause a danger to persons or property, or a threat of disrupting the instructional process.

7. **Mandatory Expulsion Offenses Pursuant to Education Code Section 48915(c), Zero Tolerance (All Students).** The school principal or designee must immediately suspend and recommend for expulsion a student that he/she determines has committed any of the following acts at school or at a school activity off school grounds:

   a. **Possessing, selling or otherwise furnishing a firearm**

      (1) The act of possessing the firearm must be verified by a district employee.

      (2) A "firearm" is defined, under 18 United States Codes Section 921, as:

         (a) Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

         (b) The frame or receiver of any weapon described above.

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(c) Any firearm muffler or firearm silencer.

(d) Any destructive device, which includes:

1) Any explosive, incendiary, or poison gas (e.g., bomb, grenade, rocket having a propellant charge of more than four ounces, a missile having an explosive or incendiary charge of more than one-quarter ounce, a mine or similar device).

2) Any weapon which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has a barrel with a bore of more than one-half inch in diameter.

3) Any combination of parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

4) Antique firearms are not included in the definition, nor are Class-C common fireworks.

b. **Brandishing a knife at another person**. As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

c. **Unlawfully selling a controlled** substance listed in Health and Safety Code Sections 11053 *et seq*.

d. **Committing or attempting to commit a sexual assault** as defined in subdivision (n) of Education Code Section 48900 or committing sexual battery as defined in subdivision (n) of Education Code Section 48900.

e. **Possession of an explosive** as described in Section 921 of Title 18 of the United States Code.

8. **Upon recommendation by the principal, superintendent of schools**, or by a hearing officer or administrative panel appointed pursuant to C.18.c., the Board of Education shall order a student expelled upon finding that the student committed any of the acts described in this section. All five (5) of the above-noted mandatory

expulsion recommendations approved by the Board of Education will be for a period of one (1) year, except that the Board of Education may set an earlier date for readmission on a case-by-case basis.

9. **Mandatory Expulsion Offenses Pursuant to District Policy-Zero Tolerance (Secondary Students)**

   a. **Weapons, violent acts and repeated fighting**. The school principal or designee shall suspend and recommend for expulsion all students who possess a firearm, knife, explosive, or any other dangerous object in school. In addition, the principal shall suspend and recommend for expulsion all students who are involved in three (3) or more incidents of fighting that inflicts injury within one (1) year. This policy shall apply to middle, junior high, and senior high school students. For purposes of Zero Tolerance, an object used in a threatening manner shall be considered a weapon even if its normal use is not as a weapon. The principal shall immediately notify the Placement and Appeal Office of the suspension and initiate an investigation for possible expulsion. In cases where students violate Penal Codes pertaining to weapons, School Police or San Diego Police must be notified.

   b. **Alcohol, tobacco, and other drugs**. The district's substance abuse policy specifies a recommendation for expulsion with the first incident of furnishing, selling, or possession of an amount determined to be for more than personal use, and the third violation involving use and possession of any dangerous or prohibited substance, other than tobacco; upon the fourth violation of the policy involving tobacco, the student will be suspended five (5) days with a recommendation for expulsion.

10. **Expulsion-Pursuant to Education Code Section 48915(a).** The school principal or designee shall suspend and recommend for expulsion a student who has committed any of the following acts at school or at a school activity off school grounds.

    a. **Causing serious physical injury** to another person, except in self-defense.

    b. **Possession of any knife, explosive**, or other dangerous object of no reasonable use to the student.

    c. **Third offense of possession** and/or use of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code (see Procedure 6298).

    d. **Robbery or extortion**.

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e. **Assault or battery**, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

11. **Upon recommendation by the principal, superintendent, or by a hearing** officer or administrative panel appointed pursuant to C.18.c., the Board of Education may order a student expelled upon finding that the student committed an act for which a student may be suspended and recommended for expulsion, other than those described in C.7.a. through C.7.e., and either of the following applies to the student:

a. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

b. Due to the nature of the act or violation, the presence of the student causes a continuing danger to the physical safety of the student or others.

12. **At the time an expulsion of a student is ordered** for an act other than those described in C.7.a. through C.7.e., the Board of Education shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the student shall be reviewed for readmission to a district school or the last school attended by the student.

13. **Students with Exceptional Needs**

a. **Manifestation determination**. In a matter involving a student identified with exceptional needs who is currently enrolled in a special education program, the Board of Education may order the student expelled, only if the board also finds, based upon a determination by an Individualized Education Program (IEP) team, that:

(1) The student's conduct was not caused by, or did not have a direct and substantial relationship to, the child's disability.

(2) The student's conduct was not the direct result of the district's failure to implement the IEP.

14. **If the IEP team or other qualified district personnel** determine that any of the standards described in C.13.a.(1) through C.13.a.(2) were not met, the behavior must be considered a manifestation of the student's disability.

a. **Notification of rights**. The student's parent/guardian must immediately be notified of the decision to recommend expulsion. In addition, the student's

parent/guardian must be provided the procedural safeguards notice and informed of his/her right to participate in the IEP team meeting.

b. **Notification and scheduling of IEP team meeting**. The IEP team meeting must be held within ten (10) school days of the decision to recommend expulsion and at a time and place mutually convenient to the parent/guardian and school personnel. A telephone conference call may be substituted for the IEP team meeting. In addition, parent/guardian must be notified of his/her right to participate in the IEP team meeting.

c. **IEP team considerations**

(1) The IEP team must consider, in terms of the behavior subject to expulsion, all relevant information, including evaluation and diagnostic results, results or other relevant information supplied by the parents/guardians of the student, observations of the student, and the student's IEP and placement.

(2) In addition, the IEP team must develop an assessment plan, if necessary, whenever a functional behavioral assessment or behavior intervention plan was not conducted of or implemented for the student before the behavior subject to expulsion. If the student already has a behavioral intervention plan, the IEP team must review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.

15. **Students not yet eligible for special education and related services.** A student who has not been determined to be eligible for special education and related services and has been recommended for expulsion, may assert any of the protections under C.14.a. through C.14.c., if school personnel had knowledge that the student was a student with a disability before the behavior that precipitated the recommendation for expulsion occurred. School personnel will be deemed to have knowledge that a student is a student with a disability if any of the following occurred:

a. The parent/guardian expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services; or

b. The parent/guardian requested an evaluation of the student; or

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c. The teacher of the student, or other personnel of the District, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

16. **Students Eligible for Services Under Section 504 of the Rehabilitation Act of 1973**

a. **Manifestation determination**. In a matter involving a student eligible for services under Section 504 of the Rehabilitation Act of 1973, the Board of Education may order the student expelled, only if the board also finds, based upon a determination by an instructional study team (IST), that the student's behavior was not a manifestation of the student's disability.

17. **Rules Governing Expulsion Procedures**

a. Within thirty (30) school days of the principal's or designee's determination that the student has committed an offense for which he/she may be expelled, the student is entitled to a hearing to determine whether the student should be expelled.

(1) The student is entitled to one (1) postponement of an expulsion hearing for a period of not more than thirty (30) calendar days; any additional postponement may be granted at the discretion of the Board of Education or its designee.

(2) If compliance by the Board of Education with the time requirements for conducting an expulsion hearing is impracticable during the regular school year, the superintendent or designee may, for good cause, extend the time period for holding the expulsion hearing for five (5) additional school days. Reasons for that extension of time shall be included as a part of the record when the expulsion hearing is conducted.

(3) If compliance by the Board of Education with the time requirements for conducting an expulsion is impracticable due to a summer recess of board's meetings of more than two (2) weeks, the days during the recess period shall not be counted as school days in meeting the time requirements. The days not counted as school days in meeting the time requirements for an expulsion hearing because of a summer recess of board meetings shall not exceed twenty (20) school days, as defined under C.2.g., and unless the student requests in writing that the expulsion

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hearing be postponed, the hearing shall be held not later than twenty (20) calendar days prior to the first day of school for the school year. Reasons for that extension of time shall be included as a part of the record when the expulsion hearing is conducted.

(4) Upon commencement of the hearing, matters shall be pursued and conducted with reasonable diligence and concluded without any unnecessary delay.

b. Written notice of the hearing shall be forwarded to the student at least ten (10) calendar days before the hearing date. The notice shall include:

(1) Date and place of the hearing.

(2) The specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the district disciplinary rules which relate to the alleged violation.

(4) The opportunity for the student or student's parent/guardian to appear in person or to employ and be represented by counsel.

(5) The right to inspect and obtain copies of all documents to be used at the hearing.

(6) The opportunity to confront and question all witnesses who testify at the hearing and to question all other evidence presented.

(7) The opportunity to present oral and documentary evidence on the student's behalf, including witnesses.

c. **Expulsion Review Panel**. In lieu of conducting expulsion hearings itself, certificated managers and school vice principals shall serve as an impartial Expulsion Review Panel consisting of at least three (3) certificated people, none of whom are employed on the staff of the school in which the student is enrolled.

(1) The Expulsion Review Panel shall include a presiding officer and two (2) other members.

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(2) The Expulsion Review Panel shall conduct a hearing to consider the recommendation to expel a student in a session closed to the public, unless the student or student's parent/guardian submits a written request to the Placement and Appeal Legal Specialist/Director, at least five (5) days prior to the hearing date, that the hearing be conducted in public. Regardless of whether the expulsion hearing is conducted in a closed or public session, the Expulsion Review Panel may meet in closed session to deliberate and to determine whether to recommend expulsion of a student.

(3) Except as provided in this section, no decision to expel shall be based solely upon hearsay evidence.

(a) The Board of Education or the Expulsion Review Panel may, upon a finding that good cause exists, determine that disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to unreasonable risk of harm. Upon this determination, testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the board or the panel.

(b) Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the student.

(4) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(5) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the Board of Education to expel shall be supported by substantial evidence showing that the student committed any of the acts enumerated in Education Code Section 48900.

(6) If the Expulsion Review Panel admits any other person to a closed deliberation session, then the parent/guardian of the student, the student, and the counsel of the student shall be allowed to attend the closed deliberation.

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(7) Within three (3) school days following the hearing, the Expulsion Review Panel shall determine whether to recommend expulsion of the student to the Board of Education.

(8) If the Expulsion Review Panel decides *not to recommend expulsion*, expulsion proceedings shall be terminated.

(a) The student shall be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or a combination of these programs. Placement in one (1) or more of these programs shall be made by the Placement and Appeal Office after consultation with school district personnel, including the student's teachers, and with the student's parent/guardian.

(b) The decision not to recommend expulsion is final.

(9) If the Expulsion Review Panel *recommends expulsion*, findings of fact in support of the recommendation shall be prepared and submitted to the Board of Education.

(a) All findings of fact and recommendations shall be based solely on evidence adduced at the hearing.

(b) If the Board of Education accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and the recommendations submitted by the Expulsion Review Panel, or upon the results of any supplementary hearing, conducted pursuant to this section, that the board may order.

d. **Rules governing expulsion procedures involving allegations concerning sexual assault or sexual battery**

(1) Whenever any allegation is made involving sexual assault or sexual battery the complaining witnesses and accused students are to be advised immediately to refrain from personal or telephonic contact with each other during the pendency of any expulsion.

(2) At the time that the expulsion hearing is recommended, the complaining witness shall be provided with a copy of this procedure and advised of his or her right to:

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(a) Receive five (5) days' notice of the complaining witness' scheduled testimony at the hearing.

(b) Have up to two (2) adult support persons of his/her choosing, present in the hearing at the time he/she testifies.

(c) To have the hearing closed during the time they testify.

(3) An expulsion hearing may be postponed for one (1) school day in order to accommodate the special physical, mental, or emotional needs of a student who is the complaining witness where the allegations involve sexual assault or sexual battery.

(4) In a hearing in which a student is alleged to have committed or attempted to commit a sexual assault or committing a sexual battery, a complaining witness shall be given five (5) days' notice before being called to testify, and shall be entitled to have up to two (2) adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during their testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the presiding officer from removing a support person whom the presiding officer finds is disrupting the hearing. If one (1) or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing.

(5) The district shall provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. The district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. At the discretion of the presiding officer, the complaining witness shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room. The presiding officer of the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours.

(6) If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault or committing a

sexual battery, a complaining witness shall have the right to have his/her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(7) In hearings that include an allegation of committing or attempting to commit a sexual assault or committing a sexual battery, evidence of specific instances of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard without a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

e. **Only the Board of Education may expel a student**. A decision of the Board of Education to expel a student shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing before the Expulsion Review Panel.

(1) Final action to expel a student shall be taken only by the Board of Education in public session.

(2) The Board of Education may meet in closed session to deliberate and determine whether the Expulsion Review Panel's recommendation to expel should be adopted.

f. **Expulsion orders**

(1) An expulsion order shall remain in effect until such time as the Board of Education orders readmission of a student.

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(2) The Board of Education shall recommend a plan of rehabilitation for the student at the time of the expulsion order that may include, but not be limited to, periodic review and assessment at the time of application for readmission. The plan also may include recommendations for counseling, employment, community service, or other rehabilitative programs.

(3) The decision of the Board of Education to expel also shall direct that the student contact the Placement and Appeal Office before the end of the last semester of expulsion. The Placement and Appeal Head Counselor shall determine appropriate placement for the student upon readmission, taking into account the nature of the offense leading to expulsion and the health, safety, and welfare of all district staff and students.

g. **Readmission process/rehabilitation plan**

(1) The Board of Education shall recommend a plan of rehabilitation for the student at the time of the expulsion order that may include, but not be limited to, periodic review as well as assessment at the time of review for readmission. The plan may also include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs.

(2) Upon completion of the readmission process, the Board of Education shall readmit the pupil, unless the board makes a finding that the student has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other students or employees of the school district. A description of the readmission process shall be made to the student and the student's parent/guardian at the time the expulsion order is entered.

(3) If the Board of Education denies the readmission of an expelled student, the board shall make a determination either to continue the placement of the student in the alternative educational program initially selected for the student during the period of the expulsion order or to place the student in another program that may include, but need not be limited to, serving expelled students, including placement in county community school.

(4) The Board of Education shall provide written notice to the expelled student and the student's parent/guardian describing the reasons for denying the student readmittance into the regular school district program. The written notice shall also include the determination of the educational program for the expelled student. The expelled student shall enroll in that

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educational program unless the parent/guardian of the student elects to enroll the student in another school district.

h. **Suspension of order to expel**

(1) The Board of Education, upon voting to expel a student, may suspend enforcement of the expulsion order for a period of not more than one (1) calendar year and may, as a condition of suspension of enforcement, assign the student to a school, class, or program deemed appropriate for rehabilitation of the student.

(a) During the period of suspension of the expulsion order, the student shall be on probationary status.

(b) Suspension of an expulsion order may be revoked by the Board of Education if the student commits any of the acts enumerated in Education Code Section 48900 or violates any district rule or regulation governing student conduct.

(c) Upon revocation of the suspension of an expulsion order, a student may be expelled under terms of the original expulsion order.

(2) Upon satisfactory completion of the student's rehabilitation assignment, the Board of Education shall readmit the student. Upon reinstatement, the board may order expungement of any or all records of the expulsion proceedings.

i. **Revocation of suspended expulsion.** If a student on suspended expulsion commits any of the acts enumerated in Education Code 48900 or violates any district rule or regulation governing student conduct, that student may be recommended for revocation of the suspended expulsion and a change of placement.

(1) Upon receipt of the recommendation for revocation of suspended expulsion, the Placement and Appeal staff will send a letter to the parent/ guardian of the student advising of the recommendation and of the student's/parent's/guardian's right to request a meeting with the designated Placement and Appeal staff member.

(2) A meeting with the parent/guardian will be held prior to the date the case would be presented to the Board of Education. If it is determined that the recommendation will go forward, or if the parent/guardian chooses not to

request a meeting, the case will be presented to the Board of Education for action on the matter. At that time, the Board of Education may order that the suspended expulsion be revoked and that the student's placement be changed.

j. **Appeals.** A student may appeal the decision to expel by filing, within thirty (30) days of the date of the decision, with the County Board of Education. A decision of the Board of Education to suspend an expulsion order shall not affect the time period and requirements for filing an appeal of the expulsion order with the County Board of Education.

18. **Enrollment of Students Expelled From Other School Districts.** Education Code Section 48915.1 provides:

a. If a student has been expelled pursuant to Education Code Section 48915(a)(1) through 48915(a)(4), the district may deny enrollment for the remainder of the expulsion period, after a hearing and determination that the individual poses a potential danger to students or employees of the district.

b. If, after a hearing, it is determined that the individual does not pose a danger, the student shall be permitted to enroll if he/she can prove legal residence in the district or is enrolling pursuant to an interdistrict attendance agreement.

c. The hearing may be before the Expulsion Review Panel (C.18.c.) or a hearing officer and shall be held pursuant to provisions of Education Code Section 48918. The district may request information about the student from the prior school district. The district of prior enrollment must respond to this request within five (5) workdays of receipt.

d. The Expulsion Review Panel or hearing officer may recommend, and the Board of Education has, the following options when considering enrollment:

(1) Deny enrollment

(2) Permit enrollment

(3) Permit conditional enrollment in a regular school program or another educational program

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(4) IMPLEMENTATION

1. **Principal or designee**

   a. Reviews facts of the incident and makes an initial determination as to whether the student has committed an act for which he/she must or may be recommended for expulsion. (See C.3., C.7.-C.9.)

   b. When any student is recommended for suspension for any reason requiring police notification as specified by "Report on Suspension" form:

      (1) Calls School Police (619-291-7678) and requests an officer be dispatched to investigate incident.

      (2) Detains student at school, when feasible and without physical force until a police officer arrives. Following investigation, if police officer determines a criminal act occurred and an arrest is warranted, police officer will determine an appropriate disposition for student. Disposition may include releasing student back to school, releasing student to a parent/guardian, or placing student into protective custody.

      (3) If student is arrested by police officer, may suspend student at that time or upon his/her return to campus.

   c. Shall ensure student's right of due process as outlined in C.11., C.12., and in Procedure 6290.

   d. If, upon hearing student's version of incident, determines that suspension is justified, places alleged offender on a five (5) day suspension following provisions of Procedure 6290.

   e. Shall determine if expulsion should be recommended. If principal recommends expulsion, contacts the Placement and Appeal Office for appropriate action. Consults with the Placement and Appeal Legal Specialist or Director. If, after further investigation it is determined that incident is not as serious as first appeared, may handle case at site level and use services of school counselors and other key personnel. This decision is reached cooperatively by principal or designee and the Placement and Appeal Legal Specialist or Director. In some instances involvement of the Office of General Counsel or Area Superintendent is appropriate.

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2. **Placement and Appeal Legal Specialist**

   a. Notifies student and student's parent/guardian of due process rights outlined in Section C.

   b. Assigns responsibility to the Placement and Appeal Office Head Counselor as a case manager.

   c. Assigns responsibility to the Special Education Division for record review to determine possibility of further assessment.

   d. After meeting with student and student's parent/guardian, decides either to extend or to terminate suspension of student; may place student in an alternate school placement, including independent study. Decision to extend suspension must be based on a finding that presence of student at school would constitute a danger to persons or property, or a threat of disrupting the instructional process.

      (1) If decision is to terminate suspension and place student in an alternative school placement pending expulsion hearing, arranges for appropriate placement.

      (2) If decision is to extend suspension must notify student's parent/guardian and may refer student to independent study program.

   e. Represents district at expulsion hearing and argues in favor of recommendation for expulsion; may request assistance of General Counsel when necessary.

3. **Placement and Appeal Head Counselor**

   a. Reviews facts of case.

   b. Coordinates and makes direct contact with alleged offender and his/her parent/guardian to determine interim placement pending hearing.

   c. Provides follow-up counseling and placement as a result of Expulsion Review Panel and board decisions.

4. **Expulsion Review Panel**

   a. Convenes expulsion hearing to hear all written or oral evidence pertaining to incident or student, as deemed relevant by presiding officer. When advisable,

may request additional information be obtained by the Placement and Appeal Legal Specialist or Director.

b. At the hearing, makes report of the Placement and Appeal Legal Specialist or Director available to student, student's parent/guardian, and/or their representative.

5. **If Expulsion Review Panel recommends expulsion of student**, the Placement and Appeal Legal Specialist or Director forwards evidence presented to Expulsion Review Panel and findings of fact to the Board of Education for action.

6. **Board of Education**

a. Board of Education may meet in closed session to deliberate and determine if Expulsion Review Panel's recommendation to expel should be adopted.

b. If Board of Education accepts recommendation for expulsion, acceptance shall be based either upon a review of findings of fact and recommendations submitted by Expulsion Review Panel or upon results of any supplementary hearing the board may order.

(1) At the time expulsion of student is ordered, the board shall set a date, not later than last day of semester following the semester in which expulsion occurred, at which time student may apply for readmission to district. However, upon completion of readmission process, the board shall not be required to readmit said student.

(2) The board may recommend a plan of rehabilitation for the student.

(3) Decision to expel shall direct student to contact the Placement and Appeal Office for appropriate placement prior to the end of last semester of expulsion.

c. Board of Education may suspend enforcement of an expulsion order for no more than one (1) calendar year and may, as a condition of suspension of enforcement, assign student to a school, class, or program appropriate for rehabilitation of student.

7. **Placement and Appeal Legal Specialist or Director** notifies parents/guardians of Board of Education's decision regarding expulsion and of parents'/guardians' rights to appeal to the County Board of Education.

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8. **Enrollment of Students Expelled from Another School District** (C.19). When a school receives a request for enrollment from a student from another school district, the receiving school may specifically ask student if he/she is currently expelled from the other district. *If student is currently expelled from another school district:*

   a. School refers student to the Placement and Appeal Legal Specialist or Director.

   b. Placement and Appeal Legal Specialist or Director requests expulsion information from district of prior enrollment; convenes Expulsion Review Panel hearing in accordance with provisions of this procedure.

   c. Expulsion Review Panel or hearing officer determines whether to admit and whether student poses potential danger to students or employees of the district, decides whether student should be enrolled, and sends recommendation to the Board of Education via the Placement and Appeal Legal Specialist or Director.

   d. Board of Education makes decision regarding enrollment.

   e. Placement and Appeal Office notifies student's parent/guardian of board's decision.

   f. If enrollment is denied, student may enroll when original expulsion date expires.

9. **Notification to Teacher of Students Whose Actions Are Grounds for Suspension**

   a. The principal or designee shall inform the teacher of each student who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in C.3., including at other schools. The principal or designee shall provide the information to the teacher based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency, regarding a student described in this paragraph.

   b. The district, or district officer or employee, is not civilly or criminally liable for providing information in conformance with D.9.a. unless it is proven that the information was false and that the district, or district officer or employee, knew or should have known that the information was false, or the information was provided with a reckless disregard for its truth or falsity.

   c. An officer or employee of the district who knowingly fails to provide information about a student who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in C.3. is guilty of a misdemeanor.

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d. Any information received by a teacher pursuant to D.9.a. shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

(5) FORMS AND AUXILIARY REFERENCES

1. Report on Suspension, English Version (Attachment 1)
2. Report on Suspension, Spanish Version (Attachment 2)
3. Report on Suspension, Tagalog version (Attachment 3)
4. Report on Suspension, Somali version (Attachment 4)
5. Report on Suspension, Vietnamese version (Attachment 5)
6. Letter to parent or guardian
7. Student Discipline Policies, available on the district website at:

http://www.sandi.net/21802072114619197/site/default.asp?21802072114619197Nav=|&NodeID=4483&20451072011458950Nav=|&NodeID=4872

(6) REPORTS AND RECORDS

(7) APPROVED BY

General Counsel, Legal Services
San Diego Unified School District

San Diego Unified School District

REPORT ON SUSPENSION
Admin Procedure 6295

School: _____ Phone: _____

NOTE TO PARENTS: Please read the important parental rights information attached to this form.

Student Name: Student ID#: **INCIDENT DATE**:

Age: Sex: Grade: Ethnic Code: VEEP? ☐Y ☐N Special Education? ☐Y ☐N 504? ☐Y ☐N

Address:

Parent/Guardian Name: Phone:

PERIOD OF SUSPENSION: Start Date: End Date: Number of Days: May return to school on:

In person parent conference to be held on _____ (date) at _____ (time). Parent declined meeting? ___ yes ___ no

Conference attendees: _____

☐ **IF THIS BOX IS CHECKED, THE SITE ADMINISTRATOR IS RECOMMENDING THE STUDENT BE EXPELLED. PARENT WILL BE CONTACTED REGARDING THE RECOMMENDATION FOR EXPULSION BY THE PLACEMENT AND APPEAL OFFICE**

01 Assault/Battery/Mutual Combat
- ☐ a. Caused, attempted, or threatened to cause physical injury
  - ☐ 1st fight
  - ☐ 1st fight
  - ☐ 3rd fight ★ •
- ☐ c. Willfully caused minor injury, except in self-defense •
- ☐ d. Willfully caused serious injury, except in self-defense ★ •
- ☐ f. Assault or battery on a school employee ★ •
- ☐ h. Sexual assault or sexual battery ★ •
- ☐ k. Aids or abets the infliction or attempted infliction of physical injury (suspension only, unless convicted by court)

02 Weapons, Explosives, Dangerous Objects, Imitation Firearms
- ☐ g. Possessed, sold, or furnished a firearm, knife, explosive, or dangerous object ★ •
  - ☐ **firearm or explosive** +
- ☐ h. Brandished a knife ★ •
- ☐ i. Possessed, sold or furnished fireworks other than M80's or cherry bombs
- ☐ j. Possessed imitation firearm ★ •

03 Controlled/Prohibited Substances
- ☐ a. Possessed / Used / Under the Influence
  - ☐ 1st offense ▲ •
  - ☐ 2nd offense ▲ •
  - ☐ 3rd offense ★ •
- ☐ d. Furnished or sold ★ •
- ☐ e. Possession of amount for more than personal use ★ •
- ☐ h. Soma – offered, arranged or negotiated to sell, or sold •

04 "In Lieu Of" Substance
- ☐ b. Delivered, furnished, or sold •

05 Robbery/Extortion (includes attempts)
- ☐ a. Robbery ★ •
- ☐ b. Extortion ★ •

06 Property Damage
- ☐ a. Attempted to cause damage
- ☐ b. Caused minor damage
- ☐ c. Caused major damage •

07 Property Theft
- ☐ a. Attempted to steal •
- ☐ b. Stole •
- ☐ c. Receipt of stolen property •

08 Tobacco/Nicotine Product
- ☐ a. Possessed/Used
  - ☐ 1st offense ▲
  - ☐ 2nd offense ▲
  - ☐ 3rd offense ▲ •
  - ☐ 4th offense ★ •

09 Obscenity
- ☐ a. Obscene act
- ☐ b. Habitual profanity / vulgarity

10 Drug Paraphernalia
- ☐ a. Unlawful possession ▲ •
- ☐ b. Unlawfully offered, arranged or negotiated to sell ▲ •

11 Disruption/Defiance
- ☐ a. Minor disruption / defiance
- ☐ b. Major disruption / defiance

13 Sexual Harassment (Grade 4-12 only)
- ☐ a. Verbal/Visual
- ☐ b. Physical contact (non-intimate)
- ☐ c. Continued sexual harassment

14 Hate Incidents (Grades 4-12 only)
- ☐ a. Mutual combat •
- ☐ b. Offensive comment, intent to harm •
- ☐ c. Use of physical force, minor injury •
- ☐ d. Use of physical force, serious injury ★ •
- ☐ e. Threat of violence •
- ☐ f. Vandalism or graffiti •

15 Threats and Intimidation
- ☐ a. Harassed, threatened or intimidated a student witness
- ☐ c. Terroristic threats•
  - ☐ school official (death or great bodily injury)
  - ☐ school property (over $1000)
- ☐ d Bullying (including electronic acts)

17 Harassment (grades 4-12 only)
- ☐ a. Harassed, intimidated, or threatened pupil or district personnel

18 Hazing
- ☐ a. Hazing •

Description of incident:

Date you interviewed the student:

Previous interventions attempted:

Date Prepared: By: Title:

Parent/Guardian telephoned by: Date: Time: AM ☐ PM ☐

PRINCIPAL SIGNATURE: _____ Date:

• MUST call School Police Services: 619-291-7678 / Event #: + **MUST call San Diego Police Dept. in addition to School Police**

★Principal must recommend expulsion, pursuant to Administrative Procedure 6295

▲ Suspension Waiver: Principal may waive a portion or all of a suspension for specific substance violations. Refer to Substance Use Intervention Contract (22A4500)

ELEMENTARY: Principal may do an in lieu of expulsion for all offenses except for the following: 01h, 02g (only firearm or explosive), 02h, and 03d (only selling)

ORIGINAL TO: Parent/Guardian DUPLICATE TO: Cum File INPUT INTO ZANGLE & MAIL TO PARENT WITHIN 24 HOURS FORM 22-R-2220
Revised 8/2010 23-17.5M903-1

To the Parent:

This suspension has been issued in accordance with California Law and San Diego Unified School District Administrative Procedure No. 6290.

(1) During the period of this suspension, the student is to remain at home during school hours or under the direct supervision of the parent and is prohibited from entering upon premises of San Diego Unified School District (except in connection with an authorized or official meeting or other proceeding related to this suspension).

(2) The parent or guardian of the student has the right to attend a meeting with school officials at which time the causes, duration, school policy involved, and other matters pertinent to the suspension shall be discussed. The parent or guardian can call the school at the number listed on the front of this form and make an appointment to discuss this suspension.

(3) If a student had been recommended for expulsion, a five (5) day suspension will be issued due to the seriousness of the offense.

(4) The parent or guardian has a right to review all the student's school records.

(5) The pupil or the pupil's parents or guardian have the right to request an appeal of the suspension. The written appeal must be submitted within fifteen (15) school days of the first day of suspension. For information related to a suspension appeal and/or to receive a Suspension Appeal Form, please call (619) 725-5660.

Distrito Escolar Unificado de San Diego

REPORTE DE SUSPENSIÓN
Procedimiento Administrativo 6295

Escuela: _____ Teléfono: _____

NOTA A LOS PADRES: Por favor lea la importante información sobre derechos de los padres anexa en esta forma.

Nombre del estudiante: Identificación #: **FECHA DEL INCIDENTE**:

Edad: Sexo: Grado: Código Étnico: ¿VEEP? ☐Sí ☐No ¿Educación Especial? ☐ Sí ☐No ¿504? ☐ Sí ☐No

Domicilio:

Nombre del padre/madre/tutor: Teléfono:

PERÍODO DE SUSPENSIÓN: Fecha de inicio: Fecha de terminación: Número de días: Puede volver a la escuela el:

Entrevista en persona con los padres a realizarse el _____ (fecha) a las _____ (time). ¿Los padres declinaron la entrevista? ___ sí ___ no

Asistentes a la entrevista: _____

☐ **SI ESTE CUADRO ESTÁ MARCADO, EL ADMINISTRADOR DEL PLANTEL RECOMIENDA QUE EL ESTUDIANTE SEA EXPULSADO. LA OFICINA DE ASIGNACIÓN Y APELACIONES LLAMARÁ A LOS PADRES PARA INFORMARLES SOBRE LA RECOMENDACIÓN PARA EXPULSION**

01 Asalto/Agresión/Combate Mutuo
- ☐ a. Causó, intentó o amenazó con causar daño físico
  - ☐ 1ª pelea
  - ☐ 2ª pelea
  - ☐ 3ª pelea ★ •
- ☐ c. Causó intencionalmente lesiones leves, excepto en defensa propia •
- ☐ d. Causó intencionalmente lesiones graves, excepto en defensa propia ★ •
- ☐ f. Asaltó o agredió a un empleado de la escuela ★ •
- ☐ h. Asalto sexual o agresión sexual ★ •
- ☐ k. Auxilia o incita a infligir o intentar infligir daño físico (sólo suspensión a menos que sea declarado culpable en un tribunal)

02 Armas, Explosivos, Objetos Peligrosos, Imitación de Armas de Fuego
- ☐ g. Poseyó, vendió o distribuyó arma de fuego, navaja, explosivos, u objetos peligrosos ★ •
  - ☐ **arma de fuego o explosivo +**
- ☐ h. Blandió una navaja o cuchillo ★ •
- ☐ i. Poseyó, vendió o distribuyó fuegos artificiales que no sean M80 o *cherry bombs*
- ☐ j. Poseyó una imitación de arma de fuego ★ •

03 Sustancias Controladas/Prohibidas
- ☐ a. Poseyó, usó, estuvo bajo su influencia
  - ☐ 1ª ofensa ▲ •
  - ☐ 2ª ofensa ▲ •
  - ☐ 3ª ofensa ★ •
- ☐ d. Distribuyó o vendió ★ •
- ☐ c. Posesión de una cantidad mayor a la de uso personal ★ •
- ☐ h. Soma – ofreció, arregló o negoció para vender o vendió •

04 "En lugar de" Sustancias (sustancias que aparentan ser otras)
- ☐ b. Entregó, distribuyó o vendió •

05 Robo/Extorsión (incluye intentos)
- ☐ a. Robo ★ •
- ☐ b. Extorsión ★ •

06 Daño en Propiedad Ajena
- ☐ a. Intentó causar daño
- ☐ b. Causó daño menor
- ☐ c. Causó daño importante •

07 Robo de Propiedad Ajena
- ☐ a. Intentó robar •
- ☐ b. Robó •
- ☐ c. Recibió propiedad robada •

08 Tabaco/ Producto de Nicotina
- ☐ a. Poseyó/Usó
  - ☐ 1ª ofensa ▲
  - ☐ 2ª ofensa ▲
  - ☐ 3ª ofensa ▲ •
  - ☐ 4ª ofensa ★ •

09 Obscenidades
- ☐ a. Actos Obscenos
- ☐ b. Groserías / vulgaridades habituales

10 Parafernalia para Drogas
- ☐ a. Posesión ilegal ▲ •
- ☐ b. Ilegalmente ofreció, arregló o negoció para vender ▲ •

11 Interferencia/Desafío
- ☐ a. Interferencia/desafío menor
- ☐ b. Interferencia/desafío importante

13 Acoso Sexual (Sólo Grados 4-12)
- ☐ a. Verbal/Visual
- ☐ b. Contacto físico (no íntimo)
- ☐ c. Continuó el acoso sexual

14 Incidentes por odio (Sólo Grados 4-12)
- ☐ a. Combate mutuo •
- ☐ b. Comentario ofensivo, intento de dañar •
- ☐ c. Uso de fuerza física, herida leve •
- ☐ d. Uso de fuerza física, herida grave ★ •
- ☐ e. Amenaza de violencia •
- ☐ f. Vandalismo o grafiti •

15 Amenazas e Intimidación
- ☐ a. Acosó, amenazó o intimidó a un estudiante testigo
- ☐ c. Amenazas terroristas•
  - ☐ funcionario escolar (muerte o grave daño)
  - ☐ propiedad escolar (más de $1000)
- ☐ d Intimidación (incluso actos electrónicos)

17 Acoso (Sólo Grados 4-12)
- ☐ a. Acosó, intimidó o amenazó a un alumnos o miembro del personal del distrito

18 Novatada
- ☐ a. Novatada •

Descripción del incidente:

Fecha en que entrevistó al estudiante:

Previos intentos de intervención:

Fecha en que se preparó: Por: Título:

Llamada telefónica a padre/madre/tutor hecha por: Fecha: Hora: AM ☐ PM ☐

FIRMA DEL DIRECTOR: _____ Fecha:

• SE DEBE llamar a los Servicios de Policía Escolar: 619-291-7678 / Evento #: + **SE DEBE llamar al Depto. de Policía de San Diego además del aviso a la Policía Escolar**

★ El director debe recomendar la expulsión, de conformidad con el Procedimiento Administrativo 6295

▲ Exención de la Suspensión: El director puede exentar una porción o toda la suspensión para específicas violaciones de sustancias. Referirse al Contrato de Intervención de Uso de Sustancias (22A4500)

PRIMARIA: El director puede hacer algo en vez de la expulsión en todas las ofensas excepto en las siguientes: 01h, 02g (sólo arma de fuego o explosivo), 02h, y 03d (sólo venta)

ORIGINAL PARA: Padres/Tutores DUPLICADO PARA: Expediente INGRESAR EN ZANGLE Y ENVIAR A LOS PADRES POR CORREO EN 245 HORAS FORMA 22-R-2220
Revisado 8/2010 23-17.5M903-1

A los padres:

Esta suspensión ha sido expedida de acuerdo con la Ley de California y el Procedimiento Administrativo No. 6290 del Distrito Escolar Unificado de San Diego

(1) Durante el período de esta suspensión, el estudiante debe permanecer en casa durante el horario escolar o bajo la supervisión directa de sus padres, y tiene prohibida la entrada a los planteles de las Escuelas de la Ciudad de San Diego City (excepto en relación con una reunión oficial autorizada u otros trámites relacionados con esta suspensión).

(2) Los padres o el tutor del estudiante tienen derecho a asistir a una junta con los funcionarios de la escuela en la cual las causas, duración, política escolar implicada, y otros temas pertinentes a la suspensión serán discutidos. Los padres o el tutor pueden llamar a la escuela el número indicado al frente de esta forma y hacer una cita para discutir esta suspensión.

(3) Si se ha hecho la recomendación para expulsión de un estudiante, se expedirá una suspensión de cinco (5) días debido a la seriedad de la ofensa.

(4) Los padres o el tutor tienen derecho a revisar todos los informes escolares del estudiante.

(5) El alumno o los padres o tutores del alumno tienen derecho de solicitar una apelación de la suspensión. La apelación por escrito debe ser presentada dentro de los primeros quince (15) días de escuela a partir del primer día de la suspensión. Para información relacionada con una apelación de suspensión y/o para recibir una Forma de Apelación de Suspensión, por favor llame al (619) 725-5660.

San Juan School District
Office of the Superintendent
200 North Main
Blanding, UT 84511
435-678-1211 * fax 435-678-1272
www.sanjuanschools.org

Nelson Yellowman	Douglas E. Wright, Ed.D.	Clayton H. Holt, CPA
Board President	Superintendent of Schools	Business Administrator

December 14, 2010

Martin Dannenfelser
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Director Dannenfelser:

In response to your November 8, 2010 letter requesting information on the steps that San Juan School District (SJSD) has "taken or plan[s] to take to ensure that [we] are in compliance with federal law," and on "how our discipline policies have or will change in response to concerns about racial disproportionalities in school discipline," SJSD offers the following:

POSITIVE BEHAVIOR SUPPORT: Because prevention and positive behavior support is more effective and leads to greater student success than punitive disciplinary action, SJSD has placed great emphasis on putting preventative measures in place. PBS is an evidence-based, data-driven approach proven to reduce disciplinary incidents, increase a school's sense of safety, improve attendance rates and support improved academic outcomes. PBS is based on the premise that continual teaching, modeling, recognizing and rewarding of positive student behavior will reduce unnecessary discipline and promote a climate of greater productivity, safety and learning. PBS schools apply a multi-tiered approach to prevention, using disciplinary data and principles of behavior analysis to develop school-wide, targeted and individualized interventions and supports to improve school climate. Implementing PBS has been shown to improve school climate and helps keep students and teachers in safe and productive classrooms. Some of our schools have adopted the Utah Behavior Initiative (UBI) program which uses the Positive Behavior Support (PBS) model as a proactive framework

for creating and sustaining safe and effective schools. Other district schools plan to join this program as UBI allows other schools to become involved.

Also, this year we are in the process of implementing the Olweus Bullying Prevention Program (Olweus) in all our schools. Olweus is a schoolwide program designed to prevent or reduce bullying throughout the school setting. The multi-component approach involves individuals, classrooms, entire schools, as well as parents and communities, to successfully address bullying in schools. Research has shown that the program can help school significantly reduce the incidents of students being bullied and bullying others. It also can lead to significant reductions in student reports of general antisocial behavior such as school bullying, vandalism, school violence, fighting, theft, and truancy. Improvements in the classroom social climate as reflected in students' reports of improved order and discipline, more positive social relationships, and more positive attitudes toward schoolwork and school are results that will we seek and will assist us in preventing the types of behaviors that lead to disciplinary action being necessary.

COMPREHENSIVE GUIDANCE COUNSELING: Guidance counselors play a key role in helping to assure PBS and similar programs are is implemented properly and are successful. Recognizing that early training and support is essential, SJSD wrote and received a grant allowing us to hire four counselors to serve in our elementary schools. Within our secondary schools, we have attempted to restructure the job duties of the counselors to come in line with the Comprehensive Guidance model which is also designed to be proactive in meeting students various needs and addressing concerns before students make negative choices. The counselors play a key role in establishing and reinforcing proper behavior and preventing behavior which would require disciplinary action. The counselors also assist with parental outreach and communication assuring that the school and parents work together in the best interest of the child.

SAFE SCHOOLS POLICY REVISION: SJSD has a practice of reviewing its policy and procedures on a regular basis to assure that we stay current with best practices and in compliance with changing law and regulations. Our Safe Schools Student Discipline policies were extensively revised in April of 2008 and other smaller revisions have been enacted since then. A key component of the major revision was to create a discipline procedure that establishes a hierarchy of expectations for proper disciplinary actions depending on the nature of the incident requiring discipline. The policy outlines the serious offenses which require a recommendation for suspension or expulsion based on existing laws, but also notes other types of negative behaviors for which less severe disciplinary action is warranted. While zero tolerance of certain behaviors is required to be in compliance with the Safe and Drug-Free Schools and Communities Act of 1994 (SDFSCA), SJSD is aware of evidence

that shows that "zero tolerance" policies may be counterproductive to meeting the goal of safer schools. We desire that our practices use the lowest level of discipline necessary to mold behavior and to provide a safe learning environment for all students.

SJSD schools have been provided some discretion in establishing rules and procedures based upon community values and standards. This practice has been shown to create some areas of concern and SJSD is looking carefully at the possible need to reduce the level of discretion allowed. These rules and procedures are reviewed and approved by the School Board to assure compliance with Board policy and state and federal statute and to attempt to provide a consistency across the schools.

TRAINING PROVIDED TO ADMINISTRATION, FACULTY, AND STAFF: SJSD provides a variety of required trainings and in-services to assure that employees are aware of and follow policy and procedure. In addition, professional development opportunities are provided that can enhance an employee's knowledge and understanding of issues associate with the students we serve. Upon hire, all employees are provided with three days of training which includes a policy and procedure review. Cultural training known as Respecting Ethnic and Cultural Heritage (REACH) is also provided to all employees to help them come to a greater understanding of the need to respect and honor the cultural diversity which exists within the SJSD. In addition, SJSD sponsors an annual Heritage Language Conference in which we provide additional cultural awareness training as well as help teachers enhance their skills and abilities in working with Native American students. In addition to the cultural training, other in-service is provided on important areas such as preventing bullying and harassment, PBS practices as described above, learning styles, and child development. These trainings may be provided by SJSD employees or by consultants and other experts brought in to assist in this effort.

FUTURE PLANS: In May of this year, SJSD was notified of its selection by the United States Department of Education Office of Civil Rights (OCR) for a compliance review under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq. OCR is examining whether SJSD "discriminates against female students by disciplining them more frequently and more harshly than similarly-situated male students. The review will include issues such as whether female students are referred for discipline more frequently than male students or for less egregious conduct than male students, and whether discipline consequences are assigned differently based on the sex of the student." The process of responding to this review has provided SJSD the opportunity to look carefully at its disciplinary records and to study what is happening within our schools. The OCR review along with this request from the U.S. Commission on Civil Rights will also allow us to continue to looking at our practices for areas of different treatment and/or disparate impact and to take appropriate steps should we find areas of concern.

SJSD is dedicated to constant improvement. We appreciate the opportunity to examine our practices and enhance them to better meet student needs. We trust that the information provided in this letter will be helpful to you in your efforts to improve educational experiences for students. Please contact us if we can be or further assistance.

Sincerely,

Douglas E. Wright, EdD
Superintendent
San Juan School District

Tucson Unified School District
TUSD
Celebrate the US!
DEPARTMENT OF STUDENT EQUITY
Director: Augustine F. Romero, Ph.D.
1010 E. 10th Street—Tucson, AZ 85719
520-225-6237. Fax: 520-225-6721

December 13, 2010
Martin Dannenfelser
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Dannenfelser,

In response to your request regarding the disproportionality in school discipline incidents for African Americans (especially African American males), we have outlined the shift within our discipline policies and transformation in the continuing education opportunities that we will offer our teachers in order to ensure the potential for greater academic outcomes our African American students, and the reduction of disciplinary incidents for these same students. Based upon our letter, we have divided this statement paper into two sections: a) discipline policies, and b) transformation in the continuing education opportunities.

How have or will your discipline policies change in response to concerns about racial disproportionalities in school discipline?

- ***District Equity Plan (2010 – 2011)***
  - Within our Equity Plan is our belief that all students regardless of their race: possess strong intellectual capacities; desire to be motivated and challenged to learn at high and rigorous levels; have parents who desire excellence and equity in education for their children; will rise to the level of expectations; sometimes need special assistance to overcome barriers that may or may not be within their control; respond more favorably to classroom experiences that are culturally, socially and historically relevant; respect and adhere to behavior standards that are redemptive, edifying and fairly implemented; and can achieve at substantially higher levels.
- ***Site Responsibilities***
  - Using measurable goals and indicators, each site will create and implement equity plans to promote greater academic equity and academic achievement for all students, with a focus on African American Students. The specific elements within the plan are:
  -

- How the site will ensure that each student is performing at grade-level by the end of each academic year.
- What supplementary services will be provided for students who fall behind grade level in basic skills?
- How sites plan to maximize the amount of supplemental services that can be integrated into the regular curriculum for our special needs students.
- How sites will monitor and assist students whose academic performance or social conditions place them at risk of failing courses or eventually dropping out of school.

- Sites will design academic equity plans for its African American students who have demonstrated a lack of academic progress. These plans will avoid any and all cultural deficit models.

- ***District Responsibilities***
  - Some of the district responsibilities are to:
    - Annually document progress toward achieving parity in the academic outcomes of all student groups.
    - Annually document four-year cohort graduation rate, with a focus on the graduation rates for African American students.
    - Devote resources for personnel that will help the sites with the full implementation of restorative practices per each site's school improvement or "umbrella" plan. This may include, but is not limited to release time, substitute time, training time, and materials and teaching resources.
    - Ensure that its assistant superintendents for each level review building discipline data and ensure that disproportionate suspension (particularly of minority students) is addressed through a restorative means in the site's plan if applicable.
    - Provide an on-line course on culturally responsive pedagogy.

- ***African American Studies Department (AASD)***
  - One of the primary goals of the AASD is to reduce suspensions rates by providing direct and supplemental support to schools and students. AASD continues to accomplish this goal through several practices including a pilot program focused on African American male student transition from middle school to high school. AASD has increased staffing to provide direct support in elementary, middle, and high schools; thusly, increasing support from approximately 1,400 African American students to supporting over 1,900 students. Direct support includes regular meetings with students to discuss academic and social growth, and advocate support on behalf of students and families. Other forms of support include community members volunteering in schools, and youth empowerment conferences.

- ***Department of Student Equity (DSE)***
  - DSE continually monitors discipline practices of each school site. In schools where disproportionality is of concern, members of the equity department meet with the site administration to plan how to address disproportionate discipline.
  - In collaboration with assistant superintendents, site administrators, key site personnel, and the African American Studies Dept. will design, implement, and assess effective methodologies that contribute to greater academic equity especially for African American and Hispanic students.
  - In partnership with African American Studies Dept. and relevant central office departments, we will design, implement, and evaluate a foundational orientation for all new hires that ensures they are knowledgeable about cultural responsiveness and cultural relevance.
  - The Equity Team will ensure that disciplinary policies focus on improving students' future behavior, rather than inflicting punishment, and that they represent a commitment to social justice for all students.

How are teachers trained in implementing discipline policies?

- ***African American Studies (AASD)/ Department of Student Equity (DSE)***
  - AASD in partnership with DSE has provided training on intercultural proficiency to over 600 teachers and staff. The goal of these training is to help teachers better understand and value the cultural needs, background, and experiences of minority youth.
- ***Restorative Practices (K-12)***
  - We will devote resources for personnel that will help the sites with the full implementation of restorative practices per each site's school improvement or "umbrella" plan. This may include, but is not limited to release time, substitute time, training time, and materials and teaching resources.
  - We will:
    - Create a restorative practices library that will include books, instructional materials, and videos.
    - Provide restorative practices trainings.
    - Provide abeyance contract in-services.
    - Support an In-House suspension program that fully implements restorative practices.

    Provide restorative practice training for its In-House suspension program.
- ***Outcomes:***
  - Expected outcomes for African American students:
    - Reduced discipline referrals to the office
    - Reduced suspensions and expulsions
    - Increased academic outcomes
    - Increased rates of high graduation

It is our hope that we have answered all of your questions. Should there be any questions or concerns please do not hesitate to contact either one of us for follow up. We look forward to any future communications, and/or collaborations.

Sincerely,

Augustine Romero, Ph. D.
Director of Academic and Student Equity

Jimmy Hart
Director of Academic Equity for African American Studies

November 12, 2010

Lenore Ostrowsky
Attorney Advisor to the Office of the Staff Director
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Lenore:

Thank you for your letter dated November 8, 2010 regarding disciplinary practices in the Winner School District. I am honored to answer the questions as the Winner School District prides itself on reviewing current practices and revising those based on new research and methodologies proven to enhance the educational experience for all students enrolled in our district. Our mission statement is "We are Warriors! We have PRIDE! Prepared-Respectful- Involved-Determined-Empowered. To help us reach Warrior PRIDE among all students, we have implemented new supports and interventions we feel make a positive impact on our school climate and culture and reduce racial disparity in disciplinary practices.

The Winner School District has changed its approach to student behavior interventions significantly from the 2008-2009 school year to the present. Working closely with technical experts from Learning Point Associates and Effective Schools, Inc., we have trained all faculty on the use of Positive Behavioral Supports. This system encourages pro-active methods as we take steps to continuously teach students expectations for behavior. We have three faculty members currently taking a university course focused on PBIS. Their work will result in an updated discipline policy and procedure matrix set to be reviewed Summer 2011. Complementing our PBIS system is our continued use of Love and Logic student behavior interventions. The school district sends new faculty to this training helping them learn new more beneficial methods for dealing with student behaviors. Both programs reduce the number of referrals requiring principal action through the discipline matrix. We also use the Olweus Bullying Prevention Program. A student bullying survey is administered in April each year. Survey data is shared with faculty who prepare meaningful classroom activities that help promote a pro-active response to bullying behaviors. Our district has also increased our connection with the Rosebud Sioux Tribe Education Office as they offer assistance with family support programming during the year and through the summer focused on student and parent/guardian need. Strong potential for reducing racial disparity in discipline practices is our goal through meaningful implementation of these systems.

Assessing the impact and effectiveness of our practices is equally important. Data from annual

assessments encourages reflective decision making leading to yearly changes in what we do to consistently improve our efforts and incorporate best practice. Learning Point Associates serves as our district monitor in numerous areas of school climate and culture. With their assistance we collect discipline data and build systems that can enhance and improve the school climate for students and their families. We are putting together a strong communications plan and are implementing effective "Early Warning Signals" that help us identify students who struggle at school which may impact their opportunity to graduate. We want to work with those students early on in their educational career and guide them toward graduation and the realization of their post secondary goals. The district also collects data through an annual school survey of 5th through 12th grade students and their parents/guardians. Contracting with California State University, Los Angeles for our annual school climate survey, the district collects information from students and their parents in areas such as Physical Environment, Student Interactions, Discipline and Management, School Leadership, Faculty Relations, and Learning and Assessment. The data from this survey is very important in our efforts to review current district practice and make changes based on survey data. Additionally, we hold one Principal Advisory Council meeting each quarter to review discipline data, attendance, and academic data. Council membership is made up of parents, faculty, and administration working together to review trends and offer suggestions for improvement. Every opportunity is made to articulate data results to the community through board meetings, parent meetings, civic organization presentations, and various media outlets.

Thank you very much for the opportunity to highlight our district's initiatives in this area of our educational programming. Focusing on improving student achievement through development of Warrior PRIDE within all students at the Winner School District, acts as the cornerstone in our commitment toward promoting a positive climate and culture for learning. The Winner School District is proud to incorporate new practices and methods that build a strong climate and culture for learning. Meeting the academic, social, emotional, and physical needs of our students each and every day requires continuous opportunities for review and improvement. Building strong data sets that promote reflective decision making promotes the introduction of new practices and also strengthens those our district leaders feel make a positive impact to reduce racial disparity in school discipline.

Sincerely,

Charles M. (Mike) Hanson II
WSD 59-2 Superintendent

Winston-Salem/Forsyth County Schools
P. O. Box 2513
Winston-Salem, NC 27102-2513
(336)727-2816 Fax (336)727-2008
website: wsfcs.k12.nc.us

December 10, 2010

Lenore Ostrowsky, Esq.
Attorney Advisor
Office of Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

VIA E-MAIL
lostrowsky@usccr.gov

Re: *Civil Rights Compliance Review*

Dear Ms. Ostrowsky:

This letter is in response to correspondence from Martin Dannenfelser, Staff Director, dated November 8, 2010.

The Winston-Salem/Forsyth County Schools ("WS/FCS") is constantly evaluating its discipline policies and procedures to ensure fairness and consistency when assigning disciplinary sanctions to students. There has also been a strong focus on reducing the number of out of school suspensions throughout the WS/FCS. This was accomplished with two simple policy changes:

1. Instead of "short-term" suspensions not exceeding ten (10) days, the maximum number of days for a short-term suspension was reduced to eight (8); and
2. No student will ever receive an out-of-school suspension for truancy.

Over the past two years, middle and high school days of suspension have been reduced by 28%.

This school year, each middle school and high school in the WS/FCS has been required to open an Alternative Learning Center ("ALC") on its campus. (Previously, there were only ALCs on high school campuses.) These ALCs provide extended in-school suspension as an alternative to out of school suspension and alternative school assignment. Thus, all students spend less time out of class for disciplinary reasons.

To address the disproportionate discipline of African-American students in the district, the WS/FCS discipline policies were revised this year to specifically disallow administrators from aggravating disciplinary sanctions based on prior, unrelated misconduct. Further, minor code of conduct infractions occurring in prior school years may not be considered *at all* when assigning disciplinary sanctions. Administrators are also able to use mitigating

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factors in assigning discipline, and may consider circumstances such as a student's full and truthful statement, a student's positive discipline history, and a student's respectful cooperation during the discipline process.

Should you have any further questions about WS/FCS discipline policies and procedures, please do not hesitate to contact me.

Sincerely yours,

Donald L. Martin, Jr.

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STUDENT BEHAVIOR **Policy 5131**
Winston-Salem/Forsyth County Board of Education **August 2011**

I. Introduction

The Winston-Salem/Forsyth County Board of Education recognizes its responsibility to provide each student an equal opportunity to receive an education and to provide an atmosphere in its schools which is conducive to learning and which protects student freedoms guaranteed by the Constitution of the United States. In order to meet these responsibilities the Board of Education adopts this statement of policy concerning student behavior**.**

II. Principles

The reasons for managing student behavior are to (1) create an orderly environment in which students can learn; (2) teach expected standards of behavior; (3) help students learn to accept the consequences of their behavior; and (4) provide students with the opportunity to develop self-control. The following principles apply in managing student behavior.

1. Student behavior management strategies will complement other efforts to create a safe, orderly and inviting environment.

2. Positive behavioral interventions will be employed as appropriate to improve student behavior.

3. Responsibility, integrity, civility and other standards of behavior will be integrated into the curriculum.

4. Disruptive behavior in the classroom will not be tolerated.

5. Consequences for unacceptable behavior will be designed to help a student learn to comply with rules, to be respectful, to accept responsibility for his or her behavior and to develop self-control.

6. Strategies and consequences will be age and developmentally appropriate.

III. Authority of School Personnel

The principal has the authority and responsibility to investigate and take appropriate action regarding any prohibited or criminal student behavior and any other behavior appropriately referred to him or her.

The teacher has the authority and responsibility to manage student behavior in the classroom and when students are under his or her supervision. The teacher is expected to implement the student behavior management plan and any other school standards or rules. The teacher may develop other standards or rules consistent with the direction provided by the board, superintendent and school principal. Every teacher, student teacher, substitute teacher, voluntary teacher, teacher assistant or other school employee is required to report to the principal all acts of violence occurring in school, on school grounds or at any school-sponsored activity.

Teachers and other school personnel have the authority to manage or remove disruptive or dangerous students from the classroom and other locations within the school building. School personnel may use reasonable force to control behavior or to remove a person from the scene in those situations when necessary:

1. to correct students;

2. to quell a disturbance threatening injury to others;

3. to obtain possession of a weapon or another dangerous object on the person, or within the control, of a student;

4. for self-defense;

5. for the protection of persons or property; or

6. to maintain order on school property, in the classroom, or at a school-related activity whether on or off school property.

Except as restricted by G.S. 115C-391.1, school personnel may use appropriate seclusion and restraint techniques reasonably needed in the circumstances described above as long as such use is consistent with state law and applicable board policies and procedures.

Students must comply with all directions of principals, teachers, substitute teachers, student teachers, teacher assistants, bus drivers and all other school personnel who are authorized to give such directions during any period of time when they are subject to the authority of such personnel.

IV. School Plan for Management of Student Behavior

Each school must have a plan for managing student behavior that incorporates effective strategies consistent with the principles established herein. School officials are encouraged to implement research-based behavior management programs that take positive approaches to improving student behaviors in an effort to avoid repeated misbehavior and suspension. Components of the plan for management of student behavior should address:

1. the process by which student behavior will be addressed;

2. the means by which students at risk of repeated disruptive or disorderly conduct are identified, assessed and assisted;

3. positive behavioral interventions and possible consequences that will be used; and

4. parental involvement strategies that address when parents or guardians will be notified or involved in issues related to their child's behavior.

Principals are encouraged to use a full range of disciplinary responses that do not remove a student from the classroom or school building, unless necessary to provide a safe, orderly environment that is conducive to learning.

V. Corporal Punishment

No school plan for managing student behavior, Board policy, or administrative regulation may authorize the use of corporal punishment. Corporal punishment is the intentional infliction of physical pain upon the body of a student as a disciplinary measure. It includes, but is not limited to, spanking, paddling and slapping. The Board prohibits corporal punishment, believing that other consequences are more appropriate and effective for teaching self-control. No teacher, substitute teacher, student teacher, bus driver, or other employee, contractor or volunteer may use corporal punishment to discipline any student. Reasonable force that is necessary to protect oneself or others is not considered corporal punishment.

VI. Communication of Rules

At the beginning of each school year, principals shall make available to each student and parent all of the following: (1) the Code of Student Conduct (AR 5131); (2) Board Policy 5131 and any other policies related to student behavior; (3) any related administrative procedures; (4) any additional discipline-related information from the school's student behavior management plan, including behavior standards, prohibited conduct or disciplinary measures; and (5) any other school rules. This information must be available at other times upon request and must be made available to students enrolling during the school year and their parents.

For the purpose of board policies related to student behavior, all references to "parent" include a parent, a legal guardian, a legal custodian or another caregiver adult authorized to enroll a student under Board Policy 5117, Domicile or Residence Requirements.

VII. Applicability

Schools may enforce policies, administrative regulations, and school rules when student misbehavior occurs:

1. while in any school building or on any school premises before, during or after school hours;

2. while on any bus or other vehicle as part of any school activity;

3. while waiting at any school bus stop;

4. during any school-sponsored activity or extracurricular activity;

5. when the student is subject to the authority of school employees; and

6. at any place or time when the student's behavior has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment.

VIII. Enforcement

The Superintendent and Assistant Superintendents for Elementary, Middle and High Schools are responsible for supervising the enforcement of the Code of Student Conduct to ensure that school disciplinary policies are uniformly and fairly applied throughout the school system.

The procedures set forth in the Individuals with Disabilities Act (IDEA) and its implementing regulations, Article 9 of Chapter 115C of the North Carolina General Statutes and its implementing regulations, and AR 5131.25 shall be followed when disciplining students with disabilities.

IX. Prohibited Behavior

Every student has the right to be free from fear, harm, and violence at school, on the school bus and at school-related activities. In order to preserve this right, the Board authorizes the Superintendent to create a Code of Student Conduct that sets out specific consequences for students violating the following rules:

1. Students shall obey Board of Education policies, administrative regulations, school rules, and classroom rules.

2. Students shall comply with all lawful directions of Principals, teachers, substitute teachers, teacher assistants, bus drivers, and other school personnel who are authorized to give such directions.

3. Students shall not assault, hit, kick, punch, fight, intentionally harm or threaten to harm another person.

4. A student shall not incite or instigate a fight, assault or riot. The terms "incite" and "instigate" mean to urge or direct others by words or actions to engage in a fight, assault or riot. A student commits this offense by actively urging or directing others to take part in the prohibited behavior or by causing or instigating the prohibited behavior to occur. Students committing this offense should be disciplined in the same manner as those students actually engaging in the fight, assault or riot.

5. A student shall not aid or assist another student to violate any Board Policy, administrative regulation or local school rule. A student is guilty of this offense if he/she knowingly advises, induces, encourages, aids or assists another student to commit an offense OR shares in the purpose of the act (to commit the offense) and aids or is in a position to aid the other student when the offense is committed. A student committing this offense may be disciplined in the same manner as those students actively committing the offense.

6. A student should avoid a fight by walking away from a threatened conflict and/or reporting the other student's threats to a teacher or other school employee. A student may, in a defensive manner, restrain the other student or block punches, kicks etc. but if the student retaliates by kicking, hitting, striking, etc. the other student, that action is considered fighting.

7. A student shall not participate in an affray. An affray is a fight between more than two people which causes a large public disturbance. Examples of an affray are fights involving multiple students in the school cafeteria or at an athletic event. A person who commits an affray may be guilty of a misdemeanor.[1]

8. Students shall not take the property of another person or the school without permission. Theft, larceny, robbery and extortion are forbidden. Students shall not knowingly sell stolen items at school.

9. Students shall not engage in extortion. Extortion is the act of securing money, favors, or other things of value from another person through blackmail, abuse of authority, or intimidation.

10. Students shall not intentionally vandalize, scratch, mark, or damage the property of the school or any person at the school.

11. Students shall adhere to their school's dress code. At a minimum, the

[1] N.C.G.S. § 14-33.

following dress or appearance is prohibited:

a. Clothing that contains advertisements for tobacco, alcohol or drugs; pictures or graphics of nudity; words that are profane, lewd, vulgar, or indecent;
b. Halter or bare midriff tops, or bare midriffs;
c. Spaghetti straps or tank tops;
d. Strapless shirts or tube tops;
e. Bare feet;
f. Short shorts or skirts;
g. Pants, slacks or jeans that sag below waist; and
h. Hats, caps, bandanas, or garments which cover the student's face or conceal the student's identity[2].
i. Underpants or bras showing or worn as outerwear;
j. Provocative, revealing attire that exposes cleavage; and
k. Any symbols, styles or attire frequently associated with gangs, intimidation, violence or violent groups about which students at a particular school have been notified as described in AR 5131.4.

12. Students shall not bring to, or have on school property or at any school-related activity, any weapon, or explosive of any kind, including, but not limited to any BB gun, stun gun, air rifle, air pistol, knife, dirk, dagger, slingshot, leaded cane, blackjack, metallic knuckles, razors and razor blades, destructive devices, firearms, and firecrackers, or any look-a-like weapon, including but not limited to, plastic guns, water pistols, and rubber knives, or use any weapon or look-a-like weapon to harm or threaten to harm another person. Students shall not bring to, or have on school property or at any school related activity any other item which may be used as a weapon, such as a saw or unaltered nail file, unless such item is being used for a school-related project or activity. (See also AR 5131.7, Reporting Prohibited Relationships with Students and Other Criminal Acts.)

13. Students shall not use an aerosol spray can, bottle or other type container as a weapon to threaten to injure, to injure, harm, harass or annoy any other person or to disrupt class or any school program or activity.

14. Students shall not start fires or ignite explosives or threaten to do so.

15. Students shall not wrongfully break and/or enter into school buildings, school buses, classrooms, storerooms, or lockers.

16. Students shall not trespass on school grounds when told not to do so by

[2] Unless the headwear is worn based on a sincerely held religious belief or practice.

authorized school personnel. During the term of assignment to an alternative school, students are prohibited from being present on any WS/FCS campus or at any school-sponsored event other than the campus of the alternative school to which the students are assigned. During the term of a suspension or expulsion, students are prohibited from being present on any WS/FCS campus or at any school-sponsored event.

17. Students shall not engage in ~~a~~ disorderly conduct. Disorderly conduct is defined in N.C. Gen. Stat. §14-288.4 as intentionally creating a public disturbance that disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engaging in conduct which disturbs the peace, order or discipline on a school bus, at any public or private educational institution or on the grounds adjacent thereto.

18. Students shall not possess, use, give away, attempt to sell or purchase, or be under the influence of any illegal narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, malt beverage (including beer and other malt beverages that contain less than .5 of one percent of alcohol), wine, alcoholic beverage, or any other controlled substance as defined by North Carolina law.[3] Students shall not possess, use, give away, attempt to sell or purchase a counterfeit substance such as those described in this paragraph, or an otherwise legal substance that is intended to mimic the effects of one of the substances described in this paragraph. (See policy 5131.6, Student Behavior – Drugs and Alcohol.)

19. Students shall not insert a foreign substance in the food or drink of another person with the intent of injuring or harming the other person or causing an adverse reaction including but not limited to, hallucinations, sleep, or euphoria. Students shall not knowingly bring containers of urine or any other bodily fluid or substance to school unless required for an academic or other required assignment or activity.

20. Students may not possess, display or use tobacco products at any time in any building, facility, or vehicle owned, leased, rented or chartered by the Board or a school, on any school grounds and property, including athletic fields and parking lots, owned, leased, rented or chartered by the Board, or at any school-sponsored or school-related event on-campus or off-campus.

21. Students shall not possess drug or chemical paraphernalia at any time in any building, facility, or vehicle owned, leased, rented or chartered by the Board or a school, on any school grounds and property, including athletic fields and parking lots, owned, leased, rented or chartered by the Board, or at any

[3] A student may possess and use a prescription medication on school property as allowed by Policy 5141, Student Health Care.

school-sponsored or school-related event on-campus or off-campus. (See policy 5131.6, Student Behavior – Drugs and Alcohol.)

22. Students shall not park motor vehicles on campus in student parking areas unless allowed by Policy 5131.3, Parking on School Grounds. Parking privileges may be revoked for violation of the Code of Student Conduct.

23. Students shall not engage in sexual or intimate conduct at school, on the school bus or school-related activities, including but not limited to: taking or attempting to take immoral or indecent liberties with another student, exposing private body parts (genitals, buttocks and/or female breasts) or engaging in consensual sexual misconduct or engaging in inappropriate public displays of affection including but not limited to, prolonged hugging or embracing, kissing, petting, and/or making out.

24. Students shall not gamble; they shall not possess and/or use playing cards unless approved by a teacher or school officials for an educational purpose.

25. Students shall not use or possess electronic devices such as MP3/4 players, portable radios, recording devices, tape/CD/DVD/MP3 players, digital cameras, laser pens, or other similar electronic equipment in school during regular school hours except as approved by a Principal or his designee. Students shall not use any type of electronic device on school property or during a school activity, whether on or off school property, for the purpose of immoral or pornographic activities, including, but not limited to, sexting. Sexting shall be defined as the sending, taking, disseminating, transferring, sharing, or receiving of obscene, pornographic, lewd, indecent, or otherwise sexually explicit messages, photographs or images on or by electronic devices.

26. Students shall not possess a portable communication device of any kind, including, but not limited to, a cellular telephone, at any school that has expressly prohibited such items.

27. If schools allow students to possess a portable communication device of any type, including but not limited to, a cellular telephone, students shall not use or display such devices during regular school hours except as approved by a Principal or his designee. “Regular school hours” means from the beginning of the student instructional day to the end of the student instructional day.

    a. If a portable communication device rings¸ vibrates or is otherwise used or in use during class or instruction without permission from the Principal or his designee, it may be confiscated and the student may be denied the privilege of possessing a communication device at school for up to the

remainder of the school year. The confiscated device shall be returned to the student's parent/guardian.

b. If a school administrator has reasonable suspicion a device has been used to violate the Code of Student Conduct, the school administrator may search the device for evidence of such misconduct.

c. By virtue of the ringing, vibration, or other evidence of use of a portable communication device during regular school hours in contravention of this Policy, the owner of the device thereby consents to the search of such portable communication device by a school administrator.

28. Students and their parent(s)/guardian(s) are solely responsible for any loss or damage to their portable radio, tape recorders, tape/CD/DVD/MP3 players, cell phone or any other similar electronic equipment in school while it is in their care, custody or control. WS/FCS accepts no responsibility for theft, loss or damage to a student's personal electronic equipment.

29. Commercial solicitation of or by students is prohibited on school grounds or at school-sponsored events. Charitable solicitation of students is permitted subject to the provisions of Policy 1324.

30. Students shall not engage in hazing. Hazing is defined in state law as to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group.

31. Students shall not engage in gang activity as described in AR 5131.4.

32. Students shall not litter or loiter on school property.

33. Students shall not make false statements to teachers and school officials or forge a signature on any papers or documents.

34. Students shall not make or publish false statements on the internet, by Fax or by any other means of communication that defame the character or reputation of a school employee or student. While students have a constitutional right to criticize school personnel or students, that right does not include making false statements accusing school personnel or students of engaging in criminal or immoral acts that are intended to injure, harass and/or harm an individual.

35. Students shall not download to or otherwise place upon a computer owned

and/or maintained by the school or school system any software or computer program which enables the student and/or others to load content or programs to school system computers which would otherwise be prohibited by school system policy. Students are not to download software or programs or view content prohibited by AR 6161.1.

36. Due to the risk or injury to the student and others, students shall not ride a skateboard, roller skate or in-line skate on school property, unless approved in advance by the Principal or designee as a school sponsored program or activity.

37. Students shall not skip/leave class or school without permission.

38. Students shall not knowingly make a false report to law enforcement (i.e. a false 911 call).

39. Students shall not make a bomb threats or a false fire alarm.

40. Students shall not make terrorist threats. A student violates this rule when he or she:

    a. By any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, substance, or material designed to cause harmful or life-threatening illness or injury to another person;

    b. With intent to perpetrate a hoax, conceals, places, disseminates, or displays on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, machine, instrument, artifact, letter, package, material, or substance, so as to cause any person reasonably to believe the same to be a substance or material capable of causing harmful or life-threatening illness or injury to another person;

    c. Threatens to commit on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that threat is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption;

    d. Makes a report, knowing or having reason to know the report is false, that

there is about to occur or is occurring on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that report is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption; or

e. Conspires to commit any of the acts described in this subsection.

37. Students shall not possess on school property or on a school activity or use counterfeit currency, unless such item is being used for a school-related project or activity.

38. Students shall not cheat. Students shall not copy another student's answers to a test, homework or any other school work and submit it as their own work for evaluation and grading. In addition, unless permitted in advance, students shall not bring any materials in any form with them for use in answering questions on a test, such as a "cheat sheet."

39. Students shall not plagiarize. Students shall not copy an author's work and submit it as their own original work for evaluation and grading.

40. Students shall not use profanity, obscenity, fighting or abusive words, or otherwise engage in speech that disrupts (written, symbolic or verbal) which materially and substantially disrupts the classroom or other school activities.

41. Students shall not communicate a threat to another person. Students shall not bully, harass, or discriminate against others. Incidents of misbehavior that do not rise to the level of bullying, discriminating, threatening or harassing may still violate Policy 1170, Civility Policy. Bullying, discrimination, and harassment are defined in policy 5131.1. Communicating threats, is defined as[4]:

a. A person without lawful authority who:
   i. willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another.
   ii. The threat is communicated to the other person, orally, in writing, or by any other means;
   iii. The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

[4] N.C.G.S. § 14-277.1

iv. The person threatened believes that the threat will be carried out

42. Students are prohibited from engaging in behavior (whether on or off campus) that constitutes a clear threat to the safety of other students or employees. Pursuant to AR 5131, Code of Student Conduct, such behavior may subject a student to expulsion. Behavior constituting a clear threat to the safety of others includes, but is not limited to:

a. theft or attempted theft by a student from another person by using or threatening to use a weapon;

b. the intentional and malicious burning of any structure or personal property, including any vehicle;

c. an attack or threatened attack by a student against another person wherein the student uses a weapon or displays a weapon in a manner found threatening to that person;

d. an attack by a student on any employee, adult volunteer or other student that does not result in serious injury but that is intended to cause or reasonably could cause serious injury;

e. an attack by a student on another person whereby the victim suffers obvious severe or aggravated bodily injury, such as broken bones, loss of teeth, possible internal injuries, laceration requiring stitches, loss of consciousness, or significant bruising or pain; or whereby the victim requires hospitalization or treatment in a hospital emergency room as a result of the attack;

f. any intentional, highly reckless or negligent act that results in the death of another person;

g. confining, restraining or removing another person from one place to another, without the victim's consent or the consent of the victim's parent, for the purpose of committing a felony or for the purpose of holding the victim as a hostage, for ransom, or for use as a shield;

h. the possession of a weapon on any school property, including in a vehicle, with the intent to use or transmit for another's use or possession in a reckless manner so that harm is reasonably foreseeable;

i. taking or attempting to take anything of value from the care, custody or control of another person or persons, by force, threat of force, or violence, or by putting the victim in fear;

j. any unauthorized and unwanted intentional touching, or attempt to

touch, by one person of the sex organ of another, including the breasts of the female and the genital areas of the male and female;

k. the possession, manufacture, sale or delivery, or any attempted sale or delivery, of a controlled substance in violation of Chapter 90 of the North Carolina General Statutes;

l. any behavior resulting in a felony conviction on a weapons, drug, assault or other charge that implicates the safety of other persons; and

m. any other behavior that demonstrates a clear threat to the safety of others in the school environment.

X. Student Speech and Expression.

Nothing herein is intended to limit a student's right to express his or her thoughts and opinions at reasonable times and places, consistent with the protections of the First Amendment. In general, schools may place restrictions on a student's right to free speech when the speech is obscene, abusive, promoting illegal drug use, or is reasonably expected to cause a substantial disruption to the school day. If a student believes his or her constitutional rights have been violated, he or she may file a grievance in accordance with Board Policy 5145, Student and Parent Grievance Procedure.

Adopted: July 1974
Revised: July 1984; June 1975; May 1985; May 1980; May 1987; July 1981; October 1989; March 1992; March 1993; June 1993; July 1994; June 1996; December 1997; February 1999; May 2001; May 2002; October 2002; November 2002; November 2003; May 2004; May 2005; May 2006; May 2007; May 2008; May 2009, July 2009; May 2010; October 2010; March 2011; August 2011.

Date: October 18, 2011
From: Winston-Salem Schools General Counsel
Re: Revised school discipline policy

We have revised our entire discipline policy and code of conduct as a result of changes made by the NC General Assembly to statewide discipline rules. Out of school suspension days cannot exceed 5 cumulative days now, and every school must have a plan for managing student behavior that uses positive behavior intervention strategies prior to suspending the child out of school for more than 10 days in a semester. It is early in the year, but anecdotally there appears to be a marked decrease in the number of long-term suspension/expulsions being recommended across the district.

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