



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 20, 2014

Dr. Bernadeia H. Johnson
Superintendent
Minneapolis Public Schools
1250 W. Broadway Ave.
Minneapolis, Minnesota 55411-2533

Re: Compliance Rev. #05-12-5001

Dear Dr. Johnson:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at the Minneapolis Public Schools (District) by the U.S. Department of Education, Office for Civil Rights (OCR), under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

OCR's review investigated the District's disciplinary policies and practices and, specifically, whether the District discriminates against black students on the basis of race by disciplining them more frequently and more harshly on the basis of race, in violation of Title VI and its implementing regulations.¹

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into an Agreement submitted to OCR on November 13, 2014 that commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

Legal Authority

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. §100.3(a) and (b).² The regulation, at 34 C.F.R. §100.3(a), states that no person shall,

¹ OCR incorporated into this review an individual complaint (#05-12-1347), alleging that the District discriminates against black students by administratively transferring them to another school at rates that are disproportionate to their enrollments. As discussed below, this issue is addressed as part of this review. OCR will provide a copy of this resolution letter to the complainant in complaint #05-12-1347.

² The applicable legal standards are more fully described in the Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, jointly issued by OCR and the Civil Rights Division, U.S. Department of

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on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi) further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a different manner; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or deny an individual an opportunity to participate in a program through the provision of services or otherwise or afford an individual an opportunity to do so which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

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

Different Treatment

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

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

other contractors or law enforcement personnel over whom the school can exercise some control.

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

Disparate Impact

In addition to different treatment of students based on race, schools violate Federal law when they evenhandedly implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as “disparate impact.”³ In determining whether a facially neutral student discipline policy has an unlawful disparate impact on the basis of race, OCR engages in the following three-part inquiry:

- 1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races?
- 2) Is the discipline policy necessary to meet an important educational goal?⁴
- 3) Even in situations where a school can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative discipline policies available that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school’s proffered justification a pretext for discrimination?

Overview of the District

The District is located in Minneapolis, Minnesota, and serves students in pre-kindergarten through twelfth grade. According to enrollment data provided by the District, there were 80 education sites in operation in the District during 2010-2011 and 79 educational sites in operation in the District during 2011-2012. Information on the District’s web site indicated that the schools listed included 37 elementary or K-8 schools, 8 middle schools, and 7 high schools, as well as alternate schools and schools serving only special education students.

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

³ Recipients of Federal financial assistance are prohibited from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals or a particular race, color, or national origin.” 34 C.F.R. §100.3(b)(2); *see also* 28 C.F.R. §42.104(b)(2).

⁴ *See Elston v. Talladega County Bd. Of Educ.*, 997 F.2d 1394 (11th Cir. 1993).

District Total Enrollment

Enrollment by race	2010-2011		2011-2012	
Black ⁵	16,277	40.6%	15,732	39.4%
White	11,816	29.5%	12,785	32.0%
Total	40,054		39,922	

Figure 1.

Summary of Review

During the investigation, OCR reviewed information provided by the District regarding its student enrollment, discipline records, and discipline policies and procedures. OCR conducted an onsite investigation at the District and interviewed teachers and administrators. OCR reviewed the individual student discipline reports for District schools for both the 2010-2011 and 2011-2012 school years. OCR examined documents on the District’s website and data provided to the Department for the 2011 Civil Rights Data Collection (CRDC).⁶

Discipline Policies, Practices and Procedures

Early Childhood

The District operates several early childhood programs at elementary school sites throughout the District, including Early Childhood Family Education, Early Childhood Special Education, and High Five, a program for students who will enter kindergarten the following year. The District’s discipline policies described below do not specify whether they apply to students in these programs, and the early childhood education section of the District’s website does not contain any disciplinary policies. The District informed OCR that the disciplinary procedures in place in the District have not been applied to students in the District’s early childhood education programs and said the District does not suspend or expel students from these programs. In the 2011 CRDC, the District reported that it did not suspend or expel any of the 912 students enrolled in Early Childhood programs. The spreadsheet with discipline data described below did not contain any information about discipline of Early Childhood students. The District informed OCR that if students in early childhood programs exhibit behavior problems, then the District seeks to provide support for the students.

K-12 Schools

OCR reviewed the District’s discipline policies and procedures in effect during the 2010-11 and 2011-12 school years examined by OCR in this review. OCR also spoke with school-

⁵ The District uses five categories in classifying students by race in its enrollment and student discipline data (White, Black, Hispanic, Asian, American Indian). Black students include African American students and students, such as Somali students, who are black but not African American.

⁶ <http://ocrdata.ed.gov>

level administrators and teachers about the District’s discipline practices. The District’s Citywide Discipline Policy (Policy), which is available⁷ on the District’s website, stated:

The goal of school discipline is to teach students to behave in ways that contribute to academic achievement and school success and to support a school environment where students and staff are responsible and respectful. Minneapolis Public Schools expects all students to be active learners and responsible members of their learning community.

The Policy also specified that the Superintendent was to establish procedures, in accordance with the policy, to ensure consistent practices across the District. The District provided OCR a copy of its Citywide Discipline Procedures (Procedures), which are also posted on the District’s web site.⁸ OCR reviewed the Discipline Policy and the Procedures and determined they were not discriminatory against black students on their face. OCR’s investigation revealed that all schools relied on these documents rather than developing their own discipline policies and procedures.

The Procedures included a “Framework for MPS Discipline,” which referred to quality instruction, caring relationships and teaching expectations, use of data for problem solving, accountability, and continuous improvement, a continuum of interventions for misbehavior, and a statement of the need to build cultural competence and address racism. Under the heading of “Build Cultural Competence and Address Racism,” the Procedures stated:

In order to serve *all* students and to prepare them to be members of an increasingly diverse community, schools and staff must build cultural competence. MPS must also acknowledge and strive to eliminate the institutional racism that presents barriers to success. With regard to discipline, staff are specifically expected to question the impact of their actions on African American male and Native American students and other groups that are over-represented among those students who are suspended. MPS expects that staff will use strategies to increase positive behavior for *all* students and to employ strategies that are known to be effective with students from African American, Native American, Latino, Hmong, Somali, and other communities. [*italics in original*]⁹

The Procedures identified the rights, responsibilities, and roles of students, families, schools, teachers, principals and other school administrators, and District administration in six “key areas”: accountability and continuous improvement, relationships and community building,

⁷ <http://policy.mpls.k12.mn.us/uploads/5200.pdf>

⁸ http://policy.mpls.k12.mn.us/uploads/5200_a_rev_2011.pdf

⁹ As discussed below, the District’s revised discipline policies and procedures do not include the quoted language that staff members are “specifically expected” to question the impact of disciplinary action on particular racial groups. Also, the District’s policies and procedures did not require any different treatment of students based on race, even for groups that were over-represented among suspended students.

define and teach expectations, communication between families and schools, interventions for misbehavior, and use of data and problem solving.

The Procedures identified a range of disciplinary interventions to respond to misconduct, including the following “sampling of some interventions that may be used”:

- Reminders and redirection;
- Re-teaching expectations and skills;
- Modify instruction;
- Student-teacher conference;
- Family conference;
- Detention;
- In-school monitoring;
- Referral to school-based support service (e.g., social worker, counselor, etc.)
- Class or group related to the offense (e.g., tobacco education, chemical awareness, anger management)
- Referral to community based services;
- Temporary removal from class (such as to an alternative instruction room);
- Restitution;
- “Circle of Repair” with student and others affected by the incident;
- Dismissal from school;
- Suspension;
- Involuntary Administrative Transfer to another school; and
- Expulsion.

State law prohibits the use of corporal punishment for the discipline of students. The Procedures did not include corporal punishment as an option for discipline of students.

The Procedures listed and clearly defined the types of misconduct for which school-level administrators may discipline students. The Procedures identified specific types of misbehavior for which suspensions are mandatory and the length of the applicable suspension; the precise length of the suspension was determined by the school-level administrator and depended on the age of the students. The procedures provided a specific number of days for some offenses, and a range of out-of-school suspension (OSS) days for other offenses, with the number of OSS days determined by the school-level administrator in those cases. State law mandates expulsion for at least one school year if a student brings a firearm to campus, although a school board may modify the discipline on a case-by-case basis; state law has no other mandatory sanctions.

Administrators may refer students to law enforcement for certain offenses. The Procedures specified that students in grades 6-12 *must* be referred to the police for offenses related to weapons (which may include firearms or other devices that can cause bodily harm, such as knives, clubs, or explosives) and for physical or sexual assault and that students in all grades

must be referred to the police for the sale of alcohol or drugs. The Procedures indicated that students *may* be referred to the police for the following offenses: weapons (grades K-5), physical or sexual assault (grades K-5), fighting (grades 6-12), possession and/or use of alcohol or drugs, bomb or terroristic threats, other threats or extortion, harassment, tobacco, property offenses such as vandalism or theft, trespassing, fire alarms, or other safety violations.

The following table lists the specific offenses and the length of the suspension; as noted students may also be referred to the police for these violations. Certain offenses also include recommendation for expulsion. The spreadsheets of discipline incidents indicated that several students were recommended for expulsion or referred to the District office for a review to consider expulsion, but OCR’s investigation revealed that the District has not expelled any students since the 2010-11 school year.

Offenses with Mandatory Suspensions		
Misconduct	Length of Suspension (K-5)	Length of Suspension (6-12)
Weapons	1-5 days, may be recommended for expulsion, may be referred to law enforcement	5 days, will be recommended for expulsion, must be referred to law enforcement
Assault	1-5 days, may be administratively transferred, may be referred to law enforcement	5 days, may be administratively transferred or recommended for expulsion (2 nd offense results in recommendation for expulsion), must be referred to law enforcement
Fighting	1-3 days	3 days, may be referred to law enforcement
Alcohol/Drugs (possession or use)	1 day (in-school recommended), may be referred to law enforcement	3 days (1 st offense) 5 days (repeat offenses), may be referred to law enforcement
Alcohol/drugs (sale or attempted sale)	5 days, may be recommended for expulsion, must be referred to law enforcement	5 days, may be recommended for expulsion, must be referred to law enforcement
Bomb and terroristic threats	1-5 days, may be referred to law enforcement	5 days, may be administratively transferred or recommended for expulsion, may be referred to law enforcement

The Procedures also indicated that students may be suspended for up to five days, at the discretion of the school-level administrator, for the following other offenses:

- Threats
- Harassment

- Physical Aggression
- Use of Tobacco
- Defiance, Persistent Lack of Cooperation
- Verbal Abuse and Disrespect of School Staff and Students
- Property offenses (Vandalism, Theft, Possession of Stolen Property, Unauthorized Use of School Equipment)
- Improper Activation of Fire Alarms
- Trespassing (Unauthorized Presence)
- Other Safety Violations
- Tardiness, Unauthorized Absences, and Truancy,
- Other Violations as deemed necessary by a school administrator

The Procedures did not specify whether students were to receive academic or counseling services during suspensions, but indicate that re-entry conferences should include “a discussion of how to repair harm done.” The Procedures also did not include (or reference) a due process procedure that students or parents may invoke if they object to the discipline imposed, or include procedures by which students or parents can file complaints about discipline, although they contained requirements for notice to parents when a student is removed from school. The Procedures also stated that misconduct on the bus can result in a suspension from school and/or loss of bus privileges.

In addition, the Procedures stated that a student could be involuntarily administratively transferred for misconduct in the category of assault, threats, harassment, or “other safety violations.” School administrators interviewed by OCR during the on-site visit indicated that administrative transfers are implemented only for the most serious offenses. They said administrative transfer recommendations are sent to the District office, which then determines whether to grant the administrative transfer. A document explaining the 2011-2012 procedures for administrative transfers was provided to OCR; this document indicated if a student has been removed from school, such as through an out-of-school suspension, the transfer process would be completed in time to allow the student to return to school attendance at the end of the removal period, such as the term of suspension. The document further indicated that the District’s Transfer Coordinator makes the final decision on administrative transfer requests submitted by school administrators.

School-level administrators interviewed by OCR said they relied on the District guidelines in determining disciplinary sanctions; they said they took into account a student’s past history, the severity of the offense, and interventions attempted in determining the appropriate sanction.

The District provided OCR a copy of its contract with the Minneapolis Police Department, which indicates that 17 police officers are assigned to District schools; under the contract, the police department retains responsibility for assigning or removing officers and establishing work schedules of officers, and the District pays the Police Department a set fee for the services of the officers, rather than paying the salaries of the officers directly. A chart

provided by the District indicates that each high school, middle school, and K-8 school in the District has one officer assigned part-time and that the officers also have additional schools to which they are assigned part-time; the table did not specify the amount of time each officer spends at each school. The contract identifies law enforcement activities in which police officers will engage, as well as support and preventative work with students, such as providing presentations in classes and consulting regarding students who are at-risk as potential perpetrators of criminal activity. The contract does not provide information about specific training to be provided to officers assigned to the District. There is no indication in the contract that officers are involved in school disciplinary decisions, in addition to their law enforcement responsibilities.

District administrators interviewed by OCR about the role of law enforcement said they only involve the School Resource Officers (SROs) in criminal matters, not matters that are merely violations of school rules, and that the officers do not participate in school discipline decisions. One assistant principal informed OCR that the school resource officer at her school also may assist students in crisis. Nothing in the Procedures or state law indicated that students will be precluded from returning from school due to involvement in the criminal justice system.

During an on-site visit, District personnel indicated that teachers attempt behavioral interventions to refrain from having to refer students to building-level administrators for possible disciplinary action. These interventions include individual conversations, warnings, time-outs, and sending students for a short time to a “buddy room,” where they fill out a form that requires them to reflect on their behavior and what they would do differently in the future. Teachers interviewed by OCR indicated that if they have attempted a series of interventions and misconduct continues or if the misconduct is particularly severe, students would be referred to building-level administrators for possible discipline. Teachers generally indicated that they do not keep records of misconduct that does not result in a disciplinary referral.

In addition, testimony revealed that some schools have implemented programs and training for staff in an effort to address behavioral issues, including Positive Behavioral Interventions and Supports. The District stated in its data response that 18 schools in the District use the Positive Behavior Intervention and Support framework.

The District indicated that administrators and staff have received training related to discipline, although the District has not tracked all of the training received. Among the 2010-2011 training sessions about which the District provided documentation were training for principals on the discipline process for special education students, training for principals on discipline and the administrative transfer process, training for social workers on the discipline process for special education students, and training for SROs on behavior program strategies. Among the 2011-2012 training sessions about which the District provided documentation were training for principals on suspensions, expulsions, and administrative transfers and a special education overview training, which included discipline.

The District indicated that it gives annual notice to students and families of District disciplinary policies and procedures and that they can access full versions of all policies, procedures and standards of conduct on the District website. The District specified that the annual notices given to families include an abbreviated version of the District’s discipline policy; the abbreviated version contains information on the rights and responsibilities of students and families, and a notice of procedural safeguards that the District provides annually to families of students with disabilities.

Discipline Data Analysis

OCR obtained data from the District regarding discipline of students at all schools, including alternative and special education schools. The District provided OCR spreadsheets with 93,742 disciplinary incidents for the 2010-2011 and 2011-2012 school years. The spreadsheets contained the following information regarding each disciplinary incident: the name, school, race, gender, disability status, and grade of the student, an indication of whether the student qualified for free or reduced lunch, the date of the infraction, the identification number of the individual who referred the student, the location of the incident, a narrative description of the incident, the student’s school, the offense type, the discipline administered, the identity of the individual who administered the discipline, and an indication of whether the student was referred to law enforcement for the incident. The discipline administered to students identified on the spreadsheets included suspension in-school or out-of-school, administrative transfer to another school, placement in an alternative instructional room, bus suspension, cafeteria suspension, detention, family conference, peer mediation, restitution/community service, and Saturday school.

Overall, based on the disciplinary data reviewed by OCR, black students were the subject of 36,714, or 74.5%, of the 49,302 disciplinary incidents in the District in 2010-2011 and 32,711, or 73.6%, of the 44,440 disciplinary incidents in the District in 2011-2012. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students of 40.6% in 2010-2011 and 39.4% in 2011-2012, black students were disproportionately represented to a statistically significant degree in the proportion of students who were disciplined during the 2010-2011 and 2011-2012 school years. More than half of the disciplinary incidents on the spreadsheet provided to OCR were coded as “Disruptive/Disorderly/Insubordination,” and black students were disproportionately represented in this category of offenses; penalties for this category of offense ranged from peer mediation or family conference to, for more serious infractions, a 10-day out of school suspension.

In addition, black students received 1694, or 62.4%, of the 2713 in-school suspensions in the District in 2010-2011 and 1709, or 67.7%, of the 2523 in-school suspensions in the District in 2011-2012. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students of 40.6% in 2010-2011 and 39.4% in 2011-2012, black students were disproportionately represented to a statistically significant degree in the

proportion of students who were suspended in-school during the 2010-2011 and 2011-2012 school years.

Further, black students received 9716, or 79.3%, of the 12,247 out-of-school suspensions in the District in 2010-2011 and 9190, or 78.5%, of the 11,709 out-of-school suspensions in the District in 2011-2012. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students of 40.6% in 2010-2011 and 39.4% in 2011-2012, black students were disproportionately represented to a statistically significant degree in the proportion of students who were suspended out-of-school during the 2010-2011 and 2011-2012 school years.

Overall, black students were 165, or 73.3%, of the 225 students involuntarily administratively transferred to a different school in the District in 2010-2011 and 173, or 74.2%, of the 233 students involuntarily administratively transferred to a different school in the District in 2011-2012. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students, black students were disproportionately represented to a statistically significant degree in the proportion of students who were involuntarily administratively transferred during the 2010-2011 and 2011-2012 school years. Moreover, although the Procedures provided for administrative transfers for offenses that District administrators described as the most serious, the data provided to OCR indicated that, for 2011-12, three black students were administratively transferred for offenses such as “Disruptive/Disorderly/Insubordination.”

With respect to law enforcement, black students received 631, or 72.4%, of the 871 law enforcement referrals in the District in 2010-2011 and 545, or 70.0%, of the 779 law enforcement referrals in the District in 2011-2012. An analysis of data provided by the District revealed that, compared with the enrollment proportion of black students of 40.6% in 2010-2011 and 39.4% in 2011-2012, black students were disproportionately represented to a statistically significant degree in the proportion of students who were referred to law enforcement during the 2010-2011 and 2011-2012 school years.

The District reported that it did not expel any students in the 2010-2011 or 2011-2012 school years specifically examined by OCR or in subsequent school years.

In addition to the discipline sanctions outlined above, black students were disproportionately given all other discipline sanctions listed on the spreadsheets, which included among other sanctions detentions, Saturday school, and community service or restitution, when compared with their enrollment rate. Data in the spreadsheets also showed that, compared with their enrollment proportions, black students were disproportionately sanctioned for every type of misconduct, including misconduct that could be characterized as subjective such as insubordination and disruptive behavior or as objective, except for a few types of misconduct that occurred extremely rarely. The data also showed that black students were disproportionately disciplined compared with their enrollment proportions at almost every school in the District.

Individual Incidents of Discipline

OCR analyzed all disciplinary records provided by the District for the 2011-2012 school year, including first infractions and repeat infractions, to determine whether there were instances in which black and white students were treated differently for similar incidents. Based on data showing significant racial disparities at the schools and information suggesting that similarly situated students of different races at these schools may have been treated differently, OCR identified 11 schools from which to interview District administrators to ascertain whether there was different treatment based on race. The schools included three elementary schools, three schools serving students in kindergarten through 8th grade, two middle schools, and three high schools. At these 11 schools, OCR identified 369 disciplinary incidents from the 2011-2012 school year for which it conducted interviews with District administrators in an effort to ascertain whether there was different treatment based on race. Following these interviews, OCR identified a total of 96 incidents about which the testimony did not clarify nondiscriminatory reasons for potentially different treatment. These included the 9 groups listed below, involving 22 separate incidents, and 74 additional incidents District personnel did not recall.

- At Sheridan, a white kindergarten student was assigned to an alternate instruction room for repeatedly wandering around the classroom and leaving the class, while a black kindergarten student received a half-day out-of-school suspension for leaving the classroom and running through the school. The administrator responsible for the discipline of both students asserted that the black student had engaged in repeated conduct, but acknowledged that the white student's conduct was also repeated.
- At Anthony, an 8th grade white student left class without permission and was given a detention, while an 8th grade black student received a 3-day out-of-school suspension for skipping a class; the spreadsheet did not identify which class each student skipped, but the referrals were made by two different employees. The administrator responsible for the discipline of both students said the black student had skipped class a lot, but said a 3-day suspension seemed "a bit much." Records provided by the District indicated that despite the assertion of the administrator, the black student had not had previous offenses of skipping school or of any other types of misconduct during the 2011-2012 school year.
- At Henry, two white 9th grade students were assigned to an alternate instruction room for play fighting, while a black 10th grade student was given a one-day out-of-school suspension for play fighting. While the administrator responsible for the discipline of all three students indicated that the white students did not receive a more severe sanction because they calmed down after the incident, the records provided by the District indicated that the black student and others were laughing at the end of their incident of play fighting.

- At Andersen, a white 5th grade student with a disability was assigned to an alternative instruction room for a first offense of chasing another student, pulling the student's hair, and scratching the student's face, while a black 6th grade student with a disability received a one-day out-of-school suspension for a first offense of telling another student to pull up her shirt. The District characterized the white student's conduct as assault and the black student's conduct as harassment. The administrator responsible for the discipline of both students explained that the first student's disability mitigated the incident, but did not provide the same explanation for the second student. In addition, another black student in special education at Andersen was suspended for 2 days for a first offense of fighting, despite the student's disability. No information provided to OCR indicated that the students' individualized education programs accounted for the difference in treatment.
- At Anwatin, a white middle school student was assigned to an alternate instruction room for one day for conduct the administrator interviewed characterized as bullying, while a black middle school student received a two-day out-of-school suspension for similar conduct. The explanation for the different type (in-school compared to OSS) and length (one day compared to two days) sanctions provided by the administrator responsible for the discipline was that the victim of bullying by the black student was in special education.
- At Sullivan, a white middle school student was assigned to an alternate instruction room for fighting with another student, while four black middle school students who also engaged in similar fights were suspended out-of-school for one or two days. The administrator responsible for the discipline of these students explained that the white student would have been suspended out of school, but the student's guardian could not pick him up; the administrator did not explain why an out-of-school suspension could not have been served on a subsequent day.
- At Sullivan, a white 2nd grade student was not suspended for an incident in which he threw a rock and broke a teacher's sunglasses and also hit another student in the head, while a black 2nd grade student was suspended one day out of school for poking a student with a pencil. The administrator responsible for the discipline of both students said that whenever a student is hurt, as in the pencil incident, a suspension is warranted; she explained that the student who threw the rock agreed to work off the costs of the sunglasses by helping the teacher for three days during lunch. She did not explain why the student was not disciplined further for hitting a student in the head.
- At Waite Park, a white 2nd grade student received a lunch detention for threatening to kill another student with a (plastic) knife, while a black 3rd grade student received a one-day in-school suspension for writing a note that said, "Kill [student's name]." The administrator responsible for the discipline of both students said the teacher of the black student wanted him suspended because the note referenced a student by name.

- At Waite Park, a white 3rd grade student was assigned to an alternate instruction room for giving another student a pill, while a black 3rd grade student was given a one-day out-of-school suspension for passing out bags of tobacco to other students. The administrator responsible for the discipline of both students differentiated these incidents by saying that tobacco is a narcotic and also explaining that the student who was given the pill did not ingest it.

In addition to these incidents, there were 74 incidents identified by OCR at these 11 schools that the administrator identified by the District as responsible for the discipline did not recall; these included the following categories of incidents: (1) 47 incidents in which black students were disciplined more severely than white students at the same school who appeared similarly situated and/or white students were disciplined less severely than black students at the same school who appeared similarly situated; and (2) 27 incidents at schools that enroll predominantly black students in which the discipline of a black student was more severe than the written description of the incident warranted under discipline Policy and Procedures then in effect.

District’s Revised Discipline Policies and Procedures

In December 2013, the District’s Board of Education adopted revised discipline policies and procedures, to take effect on August 1, 2014. The District’s revised policies and procedures are posted on the District’s website and went into effect for the 2014-15 school year.¹⁰

The District’s website indicates that its new “Behavior Standards Policy” was developed after the District “engaged over 1,000 students, families, and staff members” to help develop the policy and that the policy “defines consistent responses and helps staff members find alternatives to suspensions, especially in early grades. It also works to eliminate the disproportionate negative impact our current practices have on students of color and those who receive Special Education services.”¹¹

The revised “Student Behavior Standards and Code of Conduct” indicate that “appropriate school behavior is critical to academic success and sustaining a rich and effective learning community. It is the intention of this policy to establish that student instruction time lost due to removal from class due to misbehavior must be minimized.” This document says, “If behavior warrants a removal from instruction it must be coupled with a restorative re-entry plan that addresses student relationships with their peers and with the adults involved.” The document also indicates that each school must develop a School-Wide Behavior Plan. With regard to self-evaluation, the document also says, “Every school shall examine its discipline data to assure that responses to student behavior do not show evidence of bias or discriminatory behavior. Schools shall also use behavior data to identify and provide

¹⁰ http://policy.mpls.k12.mn.us/discipline_and_student_behavior

¹¹ http://www.mpls.k12.mn.us/behavior_standards_2

additional training to staff and students; and to provide effective interventions for students to improve student outcomes.”

The District’s website also contains a revised document entitled “Classification of Behaviors and Responses.” The document says, “Alternatives to removal from instruction shall be used unless the behavior of the student places the student or others in danger, or the disruption to the educational environment can only be remedied by a referral out of the classroom, or the referral out of the classroom is required by law.” The document lists several alternatives to removal that may be implemented. Student behaviors are grouped into five levels, as follows:

- Level One behaviors are behaviors disruptive to the school environment of the acting student and/or others, and includes refusal to comply with reasonable requests of adults. According to the document, “No out of classroom referral is permissible for this level of behaviors, and response shall be limited to in classroom actions.”
- Level Two behaviors are “disordered” behaviors toward another student or staff, volunteer, or visitor, or repeated, chronic, or significant incidents of Level One type behaviors. This level of behavior may result in a removal from the classroom to an in-school setting where instruction for the student continues.
- Level Three behaviors are behaviors targeted at or targeting others, interference with safety equipment, or repeated, chronic, or significant incidents of Level Two behaviors. In-school removals with continued instruction are the preferred response to such behaviors if removal is necessary; any out of school removals shall be limited to one day or less.
- Level Four behaviors create safety concerns for the student or others, or repeated, chronic or significant incidents of Level Three behaviors. When in-school removals are not safe for the student or others, out of school removals may be used, up to four days of school depending on the student’s age and understanding of their behavior.
- Level Five behaviors are extreme behaviors that create safety concerns for the student or others. Out of school removals from instruction may be up to five (5) days, depending on the student age and understanding. Level Five behaviors may result in a recommendation for an administrative transfer from the school, recommendation for expulsion, and/or referral to local law enforcement.

A chart attached to the “Classification of Behaviors and Responses” document provides for each of the five levels of behavior examples of the behavior, skills-based supports to address the behavior, restorative practices, and a menu of staff and administrative options, including alternatives to removal and where appropriate, removal from instruction options. The chart does not list truancy or tardiness as a basis for a suspension from school. This chart also notes that the student’s age should be taken into account in determining whether removal from instruction is appropriate and does not mandate removal from instruction for specific offenses. As with the District’s previous discipline policy and procedures, corporal punishment is not included as a disciplinary option.

The website also contains a document titled “Out of School Removal from Instruction” setting forth the requirement to have an initial administrative conference, to notify parents, and to develop a written readmission plan; among the items that may be included in the readmission plan are the opportunity to make up missed work, changes in courses, classrooms, or schedules, provision of tutorial services, provision of student support services, and provision of information concerning mental health or other community supports.

Conclusion

OCR’s investigation revealed that the District’s policies and procedures in place during the 2010-11 and 2011-12 school years identified a range of disciplinary interventions to respond to student misconduct at grades K-12 and specified circumstances in which exclusionary discipline (including sanctions such as OSS, administrative transfers to another school and expulsions) could occur. The District did not expel any students during the two school years and has not since expelled any students. The procedures mandated OSS for weapons, assault, fighting, alcohol and drugs, and bomb and terroristic threats, with the specific length of the suspension dependent on the age of the student and, for offenses that provided for a range of days for the suspension, at the discretion of the school-level administrator. The procedures allowed administrators to impose OSS for other offenses, including threats, physical aggression, defiance, verbal abuse/disrespect, harassment, tobacco, property offenses, trespassing, fire alarms, and “other safety violations.”

The District’s discipline policies included subjective terms (such as “Defiance, Persistent Lack of Cooperation,” “Verbal Abuse and Disrespect of School Staff and Students” and “Other Violations as deemed necessary by a school administrator”) that could subject students to exclusionary disciplinary up to a five-day OSS. More than half of the disciplinary incidents on the spreadsheet for the 2010-11 and 2011-12 school years were coded as “Disruptive/Disorderly/Insubordination,” and black students were disproportionately represented in this category of offenses.

The District’s discipline policies and procedures further provided that a student could be involuntarily administratively transferred for misconduct in the category of threats, harassment, or “other safety violations.” District administrators indicated that administrative transfers were for the most serious offenses. However, the spreadsheet provided to OCR indicated that three black students were administratively transferred in the 2011-12 school year for “Disruptive/Disorderly/Insubordination” and that these were the only students administratively transferred for this reason.

As noted above, OCR’s investigation revealed that students engaging in similar misconduct did not always receive the same discipline and that black students were disproportionately represented compared to white students to a statistically significant degree during the 2010-2011 and 2011-2012 school years in the proportion of students who were disciplined, and the proportion of students receiving out-of-school suspensions, in-school suspensions, administrative transfers to other schools, referrals to law enforcement and all other

disciplinary actions taken by the District (detentions, Saturday school, and community service or restitution). Specifically, black students were 40.6% of the students enrolled in the District in 2010-2011 and 39.4% of the students enrolled in the District in 2011-2012, but were the subject of 74.5% of the disciplinary incidents in the District in 2010-2011 and 73.6% of the disciplinary incidents in the District in 2011-2012, received 62.4% of the in-school suspensions in the District in 2010-2011 and 67.7% of the in-school suspensions in the District in 2011-2012, received 79.3% of the out-of-school suspensions in the District in 2010-2011 and 78.5% of the out-of-school suspensions in the District in 2011-2012, received 72.4% of the law enforcement referrals in the District in 2010-2011 and 70.0% of the law enforcement referrals in the District in 2011-2012, and were 73.3% of the students involuntarily administratively transferred to a different school in the District in 2010-2011 and 74.2% of the students involuntarily administratively transferred to a different school in the District in 2011-2012.

During the course of OCR's investigation, the District engaged in a broad review and revision of its discipline policies and procedures that included obtaining input from students, parents and staff. The District's revised discipline policies and procedures went into effect at the start of the 2014-15 school year. The revised policies and procedures clearly state the District's objective of minimizing the student instruction time lost because of a student's removal from class due to misbehavior. Unlike the prior discipline procedures, the District's revised procedures do not list tardiness, absences, or truancy among the offenses that may result in OSS. In addition, the revised procedures provide clearer definitions and categories of offenses, with specific examples so that staff members better understand the circumstances under which such categories can be used to impose disciplinary sanctions and the distinctions between such categories.

The District's revised policies and procedures require that alternatives to removal from the educational setting be used unless the student's behavior "places the student or others in danger, or the disruption to the educational environment can only be remedied by a referral out of the classroom, or the referral out of the classroom is required by law" and outline examples of a range of alternative corrective measures. The policies and procedures provide for "a restorative re-entry plan" for any student removed from instruction due to misbehavior. The plan may include makeup work, changes in schedule, and provision of tutoring, student support services, and information concerning mental health or other community supports.

Prior to the conclusion of OCR's investigation, the District expressed interest in resolving possible compliance concerns without further investigation. On November 13, 2014, the District submitted the enclosed Agreement that, when fully implemented, will resolve the issues in the compliance review.

The Agreement requires the District to take steps to ensure that students of all races are treated equitably and fairly in the area of discipline. Pursuant to the Agreement, the District committed to designate an employee to serve as the District's Discipline Supervisor and oversee the implementation of the District's discipline policies and procedures in a fair and

equitable manner for all students, regardless of race. The District will designate a District office administrator who will address complaints regarding the implementation of the District's disciplinary policies. The District will also consult with and, as necessary, retain an expert or experts in non-discriminatory discipline practices to provide strategies for the District to meet its goals of ensuring that discipline is appropriately and equitably applied to all students, regardless of race.

OCR noted that the District's August 2014 discipline policies and procedures do not include the previous policy language indicating that staff members were expected "to question the impact of their actions on African American male and Native American students and other groups that are over-represented among those students who are suspended." The August 2014 discipline policies and procedures do not require the Superintendent or any District official or staff member to treat any students differently on the basis of race.

OCR's Agreement reinforces Title VI's prohibition on the different treatment of students on the basis of race in the administration of discipline and on the use of facially neutral policies and procedures that have an unjustified effect of discriminating against students on the basis of race. Given the significant disparities in the District's discipline of black students, the Agreement requires that the District, in consultation with the Discipline Supervisor and/or expert(s), examine the root cause(s) of the racial disparity in the discipline of its students and identify and, following OCR review and approval, take appropriate corrective actions necessary to address the root causes(s) in order to meet its goals of ensuring that discipline is appropriately and equitably applied to all students. The Agreement also states that, prior to the conclusion of OCR's monitoring of the Agreement, the District will provide documentation establishing that any remaining disparities in disciplinary referrals and/or sanctions are not the result of discrimination prohibited by Title VI.

Further, the Agreement requires the District to comprehensively assess the implementation of its discipline policies, procedures and practices to ensure that these are being effectively implemented in a nondiscriminatory manner. The assessment will be based on information collected pursuant to Agreement requirements that the District:

- collect and evaluate data regarding referrals for student discipline and the imposition of disciplinary sanctions at all District schools;
- establish a District-wide discipline team to review the disciplinary actions taken at each District school on an ongoing basis to ensure that the actions are non-discriminatory and consistent with the District's student discipline policies, practices and procedures and, if not, report its finding to the Superintendent who is responsible for taking immediate corrective action; the discipline team will prepare a report at the conclusion of each school year that summarizes the results of its review at each school and includes recommendations on changes in light of its report and findings; and
- conduct meetings at the conclusion of each semester with the principal and teachers of each District school to discuss the data gathered.

At the conclusion of each school year, the District will consider whether changes are needed based on its based on its evaluation of its student discipline data, the findings made by the discipline review team, and meetings with administrators and staff, and submit any proposed changes to its discipline policies, procedures and practices to OCR for review and approval prior to implementation. The District will also consider the results of its climate surveys (described below) and recommendations of its newly formed student committees and working groups (also described below).

The Agreement also requires the District to review its August 2014 student discipline policies, practices and procedures and submit further revisions to OCR for review and approval by May 2015, as necessary, to address specific Agreement requirements. These requirements include that the District ensure that its discipline policies and procedures include clear procedures for staff to follow when making referrals and eliminate, to the maximum extent possible, vague, subjective or redundant offense categories including those that necessarily require a high degree of subjectivity and individual discretion. OCR noted that the August 2014 policies retain subjective terms such as “disruptive” and “disordered” behavior. While the August 2014 policies and procedure indicate a range of penalties that may be imposed for each infraction and penalties that are proportionate to the type of misconduct, the Agreement also requires that the policies and procedures identify the criteria that will be used to identify sanctions within the range of possible penalties. The Agreement also requires that the District policies and procedures contain appropriate due process standards for all students disciplined under the District’s student discipline policies, practices and procedures, including a description of the key elements of the discipline process.

Finally, the Agreement requires that the District take the following additional steps:

- review its policy on involuntary administrative transfers and its SRO program to identify and make appropriate changes, after OCR review and approval;
- provide annual training to all District SROs that explains the District’s obligations under Title VI and the District’s student discipline policies, practices, and procedures;
- assess staffing levels of guidance counselors, social workers and other mental health workers to determine if there is sufficient availability at each school;
- develop and implement plan to tailor school-based services that are supportive of needs of students to decrease behavior difficulties;
- ensure that it has in place a system of support services, such as mentoring or counseling, to assist students who display behavior problems;
- provide annual training programs on discipline to District personnel and students and informational programs to parents and guardians;
- establish a student committee at each District school that enrolls students in grade six or higher to discuss and make recommendations concerning the equitable treatment of students in discipline, improving student behavior and helping students to be more engaged in the educational program;

- establish a working group at each District school consisting of school personnel, parents and community leaders to make recommendations to the District regarding the effectiveness of its discipline policies, practices, and procedures;
- administer annually a comprehensive climate survey to students, teachers/staff, and parents at all District schools about the District's administration of discipline and submit for OCR review and approval the survey results and description of any actions the District plans to take in response to the results;
- establish uniform standards for the content of student discipline files at all District schools; and
- provide to the public data on the District's use of discipline, including the use of discipline disaggregated by student race.

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

This letter sets forth OCR's determination in an individual OCR compliance review. It is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of

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Ms. Amy Moore, counsel for the District. If you have any questions, please contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at Jeffrey.Turnbull@ed.gov.

Sincerely,

/s/

Adele Rapport
Director

Enclosure

cc: Ms. Amy Moore