April 19, 2016

Robert Neu, Superintendent
Oklahoma City Public Schools
900 North Klein Avenue
Oklahoma City, Oklahoma 73106

Re: OCR Docket # 07141149

Dear Superintendent Neu:

This is to advise you of the resolution of the above-referenced complaint investigation of the Oklahoma City Public Schools (District), Oklahoma City, Oklahoma, by the United States Department of Education (Department), Office for Civil Rights (OCR) alleging discrimination based on race.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, *et seq.*, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination on the basis of race, color or national origin and retaliation against a person who engages in a protected activity 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 investigated specific allegations against the District which were filed on May 14, 2014. The complainant alleged the District:

1. Subjected two Hispanic students (Student 1 and Student 2) to harassment by staff members based on race and failed to adequately respond to complaints she made alleging race-based harassment during the 2013-14 school year;

2. Discriminated against Student 1 and Student 2 the basis of race by disciplining them differently than white students, including reporting Student 1 for truancy when he was on school property and suspending him for marijuana use, and slapping Student 2 on the hand as a form of discipline;

3. Retaliated against the parent of Student 1 and Student 2 based on her advocacy for her children by having her arrested at an Individualized Education Program (IEP) meeting for her son on or around January 28, 2014.

4. Discriminates against Hispanic and African American students by disciplining them more frequently and more harshly on the basis of race than similarly situated white students.

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 April 7,

2016, committing the District to specific actions to resolve the complaint. This letter summarizes the applicable legal standards, the information gathered during the investigation and how the investigation 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).[1] The regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi) further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a different manner; subject an individual to segregation or separate treatment in any manner related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or deny an individual an opportunity to participate in a program through the provision of services or otherwise 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.

Racial Harassment

Racial harassment is a form of race discrimination prohibited by Title VI. Racial harassment is intimidation or abusive behavior toward a student based on race or national origin that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

OCR determines whether conduct constitutes a hostile environment based on race by examining the totality of the circumstances. These circumstances include the context,

[1] See also the Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, jointly issued by OCR and the Civil Rights Division, U.S. Department of Justice (January 8, 2013), which is available on the Department's website.

nature, scope, frequency, duration and location of the harassment incidents, as well as the identity, number and relationships of the persons involved. To establish a violation under a hostile environment approach, the evidence must establish that: (1) a hostile environment existed, *i.e.*, harassing conduct (physical, graphic or written) on the basis of race occurred that was sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient; (2) the recipient had notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment. If a hostile environment based on race exists and a recipient has actual or constructive notice of it, then the recipient is required to take appropriate and adequate responsive action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the student(s) subjected to the harassment.

While the regulation implementing Title VI does not contain an explicit requirement that recipients adopt and implement complaint procedures to address allegations of discrimination based on race, color or national origin, grievance procedures that encompass race, color and national origin discrimination can be part of a prompt and effective response to harassment or other forms of discrimination prohibited by Title VI. In addition, a recipient that has adopted discrimination complaint procedures must apply the procedures in a manner that does not constitute discrimination prohibited by Title VI. Whether or not it has such procedures, a recipient is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations harassment may be in plain sight, widespread, or well-known to students and staff. In other situations, the recipient may become aware of the misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.

Where the recipient learns of harassment based on race, the recipient should investigate the incident(s) promptly and respond appropriately, regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

The corrective action taken by the recipient should be tailored to the specific situation and may include the imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the targets of racial harassment. A series of escalating responses, including escalating consequences for the harasser, may be necessary if the initial steps are ineffective in stopping the harassment.

Retaliation

Retaliation is prohibited by the regulation implementing Section 504 at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of the regulation implementing Title VI at 34 C.F.R. § 100.7(e). The regulation implementing Section 504 prohibits a recipient from retaliating against an individual for the purpose of interfering with any right or privilege secured by Section 504 or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, hearing or proceeding under this part. The regulation implementing Title III contains similar prohibitions against retaliation at 28 C.F.R. § 35.134(a) and (b).

A *prima facie* case of retaliation exists when each of the following is established: 1) a person engaged in an activity protected by the laws or regulations enforced by OCR: 2) the recipient had notice of the protected activity; 3) the recipient took an adverse action against the person contemporaneous with or subsequent to the protected activity; and 4) there is an inferable causal connection between the person's participation in the protected activity and the adverse action. In assessing whether an individual has been subjected to an adverse action, OCR considers whether the recipient's action significantly disadvantaged the individual and whether the challenged action reasonably might have deterred or precluded the individual from engaging in further protected activity. Merely unpleasant or transient incidents are not considered adverse.

If a *prima facie* case is established, then OCR considers whether the recipient has a legitimate, non-retaliatory reason for its action and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible, or that the recipient's treatment of the person was inconsistent with its treatment of similarly situated individuals or established policy or practice.

Student Discipline

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 a 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." In determining whether a facially neutral student discipline policy has an unlawful disparate impact on the basis of race, OCR will engage 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?
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 and practices 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 covers Oklahoma City and has a large geographical boundary, spanning 136 square miles. The District includes 88 school sites in all: 55 elementary, seven middle, five middle-high, five high, four alternative and 12 charter schools. In 2014-15, the District's enrollment was 44,658 students. Hispanic students accounted for the largest portion of the students, at 48%. African American students were 26%, white students were 18%, American

Indian students were 4% and multi-racial and Asian students each made up 2% of the population, respectively.

Overview and Scope of Investigation

OCR's investigation reviewed information provided by the District regarding its student enrollment, discipline records, and discipline policies and procedures. OCR conducted interviews with District staff and reviewed documentation regarding the individual and systemic allegations presented in this complaint. OCR examined documents on the District's website and data provided to the Department for the 2011 *Civil Rights Data Collection* (CRDC), as well as information from an internal audit the District initiated of its discipline practices in 15 middle and high schools in the District. [2]

During the course of this investigation, the District created their 2015-2020 Strategic Plan[3] that specifically demonstrates a District commitment to ensuring equitable discipline practices. The strategic plan includes four "Pillars" and Pillar #2 is entitled "Safe Climate and Strong Relationships with Families and Community." To accomplish this goal, the District committed to "provide training and revise policies to support safe and respectful environments and equitable enforcement of disciplinary procedures; create a safe climate that celebrates diversity and fosters culturally inclusive practices among all staff; and provide ongoing training and two-way communication to parents, families, and community."

Additional efforts are demonstrated in several actions that the District undertook during the course of the investigation, including its internal audit. The District assembled six teams of three to four employees from its Student Support Division to conduct on-site reviews of all discipline referral forms at each school visited for the 2013-14 and 2014-15 school years.

The audit found scores of concerns including: incomplete and inconsistent recordkeeping; inconsistent provision of due process rights; that the District as an entity is inconsistent in its discipline practices; there are inconsistencies within individual schools themselves; there are inconsistencies in information provided to parents when their children were suspended; and that parameters of certain disciplinary sanctions are unclear, such as "defiance of authority" and "disrespect" among others.

In response to the audit findings and discussions with OCR, the District proactively initiated a review of its discipline policies and practices in order to identify any disparities among school sites in their discipline practices. The District also initiated efforts to review and revise its discipline code in order to reduce the amount of exclusionary discipline sanctions

[2] http://www.okcps.org/AboutOKCPS/Departments/CommunicationServices/PressReleases/tabid/68919/ItemId/111885/Default.aspx

[3] For more information, see the District's The Great Commitment, Working Together As One - For all Students, Oklahoma City Public Schools' new Strategic Plan

assigned to students. In July of 2015, the District created the Office of School Climate and Student Discipline, and hired a Director of School Climate and Student Discipline and three Student Behavior Specialists. Finally, the District began implementing training on Positive Behavioral Interventions and Supports ("PBIS") in several schools and entered into a partnership with The Learner First, an educational services company that specializes in whole system change, including root cause analysis.

1. **Allegation of Race-Based Harassment by Staff**

The complaint alleged that the District subjected Students 1 and 2 to harassment by staff members based on race and failed to adequately respond to complaints made by the parent alleging race-based harassment during the 2013-14 school year.

OCR's investigation of this allegation found that the parent filed an internal grievance with the District on April 29, 2014. The original grievance alleged that the parent and her son were discriminated against when the District refused to allow her son to return to school after serving five days of a ten day suspension. On the original, internal grievance form, the parent checked a box indicating discrimination based on religion.

The District assigned the director of personnel to conduct the investigation. Based on a review of the information submitted with the grievance, the director of personnel determined that the parent was alleging discrimination based on her son's race in addition to religious discrimination. Based on that determination, the director of personnel utilized the District's procedures applicable to allegations of racial harassment in responding to the grievance and obtained a written statement from Student 2's principal.

In his written statement, the principal indicated that Student 2 had 16 referrals from November 13, 2013 to May 21 2014. He had been assigned to in-school suspension (ISS) 19 days and 14 days out of school suspension. For five of the referrals he was either conferenced with or given after school detention. The referrals consisted of 5 defying authority, 5 disruptive behavior, 2 disrespect to teachers, 2 use of profanity, 2 bullying/ harassment of students, and 1 failure to identify to a teacher. The student was placed on a behavior contract at the beginning of the year. According to the principal, Student 2 had been given numerous opportunities to correct his behavior and he would refuse. The District indicated that they made numerous attempts to contact the mother but that they had difficulty contacting her during this time. The District, before reaching a determination regarding the grievance, on May 5, 2014, offered to allow the parent to transfer Student 2 to a different school in the District. The parent did not accept this offer. The District completed its internal investigation and determined no harassment occurred.

On June 2, 2014, the director of student services attempted to meet with the parent regarding the District's findings in its investigation but the parent was unresponsive to the

District's attempts to reach her. The parent withdrew Students 1 and 2 from the District on August 24, 2014. Although the District completed its investigation and concluded harassment had not occurred, there is no evidence that the District provided the parent with the results of its investigation, as is required by the District's procedures.

The District requested to resolve the complaint, including this allegation, prior to the completion of OCR's investigation. The Agreement requires the District to meet with the parent to discuss and, if applicable, set dates for re-enrolling Students 1 and 2 in the District. The meeting will include a discussion of the results of the District's investigation into her allegations of racial harassment. The District will also provide the parent with the written report of the results of the investigation.

2. <u>Allegation of Different Treatment in Discipline for Student 1 and Student 2</u>

The complaint alleged that the District discriminated against Student 1 and Student 2 on the basis of race by disciplining them differently than white students, including reporting Student 1 for truancy when he was on school property and suspending him for marijuana use, and slapping Student 2 on the hand as a form of discipline.

On January 23, 2014, an assistant principal found Student 1 in a school hallway during class time without a pass. The assistant principal observed that Student 1 had slowed speech, red eyes, and smelled of marijuana. Student 1 told the assistant principal he had left campus and just returned with another student. The assistant principal found another student in the restroom and noticed he also exhibited a strong smell of marijuana. The assistant principal informed the students he suspected them of leaving campus when they were not supposed to and being under the influence of marijuana. Both students denied the allegations.

The assistant principal suspended both students for 45 days for being under the influence of marijuana and contacted each student's parents. Student 1's parent came to the school and agreed with the assistant principal that Student 1 smelled of marijuana.

Because Student 1 was identified as a student with a disability and because of the length of the discipline imposed, the District scheduled a manifestation determination for Student 1 on January 28, 2014. The District stated the parent opted not to have a hearing because Student 1 had missed so many days already and had no chance of passing. She stated she was considering having him drop out and re-enroll as a high school student the following school year. Despite the parent's request to waive the hearing, the IEP team conducted the manifestation determination hearing and determined Student 1 being under the influence of marijuana was not a manifestation of his disability. The District conducted a disciplinary hearing immediately following the manifestation determination and upheld Student 1's 45-day suspension.

With respect to the allegation that a staff member slapped the hand of Student 2, the District denied receiving a complaint from the parent regarding this alleged incident. There were no records related to the Student 2 being slapped on the hand by a teacher and the parent could not recall the date of the incident or the teacher involved. The District has a policy prohibiting corporal punishment which was enacted several years prior. Additionally, the CRDC states that the District reported no corporal punishment incidents during the most recent reporting year.

The District's response to the allegations regarding Student 1 was that the discipline given to him was consistent with its policies and procedures. OCR's investigation found that both Student 1 and the other student were suspended for 45 days for the alleged marijuana use. OCR also reviewed District records about the incident that showed that the other student was not in fact white, but was also Hispanic. OCR therefore finds insufficient evidence to support that Student 1 was treated differently than a similarly situated white student with respect to the marijuana incident. As there are also no records related to the Student 2 being slapped on the hand by a teacher and the parent could not recall the date of the incident or the teacher involved, OCR also finds there is insufficient evidence to support a violation of Title VI for this allegation.

As described above, under the Agreement, District officials will meet with the parent. During this meeting, they will also provide to the parent a description of the District's revisions to its discipline code, which became effective in January of 2016. The District administrator will provide assurance to the parent that the District's policy prohibiting corporal punishment, which has been enacted many years prior, shall be adhered to regardless of the nature of the disciplinary incident.

3. **Allegation of Retaliation Against Parent**

The parent alleged the District retaliated against her based on her advocacy for Students 1 and 2 when it invited her to an IEP meeting on District property and then had her arrested for six outstanding warrants for her arrest. The parent acknowledged to OCR that she had outstanding warrants but felt it was inappropriate for the District to have the School Resource Officer (SRO) arrest her at school when she was on school property for an IEP meeting for her son.

District SROs are city police officers charged with enforcing city ordinances and state statutes and therefore their duties include arresting an individual who has outstanding warrants. The District contracts with the city and under the contract, Oklahoma City provides a total of sixteen officers at designated middle and high school sites. The contracted duties of the officers are to work with staff and students; prevent improper conduct and trespassing; and when appropriate, make arrests and take into custody persons guilty of violating City ordinances and/or state laws. SROs also report violations of the

student code of conduct to school officials; however, they do not enforce school conduct policies.

The parent filed a complaint alleging she was bullied at the District because of her arrest. The District acknowledged that the SRO arrested the parent. The District conducted an internal investigation and interviewed the SRO. In his statement to the District, the SRO stated that he previously encountered the parent and informed her that she had multiple outstanding warrants for her arrest. Some of these warrants dealt with traffic citations and others related to a dog that she brought on campus that bit a student.

On January 23, 2014, the SRO saw the parent and asked her to "take care of" the warrants or else he would be required to arrest her the next time he saw her. The SRO noted that he could have arrested her at that time but wanted to provide her the opportunity to resolve the warrants without an arrest. The SRO was present at the January 28, 2014, meeting about Student 1, which was not an IEP meeting but a disciplinary hearing regarding the alleged marijuana use by Student 1. The SRO waited until the end of the hearing when everyone but the parent and Student 1 had left and arrested the parent. He stated the parent informed him she knew she would be arrested and had made arrangements for her 18-year-old son to supervise her children. According to the SRO's statement, "During the arrest she was very composed and kept telling her son that it was her fault and that she had to do the right thing and take care of the warrants."

The District requested to resolve this complaint, including this allegation, prior to the completion of OCR's investigation. To complete the investigation of this allegation, OCR would have to conduct additional interviews and gather additional data regarding the parent's allegations of retaliation, including interviews to establish whether the SRO was aware of the parent's advocacy activities on behalf of her child as a student with a disability as well as whether District officials were involved in any discussions with the SRO about his plans to arrest the parent.

The Agreement requires the District to review every instance during the 2013-14 and 2014-15 school years in which a SRO physically restrained a student as part of implementing the District's discipline procedures, issued a citation to a student or parent, or arrested a student or parent on school grounds and whether the SRO acted in a manner that was consistent with the District's expectations and its policies, practices and procedures. If the District determines the SRO actions were inappropriate in any instance, it will promptly take appropriate actions to remedy any adverse effects from the SRO involvement. The District's review and any actions by the District will be submitted to OCR as part of the monitoring of the Agreement for OCR's review and approval to ensure they are consistent with Title VI. The review will include the incident that led to the parent's arrest.

The District will also review the protocol in place for assessing whether a parent or student has outstanding warrants and the procedure for making arrests in response to those warrants. To the extent there are differences in protocols among SROs and building sites, the District will work to standardize its protocols in a manner consistent with its stated goal to encourage parent participation in students' education. These actions by the District will also be submitted to OCR as part of the monitoring of the Agreement for OCR's review and approval to ensure they are consistent with Title VI.

4. **Allegation of Class-wide Different Treatment in Discipline**

The District's discipline code is found in its student code of conduct which is printed in its Board policies and in the student/parent handbooks. The student handbook is provided to every student and every student's parent, and the board policies are available on-line.

The District's discipline code provides a matrix which enumerates the type and severity of discipline appropriate for various offenses. The matrix is progressive, meaning the severity of the sanction increases with repeat or additional offenses by a student. In general, more severe sanctions or consequences are associated with dangerous or criminal behavior.

There are several inconsistencies between the discipline policies in the handbooks and in the Board policies. Some examples of discrepancies include that the handbook outlines three action levels of potential District responses to alleged conduct violations, namely conference, intervention, and out-of-school suspension while the board policies include eight action levels; the handbook does not require parental notification prior to calling a conference but the board policies do require such notification; the student handbook mandates that an education plan needs to be developed for any suspension longer than five day but board policy does not require an education plan; and the handbook contains a hearing component and outlines student due process rights, while the board policy contains no hearing component or student due process rights.

At the time OCR opened this case for investigation, OCR had data available from the 2011-12 CRDC. It showed that black students were considerably overrepresented in all of the district's disciplinary actions. For example, black students received in-school and out-of-school suspensions, were referred to law enforcement and were arrested for school-related incidents at statistically significant proportions compared to their enrollment in the District. African American students made up 27% of the total student enrollment but accounted for 35% of in-school suspensions and 40% of out-of-school suspensions. African American students were 2.25 times more likely to receive out of school suspensions than white students. African American students also accounted for 44% of the arrests and 35% of the referrals to law enforcement.

Hispanic students, however, made up 46% of the total student enrollment and accounted for 44% of the in-school suspensions and 39% of the out-of-school suspensions. The CRDC 2011-12 data for discipline of Hispanic students showed that in each of the eight categories reviewed, their proportion of discipline is less than their enrollment proportion. Moreover, in 4 of 7 categories where the numbers allowed OCR to conduct a test of statistical significance, the analysis showed that Hispanic students were disciplined not only less than their enrollment proportion, but to a statistically significant degree.

OCR's investigation examined the types of discipline students received and the rates at which students of different races were disciplined. The evidence indicates that differences between the overall count of the African American students' penalty rates compared to the overall count of white students' penalty rates is statistically significant relative to respective enrollments, with the black students always overrepresented and the white students always underrepresented. The evidence indicates that Hispanic students' punishment rates are always lower than their respective enrollment rate and suggests that Hispanics students are not punished an excessive amount. OCR's investigation also included a review of African American, Hispanic and white students receiving referrals and found that the rate at which African American students were referred was statistically significant as compared to white students. In other words, OCR was able to confirm that African American students were more likely to be referred for discipline than their white peers. Hispanic students were referred to discipline at a rate less than their representation in the total student population.

OCR's investigation then reviewed 2014-2015 discipline data which showed that disparities still exist. For example, for the 2014-15 school year, OCR's investigation revealed an extremely high statistical significance in the rate of African American students being referred for discipline as compared with Hispanic and white students. Specifically, the rate at which African Americans were being referred in 2014-2015 was proportionate to their enrollment, which Hispanic and white students were referred at a rate well below their representation in the population.

Enrollment and Discipline Referrals by Race including Rate of Referral for 2014-2015

African American Students				Hispanic Students				White Students			
Enroll	**Rate**	**Refer**	**Rate**	**Enroll**	**Rate**	**Refer**	**Rate**	**Enroll**	**Rate**	**Refer**	**Rate**
11,356	25%	2,973	26%	22,971	46%	2,825	12%	7,045	19%	917	13%

OCR's investigation also showed that African American students and Hispanic students received the most out of school suspensions for 1 to 5 days and 6 to 10 days, respectively. Of particular note, based on the figure above, during the 2014-15 school year, the disparity between the proportion of disciplinary referrals for African American students and the proportion of disciplinary referrals for white students was statistically significant. The most commonly assessed penalty for students was a suspension of one to five days. African

American students received the greatest number of this sanction and the highest rate. Of all the offense categories, African American and Hispanic students experienced the highest proportion of the sanction with the exception of out of school suspensions, for which white students experienced the same rate as African American students. Of note, African American students accounted for 55% 1-5 day suspensions and 42% of the in-school suspensions.

OCR's data review also demonstrated inconsistencies in the District's data collection. For example, there are sanctions not mentioned in the handbook discipline code reflected above such as Saturday school and a time-out room. Further, 133 students received discipline categorized as "other." The District was unable to explain what that sanction may include when asked by OCR. This was consistent with the District's own findings in its audit that its data collection and administration of discipline were inconsistent with its code and varied among buildings. The data also demonstrated that the District's two most commonly used disciplinary methods were suspensions (out of school and in school suspensions) which are measures that exclude students from their regular education classroom.

In addition to OCR's review of data, OCR reviewed the District's audit of its discipline practices. As identified above, the audit identified concerns including: incomplete and inconsistent recordkeeping; inconsistent provision of due process rights; inconsistencies District-wide as well as within individual schools in discipline practices; inconsistencies in information provided to parents when their children were suspended; and that parameters of certain disciplinary sanctions are unclear, such as "defiance of authority" and "disrespect" among others.

The District requested to resolve the complaint prior to the conclusion of OCR's investigation. In order to make findings to conclude OCR's investigation of this allegation, OCR would have to conduct additional interviews, including interviews with building-level principals and other administrators to discuss their implementation and understanding of District discipline policies. In particular, interviews would need to be conducted to establish whether or not there is a legitimate nondiscriminatory reason for the disparate numbers outlined above. In this case, the District was unable to provide accurate and complete information showing the discipline given to similarly situated students because the District's current data collection process is inconsistent and lacks clear documentation. OCR would also conduct focus groups of students, staff and community groups to learn the general climate and impressions of the District's efforts with regard to discipline.

The Agreement, in part, requires the District to review and revise its policies and procedures regarding discipline of students. The provisions of the Agreement also require the District to:

- Take steps to ensure that students of all races are treated equitably and fairly in the area of discipline.
- 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.
- Designate a District employee who will address complaints regarding the implementation of the District's disciplinary policies.
- 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;
- 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 take appropriate corrective actions necessary to address the root cause(s) in order to meet its goals of ensuring that discipline is appropriately and equitably applied to all students.
- 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 to its discipline code are needed based on its evaluation of student discipline data, the findings made by the discipline review team, and meetings with administrators and staff, and submit any proposed changes to its discipline policies, procedures and practices to OCR for review and approval prior to implementation. 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).
- 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.

- Review its SRO program and 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.
- Provide annual training programs on discipline to District personnel and students.
- Establish a student committee at each District middle school and high school 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 committee 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.

When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may take action to enforce the agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR appreciates the professionalism and cooperation shown by District staff to our office throughout the pendency of this investigation.

If you have any questions, please contact Anne Bradley, Attorney at (816) 268-0582 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at anne.bradley@ed.gov.

Sincerely,
/s/

Joshua Douglass
Chief Attorney

Enclosure