



UNITED STATES DEPARTMENT OF EDUCATION
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December 14, 2012

Freeman Williams, Ed.D.
Superintendent
Christina School District
Drew Educational Support Center
600 North Lombard Street
Wilmington, DE 19801

Re: Case No. 03-10-5001
Christina School District

Dear Dr. Williams:

This is to inform you of the resolution of this compliance review of the Christina School District initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on March 19, 2010 under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100.

Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the U.S. Department of Education (the Department). As a recipient, the Christina School District (District) is subject to the provisions of Title VI.

Title VI and its implementing regulation require that a school's disciplinary policies and practices be applied to students without regard to a student's race. This compliance review investigated the District's discipline policies and practices and specifically whether the District discriminates against African American students by disciplining them more frequently and more harshly on the basis of race than similarly-situated white students.

In conducting this review of the District's discipline policies and practices, OCR examined the District's written policies and procedures, reviewed data, including individual student disciplinary records, from 27 District schools, and conducted interviews with District administrators, teachers, counselors, school resource officers, support staff, and community members.

Based on our investigation, we conclude that the District has violated Title VI. Our investigation identified examples where African American students engaging in virtually identical behavior to

white students were punished more harshly than white students (who had the same or worse disciplinary history). A statistical analysis of all students referred for discipline for the first time, based on the District's own records and categorizations, found that African Americans were at least twice as likely to receive a suspension (either an in-school suspension (ISS) or an out-of-school suspension (OSS)) than white students for violations of similar severity. Moreover, African Americans experiencing their first referral were over three times more likely than white students to have the suspension be OSS, rather than ISS. For students whose first disciplinary referral was for *Inappropriate Behavior*, African American students were nearly seven times more likely to receive OSS than white students.

OCR's investigation also revealed that the District permitted decision-makers to apply penalties in excess of the provisions outlined in the *Student Code of Conduct* (Code), and that the imposition of higher penalties was most prevalent for the highly subjective violations and disproportionately fell on African American students (compared to similarly-situated white students referred for the same violation).

These consistent and significant disparities also existed with regard to the threshold matter of disciplinary referrals. For example, in 2010-2011, African American students were 1.98 times more likely than white students to be referred for a first offense. African American students were twice as likely as white students to be referred for *Inappropriate Behavior* for their first disciplinary referral in 2009-10 and almost twice as likely in 2010-11. Also, at every school level, and in every year examined, the disparities in disciplinary referrals between African American students and white students were statistically significant.

The extraordinary disparities in referrals for disciplinary action and to law enforcement, and the extraordinary disparities in the imposition of penalties, combined with the examples of individual African American students who received harsher discipline than similarly-situated white students, are sufficient to establish different treatment on the basis of race.

OCR notes that, during the course of this investigation, the District initiated steps to support the strategies and goals reflected in the Resolution Agreement. These include: strengthening the implementation of the Positive Behavior Support program; hiring personnel to assist in developing behavior modification plans and classroom management training; engaging parents and community members in the process of revising the Code; and working with the Delaware Department of Education to make improvements in the eSchool system. We also note a number of positive statistical trends reflected in the data over the three-year period under investigation, including reductions in the numbers of students referred for discipline, receiving ISS and OSS, or being expelled.¹

¹ There was a 14.2% reduction in the total number of ISS assignments between 2008-09 and 2010-11 (from 7,689 to 6,597), and the proportion of ISS assigned to African American students decreased from 66.5% to 66.0%. There was a 42.8% reduction in the total number of OSS assignments between 2008-09 and 2010-11 (from 9,451 to 5,403), and the proportion of suspensions assigned to African American students decreased from 75.3% to 72.9%. The total number of students expelled from school by the District fell from 84 to 15 (83%) between the 2008-09 and 2010-11 school years. In the 2010-11 school year, the difference in the rate at which African

The District agreed to enter into a Resolution Agreement in order to address OCR's findings.

I. LEGAL AUTHORITY

OCR investigates alleged discrimination in the application of student discipline consistent with federal statutory authority, the Department's regulations, 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 (commonly referred to as "different treatment"), and second, even if a policy is neutral on its face but has a disproportionate and unjustified *effect* on student(s) of a particular race (commonly referred to as "disparate impact").

For different treatment, absent direct proof of intentional discrimination based on race, OCR asks the following questions to determine whether different treatment has occurred in the school disciplinary context:

- (1) Did the school treat a student or group of students differently than a similarly-situated student or group of students of another race in the disciplinary process, and thereby limit or deny the student(s) educational services, benefits, or opportunities? If so,
- (2) Did the school have any legitimate, non-discriminatory reason for its actions? If so,
- (3) Was the reason given a pretext for discrimination?

See, e.g., U.S. Department of Justice, Title VI Legal Manual 44-46 (Jan. 11, 2001); and U.S. Department of Education, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11,448 (Mar. 10, 1994). *See also McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

For disparate impact, discrimination occurs if a race neutral policy adversely affects students in a racially disproportionate manner, and the school district cannot demonstrate that the policy substantially furthers a substantial legitimate educational justification.² Even in situations where a school can demonstrate that a policy has a substantial legitimate educational justification, OCR would still find a violation of Title VI, if there are alternatives available that would comparably meet the school's educational goal with less of an adverse racial impact.

For both different treatment and disparate impact, statistics alone are not sufficient to establish a violation of Title VI, but significant statistical disparities can be evidence of a violation.

American students were expelled compared to white students was not statistically significant.

²*See Elston v. Talladega County Board of Education*, 997 F.2d 1394 (11th Cir. 1993) (there must be an "educational necessity" for the challenged program, practice or procedure); Title VI Manual at 51.

II. FINDINGS OF FACT

A. Background

The District is the largest in the state of Delaware. The boundaries of the Christina School District include the city of Newark, the southeastern section of the city of Wilmington, the towns of Christiana and Glasgow, and the township of Bear.

The 2010-11 District enrollment was 17,149 students, of which 7,148 students were African American (41.7%), 5,954 students (34.7%) were White, 2,920 students (17%) were Hispanic, and 1,127 students (6.6%) were listed as Other.

The 27 District schools included in this review are:

- Eighteen elementary schools (grades K – 5): Bancroft, Brader, Brookside, Downes, Elbert-Palmer, Gallaher, Jones, Keene, Leasure, Maclary, Marshall, McVey, Porter Road, Pulaski, Smith, Stubbs, West Park Place and Wilson;
- Four middle schools (grades 6 – 8): Bayard, Gauger-Cobbs, Shue-Medill and Kirk;
- Three high schools (grades 9 – 12): Christiana, Newark and Glasgow; and
- Two alternative schools: Douglass Alternative School and Sara Pyle Academy.

Thirteen elementary schools (Brader, Brookside, Downes, Gallaher, Jones, Keene, Leasure, Maclary, Marshall, McVey, Smith, West Park Place, Wilson), three middle schools (Gauger-Combs, Kirk, Shue-Medill), and three high schools (Christiana, Glasgow, Newark) are located in the city of Newark. Four elementary schools (Bancroft, Elbert-Palmer, Pulaski, Stubbs), one middle school (Bayard), and two alternative schools (Sara Pyle Academy, Douglass) are located in the city of Wilmington. One elementary school (Porter Road) is located in the township of Bear.

B. The District's System of Discipline

1. Written Policies

The District publishes its Code, and distributes the current version in hard copy to every student at the beginning of the school year. The Code is also available on the District's website. The District reported that the Board of Education requires the District to annually review the Code and revise it as needed. Staff, parents, and community members are invited to participate and provide input at meetings held around the District. Through this process, the Code has been revised in each of the last three school years, 2008-09, 2009-10 and 2010-11. We refer to these as the 2008 Code, 2009 Code and 2010 Code, respectively.³

³ Although in most areas impacting this review the three Codes are substantially similar, a brief description of any relevant differences or revisions year to year is included in the analysis below.

The Code is the District’s primary form of notice to students and parents of the expected behavior and of the potential consequences should a student fail to adhere to the expected behavior. At the beginning of each school year, students are asked to discuss the Code with their parents. Students and parents are expected to provide a written acknowledgement that they have received a copy of the Code.

The 2010 Code lists 46 violations for students in grades 6 to 12.⁴ The violations were largely the same as in the 2008 and 2009 Codes and, as in previous years, were grouped under one of three “categories” or “levels.” Category I violations are those the District determined were the least serious, and include violations such as *Abusive Language (student-to-student)*, *Inappropriate Behavior*, and *Unauthorized Use of Electronics*. Category II violations are more serious, and include violations such as *Abusive Language (student-to-staff)*, *Academic Cheating*, and *Fighting*. Category III violations are the most serious, including violations like *Arson*, *Distribution of Drugs and/or Alcohol or Paraphernalia*, and *Rape or Attempted Rape*.⁵ Each violation was followed by a progression of optional, recommended, and required penalties or other consequences pertaining to the misconduct. See Chart A for a list of the violations in the 2010 Code, by offense category.

The following statements in all three Codes provided notice to parents and students of the District’s discretion to increase penalties⁶:

This document is not all-inclusive nor does it restrict the Christina School District and/or Board of Education’s authority to take actions that are appropriate to maintain a safe and orderly educational environment.

The Student Code of Conduct is not all-inclusive, and a student committing an act of misconduct not listed may be subject to the authority of the principal or designee. Serious or excessive behavior that necessitates a more severe disciplinary action than that which is listed shall be subject to the discretionary authority of the principal and the Superintendent. This may include a recommendation for expulsion. [Emphasis added.]

Some violations are not clearly defined in the Code. For example, *Inappropriate Behavior* is defined as “Language, gestures, or actions that incite, produce distractions or disruptions, or seriously interfere with effective functioning of the teacher, another student, class or any school activity.” As discussed in more detail below, this definition is subject to wide interpretation. Similarly, there are instances where the Code does not clearly identify the sanctions that may be imposed for a particular offense or a violation. The 2010 Code lists consequences as “optional,” “required” or “recommended,” but some consequences have no

⁴ There are 43 violations defined for younger students. The discussion herein focuses on older students, generally grades 6-12.

⁵ We noted that out of 184 teachers asked by OCR to explain the differences among the offense category levels, 20 did not know or were unable to do so.

⁶ These statements are found in the Introduction to the Code, which is approximately an 80-page document.

heading at all, which the District stated meant they were required. As for the meaning of “recommended,” District administrators told OCR that these consequences should be imposed. However, the data did not show a consistent pattern of following that guidance. Based on this, OCR finds that “recommended” consequences in the 2010 Code were not clearly stated and neither was it clear that consequences with no heading were required.

The District’s Supervisor of School Climate and Discipline, who is responsible for oversight of disciplinary issues, informed OCR that she conducts a Code training course for administrators at the beginning of each school year. She reported that principals were previously required to provide Code training for teachers, but this was discontinued. When asked whether they received training on the Code, 72 out of the 189 teachers whom OCR interviewed indicated that they had no Code training. Of the teachers who were asked whether they received any kind of discipline training, 56 out of 89 responded that none was provided.

2. *Disciplinary Referral Practices and Recordkeeping*

The 2010 Code stated in general terms that, except in emergencies, teachers were expected to use reasonable behavior management techniques in the classroom prior to referring misconduct to an administrator for disciplinary action. In interviews, most teachers indicated that they handled Category I violations themselves by using classroom management techniques -- such as giving a student “a look”, providing warnings, redirecting, reiterating expectations, staying in close proximity to the student, or moving the student’s seat -- rather than referring the student to an administrator for discipline. When students were referred for discipline, District staff generally filled out paper forms reflecting the referral. Upon receiving the referral, building administrators were responsible for identifying the specific Code provision violated and assigning the appropriate disciplinary action. The incident and outcome were then recorded in an electronic information and records management system known as eSchoolPLUS (eSchool). The eSchool system is intended to store the District’s student records, including all instances of discipline. All school districts in Delaware use eSchool, which, among other purposes, is designed to support the collection of data on school crimes.

On some referral forms and on all notice letters there was a statement that the student was given a chance to present his/her side of the story. However, of the 1600 discipline files that OCR reviewed, fewer than half indicated that the student was actually given this opportunity before the penalty was assigned and carried out. OCR also observed that the intent of a misbehaving student⁷ could mitigate or increase the severity of the penalty (although the Code was silent on this). Additionally, some of the plainly stated required penalties were treated by administrators as non-mandatory, including those requiring expulsion, notification of police or filing criminal charges.

⁷ OCR found that some referral forms collected information on the “possible motivation” behind a student’s behavior, including whether the behavior was motivated by the student seeking attention from peers or staff or by an ongoing conflict.

While referral forms have a space provided to record any contact with a parent or guardian, we found that this space was mostly left blank.⁸ Some referral forms included notations that parents were contacted, but there was little or no documentation of the information given to the parent; many other telephone records left it unclear whether actual contact with a parent was accomplished. For example, some forms had only a parent or guardian's name and telephone number and nothing more, or else the "phone" or "parent contact" boxes were checked off. Some forms indicated that a message was left for the parent or guardian. Other forms noted that contact was made, usually with a handwritten notation such as "parent contacted" or "spoke with mom" and nothing more. We also found referral forms with the box "E-mail" checked off or the notation of "e-mail" written on it, but none of the discipline files included the copy of an e-mail to the parent. On rare occasions the notation recorded the parent's reaction, not what was said to the parent.

Furthermore, as many as half of the violations defined in the Code lacked a corresponding match in eSchool's preset dropdown menus for entering disciplinary data. Although the District had developed a cross-reference to guide employees in choosing an eSchool approximate for the actual Code violation, it did not resolve all consistency problems because a single eSchool code could still be used for different Code violations. The District maintained that employees were also instructed to record the District Code violation in the comment field, but this was not always done. Thus, the District often did not make or record an official determination of the specific Code provision violated. We also noted various other inconsistencies in disciplinary recordkeeping among the files reviewed, *e.g.*, documentation was missing from the file; the student received a penalty for conduct not enumerated in the Code; the penalty assigned and/or the initial referral itself was not recorded in eSchool; or the conduct described did not fit the definition of the violation noted in the record.

C. Data Analysis

Methodology

OCR investigated the District's administration of discipline, including both a statistical analysis of its records and a review of the contents of hundreds of paper files:

OCR reviewed all of the District's electronic records of disciplinary referrals from the 2008-09, 2009-10, and 2010-11 school years in order to determine whether there were statistically significant disparities in referrals and in the imposition of penalties based on race.

OCR also reviewed over 1600 disciplinary referrals, including corresponding paper files and eSchool records, made during the 2009-10 school year to identify instances of individual students subjected to different treatment on the basis of race.

⁸ The District did not require that parents receive formal written notice of all discipline until the 2010-11 school year.

OCR reviewed 2009-10 and 2010-11 school year data in order to compare the treatment of African American and white students referred for similar violations at the time of the student's first disciplinary referral of the school year.

Finally, OCR analyzed the penalties that were assigned for five high-incidence violations in each of the three years to determine whether there were statistically significant differences by race in the distribution of penalties (from least severe to most severe) assigned for those violations. For example, OCR isolated the number of students referred, by race, for a first offense of *Inappropriate Behavior* and compared the severity of penalty received. A similar analysis was conducted of students referred for a second and third offense.

Analysis

Disparities in Disciplinary Referrals

During the three years under review, African American students comprised 43.6% (2008-09); 43.4% (2009-10); and 41.7% (2010-11) of the total enrollment of the 27 schools. However, while African American students constitute less than half of the enrollment, the vast majority of referrals entered in the eSchool system each year (68.4% in 2008-09; 67.1% in 2009-10; 65.5% in 2010-11) were for African American students. In comparison, white students constituted 36.8% (2008-09), 36.2% (2009-10), and 34.7% (2010-11) of enrollments, and 20.7% (2008-09 and 2009-10) and 20.1% (2010-11) of disciplinary referrals. When breaking this data down to the number of individual students by race, African American students constituted 60.6% of all students referred for discipline at least once in 2008-09; 60% in 2009-10; and 58.2% in 2010-11. White students comprised 26.1% of individual students referred for discipline at least once in 2008-09, 25% in 2009-10, and 24.7% in 2010-11. For all three years, the results are statistically significant.

OCR also analyzed students referred for discipline at least once by school level and found statistically significant disparities in each of the 2008-09, 2009-10, and 2010-11 school years, and at all school levels.

African American students were twice as likely as white students to be referred for *Inappropriate Behavior* for their first disciplinary referral in 2009-10 and almost twice as likely in 2010-11.

Disparities in Disciplinary Penalties

a. In-School Suspensions (ISS)

The disparity between African American students' representation in the enrollment population and those receiving ISS was statistically significant for all three school years reviewed. The proportion of ISS assigned to African American students was 66.5% in 2008-09 and 66.0% in

2010-11; the proportion of ISS assigned to white students was 23.8% in 2008-09 and 19.4% in 2010-11. The percentage of African Americans among those assigned ISS at least once remained constant at 63.7% from 2008-09 to 2010-11. The percentage of white students among those assigned ISS at least once decreased from 25.3% in 2008-00 to 20.8% in 2010-11.

OCR also analyzed the number of students assigned ISS at least once by school level. Overall, the disproportionate representation of African American students who were assigned ISS was statistically significant when compared to white students in the 2008-09, 2009-10, and 2010-11 school years, and at each school level.

OCR conducted an additional analysis of ISS comparing, by race, students referred for disciplinary action to students in that group who received ISS at least once. African American students were disproportionately assigned ISS to a statistically significant degree when compared to white students for all three school years District-wide and at each school level, except at the middle school and high school levels in 2009-10.

b. Out-of-School Suspensions (OSS)

i. OSS for all Violations

The disparity between the number and proportion of African American students receiving out of school suspension (OSS) for any violation was statistically significant for all three school years reviewed. The proportion of suspensions assigned to African American students was 75.3% in 2008-09, 73.2% in 2009-10, and 72.9% in 2010-11; the proportion assigned to white students was 14.6% in 2008-09, 21.9% in 2009-10, and 13.9% in 2010-11. The percentage of African Americans among those suspended for any violation was 69.5% in 2008-09, 68.9% in 2009-10, and 68.6% in 2010-11. Of individual students suspended for any violation, the percentage who were white students was 19.5% in 2008-09, 19.3% in 2009-10, and 17.1% in 2010-11.

At each school level, the disproportionate representation of African American students who were assigned OSS at least once was statistically significant when compared to white students in each of the 2008-09, 2009-10, and 2010-11 school years. The percentage (approx. 80%) of African American students who were assigned OSS at the elementary school level was particularly high.

OCR conducted an additional analysis of OSS comparing, by race, students referred for disciplinary action to students in that group who received OSS at least once. African American students were disproportionately assigned OSS to a statistically significant degree when compared to white students in all three school years District-wide, and at each school level.

ii. OSS for a Category I Violation

The Codes for all three school years stated that OSS did not apply to any Category I violation except *Trespassing*. However, the data show that OSS was assigned for conduct labeled as