

June 22, 2012

VIA FACSIMILE 404.974.9471
AND FEDERAL EXPRESS DELIVERY

U.S. Department of Education
Office for Civil Rights
61 Forsyth Street, S.W., Suite 19T10
Atlanta, Georgia 30303-8927

Re: D.R., D.S., D.G., S.T., D.M., Z.H., M.L., Z.K., L.G., A.J., I.C., K.L. and T.F., on behalf of themselves and all others similarly situated v. Bay County (FL) District Schools

To Whom It May Concern:

Please consider this letter a Complaint filed against Bay District Schools (“BDS” or “District”) on behalf of African American students who have been or will be subjected to discriminatory disciplinary removal and disproportionate arrests while attending schools within the District.¹ Complainants allege that BDS has discriminated against them on the basis of race by engaging in practices that have the effect of discrimination in violation of Title VI of the Civil Rights Act of 1964 (“Title VI” or “Act”) and its implementing regulations. 42 U.S.C. §2000d; 34 C.F.R. part 100. The Complainants file this Complaint on behalf of themselves and all other similarly situated students.

¹ The contact information for the District is as follows: Bay District Schools, 1311 Balboa Avenue, Panama City, Florida 32401. T. 850-767-4100.

Statement of Jurisdiction

Bay District Schools is a recipient of federal funding and is therefore subject to the anti-discrimination prohibitions of Title VI. Complainants allege that the discriminatory acts complained of herein occurred within 180 days of the filing of this Complaint or are of an ongoing and continuing nature. The Office for Civil Rights has personal and subject matter jurisdiction over this matter and the Complaint is timely filed.

Statutory Framework

1. Section 601 of Title VI of the Civil Rights Act provides that no person shall, “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. §2000d. This section of the Act is applied to the District through 34 C.F.R. § 100.1

2. Section 602 of the Act authorizes federal agencies, in this case the United States Department of Education, “to effectuate the provisions of [the Act]...by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the [Act].” 42 U.S.C. §2000d -1.

3. It is permissible for these regulations to proscribe actions that the statute itself does not specifically prohibit. *Alexander v. Choate*, 469 U.S. 287, 292-94 (1985); *Georgia State Conferences of Branches of NAACP v. Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985) (court correctly applied disparate impact tests in making its determination under section 601 of Title VI).

4. The Department of Education’s rules under Title VI bar not only intentional acts, but also

unintentional disparate-impact discrimination. 34 C.F.R. §100.3(b)(2) (recipients of Federal financial assistance may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin...”).

5. As set forth below, the District, through its use of vague and ambiguous disciplinary procedures, punishes African American students more harshly and more frequently than white students. The District’s disciplinary policies are so vague they have been enforced in inconsistent ways creating a disparate impact. Data shows that this disparate impact is significant and that Bay student suspensions exceed state averages. *See* Exhibit 10.

6. District staff use their administrative discretion to impose “formal” or “informal” disciplinary measures to remove African American children from their existing educational placements, temporarily or permanently at grossly disproportionate rates. By implementing vague and ambiguous disciplinary procedures, BDS maintains an educational environment that is hostile to African American children and deprives those students of equal access to educational benefits and opportunities. These procedures are not only in direct violation of federal law but also the District’s own vision and mission statements.² The actions and inactions of BDS, as described in this Complaint, disparately impact African American students in violation of the regulations promulgated pursuant to Title VI.

² “Vision Statement: Bay District Schools will develop high academic achievers to produce successful, innovative citizens and leaders for tomorrow's world. Mission Statement: Bay District Schools will deliver a high quality education in a collaborative, safe, and respectful environment. Our commitment is to inspire students in the development of character with the acquisition and use of knowledge and skills as we prepare them for life and work in a diverse, global economy.”

www.bay.k12.fl.us/departments/DistrictInformation

Representative Complainants' Statement of Facts³

Complainant D.R.

7. Complainant D.R. is a 14 year old, African American student who resides with his family in Panama City, Florida.

8. During the 2011-2012 school year, D.R. was in 8th grade at Jinks Middle School.

9. During the 2011-2012 school year, D.R. was referred to the office and "written up"⁴ thirteen times.⁵ D.R. received nine days of out of school suspension, three days of in school suspension, D.R. spent nineteen days in the "nest"⁶ wherein he missed class for "individualized instruction"⁷ and D.R. lost his school privileges for a total of nineteen school days.⁸

10. On April 25, 2012, D.R. was referred to the office⁹ for tapping his pencil on his desk.

³ Consent forms for all listed complainants are attached hereto as Exhibit 17.

⁴ "Written up" in Bay District schools means that a formal incident report is produced and made part of the student's permanent education file. The incident is also entered into the computer system and made a permanent part of the student's electronic profile.

⁵ D.R. has been diagnosed and on medication for attention deficit hyperactivity disorder ("ADHD") since kindergarten. The District has known of the diagnosis and medication since kindergarten. Behaviors such as not being able to sit still or focus and having tantrums have been documented since 2004. While an observation was conducted in 2004, there was no follow up. During third grade, D.R. was not allowed to attend field trips because of his behaviors and reports of tantrums and destruction of property were reported. D.R. was almost retained in the 5th grade because of his behaviors and counseling was recommended. Despite this documented pattern of behaviors that unquestionably interfere with his education, knowledge that D.R. is on medication for ADHD, upon information and belief, no evaluations have ever been conducted, no accommodations have ever been provided and no specialized instruction or related services have ever even been considered, let alone provided.

⁶ The "nest" exists only at Jinks Middle School and is a room on campus where students are placed for "individualized instruction" or where they are placed when they are otherwise removed from the regular classroom for discipline purposes.

⁷ "Individualized instruction" appears to be another version of in school suspension. The students are removed from their regular classroom, placed into a room on the school campus where they must remain for the entire school day. This punishment is usually in conjunction with a loss of privileges. This is neither detention or in school suspension. Some students sit in the office and help out the office staff or guidance counselor as punishment.

⁸ "Privileges" vary from school to school but include permission to leave campus for lunch, participation on sports teams or play in games, attend school programming during the school week, attend school sponsored events/ activities such as football games or dances.

⁹ When students are "referred to the office" they generally remain in the office for the remainder of the class and/or school day. At Jinks Middle School, students are sent to the "nest." The nest is not detention

D.R. was written up for classroom disruption (CLD). D.R. was suspended out of school for three days. D.R. was out of school from May 1 through May 3, 2012.

11. On April 9, 2012, D.R. was referred to the office for jokingly patting a female student on the bottom in the hallway. D.R. was written up for inappropriate behavior/language (RBL). D.R. was suspended out of school for two days. D.R. was out of school April 10 and 11, 2012.

12. On March 20, 2012, D.R. was referred to the office for being on the wrong bus and lying to the bus driver about which bus he rode to school. D.R. was written up for lying (CHT) and a bus conduct violation (BCV). D.R. received three days in school suspension for lying and lost his privileges for three days. D.R. was out of class March 23 through March 27, 2012.

13. Also on March 20, 2012, D.R.'s privileges were suspended and he received individualized instruction for talking in class while other students were taking a test. D.R. was written up for defiance/disrespect/insubordination/non-compliance (ISB) and inappropriate behavior/language (RBL). D.R.'s privileges were also suspended for five days and he was out of class for five days from March 28 through April 3, 2012.

14. Further on March 20, 2012, D.R. was referred to the office for refusing to take his book out and work during class. D.R. was written up for defiance/ disrespect/insubordination/non-compliance (ISB). In conjunction with a three day in school suspension, five days loss of privileges and individualized instruction, D.R. was also subject to a parent conference and he was referred to the guidance counselor.

15. On February 22, 2012, D.R. was referred to the office for eating in class. D.R. was

written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). D.R.'s privileges were suspended and he was subjected to individualized instruction and out of class for five days from February 24 through March 1, 2012.

16. On February 10, 2012, D.R. was referred to the office for pretending to swallow his gum rather than spit it out during class. D.R. was written up for insubordination/defiance/disrespect/non-compliance (ISB). D.R. was suspended out of school for two days. D.R. was out of school February 14 and 15, 2012.¹⁰

17. On January 6, 2012, D.R. was referred to the office for refusing to complete his homework assignment in the "nest." D.R. was written up for defiance/disrespect/insubordination/ non-compliance (ISB). As D.R. was already in the "nest" for a January 5th incident, a conference with the student was held in conjunction with the punishment he was already serving.

18. On January 5, 2012, D.R. was referred to the office for making fun and arguing with his teacher. D.R. was written up for defiance/disrespect/insubordination/non-compliance (ISB). D.R.'s privileges were suspended for three days and he was out of class for three days for individualized instruction from January 9 through January 11, 2012.¹¹

Complainant D.S.

19. Complainant D.S. is a 16 year old, African American student who resides with his family in Panama City, Florida.

¹⁰ The majority of D.R.'s referrals came from Ms. Keesler. Ms. Keesler is a white teacher who repeatedly told D.R. that he was acting like a monkey in class.

¹¹ D.R. was referred to the office four additional times on December 16, November 17, October 7 and September 22, 2011. He was written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). D.R. was out of class for eight additional days, two days out of school and six in the nest for individualized instruction and he lost his privileges for an additional six school days.

20. During the 2011-2012 school year, D.S. was in the 9th grade at Rosenwald High School.

21. During the 2011-2012 school year, D.S. was referred to the office and “written up”¹² twenty times.¹³ D.S. received twenty seven days of out of school suspension, one day of in school suspension, three detentions, spent four days in the office and lost his privileges three times.¹⁴ D.S. has been retained and was not promoted to the 10th grade.

22. On May 10, 2012, D.S. was referred to the office and written up for skipping class (SKP). D.S. received a one day out of school suspension and was out of school from May 11 through May 14, 2012. A trespass notice was issued with a “warning” that if D.S. was found on any campus before May 14, 2012, he would be arrested and prosecuted for trespass under Florida Statute 810.097.¹⁵

23. On May 8, 2012, D.S. referred to the office for being disruptive in class and distracting other students. D.S. was written up for inappropriate behavior/language (RBL). D.S. was required to spend the remainder of the class in the office as punishment. A conference was held with the student the following day.

¹² “Written up” in Bay District schools means that a formal incident report is produced and made part of the student’s permanent education file. The incident is also entered into the computer system and made a permanent part of the student’s electronic profile.

¹³ D.S. is eligible for ESE services for a specific learning disability (SLD). In order to suspend an ESE student for more than 10 days, a manifestation determination must be made. On December 15, 2011, a manifestation hearing was held so that the District could suspend D.S. for more than 10 days. The hearing determined that D.S.’s behaviors were not a direct result of a failure to implement the IEP and were not related to his disability. However inconsistently, the District admits that D.S. was only receiving limited ESE services due to his placement. D.S. was suspended for 19 additional days after this hearing was held. D.S. is now being retained due to his behaviors and failing grades.

¹⁴ “Privileges” vary from school to school but include permission to leave campus for lunch, participation on sports teams or play in games, attend school programming during the school week, attend school sponsored events/ activities such as football games or dances.

¹⁵ Because D.S. is an ESE student, a manifestation hearing must be held BEFORE a student can be suspended. In this case, the manifestation hearing was held on May 14, 2012, four days after the punishment was imposed and three days after the punishment was completed. The manifestation hearings are perfunctory at best. The District has to find that the suspension was appropriate since the punishment has already been imposed and carried out at the time the hearing is had.

24. On April 4, 2012, D.S. was sent to the office for refusing to sit in his seat and being “disrespectful” to the teacher. D.S. was written up for defiance/ disrespect/insubordination/non-compliance (ISB), classroom disruption (CLD) and inappropriate behavior/ language (RBL). D.S. was required to spend time the rest of the class in the office as punishment.

25. On March 29, 2012, D.S. was sent to the office for not remaining quiet during the reading block and becoming argumentative with the teacher in class. D.S. was written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). D.S. was placed in detention for the remainder of the school day and lost his privileges for the day.

26. On February 22, 2012, D.S. was suspended out of school for five (5) days for talking during class and calling the teacher an inappropriate name. D.S. was written up for defiance/disrespect/ insubordination/non-compliance (ISB), classroom disruption (CLD) and inappropriate behavior/language (RBL). D.S. received five days out of school suspension and was out of school from February 29 through March 6, 2012.

27. On January 26, 2012, D.S. was accused of being loud in class and “carrying on” after being redirected. D.S. received three days out of school suspension for defiance/disrespect/insubordination/non-compliance (ISB), classroom disruption (CLD) and inappropriate behavior/language (RBL). D.S. was out of school January 27 through January 31, 2012.

28. On January 17, 2012, D.S. was suspended out of school for three days for skipping

class (SKP). The suspension was carried out concurrently and D.S. was out of school January 27 through January 31, 2012.¹⁶

Complainant D.G.

29. Complainant D.G. is a 12 year old African American student who resides with her family in Panama City, Florida.

30. During the 2011-2012 school year, D.G. was in the 6th grade and attends Jinks Middle School.

31. During the 2011-2012 school year, D.G. was written up 9 times. She was suspended out of school for 23 days total and lost her privileges for 23 school days.¹⁷

32. On May 3, 2012, D.G. was referred to the office for refusing to spit out her gum and remove her hood while in class. D.G. received five days out of school suspension for defiance/disrespect/insubordination/non-compliance (ISB). D.G. was out of school May 4 through May 10, 2012.

¹⁶ D.S. was referred to the office and written up thirteen more times during the 2011-2012 school year. On December 15, 2011, D.S. was suspended out of school for five days for skipping Class. On November 29, 2011, D.S. was suspended out of school for five days for failure to follow administrator's directive. On November 29, 2011, D.S. spent the day in the office for skipping class. On November 17, 2011, D.S. was removed from class and written up for hitting his desk and yelling. On November 7, 2011, D.S. received one day of in school suspension, three days of out of school suspension and lost his privileges for giving his cell phone to a friend. On November 1, 2011, D.S. spent class time in the office for skipping class. Also on November 1, 2011, D.S. was written up for defiance and classroom disruption and spent the remainder of the day in detention. On October 28, 2011, D.S. was suspended out of school for two days for skipping class. On October 19, 2011 D.S. was written up for skipping class and spent the class in the office. On October 19, 2011, D.S. was suspended for one day for failure to follow administrator's directive. On October 3, 2011, D.S. was written up and received a detention for throwing a plastic bottle at another student (the bottle did not hit the student). While in detention D.S. did not follow an administrator's directive and was suspended out of school for one day. On September 16, 2011, D.S. was suspended out of school for three days for "passing gas."

¹⁷ In 2009, D.G. was placed into an RTI program, the result/outcome of which is unknown. Previously D.G. has also had a behavior plan. The District is aware that the student is on mediation for ADHD, but no IEP or ESE eligibility has ever been initiated. Despite the rise in behaviors this school year the District did not initiate any evaluations, behavior intervention plans or ESE eligibility to address this students individual needs or whether she needs any specialized services, accommodations or interventions.

33. On April 5, 2012, D.G. was accused of talking to other students in class and speaking to the teacher with “attitude.” D.G. received five days out of school suspension for disrespect/insubordination (ISB). D.G. was out of school from April 9 through April 13, 2012.

34. On April 3, 2012, D.G.’s privileges were suspended for five days for eating in class and “mouthing off” to the teacher. DG was written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). Along with losing her privileges, D.G. was provided “individualized instruction” at school and was out of regular class from April 5 through April 11, 2012.

35. On March 7, 2012, D.G. was referred to the office for talking in class and not standing against the wall during a restroom break. D.G. received three days out of school suspension for defiance/disrespect/insubordination/non-compliance (ISB). D.G. was out of school from March 7 through March 9, 2012.

36. On February 24, 2012, D.G. was allegedly involved in a fight at school with another student. D.G. received five days out of school suspension for fighting (FIT). D.G. was out of school from February 27 through March 2, 2012. D.G. was also assigned to the “nest” for five days and received individualized instruction and a loss of privileges from March 5 through March 9, 2012.

37. On February 9, 2012, D.G.’s privileges were suspended for five days for skipping class. D.G. was written up for skipping class (SKP) and lying (CHT). D.G. received individualized instruction at school and her privileges were suspended for five days. D.G. was out of class from February 14 through February 21, 2012.¹⁸

¹⁸ During the 2011-2012 school year, D.G. was referred to the office and written up three more times on November 2, October 27 and October 13, 2011. D.G. was suspended out of school for five days for waving to people through the window outside of the classroom. D.G. was suspended out of school for

Complainant S.T.

38. Complainant S.T. is a 15 year old, African American student who resides with her family in Panama City, Florida.

39. During the 2011-2012 school year, S.T. was in 8th grade at Jinks Middle School. In January 2012, S.T. moved from Jinks from Everitt Middle School because of her treatment regarding discipline at Jinks. S.T. is an ESE student with an IEP for a language impairment.

40. On November 23, 2011, S.T. received three days of detention during lunch for a dress code violation.

Complainant D.M.

41. Complainant D.M. is a 7 year old, African American student who resides with his family in Panama City, Florida.

42. During the 2011-2012 school year, D.M. was in 1st grade at Tyndall Elementary School.

43. During this school year, 2011-2012, D.M. was referred to the office fourteen times. D.M. was suspended out of school 10 days total. He was required to leave early 7 times, write two apology letters, participate in seven conferences and he was physically restrained one time that was documented.¹⁹

44. On April 9, 2012, D.M. was referred to the office for abusive language to another student.

three additional days for not following directions and was removed from class for individualized instruction and placed in the “nest” for five days for writing a note to another student. D.G. also lost her privileges for five days for note writing.

¹⁹ The District has recognized that there is a behavior issue with this student. Rather than evaluate for ESE eligibility, the district implemented a “Response to Intervention” (“RtI”) program for behavior referred to as SOAR. Soar is not an evidenced based program and the district appears to be utilizing RtI to delay the eligibility determination for ESE services resulting in the possible delay in obtaining necessary individualized instruction, related services, interventions, accommodations and specialized services. This student has diagnosed in 2010 with ADHD and has now been diagnosed with ADHD and an adjustment disorder. The District has failed to determine this student eligible for ESE services or a 504 plan.

D.M. was sent to the office, his parents were contacted and D.M. was subjected to a conference with the administrators. D.M. was required to write an apology letter to the other student.

45. On April 5, 2012, D.M. was referred to the office for defiance/insubordination. D.M. got into trouble during physical education class and he was placed in time out and continued to get into trouble by not following directions and skipping to the front of the line. D.M. was sent to the office, written up and his parents were called. D.M. left school early (10:15 am).

46. On February 15, 2012, D.M. was suspended out of school for two (2) days for hitting another student. D.M. was referred to the office, written up and sent home by 8:15 am. D.M. was out of school February 15 and 16, 2012.

47. On January 17, 2012, D.M. was suspended out of school for two and half days (2.5) for violating the rights of another (VIO)²⁰. D.M. was required to sit out of physical education class for throwing a ball at another student (the ball did not hit the student). D.M. got angry and kicked the equipment and when walking back to class D.M. hit another student. D.M. was referred to the office, written up, the parents were called and D.M. was sent home early and suspended for the next two school days. D.M. was out of school part of January 17 and all of January 18 and 19, 2012.²¹

Complainant Z.H.

48. Complainant Z.H. is a 12 year old, African American student who resides with his family in Lynn Haven, Florida.

49. During the 2011-2012 school year, Z.H. was in 6th grade at Mowat Middle School.

50. On April 19, 2012, Z.H. was written up because several students reported name calling in

²⁰ The referral form states suspension for 1.5 days, but in fact D.M. was out of school two and half days.

²¹ During the 2011-2012 school year, D.M. was referred to the office and written up ten additional times for violating the rights of another or classroom disruption.

the hallway on the way back from lunch. Z.H. was called a “nigger” by some white students. In response, Z.H. called them “vagas.” Even though a racial slur was used against Z.H., nothing was done by the school administration to discipline the students involved. Z.H. was written up for his language, but no discipline was imposed.

51. On April 6, 2012, Z.H. was written up for dress code violations (DCV) on April 2 (no belt); March 27 (no black pants) and March 5 (no belt). It is unknown why discipline was not imposed until April 6, 2012. On April 6, 2012, Z.H. received five days detention during lunch. As a result Z.H. missed school programming and special functions happening during the week. Z.H. was in detention April 6 through April 12, 2012.

52. On February 14, 2012, Z.H. reported to the administration that another student, who was white, stated to him, “do us all a favor and go hang yourself so we don’t have to.” The administration did nothing in response to this racial slur.

53. On December 12, 2011, Z.H. was written up for dress code violations (DCV). Z.H. had no belt September 15, October 18 and December 12, 2011. On December 12, 2011, Z.H. received five days of detention during lunch. Z.H. was in detention December 13 through December 19, 2011.

Complainant M.L.

54. Complainant M.L. is a 14 year old African American student who resides with her family in Panama City, Florida.

55. During the 2011-2012 school year, M.L. was in the 8th grade and Jinks Middle School.

56. On April 25, 2012, M.L. referred to the office for fighting in the parking lot before school

began. M.L. was written up for fighting (FIT). M.L. was suspended out of school for ten days. M.L. was suspended from school April 26 through May 9, 2012. M.L. however never returned to school because the administration recommended expulsion.²²

57. On April 24, 2012, M.L. was suspended out of school for ten days for “making out” in the hallway. M.L. was written up for inappropriate behavior/language (RBL). M.L. was suspended from school April 26 through June 9, 2012. The suspension and expulsion recommendation ran concurrently with the offense that occurred on April 25, 2012.

58. On April 5, 2012, M.L. referred to the office for telling another student that if the teacher was bothering her, M.L. could, “take care of it.” M.L. was written up for defiance/disrespect/insubordination/non-compliance (ISB); inappropriate behavior/ language (RBL) and harassing staff (HAR). M.L. was suspended out of school for five (5) days. M.L. was out of school April 9 through April 13, 2012.

59. On March 29, 2012, M.L. was referred to the office for defiance/disrespect/insubordination/non-compliance (ISB). M.L. was suspended out of school for two (2) days starting March 29, 2012.

60. On March 6, 2012, M.L. was referred to the office for “disrupting” class and keeping others from paying attention to the lesson. M.L. was written up for defiance/disrespect/insubordination/non-compliance (ISB); inappropriate behavior/language

²² An expulsion hearing was scheduled for May 22, 2012. M.L. was required to remain out of school pending the expulsion hearing. The family requested an evaluation with a board certified behavior analyst and the District agreed to conduct an evaluation. The student however was not allowed to return to Jinks Middle School and was required to attend the alternative middle school named CC Washington Middle School in lieu of an expulsion hearing. M.L. however completed all her work for the year from Jinks while at home and never returned to school. In order to avoid an expulsion for the 2012-2013 school year, M.L. must enroll in the alternative High School, Rosenwald, or face expulsion. To date no evaluations have been conducted.

(RBL) and classroom disruption (CLD). M.L. received individualized instruction and a loss of privileges for five days. M.L. was out of class from March 19 through March 23, 2012.

61. On February 15, 2012, M.L. was sent to the office for “attitude.” M.L. received individualized instruction and a loss of privileges for five days. M.L. was out of class from February 24, 2012 through March 1, 2012. Why there was a delay in imposing a punishment is unknown.

62. On February 13, 2012, M.L. was referred to the office for skipping school (OSK). M.L. received individualized instruction and a loss of privileges for five days. M.L. was out class from February 16 through February 23, 2012.

63. On January 30, 2012, M.L. was referred to the office for yelling at another student during class. M.L. was written up for defiance/disrespect/insubordination/non-compliance (ISB); classroom disruption (CLD), inappropriate behavior/language (RBL), and harassing another student (HAR). M.L. was suspended out of school for five days. M.L. was out of school from January 30 through February 3, 2012.

64. On January 18, 2012, M.L. was referred to the office for not returning a signed tardy form. M.L. was written up for excessive tardiness (ETD). M.L. received individualized instruction and loss of privileges for one day and was out of regular classes on January 26, 2012.

65. On January 10, 2012, M.L. was referred to the office for skilling class and arriving to class 30 minutes late without a pass. M.L. was written up for skipping class (SKP). M.L. was put into the “nest” for two days. M.L. received individualized instruction and a loss of privileges for two days. M.L. was out of class from January 12 through January 13, 2012.

66. On January 4, 2012, M.L. was referred to the office for distracting other students during

class. M.L. was written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). M.L. was put into the “nest” for two days. M.L. received individualized instruction and loss of privileges for two days. M.L. was out of class from January 5 through January 6, 2012.²³

67. Complainant Z.K.

68. Complainant Z.K. is a 13 year old African American student who resides with his family in Panama City, Florida.

69. During the 2011-2012 school year, Z.K. was in the 7th grade at New Horizons Learning Center. New Horizons Learning Center is a “special purpose” school for students with disabilities grades 6 – 12.²⁴

70. During the 2011-2012 school year²⁵, Z.K. was referred to the office no less than twenty times and received at least fourteen days of out of school suspensions.²⁶

71. On May 4, 2012, Z.K. was referred to the office and written up for classroom

²³ During the 2011-2012 school year, M.L. was referred to the office and written up three additional times. On November 3, 2011, M.L. was referred to the office for fighting and was suspended out of school for ten days. On October 14, 2011, M.L. was suspended out of school for four days for causing a “continual disruption” in class. On September 7, 2011, M.L. was referred to the office for “posturing” to fight with another student on the bus ramp after school. M.L. was written up for inappropriate behavior/language (RBL). M.L. was removed from class for three days. M.L. was placed on administrative leave for one day and into the “nest” for two days.

²⁴ Z.K. was burned over a large portion of his body when he was in day care as an infant. He undergoes painful skin grafts as he grows. He has been found eligible for ESE services for an emotional behavioral disability (EBD).

²⁵ While hundreds of records for this student were provided upon request, no records for the 2011-2012 school year were provided. Records for prior school years were provided and 2011-2012 records for other students were provided, but not for this student. The reasoning behind the exclusion of these records is unknown, but appears to be intentional. Because the District did not provide the requested records, little detail is known about the official reasons behind the referrals and discipline action taken by the school during the school year.

²⁶ Despite a clear indication that Z.K.’s behaviors were interfering with his education and ability to learn, no IEP meetings were held, no amendments to the IEP or behavior plan were made and no recommendations for any evaluations were made. Z.K. has not had a psychological evaluation since April 2007. Upon information and belief the District is five years out of compliance. A conference with the parent was held in November 2011, but no changes to the IEP or behavior plan were recommended.

disruption (CLD); disrespect (DSP); rude/vulgar behavior/language (RBL) and violation of detention (VDT). Z.K. received a one day out of school suspension for May 7, 2012.

72. On March 20, 2012, the District made a manifestation determination that Z.K.'s behaviors were not related to his disability or because of the failure to implement his IEP. No changes were made to the IEP or behavior plan. As of March 20, 2012, Z.K. had been referred to the office nineteen times and suspended out of school for thirteen days total. Z.K. was suspended for failure to follow administrative instruction, violating the rights of others, classroom disruptions and disrespect.

73. On January 31, 2012, the District determined that Z.K.'s behaviors were not related to his disability or because of the district's failure to implement his IEP. No changes were made to the IEP or behavior plan. As of January 31, 2012, Z.K. has been referred to the office fifteen times and suspended out of school ten times. Z.K. was suspended for failure to follow administrative instruction, violation the rights of others, classroom disruption and disrespect.

Complainant L.G.

74. Complainant L.G. is a 14 year old African American student who resides with his family in Panama City, Florida.

75. During the 2011-2012 school year, L.G. was in 7th grade at Everitt Middle School.

76. During the 2011-2012 school year, L.G. was referred to the office at least eight times, received no less than nineteen days of out of school suspensions, two days of in school suspension and one day of administrative detention.²⁷

77. On April 5, 2012, L.G. was referred to the office for fighting. L.G. was written up

²⁷ Although referral reports, known as "event and discipline" reports, were requested for this student, none were provided for the 2011-2012 school year. Discipline reports were provided for other school years so this appears to be an intentional omission by the District. Because these reports were not provided, little is known about the official details regarding what behavior initiated the referral.

for battery (BAT). L.G. was suspended out of school for five days.

78. On March 28, 2012, L.G. was referred to the office and written up for defiance/disrespect/insubordination/non-compliance (ISB). L.G. was suspended out of school for two days.

79. On March 20, 2012, L.G. was referred to the office for fighting. L.G. was written up for battery. L.G. was suspended out of school for three days.

80. On January 23, 2012, L.G. was referred to the office and written up for a dress code violation (DCV). L.G. received one day administrative detention.²⁸

Complainant A.J.

81. Complainant A.J. is a 10 year old African American student who resides with her family in Panama City, Florida.

82. During the 2011-2012 school year, A.J. was in 4th grade at Cedar Grove Elementary School.

83. During the 2011-2012 school year, A.J. was referred to the office and written up five times. Additional incidents are noted in the student file but not formally written up by the teachers. Specifically, A.J. was placed in time out, removed from class and placed in detention on January 6, 2012 for not participating in music class but no discipline referral was made for this incident²⁹.

84. On February 7, 2012, A.J. was sent to the office for not going to class and walking away

²⁸ During the 2011-2012 school year, L.G. was referred to the office and written up four additional times: December 16, December 2, September 9 and August 30, 2011. L.G. received eight additional days of out of school suspension and two days of in school suspension.

²⁹ Although specifically requested, the computer printout of discipline incidents (S.272) was not provided for this student. This appears to be intentional as this report is provided for other students records received at this same time as part of the same request.

from an administrator at 7:50 a.m. A.J. was written up for a “major” incident of defiance. A.J. spent time in the office and was subjected to a student conference with the administrators.

85. On February 6, 2012, A.J. was sent to the office for not following directions. A.J. was written up for a “major” incident of disruption during music class at 8:30 am. A.J. received an in school detention and missed class for most of the school day.³⁰

Complainant I.C.

86. Complainant I.C. is a 7 year old African American student who resides with his family in Panama City, Florida.

87. During the 2011-2012 school year, I.C. was in 2nd grade at Cedar Grove Elementary School.

88. On February 15, 2012, I.C. was sent to the office for sharing his computer password with another student. I.C. was written up for a “major” offense for inappropriate use of computers in the classroom. This occurred at 11:20 in the morning. I.C. was placed into detention for the remainder of the day.

89. This was the first time I.C. had ever been in trouble at school and this was his first and only referral to the office.

Complainant K.L.

90. Complainant K.L. is a 12 year old African American student who resides with her family in Panama City, Florida.

91. During the 2011-2012 school year, K.L. was in 6th grade at Jinks Middle School. K.L. moved from Everitt Middle School to Jinks Middle School in January 2012.

92. On April 23, 2012, K.L. was sent to the office for singing, talking and making

³⁰ During the 2011-2012 school year, A.J. was referred to the office and written up three additional times. A.J. was suspended for five days from the after school program and placed in “time out” twice.

loud noises in the classroom. The referral form states that K.L. acts “deliberately” to make other students laugh. K.L. was written up for classroom disruption (CLD). K.L. was suspended out of school for two days. K.L.’s punishment ran concurrent with the punishment from April 11 and 23rd. K.L. was out of school and class from April 30 through May 2, 2012.

93. On April 20, 2011, K.L. was referred to the office for making “bird” noises. K.L. K.L. was written up for classroom disruption (CLD). K.L. was suspended out of school for two days and her punishment ran concurrent with the punishment from April 11 and 23rd. K.L. was out of school and class from April 30 through May 2, 2012.

94. On April 11, 2012, K.L. was referred to the office for making noises in class that that “distract” the teacher. K.L. was written up for defiance/disrespect/insubordination/non-compliance (ISB) and classroom disruption (CLD). K.L. originally received two day out of school suspension. However after the mother called to complaint, K.L.’s punishment was changed to individualized instruction and a loss of privileges for three days. K.L. was out of class from April 30 through May 2, 2012.

95. On January 30, 2012, K.L. was referred to the office and written up for defiance/disrespect/insubordination/non-compliance (ISB). K.L. received individualized instruction and a loss of privileges for three days. K.L. was out of class from February 2 through February 6, 2012.

Complainant T.F.

96. Complainant T.F. is a 15 year old African American student who resides with his family in Panama City, Florida. T.F. is an ESE student who is eligible for services for an emotional/behavioral disability (EBD). T.F. began the 2011-2012 school year at Bay High School but by October 2011, T.F. was facing expulsion and voluntarily withdrew from public

school on November 3, 2011. T. F. was written up four times, received three days in school suspension and eight days out of school suspension before withdrawing.

BDS's Organization Structure

97. BDS maintains 41 schools³¹ in 1,033.2 square miles, of which 26.59% is water.³²

The County contains the following cities and unincorporated areas: the City of Callaway, City of Lynn Haven, City of Mexico Beach,³³ City of Panama City, City of Panama City Beach, City of Parker, and the City of Springfield. Unincorporated areas include: Cedar Grove, Laguna Beach, Lower Grand Lagoon, Pretty Bayou, Tyndall Air Force Base, Upper Grand Lagoon, Bayou George, Fountain, Santa Monica, Southport, Sunnyside, Vicksburg, and Youngstown. The cities and unincorporated areas are physically separated by bodies of water and connected by bridges.

98. BDS manages nineteen elementary schools, five middle schools, four high schools, five charter schools; two alternative schools; four special purpose schools; one K – 12 center and one adult/technical center school.³⁴ Nine of the schools are Title I schools.³⁵

³¹ In Bay County 93% of all teachers are white and less than 5% are African American. Over the past 10 years, the number of African American school employees has dropped steadily both as a percentage of the total and in absolute numbers. *See* Exhibit 16.

³² "Geographic Identifiers: 2010 Demographic Profile Data (G001): Bay County, Florida". U.S. Census Bureau, American Factfinder. <http://factfinder2.census.gov>. Retrieved March 14, 2012.

³³ BDS operates public schools serving all portions of the county except for Mexico Beach, which is served by Gulf County Schools.

³⁴ *See* www.bayschools.com/SCHOOLS. The Charter Schools include: (1) Bay Haven Charter Academy; (2) North Bay Haven Charter Academy; (3) Chautauqua Learn and Serve Charter School; (4) Newpoint Bay High school and (5) Newpoint Academy. The Charter schools are predominately made up of white students. *See* Exhibit 9 (composite). African American students make up only 7% of the students attending charter schools within the District. *Id.* Further a disproportionate number of African American students attend the four "special purpose" schools. *Id.* The Special purpose schools include: (1) Margaret K. Lewis School (K-12) – student body is 14.5% African American; (2) New Horizons Learning Center (6-12) – student body is 18.7% African American; (3) Panama City Marine Institute (6-12) – student body is 25% African American; and (4) St. Andrew School (Pre K – 5) – student body is 28.3% African American. *Id.* African American students make up over 20% of the students attending "special purpose" schools within the District. *Id.* The Alternative schools include: (1) CC Washington Academy and (2) Rosenwald High School and both are predominately made up of African American students. *See* Exhibit 9 (composite) and Exhibit 18. 38% of the student body at CC Washington Academy – the alternative middle school is African American. *Id.* 54% of the Rosenwald student body is African American. *Id.*

99. BDS has been under desegregation orders since 1964 pursuant to Youngblood v. Bay Board of Public Instruction, 230 F. Supp. 74 (1964); Civ. A. No. 572.³⁶ See Bay District Schools - School Board Policy Manual (“Board Policy”) 7.103 at pgs. 707-708.³⁷

100. There are five (5) distinct feeder patterns, which BDS calls “school families.” Board Policy at pg. 708. Three of the school families are predominately white, while the remaining two school families are wherein the majority of the African American students attend school in the District. See Exhibit 8 (composite).

101. White students make up 80% or more of the student population in three of the school family feeder patterns (white feeder patterns). They are the following:

(1) Deane Bozeman School family which consists of Waller Elementary School (Pre K – 5th grade) and Southport Elementary School (Pre K – 5th grade) which feed into Deane Bozeman School (K-12th grade). African American students make up 0.9% of the students in this school family. See Exhibit 8 (composite).

(2) J.R. Arnold High School family which consists of includes Hutchinson Beach Elementary School (Pre K – 5th grade), ; Patronis Elementary School (Pre K – 5th grade),

Rosenwald has one of the highest concentrations of African American students in the District, second only to Oscar Patterson Elementary school which has 55.6% African American students. *Id.*

³⁵ The following schools are Title I schools-wide program schools: (1) Cedar Grove Elementary, (2) Lucille Moore Elementary, (3) Oakland Terrace Elementary, (4) Parker Elementary, (5) Patterson Elementary, (6) Springfield Elementary, (7) Waller Elementary, (8) St. Andrew School and (9) New Horizons Learning Center. www.bayschools.com/SCHOOLS

³⁶ *Youngblood v. Board of Public Instruction*, 230 F. Supp. 74 (1964); Civ. A. No. 572. See also *Youngblood v. Board of Public Instruction*, 430 F.2d 625 (1970), cert. denied, 402 U.S. 943 (May 3, 1971). See further *Youngblood v. Board of Public Instruction*, 448 F.2d 770 (1971). Most recently *Youngblood v. Board of Public*, 958 F.2d 1082 (1992) and *Youngblood, Et Al. v. Board County Board*, 5: 90CV00572 (Entered 4/29/1994)(case re-opened as a 1990 case and filed in office is Panama City 90 cases; however, case was actually filed 11/15/63 as case no. MCA 572 (CBJ,Pensacola) modified on 10/16/1998. Motion for leave to amend granted 5/20/1994, case closed 6/6/1994 court retains jurisdiction. Motion to amend consent order of August 1988 granted March 2004, case closed, court retains jurisdiction.)

³⁷ Portions of the policy manual are attached hereto as Exhibit 1. The entire manual can be found at www.bay.k12.fl.us/DEPARTMENTS.

and Breakfast Point Academy (Pre K – 6th grade). The elementary schools feed into Surfside Middle School which, in turn, feeds into J.R. Arnold High School. African American students make up 3% of the students in this school family. *See Exhibit 8 (composite).*

(3) A. Crawford Mosley High School family consists of Deer Point Elementary School (Pre K – 5th grade), Lynn Haven Elementary School (Pre K – 5th grade), Tommy Smith Elementary School (Pre K – 5th grade), and Hiland Park Elementary School³⁸ (Pre K – 5th grade). The elementary schools feed into Merritt Brown Middle School and Mowat Middle School.³⁹ The middle schools, in turn, feed into A. Crawford Mosley High School. African American student make up 9.9% of the students in this school family. *See Exhibit 8 (composite).*

102. School families where white students make up less than 80% of the population (African American feeder patterns) are as follows:

(4) Bay High School family includes: Merriam Cherry Street Elementary School (Pre K – 5th grade), Oakland Terrance School for the Visual & Performing Arts (Pre K – 5th grade),; Northside Elementary School (VPK – 5th grade),; Lucille Moore Elementary School (Pre K – 5th grade), and Oscar Patterson Elementary School (Pre K – 5th grade) which all feed into Jinks Middle School which feeds into Bay High School. African American students make up 30% of the students in this school family. *See Exhibit 8 (composite).*

(5) Rutherford High School family includes: Callaway Elementary School (Pre K – 5th grade), Cedar Grove Elementary School (Pre K – 5th grade), Parker Elementary School (K – 5th grade),;Springfield Elementary School (Pre K – 5th grade), and Tyndall

³⁸ Hiland Park Elementary School is an exception as whites make up less than 80% of the population.

³⁹ Mowat Middle School is an exception as whites make up less than 80% of the population.

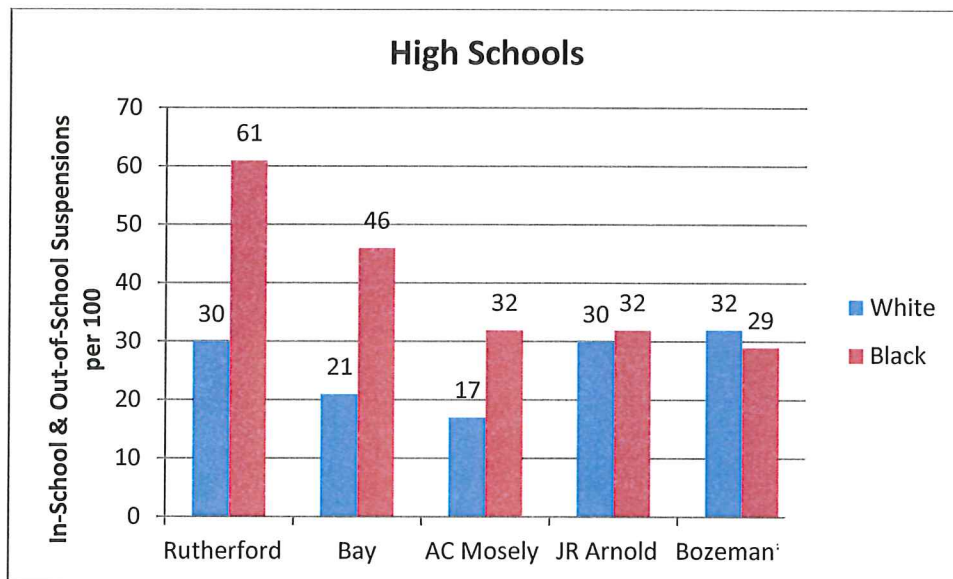
Elementary School⁴⁰ (Pre K – 5th grade). The elementary schools feed into Everitt Middle School which feeds into Rutherford High School. African American students make up 27% of the students in this school family. *See* Exhibit 8 (composite).

103. The African American feeder patterns contain six of the nine Title I schools. *See* www.bayschools.com/SCHOOLS. The African American feeder patterns contain the majority of suspensions within the district. *See* Exhibit 11. While an African American student enrolled in a Bay County Public School is three times more likely to receive an out of school suspension than the average Florida student (*See* Exhibit 10), students in the African American feeder patterns are disciplined more harshly than students in white feeder pattern schools. *See* Exhibit 11.

104. African American students assigned to the Rutherford High School and Bay High school face suspension rates that were more than double the rates for their White classmates at the same schools. *See* Exhibit 11. African American students attending the Rutherford and Bay High School families also receive significantly more suspensions than either White or African American students attending schools in any of the three predominantly white school families. *Id.*

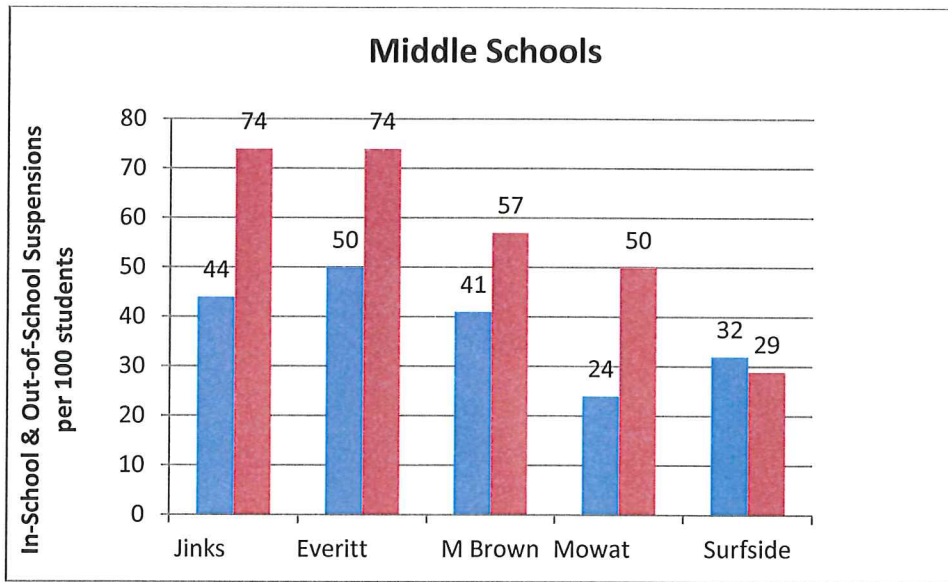
105. Of the five high schools within the District, all but one suspend African American students at a higher rate than their white peers. *See* Exhibit 11. Deane Bozeman School (K – 12) suspends 29 African American students per every 100 students while suspending 32 white students per every 100 students. *Id.* However at Deane Bozeman School there are only 21 African American students out of 2100 students who attend Bozeman, thus making the 29 per 100 ratio ultimately disproportionate. *Id.*

⁴⁰ Tyndall Elementary School, located on Tyndall Air Force Base, is an exception as white students make up 80% or more of the school population.



See Exhibit 11.

106. Of the five middle schools within the District all but one suspend African American students at a higher rate than their white peers. See Exhibit 11. Surfside Middle School suspends 29 African American students per every 100 students while suspending 32 white students per every 100 students. *Id.* However, at Surfside Middle School, there are only 22 African American students out of 900 students who attend, thus making the 29 per 100 ratio ultimately disproportionate. *Id.*



See Exhibit 11.

107. In addition, the two alternative schools contain a disproportionate number of African American students. See Exhibit 9 (composite) and Exhibit 18. C.C. Washington Academy, the alternative middle school, is 38% African American students. Rosenwald High school, the alternative high school, is over 54% African American. Rosenwald has the second largest number of African American students in the entire District. *Id.*

BDS's Disciplinary Policies

108. The District maintains a written system of disciplinary policies and procedures that governs student conduct within its schools. The system is memorialized in several different documents. These include the following: (1) Bay District Schools - School Board Policy Manual ("Board Policy"),⁴¹ (2) The Code of Student Conduct and Discipline ("Code"),⁴² and (3) Student Handbooks.⁴³ Interestingly, there is a Parent Resource Guide developed every year for the

⁴¹ Portions of the policy manual are attached hereto as Exhibit 1. The entire manual can be found at www.bay.k12.fl.us/DEPARTMENTS.

⁴² The 2011-2012 Code of Student Conduct and Discipline is attached hereto as Exhibit 2.

⁴³ Handbooks attached hereto as Exhibit 3 (composite).

parents; however it does not contain any information regarding student discipline or school rules of conduct.⁴⁴

109. While the School Board is the “Agency Head” for the Bay County School System, ultimate authority for the work of all schools and its employees lies with the Superintendent, not the Board. Board Policy 1.101 at pg. 100; Board Policy 1.301 at pg. 122-123. The Board must “recognize the authority of the Superintendent” and agree not to “attempt to circumvent” his authority. Board Policy 1.210 at pg. 121.

In matters related to discipline, the Board and Superintendent have delegated the majority of authority to the principals and teachers at each school. Board Policy 7.201 at pg. 720. “Each student enrolled in the District school system shall be subject to the policies of the Board and the administrative control and direction of the principals, other members of the administrative or instructional staff or bus drivers to whom such responsibility has been assigned.” *Id.*

110. The School Board sets forth the general policies and a general framework regarding student discipline, but provides for the individual schools and teachers to develop their own rules and discipline practices. Board Policy 7.203 at pg. 722.

111. Board Policy states, “that there shall be zero tolerance of misbehavior of all kinds.” Board Policy 7.203 at pg. 722. Board Policy provides general definitions and some examples of behaviors that would qualify as “informal” disciplinary offenses and those requiring “formal” disciplinary measures. *Id.* Informal offenses are generally those which interfere with orderly classroom procedures, school functions or the like that do not seriously endanger the health and safety of others. *Id.* Examples provided include: disrespect, skipping class, horseplay, excessive talking, failure to follow instructions and computer usage violations. *Id.* Disciplinary

⁴⁴ The 2011-2012 Parent Resource Guide is attached hereto as Exhibit 4.

measures for informal offenses are determined by the administrator or teacher at the individual school. *Id.* Some examples provided include parental contact, administrative probation, detention and in school suspension. *Id.* Formal disciplinary measures are for behaviors that include “serious” acts of misconduct, repeated misconduct, “serious” disruptions or conduct that threatens the health, safety or property of others. *Id.* at pg 722 – 723. Examples provided include: bus conduct violations, excessive tardiness, failure to report to detention, fighting, cheating, aiding and abetting another in violating the rules, lying, rude or offensive language (profanity), trespassing and public display of affection. Formal disciplinary measures include all informal disciplinary measures, corporal punishment, out of school suspensions or expulsion. *Id.* at 723.

112. Board policy provides for a Code of Student Conduct to be adopted annually. Board Policy 7.202 at pg. 721. The purpose of the Code is to provide information to the parents and students regarding the policies related to student conduct and discipline. *See* Exhibit 2 at pg. 1. The Code mirrors the general policies and general framework set forth in the School Board Policy manual in a format that is more condensed and possibly more user friendly.

113. The individual school rules and discipline practices however are to be set forth in student handbooks. While each school is to maintain a handbook with the school’s individual rules and procedures, not all schools have a handbook.

114. Of the 19 elementary schools, only five have handbooks with individual rules and procedures. *See* Elementary School Handbooks attached hereto as Exhibit 3A (composite). Of the six middle schools (including the alternative middle school), only two have handbooks which do nothing more than mirror the student code of conduct. *See* Middle School Handbooks attached hereto as Exhibit 3B(composite). Of the four traditional high schools, three have

handbooks, one of which mirrors the student of code conduct. *See* High School Handbooks attached hereto as Exhibit 3C (composite). The alternative high school, Rosenwald, while it does have a handbook, interestingly the handbook contains no disciplinary rules or procedures for the school. *See* Exhibit 3D. The schools that do maintain student handbooks, the rules and discipline practices differ from school to school, principal to principal and from teacher to teacher.⁴⁵ Because the School Board delegates so much authority to the individual schools, where the student goes to school really does make a difference in how they are disciplined.

115. The middle and high schools appear to utilize a standard referral form titled “event and discipline report.” *See* Exhibit 12. A similar form is used for elementary schools. *See* Exhibit 13. When students are considered for expulsion, the District produces a form which contains discipline/incident codes and action codes. *See* Exhibit 14. These codes are not contained in the board policies, the student code of conduct or any school handbooks.

116. Board Policy 7.203 limits out-of-school suspensions to those behaviors qualifying for formal disciplinary measures. *Id.* at 725 - 727. However, the decision to produce a discipline report, qualify an event as formal or informal or impose a specific sanction lays solely within the discretion of the principal or his/her designee. *Id.* at 725.

117. Expulsion is available for any formal misconduct and under the Zero Tolerance

⁴⁵ Of the 14 schools within the Rutherford High School and Bay High school families (African American feeder patterns) only three schools have student handbooks, two of which mirror the code of student conduct. Only one Callaway Elementary School sets forth specific rules and discipline practices for the school. Of the 15 schools in the three remaining families, 9 schools maintain a student handbook. *See* Exhibit 3 (composite).

Policy. Board Policy 7.203 at pg. 727. The principal makes a recommendation which is reviewed by the superintendent, who makes a recommendation to the School Board. The ultimate decision to expel a student lies with the Board.⁴⁶

118. BDS maintains a Zero Tolerance Policy. Board Policy 7.203 at pg 723-724. The zero tolerance policy vests “absolute discretion” in the principal and Superintendent in what disciplinary measure to impose for certain offenses listed under the zero tolerance policy. *Id.*

119. BDS also maintains the use of corporal punishment as a formal disciplinary measure. Board Policy 7.203 at pg 725. The policy states that corporal punishment “shall” be approved “in principle” by each principal before it is use, but approval “is not necessary” for each specific instance in which it is used. *Id.* The last year that corporal punishment was used in Bay District schools, four children were paddled, and all four were African American students.⁴⁷ If a student refuses corporal punishment, they may be subjected to formal disciplinary measures including out of school suspension or expulsion. *See* Board Policy 7.203 at pg. 723 and Code at pgs. 3 & 4.

120. There are no clear definitions for offenses such as disrespect, defiance, class disturbance or horseplay. What might be a formal offense in one school might be an informal offense in another and still not offensive behavior in another. There are no guidelines regarding what behaviors qualify for informal disciplinary measures or formal disciplinary measures. There are no guidelines or standard set of practices that govern what disciplinary measure will be utilized for a qualifying behavior. The person implementing the discipline has wide, unfettered

⁴⁶ The Board’s role is perfunctory. The Board generally follows the recommendation of the superintendent without question.

⁴⁷ There were no reported incidents of corporal punishment in 2010-2011 school year. The last reported year was 2009-2010 school year. In that year four incidents were reported and all four incidents involved Black students. *Florida Dept. of Education, Discipline (corporal punishment) by grade/race/gender by district, 2009-2010 Survey 5 final data as of 3/5/11, available on request.*

discretion to determine the type of offense whether formal or informal and the type of disciplinary measure whether formal or informal. This unchecked discretion allows for harsher punishments for African American students. This is evidenced by the data which shows that although African American students constituted only 14% of the school population 2010-2011 school year, they accounted for 30% of students receiving out-of-school suspensions and 27% of students receiving in-school suspensions. *See* Exhibit 6. In 2009-2010, African American students were 100% of the students subjected to corporal punishment. *See* footnote 46, *infra*.

Availability of Disciplinary Removal for Vague and Minor Offenses

121. In BDS, disciplinary removal is available as a potential consequence in nearly every instance of student misconduct. Any student, including elementary age school children, can be subject to time in the office, detention, administrative probation, suspension, in school and out of school, expulsion or even a referral to law enforcement for such acts of class disturbance, insubordination, defiance, use of a cell phone or public displays of affection. Board Policy 7.203 at pg. 722-724. All of these consequences result in the student being removed from the classroom and missing educational opportunities and participation in extra-curricular activities with their peers. African American students are subject to such removal at a disproportionately higher rate than their white peers.

122. African American students are also placed into alternative and “special” schools at higher rates than their white peers. *See* Exhibit 9 (composite) and Exhibit 18.

123. Most disciplinary measures will result in an unexcused absence for the day. Board Policy, 7.105 at pgs. 712 – 717; Code at pg. 1 & 2. Not only do suspensions both in and out of school result in an unexcused absence, but students will also receive an unexcused absence for skipping class, dress code violations, detention and when placed on administrative probation. *Id.*

Students with an unexcused absence are responsible for any missed work, including tests and exams, but will only receive a grade “no higher than a 60% on all work made up”. *Id.* This directly impacts the students overall grade point average. In addition excessive absences can result in a license suspension or retention for the student and truancy prosecution for the parents or guardians. Board Policy 7.106 at pgs. 716-717.

124. African American students in Bay District schools are retained at a disproportionate rate when compared to their white peers. *See* Exhibit 6. While African American students make up 14% of the school population, they make up 20% of the students retained. *Id.*

Lack of Definition and Standards

125. The District’s disciplinary procedures suffer from a lack of definition that leads to disparate application of ambiguous terms. Nowhere in its published materials does the District define such terms as “disrespect,” “insubordination,” “defiance,” “rude or “serious” acts of misconduct.” Board Policy at Exhibit 1. The corresponding punishments vary, without explanation, from school to school, principal to principal and teacher to teacher. Compare Exhibit 3 composite.

126. The District’s disciplinary procedures do not circumscribe administrative discretion in a manner that prevents or reduces disparate treatment of African American students. For example, a classroom disruption might result in a 10 day out of school suspension or 5 days loss of privileges. There is no standard for which behavior qualifies for informal or formal disciplinary measures or which measure is appropriate for such behavior. How misconduct is defined and punished depends on what school the student attends. There is little consistency through the district.

127. The principal or his/her designee has complete discretion to determine if any misconduct is formal or informal and has complete discretion on what disciplinary measure to impose for the offending behavior. Board Policy 7.203. The principal or his/her designee also has the unfettered authority to designate an offense as “serious.” *Id.* So if a principal or his/her designee determines that an act of misconduct is insubordinate it would be a serious offense subject to formal disciplinary measures while another principal or designee would determine the same act of misconduct disrespectful which is subject to informal disciplinary measures. *Id.* at 722-723. There are no standards or guidelines regarding when an offense rises to the formal level. This determination is completely within the individual discretion of the principal or designee imposing the disciplinary measure or consequence. *Id.*

128. The principal or designee implementing the punishment has full discretion to determine what disciplinary measure should be utilized. *Id.* There are no guidelines regarding what intervention is appropriate for specific misconduct. *Id.* Since there are no guidelines and discretion is entirely in the hands of the principal or designee implementing the disciplinary measure, how offenses are labeled and what interventions are utilized differs widely from school to school and principal to principal and designee to designee. *Id.*

129. The District has granted school administrators unfettered discretion to remove School privileges which includes anything from playing on team sports, attending dances or programing during the school day and going off campus during lunch period, involve law enforcement and impose disciplinary removal for vague and minor offenses. *Id.*

130. On October 11, 2011, Superintendent Bill Husfelt issued a strategic plan to

improve Bay District Schools over the years of 2011-2014.⁴⁸ The plan specifically calls for more law enforcement at the middle school level. Exhibit 5 at pg. 9, Goal 4, Strategy 4.1. The objective is to increase school resource deputy presence at middle school activities to decrease negative student incidents by 20% by 2014. *Id.*

Effect of Florida's Revised Zero Tolerance Law

131. In the spring of 2009, the Florida Legislature amended its zero-tolerance school discipline law in an attempt to encourage schools to handle petty disciplinary infractions and misdemeanor offenses in school rather than relying on the juvenile justice system and exclusionary discipline. Fla. Stat. section 1006.07 (2010). School districts were directed to rewrite their zero-tolerance policies to promote broader use of alternatives to expulsion and referrals to law enforcement. Fla. Stat. section 1006.13.

132. The law lists eight examples of petty or misdemeanor offenses that should not be subject to zero tolerance: disorderly conduct, disruption of a school function, simple assault, simple battery, affray (fighting), theft less than \$300, trespassing and vandalism of less than \$1000.00. Fla. Stat. section 1006.13(4)(c).

133. Bay maintains a Zero Tolerance policy that is in general compliance with Fla. Stat. 1006. BDS's zero tolerance policy can be found in the Board Policy Manual Rule 7.203 attached hereto as Exhibit 1 at pgs. 723 & 724.

134. Despite having a Zero Tolerance policy written in general compliance, of the 178 students arrested during the 2010-2011 school year, 145 were for minor or misdemeanor offenses. One hundred and eight of the arrests were for those offenses specifically listed in the above paragraph. *See* Exhibit 15.

⁴⁸ Bay District Schools Strategic Plan 2011-2014 attached hereto as exhibit 5.

135. 47% of the referrals made by the school to the Department of Juvenile Justice were of African American students. *See* Exhibit 6 and Exhibit 15. While African American students make up 15% of the student population, they made up 47% of the school based referrals to the criminal justice system in 2010-2011 school year. *Id.*

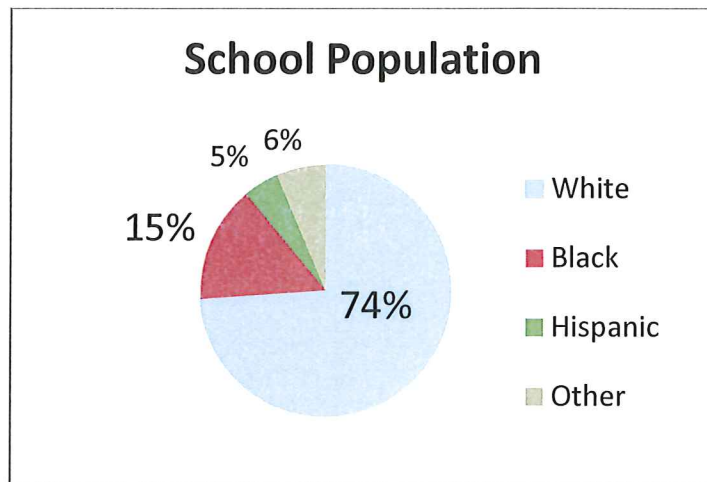
136. While all minor offenses may not trigger automatic referral to law enforcement or expulsion in BDS, the District's policies still allow for excessively harsh punishments for these offenses at the discretion of school administrators. Board Policy at pgs. 722-728.

Classwide Allegations

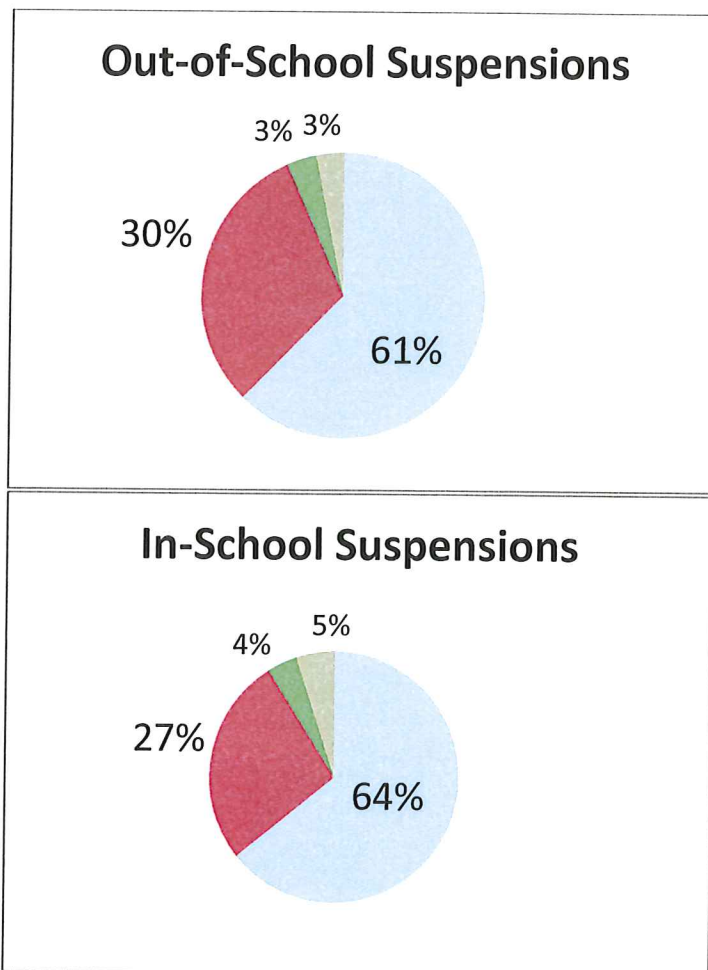
137. BDS has engaged in an ongoing and systematic pattern of violating Class Complainants' rights and subjecting them to discrimination in violation of Title VI.

138. Data demonstrates that African American students in BDS schools have been suspended from school for significant periods of time, expelled, or unnecessarily referred to juvenile justice authorities at a significantly higher rate than the white students in Bay District Schools. *See* Exhibit 6.

139. As of 2010-2011 school year, the most recent school year for which data is available, the total school population for Bay District Schools was 25,943. *Id.* White students numbered 19,143 or 74% of the total student demographic. African American students numbered 3,941 or 15% of the school population. *Id.*

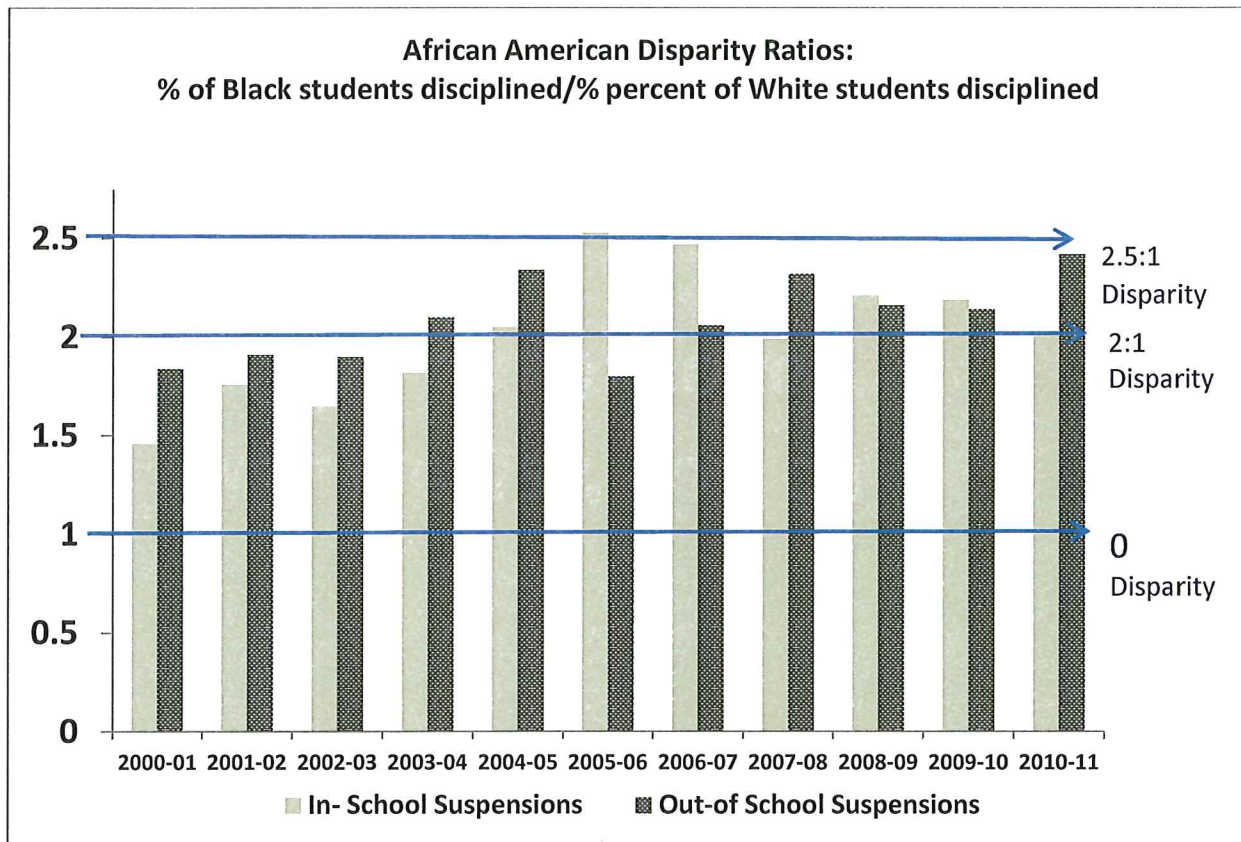


140. Although African American students constituted only 15% of the school population that year, they accounted for 30% of students receiving out-of-school suspensions and 27% of students receiving in-school suspensions. *See* Exhibit 6.



141. Bay County administrators and teachers discipline children at rates that exceed the State averages by 20% for in-school suspensions and 23% for out-of-school suspensions. *See* Exhibit 10. An African American student enrolled in a Bay County Public School is three times more likely to receive an out-of-school suspension than the average Florida student. *See* Exhibit 10.

142. This disparity has existed for many years. *See* Exhibit 7.



143. Over the past ten years data confirms that African American students have received a disproportionate amount of suspensions when compared to their white peers. *See* Exhibit 7. While in-school suspensions have gone down over the past year, the ratio is still 2 to 1 times more suspensions of African American students than their white peers. *Id.* Out-of school suspensions are almost 2.5 to 1 compared to white peers. *Id.*

144. The Bay School Board is aware that its schools are in need of reform as evidenced by the adoption of the Superintendent's strategic improvement plan. Exhibit 5.

145. There is no evidence that racial disparities in the imposition of school discipline

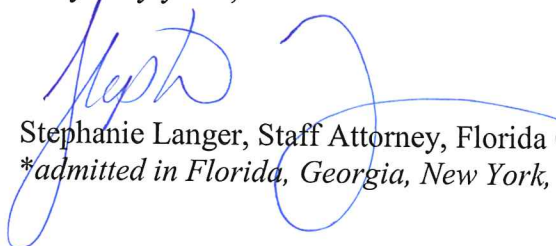
can be explained by differences in student behavior. To the contrary, there is considerable evidence that students of color are disciplined more harshly than their peers for identical behavior. See Skiba, R. et. al., *The Color of Discipline*, www.indiana.edu/~equity/docs/ColorofDiscipline2002.pdf.

Request for Relief

Based on the above, Complainants respectfully request that the Office for Civil Rights accept jurisdiction over their claims and initiate an investigation into the allegations contained herein on behalf of the Class. Complainants further request that OCR require BDS to create a corrective action plan that would ensure its future compliance with Title VI of the Civil Rights Act of 1964, such that its school discipline practices do not result in the disparate treatment of, or otherwise discriminate against, students on the basis of race. Complainants respectfully request that OCR agree to monitor any resolution reached and to provide the community with an opportunity for comment and ongoing involvement.

Thank you for your kind attention.

Very truly yours,



Stephanie Langer, Staff Attorney, Florida Office
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Enclosures

cc: Superintendent, Bay District Schools
Complainants