

February 27, 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: M.C., J.K.S., and A.J.P., on behalf of themselves and all others similarly
situated v. Escambia County (FL) School District

To Whom It May Concern:

Please consider this letter a Complaint filed against Escambia County School District (“ECSD” or “the 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 ECSD 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”) and its implementing regulations. 42 U.S.C. § 2000d; 34 C.F.R. pt. 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: Escambia County School District, 75 North Pace Blvd., Pensacola, FL 32505 (850) 432-6121.

Statement of Jurisdiction

Escambia County School District 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” covered by Title VI. 42 U.S.C. § 2000d.

2. Section 602 authorizes federal agencies “to effectuate the provisions of [§ 601] . . . by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. § 2000d-1.

3. It is permissible for these regulations to proscribe actions that the statute itself does not prohibit. *Alexander v. Choate*, 469 U.S. 287, 292-94 (1985); *Georgia State Conference of Branches of NAACP v. Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985).

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 in detail below, ECSD, through its use of vague and ambiguous disciplinary procedures, punishes African American students more harshly and more frequently than white students. Further, the District’s over-reliance on law enforcement to redress low-level school infractions has an additional discriminatory impact on African American students. Administrative discretion to “involuntarily reassign” students is used to remove African American children from their existing placements at grossly disproportionate rates. By implementing vague and ambiguous disciplinary procedures, ECSD maintains an educational environment hostile to African American students and deprives those students of equal access to educational benefits and opportunities. The actions and inactions of ECSD, as described in this Complaint, disparately impact African American students in violation of the regulations promulgated pursuant to Title VI.

Representative Complainants’ Statement of Facts

Complainant M.C.

6. Complainant M.C. is a seventeen year old African American student who resides with his grandparents and legal guardians in Pensacola, Florida. M.C. attends West Florida High School of Advanced Technology, a public high school operating under the auspices of the District. M.C. is enrolled in the twelfth grade.

7. West Florida High School (“West Florida”) is a school choice option and adjoins the physical campus of neighboring Pine Forest High School (“Pine Forest”). Per West Florida’s principal, the two schools share athletic fields, portable art buildings, student parking, and teacher parking. West Florida students who ride the bus are “dropped off” in front of Pine Forest and travel through that school to access the West Florida building.

8. On approximately October 5, 2011, M.C. purchased a hot breakfast at the Pine Forest cafeteria before school hours. This is a common practice for West Florida students as West Florida is only equipped to provide cold meals. While eating in the Pine Forest cafeteria, M.C. was approached by a school resource officer (“SRO”) and questioned about his identity. M.C. advised the SRO that he was a West Florida student. The SRO told the student to sit and wait, then left for an indeterminate period. M.C. was unable to wait given his class schedule and left the cafeteria shortly thereafter in order to make his first class on time.

9. Later that same day, the SRO removed M.C. from his last period class and questioned him again. M.C. received a five day out-of-school suspension for “being out of his designated space,” and was forced to sign an arrest affidavit.

10. M.C.’s parents later received a postcard in the mail advising them to bring M.C. to the Sheriff’s station for booking where he was formally charged with resisting

arrest and trespassing. M.C. pleaded no contest to the charges and was ordered to complete community service and write an essay regarding the school incident.

11. Prior to this incident, M.C. had no history of school disciplinary infractions. He hopes to attend the University of West Florida in the fall.

Complainant J.K.S.

12. Complainant J.K.S. is an eighteen year old African American student who resides with his grandmother in Pensacola, Florida. At the time of the events in question, J.K.S. attended Pine Forest High School and was enrolled in tenth grade. Pine Forest High School is a public high school operating under the auspices of the District.

13. J.K.S. is a student with a disability who is eligible for special education and related services pursuant to the Individuals with Disabilities Education Act under the classification categories of emotionally disabled and speech language impaired.

14. On approximately September 2, 2011, J.K.S. requested permission to leave class and use the restroom. J.K.S. has a known bladder control problem which requires that he be given the opportunity to use the restroom frequently throughout the day. The teacher, a substitute, refused to allow J.K.S. to leave. After several more requests, J.K.S. left the classroom without permission.

15. J.K.S. received a disciplinary referral for "being out of his designated area." As a consequence, he was given five days of in-school suspension to be served on September 14-16, 2011.

16. The in-school suspension triggered a series of unfortunate events. On the final day of J.K.S's in-school suspension, the teacher falsely accused him of violating the District's cell phone policy and was directed to see the principal. J.K.S. became upset by the accusation and refused to go to the principal's office. The matter escalated shortly thereafter and a SRO was called to the scene. J.K.S. was arrested, handcuffed, and taken into custody. J.K.S. has been out of school since the time of his arrest.

Complainant A.J.P.

17. Complainant A.J.P. is an eighteen year old African American student who resides with her parents in Pensacola, Florida.

18. A.J.P. has attended various schools in the District throughout her school career. A.J.P. was previously enrolled in honors courses, lettered in track, and successfully participated in Reserve Officer Training Corps ("ROTC") for three years.

19. In February 2011, while attending Escambia High School, A.J.P. was accused of involvement in a robbery on school grounds which was resolved through a plea agreement. Despite this resolution, the District threatened A.J.P. with expulsion, but allowed her to voluntarily withdraw in lieu of disciplinary action.²

20. From approximately February 2011 until November 2011, A.J.P. attended Judy Andrews Center, a community school offering adult high school completion and general education development ("GED") preparation courses.

² The "robbery" involved a sum of \$2.50.

<http://career.escambia.k12.fl.us/JudyAndrews/QandA.asp>. The District transported A.J.P. to Judy Andrews Center from Escambia High School via a school bus for which she was issued a "Center-to-Center Bus Ticket." Exhibit 9.

21. In addition to her occasional presence at Escambia High School to catch the bus, A.J.P. also enrolled in and completed night courses at the high school and sat for the college admission examination there.

22. On September 12, 2011, A.J.P. drove her brother to Escambia High School where he attends school, parked her car in the school lot, and walked through the school building along the designated route to the bus ramp where she met a friend. A.J.P. and her friend then returned to A.J.P.'s vehicle and drove to Judy Andrews Center together rather than taking the school bus. The two students arrived at Judy Andrews Center on time for the start of the school day.

23. Although allowed to be at Escambia High School and authorized to use bus transportation, A.J.P. was later charged with "trespassing" upon school grounds based on her actions of walking to and from the bus ramp on September 12, 2011. A.J.P. was never approached by school personnel regarding her purported misconduct nor given any indication that she was not allowed to walk through campus to reach the bus ramp. *See* Exhibit 9.

24. A.J.P. currently attends Pensacola State Community College's Collegiate High School where she is in contention for a Bright Futures Scholarship to attend a Florida public college or university.

ECSD's Disciplinary Policies

25. ECSD maintains a written system of disciplinary policies and procedures that govern student conduct within its schools. That system is memorialized in several different, and sometimes contradictory, documents.³ These include: (1) Student Rights and Responsibilities Handbook, Grades Pre-K – 12 ("R&R Handbook"), (2) Adjudication Guidelines 2009-2010 and 2010-2012,⁴ and (3) Rules and Procedures of the District School Board, Chapter 7. *See Exhibits 1-3.*

26. The R&R Handbook is the primary vehicle for implementing school discipline policies in the school system.⁵ *See Exhibit 1.*

27. As set forth in the R&R Handbook, ECSD has adopted a "progressive disciplinary policy" that utilizes a menu of various interventions and consequences to

³ For instance, the Student Rights and Responsibilities Handbook clearly states that "students cannot be suspended out of school for tardiness or truancy," yet the "Adjudication Guidelines, 2009-2010" suggest that a student receive 5 to 10 days "ISS/OSS" (in-school suspension/out-of-school suspension) for "skipping." *Compare Exhibit 1 at 10 with Exhibit 2 at 2.*

⁴ In response to a public records request seeking a comprehensive set of District disciplinary materials, ECSD produced a copy of its "Adjudication Guidelines, 2009-2010." After several requests for current information, the District supplemented its disclosure with a combined 2010-2012 Adjudication Guidelines document which is included in Exhibit 2.

⁵ Prior to the 2011-2012 school year, ECSD had two separate handbooks for use in the elementary and secondary settings. A copy of the Handbook in use for Grades 6-12 during the 2010-2011 school year is attached as Exhibit 4.

address student misconduct. *See* Exhibit 1 at 29-30. Not all procedures, described as interventions and consequences, are available at all campuses. *Id.*

28. The R&R Handbook places primary responsibility for implementing discipline policies with District principals or their designees who must then use the District's "Adjudication Guidelines" in implementing disciplinary measures. *See* Exhibit 2. The "Adjudication Guidelines" consist of a list of offenses and a range of corresponding punishments. As set forth in the "Adjudication Guidelines, 2009-2010," the guidelines are completely discretionary as the District has reserved the right to deviate from them "as needed," without specifying any criteria that would justify deviation. *Id.* at 1. The nature of the offense and/or the student's past disciplinary record will be "considered" in applying the progressive disciplinary policy. There are no published standards to guide that consideration. *Id.*

Availability of Disciplinary Removal for Vague and Minor Offenses

29. In ECSD, disciplinary removal is available as a potential consequence in nearly every instance of student misconduct. An elementary school student may be subject to "suspension or expulsion, reassignment to an alternative educational program, or referral to law enforcement for criminal prosecution" for "defying" authority, misbehaving in class, or breaking school rules. *See* Exhibit 1 at 15-16. At the secondary level, a student may be suspended, expelled, or criminally charged for "disrespect to any

school official in *any* way,” repeated incidents of “disruptive” behavior, or “embarrassing” school employees during or after school hours. *Id.* at 17-19.

Discretionary Use of “Reassignments”

30. The District has granted school administrators unfettered discretion to remove students from their neighborhood school under the rubric of “involuntary reassignment.” Exhibit 1 at 29(B)(15). (“Depending on the severity of the infraction, the school administration reserves the right to administer the appropriate disciplinary actions to include, but not be limited to, immediate reassignment.”). Exhibit 2 at 4.

31. Involuntary reassignment may be meted out in minor circumstances such as “repeated disruption” without recourse to the school board for review of the decision to change the student’s educational placement. *See* Exhibit 1 at 32. Only one-fourth of the reassignments were for serious infractions involving drugs and weapons. *See* Exhibit 5 at 4.

32. ECSD administrators use their discretion to reassign African American students to involuntary changes in placement at grossly disproportionate rates to their white peers. Of the 99 students who were reassigned during the 2010-2011 school year, 70 of those students were classified by the District as Black, 21 were classified as white, and 8 were classified as “other.” *See* Exhibit 5 at 3.

Lack of Definition and Standards

33. 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 offenses as "defying authority," "misbehaving in class," or "disrespect" although these terms appear to be interchangeable.⁶ However, the corresponding punishments vary, without any explanation for the distinctions. Per the 2009-2010 Adjudication Guidelines, an incident of "gross disrespect" has a corresponding base punishment of 10 days of out-of-school suspension, while "gross misconduct" is addressed through a base punishment of 5 to 10 days of out-of-school suspension. *See* Exhibit 2 at 2. Students fare no better under the revised 2011 Guidelines. "Abusive (verbal) behavior" requires a 1 to 3 day in-school suspension compared to the similar "inappropriate language" offense which warrants only detention or work detail. *See* Exhibit 2 at 8-9.

34. The District's Adjudication Guidelines do not circumscribe administrative discretion in a manner that prevents or reduces disparate treatment of African American students. For example, a third "bus violation" may result in an out-of-school suspension of unspecified duration, reassignment, referral to a school resource officer, or expulsion. There is no standard, however, for which punishment should apply to the same violation.

⁶ Certainly the District knows how to describe prohibited conduct in clear terms as is illustrated by its detailed definition of prohibited bullying and harassment. *See* Exhibit 1 at 24-25; *see also* Exhibit 1 at 50-51, Glossary.

In addition, although truancy is not an offense for which out-of-school suspension is allowed, a student may nonetheless be taken into police custody, again showing the unevenness of disciplinary sanctions within the District. *See Exhibit 1 at 7.*

35. Although the District vests school administrators with broad discretion in meting out punishments, ECSD does not have adequate standards or procedures for ensuring uniformity in their application. For instance, a first offense of “disruption/minor” could result in a mere “warning” or the more severe consequence of a three-day in-school suspension. *See Exhibit 2 at 8.* The Adjudication Guidelines represent a partial list of disciplinary consequences which gives administrators the express “right to deviate from these guidelines to administer the appropriate disciplinary actions as needed.” *See Exhibit 2 at 1.*

Effect of Florida’s Revised Zero Tolerance Law

36. 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. §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. §1006.13.

37. 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 of less than \$300, trespassing, and vandalism of less than \$1000. Fla. Stat. §1006.13(4)(c).

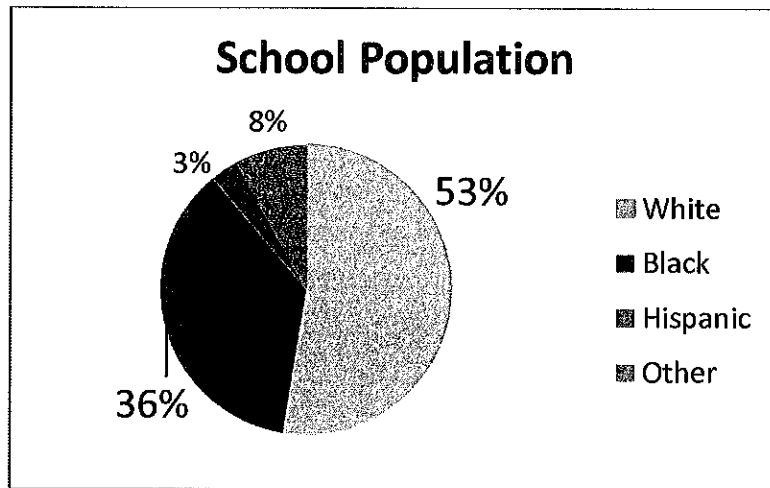
38. While these offenses may not trigger automatic referral to law enforcement or expulsion in ECSD, the District's policies still allow for these excessively harsh punishments at the discretion of school administrators. *See Exhibit 1 at 15-19; Exhibit 2 at 1-4.*

Classwide Allegations

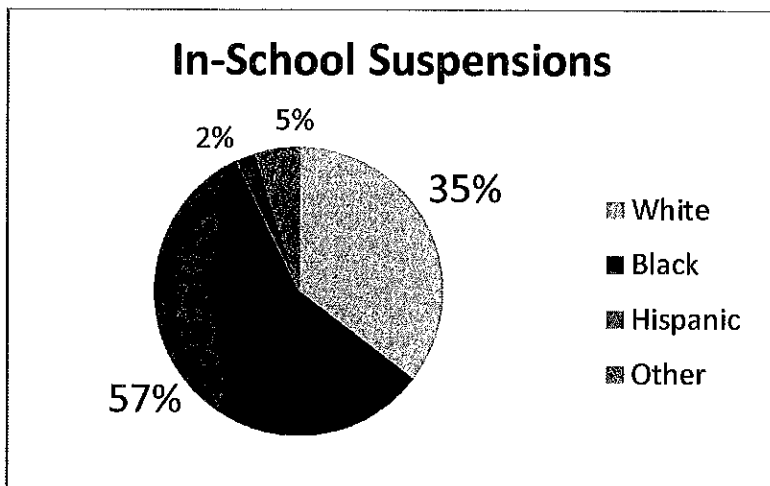
39. ECSD has engaged in an ongoing and systematic pattern of violating Class Complainants' rights and subjecting them to discrimination in violation of Title VI.

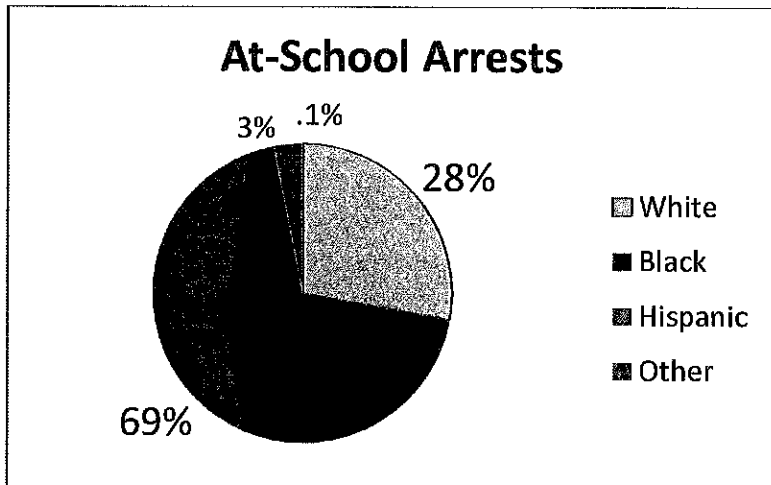
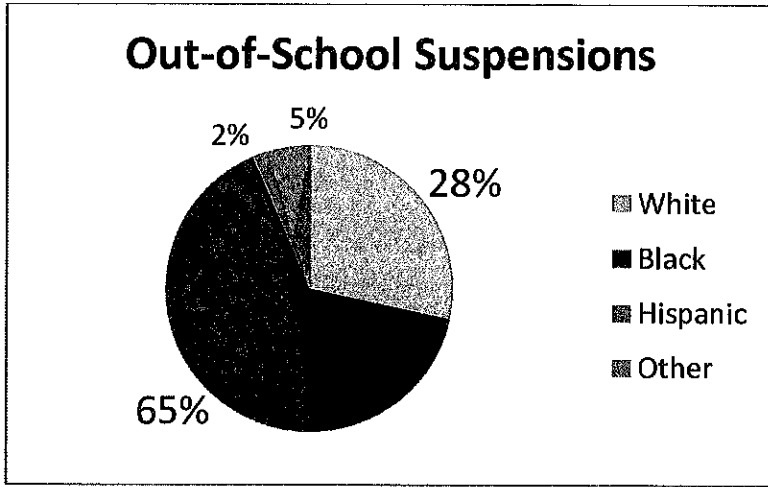
40. Data demonstrates that there are hundreds of African American students in Escambia County School District schools that have been suspended from school for significant periods of time, expelled, or unnecessarily referred to juvenile justice authorities. *See Exhibit 6.*

41. As of 2009-2010 school year, the most recent school year for which data is available, the school population in Escambia County School District was 40,610. White students numbered 21,343 or 53% of the total student demographic. African American students numbered 14,730 or 36% of the school population. *See Exhibit 6.*

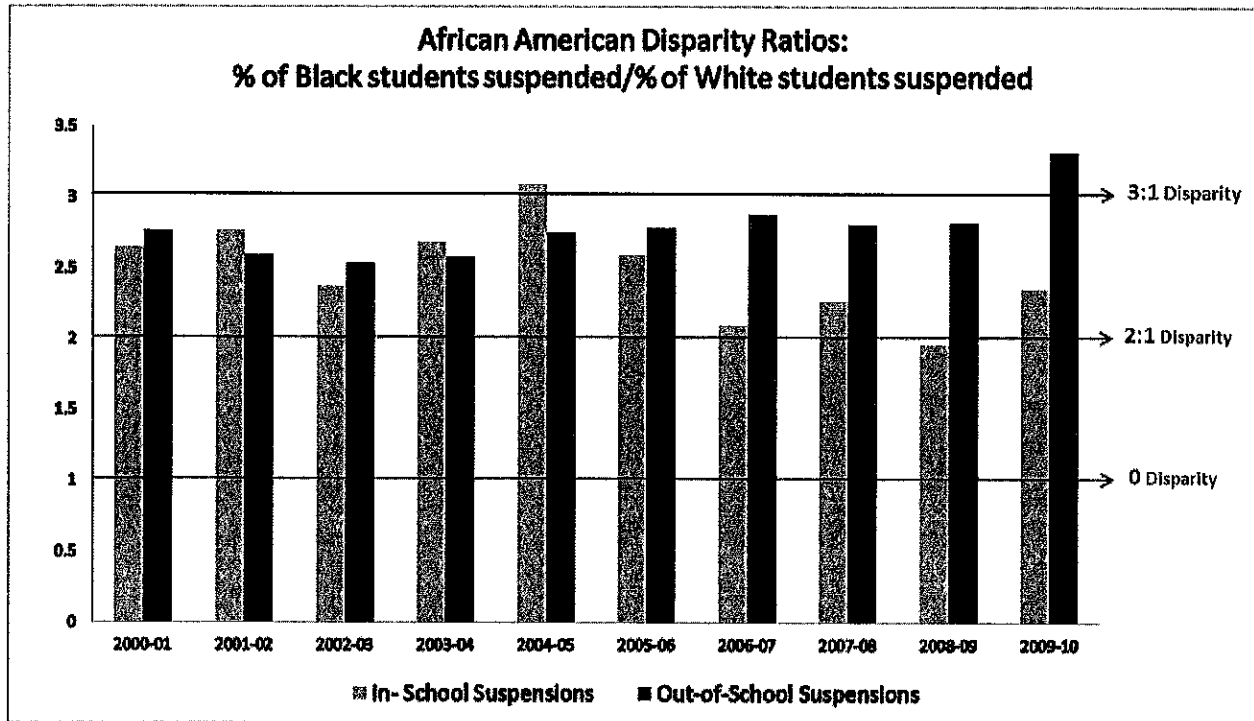


42. Although African American students constituted only 36% of the school population that year, they accounted for 57% of students receiving in-school suspensions, 65% of students receiving out-of-school suspension, and 69% of at school arrests. See Exhibit 6.





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



44. Over the past ten years, data confirms that African American students have received 2 to 3 times more suspensions than their white peers. *See Exhibit 7.* Over the past five years, the disparity ratio has narrowed slightly for students receiving in-school suspensions but widened for students receiving out-of-school suspensions. *Id.*

45. ESCD is aware that its disciplinary procedures are in need of reform. Each of its schools has drafted a "School-Wide Behavior Management Plan." Unfortunately, however, the schools have set the bar for improvement very low, guaranteeing little progress.

46. Tate High School, for instance, imposed 309 out-of-school suspensions during the 2009-2010 school year. Its goal for improvement is a mere 3% reduction of this extraordinarily high number. See Exhibit 8. See www.escambia.k12.fl.us/schscnts/that/aboutus./index.asp (population of Tate High School is approximately 2000 students).

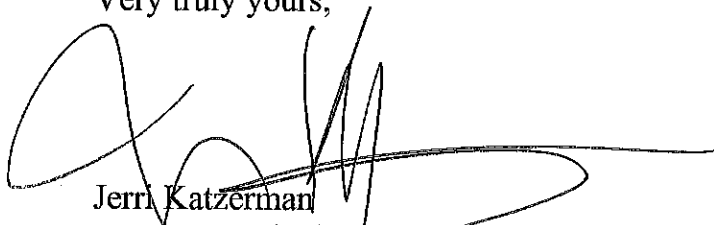
47. There is no evidence that racial disparities in the imposition of school discipline can be explained by differences in student behavior. To the contrary, there is considerable evidence that students of color are disciplined more harshly than their peers for identical behavior. See Skiba, R. et al., *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 ECSD 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,



Jerri Katzerman
Deputy Legal Director
**admitted in Arizona and Washington*

Tania Galloni
Managing Attorney, Director Florida Office
**admitted in Florida*

Enclosures

Cc: Superintendent, Escambia High School (w/o enclosures)
Clients (w/o enclosures)