

July 18, 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: J.A.B., J.B., E.G. and J.S. on behalf of themselves and all others similarly situated
v. Okaloosa County (FL) School District

To Whom It May Concern:

Please consider this letter a Complaint filed against Okaloosa County School District (“OCSD” 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 OCSD 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.

¹ The contact information for the District is as follows: Okaloosa County School District, 120 Lowery Place, Ft Walton Beach, Florida 32548, Phone (850)833-3100, Fax (850) 833-3436.

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.

Statement of Jurisdiction

Okaloosa 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 grounds 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.

6. District staff use their administrative discretion to impose 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, OCSD 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 in direct violation of not only federal law but also the Vision and Mission statements of the District.² The actions and inactions of OCSD, as described in this Complaint, disparately impact African American students in violation of the regulations promulgated pursuant to Title VI.

Representative Complainants’ Statement of Facts³

Complainant J.A.B.

7. Complainant J.A.B. is an eleven year old, African American student who resides with his

² Vision Statement: Maximize educational systems that empower students to successfully transition into a globally competitive society. Mission Statement: Perpetuate our commitment to educational excellence through: Rigorous and relevant curriculum, Accountability and Stakeholder relationships. See Exhibit 9. Exhibit 9 is a portion of a plan published by the School Board in August 2011, titled, “Okaloosa County School District - Pupil (Student) Progression Plan” August 8, 2011. The entire plan can be found at www.okaloosaschools.com/documents-policies

³ Consent forms for all listed complainants are attached hereto as Exhibit 7.

family in Crestview, Florida.

8. During the 2011-2012 school year, J.A.B. was in 5th grade at Riverside Elementary School.

9. During the 2011-2012 school year, J.A.B. was referred to the office and written up⁴ nine times. J.A.B. was suspended out of school for six days, suspended from riding the bus for 25 days, lost his privileges twice⁵, placed in time out⁶ twice and received one verbal reprimand⁷.

10. On April 6, 2012 and April 4, 2012, J.A.B. was referred to the office and written up for a bus infraction. J.A.B. was asked to remain in his seat. As a result, J.A.B. was suspended from riding the bus five days for each infraction or for a total of 10 days.

11. On February 28, 2012, J.A.B. was referred to the office and written up for “inappropriate behavior” in the classroom. J.A.B. was in possession of his friend’s cell phone. As a result, J.A.B. was suspended out of school for five days. J.A.B. was out of school from February 28 through March 5, 2012. The suspension notices issued by the school specifically state that the student will not receive credit for any work missed during the suspension. *See* sample suspension letter attached hereto as Exhibit 12.

12. On February 27, 2012, J.A.B. was sent to the office and written up for inappropriate

⁴ “Written up” in Okaloosa County Schools means that a formal incident or infraction report is produced and made a 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 “Privileges” vary from school to school but include permission to leave campus for lunch, have limited participation in certain activities within the class or classroom, participation on sports teams or in extra-curricular activities, attend school programming during the school week such as field day, attend school sponsored events/ activities such as football games or dances.

⁶ “Time out” differs from school to school but in every situation, the student is removed from the classroom for a short period of time. In some schools students are sent to the office, while in other schools students sit in the hallway or are not allowed to participate in a class activity.

⁷ “Verbal Reprimand” is when the principal or other administrator speaks to the student about the incident. The student is removed from the classroom, placed in an office and spoken to by the principal or administrator. The student remains out of class until the administrator gives the student permission to return to the classroom.

behavior in Physical Education (P.E.) class. J.A.B. was written up for pushing another student in class. As a result, J.A.B. received time out in the office and lost privileges during P.E. in the future.

13. On January 24, 2012, J.A.B. was written up for a bus infraction. No details regarding this incident were provided; however, J.A.B. received a five day suspension from the bus for “repeated” bus referrals.

14. On January 23, 2012, J.A.B. was written up for a bus infraction. The conduct involved J.A.B. “messing” around with his brother. As a result, J.A.B. received a verbal reprimand from the principal and his mother was contacted. J.A.B. was also suspended from the bus for five days.⁸

Complainant J.B.

15. Complainant J.B. is an eleven year old, African American student who resides with his family in Crestview, Florida.

16. During the 2011-2012 school year, J.B. was in 5th grade at Riverside Elementary School.

17. During the 2011-2012 school year, J.B. was referred to the office and written up fourteen times. J.B. was suspended out of school for nine days, received twelve verbal reprimands, three time outs, and lost his privileges once.

18. On May 14, 2012, J.B. was referred to the office for throwing his jacket up on the bus.

⁸ J.A.B. was referred to the office and written up four additional times on October 13, 2011 and December 2, 2011, December 12, 2011 and December 14, 2011. As a result, J.A.B. was placed in time out twice, lost his privileges once, received one verbal reprimand, suspended from the bus for five days and was suspended out of school for one day.

J.B. was written up for a bus infraction of refusing to obey the bus driver and throwing objects on the bus. J.B. received a verbal reprimand from the principal.

19. On May 7, 2012, J.B. was referred to the office for yelling and refusing to sit in his seat on the bus. J.B. was written up for a bus infraction of failure to remain seated and refusing to obey the bus driver. J.B. received a verbal reprimand and his parents were contacted.

20. On April 26, 2012, J.B. was referred to the office for having a “multi-tool” in class and showing it to another student. Students reported that J.B. found the tool in the classroom. J.B. was written up for having a weapon at school. As a result, J.B. was suspended out of school for three days. J.B. was out of school from April 26 through April 30, 2012. In addition, the principal recommend expulsion as a result of this incident. The student was investigated and an informal hearing was held. The results of the investigation are still outstanding.

21. On April 6, 2012, J.B. was referred to the office and written up for inappropriate hand gestures. No further details were provided on the infraction report. J.B. received a time out in the office, a verbal reprimand, and his parents were contacted.

22. On April 3, 2012, J.B. was referred to the office for saying he was tired during music class and not participating. J.B. was written up for classroom disruption and received a verbal reprimand.

23. On March 29, 2012, J.B. was referred to the office for not remaining in his seat. J.B. was written up for disruption and received a verbal reprimand.

24. On March 26, 2012, J.B. was referred to the office for making noise in class and being “openly defiant.” J.B. was written up for classroom disruption and received time out in the office and a verbal reprimand.

25. On February 28, 2010 J.B. was referred to the office for being in possession of a

friend's cell phone. J.B. was written up for inappropriate behavior. As a result, J.B. was suspended out of school for five days. J.B. was out of school from February 28 through March 5, 2012.

26. On February 14, 2012, J.B. was referred to the office and written up for defiance/disrespect and lying. J.B. walked his friend to the bus and then went to his own bus. J.B. was stopped and asked why he went to his friend's bus and he stated that his teacher told him to walk the friend to the bus. This was not true. J.B. received a verbal reprimand from the principal.

27. On January 30, 2012, J.B. was referred to the office and written up for classroom disruption. J.B. received a verbal reprimand from the principal.

28. On January 20, 2012, J.B. was referred to the office and written up for classroom disruption and mocking the teacher. J.B. was talking during class. As a result, J.B. was sent to the office and given a verbal warning. J.B.'s homeroom was also changed.⁹

Complainant E.G.

29. Complainant E.G. is a sixteen year old, African American student who resides with his family in Fort Walton Beach, Florida.

30. During the 2011-2012 school year, E.G. began the year in the 8th grade at Okaloosa Academy, a charter/contract school within the District. E.G. received a mid-year promotion to the 9th grade and remained at Okaloosa Academy. While E.G. had twenty-two referrals during the 2010-2011 school year¹⁰, it appears that E.G. was not having any major disciplinary

⁹ J.B. was referred to the office and written up four additional times on September 27, 2011, October 4, 2011, October 14, 2011 and December 12, 2011. As a result, J.B. received one day out of school suspension, three verbal warnings, one time out, and lost his privileges once.

¹⁰ It appears that in order to remain in school, E.G. was required to "voluntarily" enroll in a Department of Juvenile Justice program housed within Okaloosa Academy. E.G. was also required to sign a "voluntary" behavior contract. E.G. has been attempting to return to regular, mainstream, school for the 2012-2013 school year but has thus far been unsuccessful and the District has stated that E.G. must remain in the

problems until his promotion mid-year. After his promotion mid-year, E.G. was referred to the office and written up four times. E.G. was suspended from the bus two times, received one time out in the office and was suspended in school one time.

31. On February 22, 2012, E.G. was referred to the office and written up for a bus infraction. E.G. was breaking up a fight between his cousin and another student. As a result, E.G. was suspended from riding the bus for an undisclosed period of time.¹¹

32. On February 9, 2012, E.G. was referred to the office and written up for “inappropriate behavior,” the details of which are unknown. As a result, it appears that E.G. was suspended in school and removed from class for the incident. The length of the suspension cannot be verified.

33. In addition, E.G. was referred to the office and written up on November 11, 2011 and October 22, 2011 for a bus infraction and inappropriate behavior. As a result, E.G. was suspended from riding the bus for an undisclosed period of time and received a time out in the office for an undisclosed period of time.

Complainant J.S.

34. J.S. is a seventeen year old African American student who resides with his family in Fort Walton Beach, Florida.

35. During the 2011-2012 school year, J.S. began the year in the 9th grade at Fort Walton Beach High School. At Fort Walton Beach High School J.S. referred to the office and written up twenty eight times before January 2012.

alternative placement setting. It is suspected that OCSD utilizes these “voluntary” placements as alternative schools and to remove students from the regular educational program and instead places them with students who are returning from incarceration in the juvenile justice system. A description of the Okaloosa Academy can be found in Exhibit 10 at p. 17-22.

¹¹ Despite requesting the same, OCSD interestingly failed to provide any disciplinary referral or action reports for the 2011-2012 school year. The District only provided records for the 2010-2011 school year. Without such records the details of the incidents and full extent of the consequences are unknown.

36. Sixteen of the referrals were for tardiness/truancy for being late to class. J.S. was also written up for inappropriate behavior, classroom disruption, failure to complete his assignment, disobedience, lack of cooperation, inappropriate language, leaving school campus and for being discourteous. J.S. was written up for talking, kissing in the hallway, sharpening his pencil too long, and for being in the bathroom too long. One teacher wrote that J.S. had "made it very clear that he did not like me." For this incident, J.S. was referred to the office and written up for disobedience and classroom disruption. The last referral was made for fighting on December 8, 2011. J.S. was referred to the office and written up for fighting on school grounds. He was further written up for repetitive willful disobedience and inappropriate behavior. The school resource officer was called and J.S. was taken into the school office kitchen by the officer. As a result J.S. was suspended out of school for ten days and arrested. The criminal charges were later dropped.

37. As a result of the twenty eight referrals, J.S. was suspended out of school for a total of twelve days, was given three time outs in the office, detention hall six times, was suspended from class fourteen times, had twelve lunch detentions, three verbal reprimands by the principal and was sent to Saturday school seven times.

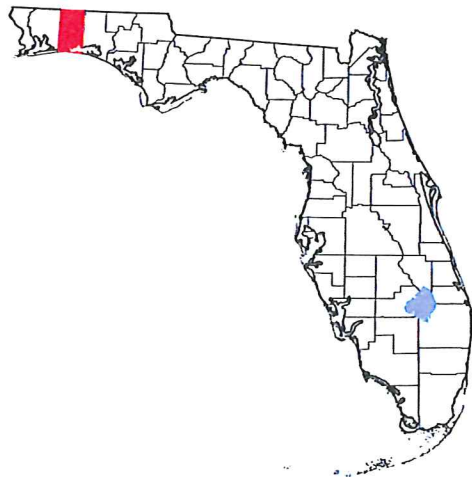
38. After the last referral, an IEP meeting was held on December 12, 2011, without J.S. or his mother. J.S. was administratively removed from Fort Walton Beach High School. The District enrolled J.S. into a home instruction program for 90 minutes twice a week or 180 minutes weekly, presumably to be administered by J.S.'s mother or someone hired by J.S.'s mother. However, J.S.'s mother was unaware of the home instruction program and did not provide one. On March 13, 2012, a second IEP meeting was held and six hours of Exceptional Student Education (ESE) instruction per week was added to the home instruction program. The

ESE services however were not direct services. J.S. worked on a computer two hours a day, three days a week¹². The program was housed at Emerald Coast Marine Institute. J.S.'s mother was later able to increase the ESE services to eight hours per week or two hours a day, four days week.

39. For the 2012-2013 school year, Fort Walton Beach High school and OCSD has refused to accept J.S. back into any of their high school programs. J.S. was given the option to attend private school or attend school outside of the District. Private school is not an option because of the financial constraints and attending high school outside the District would result in long bus rides and no opportunities to graduate with his peers.

OCSD's Organization Structure

40. Okaloosa County is located in northwest Florida and extends from the Gulf of Mexico to the Alabama state line.



41. The county has a total area of 1,082.00 square miles, of which 146.37 square miles (or

¹² J.S. reports that often times the computers were not working and he sat for two hours receiving no educational instruction.

13.53%) is water.¹³ The county contains three United States Air Force bases including Duke Field, Eglin AFB and Hurlburt Field. The county includes the town of Cinco Bayou, City of Crestview, City of Destin, City of Fort Walton Beach, City of Laurel Hill, City of Mary Esther, City of Niceville, Town of Shalimar and the City of Valparaiso. The county also includes the areas of Baker, Blackman, Campton, Deerland, Escambia Farms, Garden City, Holt, Lake Lorraine, Milligan, Ocean City, Seminole and Wright.

42. OCSD manages forty eight schools¹⁴: eighteen elementary schools, seven middle schools, four high schools, four K – 12 community centers, one K-8 center, six charter schools; five alternative schools; the Choice High School and Technical Center, the Choice institute and Southside Center.¹⁵ The District maintains fourteen Title I schools all of which are elementary schools.

OCSD's Disciplinary Policies

43. The District maintains a written system of disciplinary policies and procedures that govern student conduct within its schools. The system is memorialized in several different documents. These include the following: (1) Okaloosa County - School Board Policy Handbook ("Board Handbook"),¹⁶ (2) the Student Conduct Code ("Code"),¹⁷ and (3) individual school disciplinary plans.

44. The Board Handbook refers the reader to the Code for matters of discipline. *See* Board

¹³ "Census 2000 U.S. Gazetteer Files: Counties". United States Census. Retrieved 2011-02-13.

¹⁴ In Okaloosa County, 90% of all instructional staff is white and only 5% is African American. There are no African American administrators at the district level and over the past ten years, the number of full time African American school employees has declined by 24%. *See* Exhibit 13.

¹⁵ *See* www.okaloosaschools.com.

¹⁶ Portions of the policy manual are attached hereto as Exhibit 1. The entire manual can be found at www.okaloosaschools.com.

¹⁷ The 2011-2012 Student Conduct Code is attached hereto as Exhibit 2.

Policy 4-32 DISCIPLINE at p. 36. The Board Handbook simply states, “See Code of Student Conduct concerning student discipline.” *Id.* The Code however, refers the reader back to the Board Handbook for regulations regarding student discipline. *See* Code at p. 7. The Code specifically states, “The rules adopted by the School Board, as well as administrative regulations which pertain to student control and discipline are found in the School Board Policy Handbook.” *Id.* When read together, the Board Handbook along with the Code set forth the district’s general policies, rules and regulations regarding student discipline and both place actual authority regarding discipline into the hands of the individual school teachers, administrators and principals. *See* Board Handbook at 4-32(B) and (C) at p. 36-37 and Code at p. 2.

45. The School Board is the governing body of the District and is responsible for the control, operation, organization, management, and administration of schools in Okaloosa County. *See* Board Handbook 1-1 at p. 1. The Superintendent exercises general oversight over the district school system in order to determine problems and needs and recommend improvements to the Board. *See* Board Handbook 1-3 at p. 5. The Superintendent shall “advise and counsel” with the School Board on all educational matters. *Id.* However, when it comes to discipline, the Handbook and Code place all the authority into the hands of the classroom teachers and administrators of each individual school. *See* Board Handbook at 4-32(B) and (C) at p. 36-37 and Code at p. 2. This organizational structure was intentional and deliberate to “decentralize authority” and give more responsibility to individual schools.¹⁸

46. The only exception is when a principal has recommended expulsion, the recommendation

¹⁸ “Unfinished Business: An Analysis of the Turnaround Of Okaloosa Schools 2001 – 2005 - And a Roadmap for Doing Even Better” by Terry Bevino, September 12, 2005 at p. 12-13 a portion of which is attached hereto as Exhibit 8. This report was commissioned by the Okaloosa County School Board which was published in September 2005 and can be found in its entirety at www.okaloosaschools.com/documents-policies/Unfinished Business: Roadmap.

is investigated by the superintendent who makes a recommendation to the Board and the Board makes the final decision regarding expulsion from the public school system. *See* Board Handbook at 4-32 (D) and (E) at p. 37-39 and Code at p. 3.

47. The Superintendent is also solely responsible for enforcing compulsory attendance laws within the district. *See* Board Handbook 4-4 (A) at p. 8.

48. The Board Handbook sets forth general policies regarding the dress code, exclusions from class, suspensions, in and out of school, cell phone use, posting and distribution of materials by students and it sets forth the District's zero tolerance policy. *See* Board Handbook policy 4-31, 4-32, 4-33, 4-37, 4-40 at pgs. 34-44, 51-53, 55-56.

49. The Code is the primary means to inform the reader of the general scheme for addressing discipline in the District. *See* Code at pg 2-3. The Code sets forth procedures to follow when imposing formal disciplinary action. *Id.* at 2. The Code sets forth a list of behaviors which can be subject to formal discipline. *Id.* at p. 3. The Code also sets forth a list of behaviors which can be subject to suspension. *Id.* These lists however are not all inclusive. *Id.* The Code sets forth a list of possible disciplinary consequences. *Id.* at p. 2-3. This list however is also not all inclusive. *Id.* The Code vests the principal with the ultimate power to informally discipline students and formally discipline students at their unfettered discretion. *Id.* at p. 2-3.

50. The Code does not provide any definitions for terms like "willful disobedience" or "inappropriate behavior" or "misconduct." *Id.* The Code does not set forth which disciplinary consequence should be applied to a specific behavior. *Id.* The principal of each school has complete discretion regarding how to define terms and what behaviors qualify for disciplinary action and what disciplinary consequence should be applied for an incident. The Board Handbook and Code provide little if any guidance to the school principal regarding the discipline

of students within their schools and there is little if any oversight regarding how principals implement discipline within their schools.

51. All individual schools appear to maintain their own policies regarding discipline.¹⁹

Some schools maintain a chart with the violations listed along with several options for disciplinary consequences for each behavior listed. *See* Exhibit 3 (composite). For example, the first offense of the violation “lack of cooperation” can result in a warning or a detention, a second offense can result in detention or Saturday school, and a third offense can result in a one to three day suspension either in school or out of school at the discretion of the administrator. *Id.* Other schools designate what behaviors constitute a minor infraction vs. a major infraction and provide a list of possible consequences for each infraction. *Id.* While still others simply describe the school’s philosophy without any detail regarding what behaviors are prohibited or the possible consequences of misconduct. *Id.* Some schools list possible consequences but do not provide a list of prohibited behaviors. *Id.* There is little consistency between the schools. *Id.* For example, a dress code violation in one school can result in being sent home to change while in another school it can result in an after school detention. Most schools do not provide definitions for terms like “disobedience,” “defiance,” and “lack of cooperation.” *Id.*

52. What is consistent between the schools is that discretion to discipline remains with the principal of each school. *Id.* No list or plan is all inclusive and every policy reserves the right to determine punishment based upon the incident and the student’s previous discipline record. *Id.* Each school reserves the right to determine if a behavior is major, serious, willful, excessive or minor and deserving of informal versus formal disciplinary consequences. *Id.*

¹⁹ See school policies attached hereto as Exhibit 3 (composite). Elementary schools are attached hereto as Exhibit 3A (composite). Middle Schools are attached hereto as Exhibit 3B (composite). High schools are attached hereto as Exhibit 3C (composite) and other schools attached hereto as Exhibit 3D (composite).

53. What is also consistent between the schools is that when a student is suspended, the student cannot be on school property or attend school functions of any kind, the absence will be considered an unexcused absence and the student will not receive any credit for work missed. *See* Code at p. 3; Exhibit 3 (composite). The student is not allowed to make up the work missed. Board policy actually states, “A student will receive “zeros” or no credit in academic subjects during periods of suspension.” Board Handbook at 4-32(C) at p. 37. This directly impacts students’ overall grade point averages and ability to be promoted from grade to grade.²⁰

54. 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 not offensive behavior in still 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 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 12% of the school population in the 2010-2011 school year, they accounted for 24% of students receiving out-of-school suspensions and 23% of students receiving in-school suspensions. *See* Exhibit 4.

55. African American students in Okaloosa schools are further retained at a disproportionate

²⁰ While African American students make up 12% of the population, they made up 29% of the students retained in the 2010-2011 school year. *See* Exhibit 4.

rate when compared to their white peers. *See* Exhibit 4. While African American students make up 12% of the school population, they make up 29% of the students retained. *Id.*

Availability of Disciplinary Removal for Vague and Minor Offenses

56. In OCSD, 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 out, time in the office, detention, loss of privileges, suspension, in school and out of school, expulsion or even a referral to law enforcement for such acts of class disturbance, insubordination, defiance or use of a cell phone. *See* Exhibit 3 (composite). 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. *See* Exhibit 4.

Lack of Definition and Standards

57. 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 Handbook at Exhibit 1. The corresponding punishments vary, without explanation, from school to school, principal to principal and teacher to teacher. Compare Exhibit 3 composite.

58. 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 warning in one school and 5 day suspension in another school. 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.

59. 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. *See* Board Handbook at Exhibit 1 and Exhibit 3 (composite). 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.* 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.*

60. The principal or designee implementing the punishment has full discretion to determine which 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.*

Effect of Florida’s Revised Zero Tolerance Law

61. 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.

62. 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).

63. OCSD maintains a Zero Tolerance policy that is in general compliance with Fla. Stat. 1006. OCSD's zero tolerance policy can be found in the Board Handbook 4-33 attached hereto as Exhibit 1 at pgs. 40. *See also* Code at p. 4.

64. Despite having a Zero Tolerance policy written in general compliance, of the 119 students arrested during the 2010-2011 school year, ninety-six were for misdemeanor offenses. Sixty-one were for those offenses specifically listed in paragraph sixty-two *infra*. *See* Exhibit 5.

65. While African American students make up 12% of the student population, they made up 50% of the school based referrals to the criminal justice system in 2010-2011 school year. *See* Exhibit 5.

66. While not all misdemeanor offenses may trigger automatic referral to law enforcement or expulsion in OCSD, the District's policies still allow for excessively harsh punishments for these offenses at the discretion of school administrators. *See* Exhibit 1, 2 and 3 (composite).

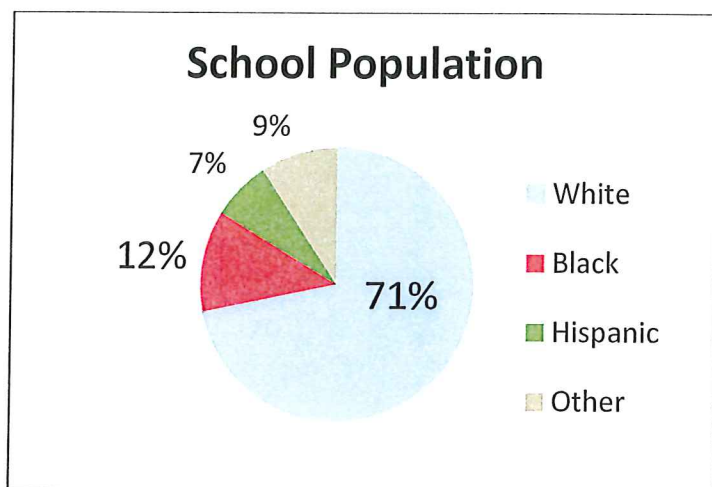
Classwide Allegations

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

68. Data demonstrates that African American students in OCSD schools have been

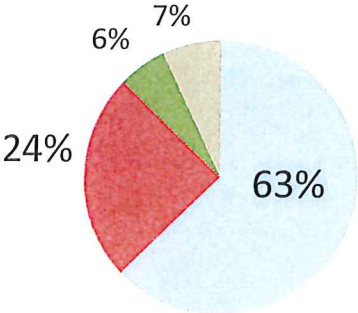
suspended from school for significant periods of time, expelled, or unnecessarily referred to juvenile justice authorities at a significantly higher rate than the white students in Okaloosa Schools. *See* Exhibits 4 and 5.

69. As of 2010-2011 school year, the most recent school year for which discipline data is available, the total school population for Okaloosa Schools was 28,504. *See* Exhibit 4. White students numbered 20,361 or 71% of the total student demographic. African American students numbered 3,534 or 12% of the school population. *Id.*

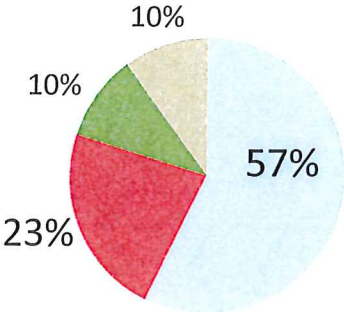


70. Although African American students constituted only 12% of the school population that year, they accounted for 24% of students receiving out-of-school suspensions and 23% of students receiving in-school suspensions. *See* Exhibit 4.

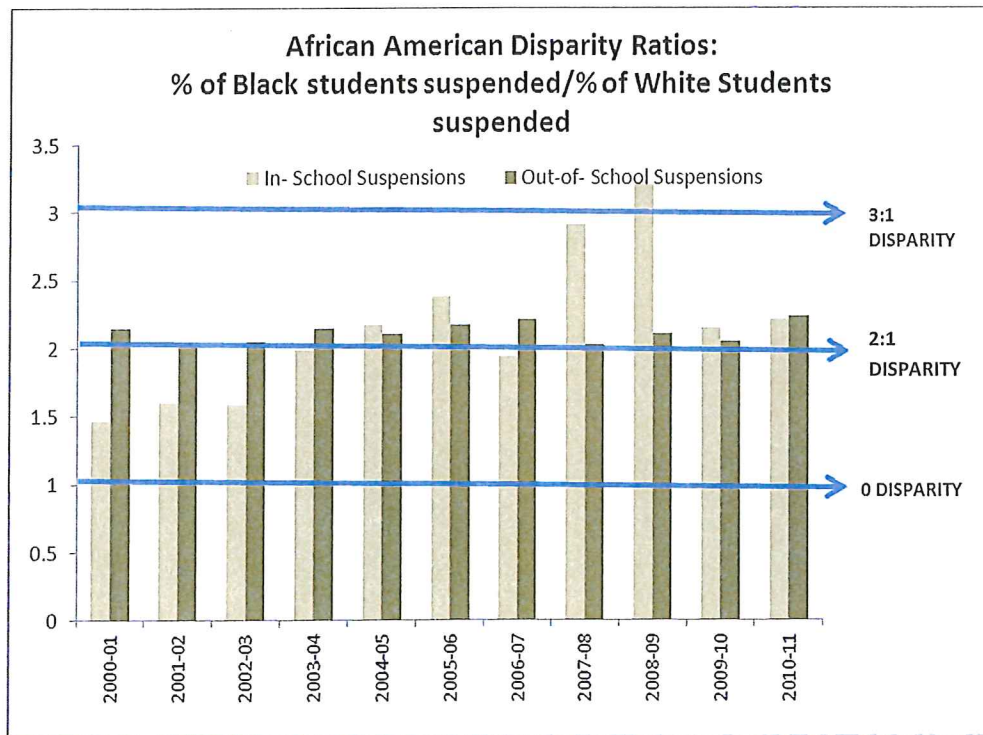
Out-of-School Suspensions



In-School Suspensions



71. This disparity has existed for many years. *See* Exhibit 6.



72. 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 6. While in-school suspensions have gone down over the past two years, the ratio is still over 2 to 1 times more suspensions of African American students than their white peers. *Id.* Out-of school suspensions have remained consistently over 2 to 1 when compared to white peers over the past ten years. *Id.*

73. The Okaloosa School Board is aware that its schools are in need of reform as evidenced by the adoption of a comprehensive dropout prevention plan attached hereto as Exhibit 10 and School Performance Plans or School Improvement plans maintained by thirty seven schools within the District. Performance plans can be found at www.Okaloosaschools.com a sample of which is attached hereto as Exhibit 11 at p. 47-49.

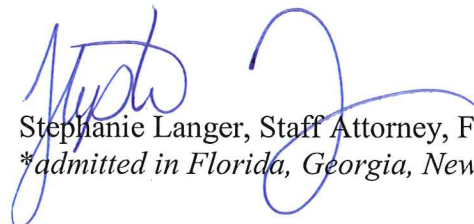
74. There is no evidence that racial disparities in the imposition of school discipline can be explained by differences in student behavior. To the contrary, there is considerable evidence that students of color are disciplined more harshly than their peers for identical behavior. See Skiba, R. et. al.,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

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

Enclosures
cc: Superintendent, Okaloosa County Schools
Complainants