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4770 Biscayne Boulevard, Suite 760  
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Toll Free 877.751.6183  
www.splcenter.org

July 24, 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: K.K., S.B. and L.H. on behalf of themselves and all others similarly situated v.  
Flagler County (FL) School District

To Whom It May Concern:

Please consider this letter a Complaint filed against Flagler County School District ("FCSD" 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.<sup>1</sup> Complainants allege that FCSD 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.

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<sup>1</sup> The contact information for the District is as follows: Flagler County School District, 1769 East Moody Blvd, #2, Bunnell, Florida 32110. Phone: (386) 437-7526. Fax: (386) 586-2641.

### **Statement of Jurisdiction**

Flagler 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 (11<sup>th</sup> 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. African American students are also retained, arrested at school,<sup>2</sup> and expelled more often than their white peers. By implementing vague and ambiguous disciplinary procedures, FCSD 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.<sup>3</sup> The actions and inactions of FCSD, as described in this Complaint, disparately impact African American students in violation of the regulations promulgated pursuant to Title VI.

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<sup>2</sup> Each school has Student Resource Officers (SRO) who are utilized “to promote and assist school administrators with school based security and safety.” *See* Board Policy 524 at Exhibit 1. A SRO can arrest or issue a civil citation which requires a student to appear before a Juvenile Judge to address the citation or at school arrest

<sup>3</sup> Vision Statement: Flagler County School District will raise student achievement every day and in every way. Mission Statement: The Flagler County School District seeks to provide students with an internationally competitive education and embraces the belief that all children will learn. Flagler County Public Schools is committed to excellence. *See* School Board Policy 101 attached hereto as Exhibit 1.



## Representative Complainants' Statement of Facts <sup>4</sup>

### Complainant K.K.

7. Complainant K.K. is a fourteen year old, African American student who resides with his family in Palm Coast, Florida.

8. During the 2011-2012 school year, K.K. was in the eighth grade at Indian Trails Middle School.

9. During the 2011-2012 school year, K.K. was referred to the office and written up<sup>5</sup> nineteen times, only thirteen of which appear in the school's office computer printouts.<sup>6</sup> K.K. was suspended out of school for fifteen days, spent three days in an in school suspension, was suspended from riding the bus three times, received five after school detentions for a total of four hours and fifteen minutes, one Saturday school detention, two in school detentions for forty-five minutes each, received two verbal warnings,<sup>7</sup> one conference, one civil citation and one time he received zeros on all his classwork at the discretion of the school administration.

10. Contained with the student's official school records, is a form purporting to categorize K.K.'s referrals into four levels. It is unknown if this form is utilized throughout the District or just by Indian Trails Middle School. It is also unknown what criteria are used to classify a behavior as a level 1 versus a level 4 offense or how the level designation may determine which

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<sup>4</sup> Consent forms for all listed complainants are attached hereto as Exhibit 6.

<sup>5</sup> "Written up" in Flagler County School District 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.

<sup>6</sup> Upon information and belief, the information in the computer is inputted by a school employee, usually sometime after the date of the incident, and is based upon what the person inputting the information decides to put into the computer from the referral forms. It is not always complete or accurate.

<sup>7</sup> A "Warning" 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. The incident is written up and becomes a permanent part of the student's discipline record.



consequence is imposed. The form is attached hereto as Exhibit 9. K.K. received one level 1 offense, two level 2 offenses, four level 3 offenses and no level 4 offenses. Two dress code violations and six tardies are also recorded on this form. *See* Exhibit 9.

11. On May 18, 2012, K.K. was referred to the office and written up for being tardy. Once in the office, K.K. was further written up for causing a “major disruption.” The referral form indicates that K.K. was argumentative, defiant, and non-compliant with office staff and administrators. The computer printout reflects that he was written up for “Defiance of Authority.” As a result, K.K. spent the remainder of the day in an in school suspension received an additional day of in school suspension, and received five additional days out of school suspension. K.K. was out of class from May 18 through May 28, 2012.

12. On May 7, 2012, K.K. was referred to the office and written up for being tardy. As a result, K.K. was placed in Saturday school for two hours on May 19, 2012.

13. On May 3, 2012, K.K. was referred to the office and written up for being tardy. As a result K.K. was placed in after school detention for 45 minutes on May 7, 2012.

14. On May 2, 2012, K.K. was referred to the office and written up for skipping class. As a result, K.K. was given a 75 minute after school detention.

15. Upon information and belief, on April 30, 2012, K.K. was referred to the office and written up for IN (which is believed to be interference) and it is believed K.K. was suspended from riding the bus as a result.<sup>8</sup>

16. On April 27, 2012, K.K. was referred to the office and written up for a bus infraction for

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<sup>8</sup> No referral form was provided for this incident. Thus, there is no written record regarding important details such as a description of the student’s behavior or the punishment imposed.

refusing to buckle his seatbelt. K.K. was suspended from riding the bus for five days. The five day suspension was served in conjunction with the infractions of April 16<sup>th</sup> and April 17<sup>th</sup>.

17. On April 23, 2012, K.K. was referred to the office and written up for being tardy. K.K. received a 45 minute after school detention.

18. On April 17, 2012, K.K. was referred to the office and written up for being tardy. K.K. received a 45 minute after school detention.

19. On April 16 and 17, 2012, K.K. was referred to the office and written up for bus infractions for refusing to put on his seat belt and for trying to speak to the driver each day. As a result K.K. was suspended from riding the bus for five days.

20. On March 23, 2012, K.K. was referred to the office and written up for not having his school identification and for a dress code violation. K.K. was given a warning.

21. On March 19, 2012, K.K. was referred to the office and written up for "BD" – which may signify disruptive behavior for which K.K. apparently received a 45 minute detention.

22. On March 14, 2012, K.K. was referred to the office and written up for misconduct in the hallway. K.K. wore his pants too low and refused to pull them up. K.K. received a 45 minute after school detention.

23. On March 12, 2012, K.K. was referred to the office and written up for being tardy. K.K. was given a warning.<sup>9</sup>

### **Complainant S.B.**

24. Complainant S.B. is a sixteen year old, African American student who resides with his

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<sup>9</sup> K.K. was referred to the office and written up and punished five additional times: (1) January 19, 2012 (refusing to wear his seat belt on the bus); (2) January 20, 2012 (refusing to wear a seatbelt on the bus); (3) January 12, 2012 (failure to have school identification and dress code violation) (4) October 31, 2011 (fighting) (5) September 14, 2011 (refusing to complete classwork).

family in Palm Coast, Florida.

25. During the 2011-2012 school year, S.B. was in 10<sup>th</sup> grade at the District's alternative school, Pathways Academy. In May 2011, S.B. was expelled from the school district and was allowed to enroll at the alternative high school, Pathways Academy in January 2012.<sup>10</sup> Students at the alternative school are subjected to more stringent disciplinary procedures and are required to sign a behavior contract. The students are further required to stay at the alternative school for a minimum of 45 days. <http://everest.flaglerschools.com>. S.B. remained at Pathways for the remainder of the 2011-2012 school year. Despite his success, lack of behavioral referrals, consistent attendances, the District failed to consider transitioning S.B. back to his home school. S.B. will be promoted to 11<sup>th</sup> grade during the 2012-2013 school year, however, it is unknown if he will be allowed to return to his home school in August 2012.

**Complainant L.H.**

26. Complainant L.H. is a fourteen year old, African American student who resides with his family in Palm Coast, Florida.

27. During the 2011-2012 school year, L.H. was enrolled in the eighth grade at Indian Trails Middle School.

28. During the 2011-2012 school year, L.H. was written up nineteen times for minor misconduct. L.H. received three days of in school suspensions, placement in two alternative settings during the school day, eight detentions for a total of seven hours and forty five minutes,

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<sup>10</sup> Pathways Academy was recently renamed Everest Alternative School. <http://everest.flaglerschools.com/pathwaysprincipalblog>. The alternative school services grades 8 – 12. African American students made up 38% of the school during the 2010-2011 school year. Students must stay at the Alternative school a minimum of 45 days. <http://everest.flaglerschools.com>. The school improvement plan for the 2011-2012 school year has been removed from the website.



two written warnings from the bus driver, two warnings from the administration, two time outs and four student conferences.

29. On April 20, 2012, L.H. was referred to the office and written up for laughing when a cafeteria employee asked him his name. As a consequence, L.H. received a 75 minute after school detention for allegedly being “rude and disrespectful.”

30. On April 23, 2012, L.H. was referred to the office and written up for classroom disruption and received a detention for the same. The district failed to produce a copy of the referral form thus, there is no written record regarding important details such as a description of the student’s behavior or the punishment imposed.

31. On March 12, 2012, L.H. was referred to the office and written up for public display of affection for hugging another student and a dress code violation. As a consequence, L.H. received a warning.

32. On March 2, 2012, L.H. was referred to the office and written up for being tardy. L.H. received a 45 minute after school detention.

33. On March 1, 2012 L.H. was referred to the office and written up for being tardy. L.H. received a warning.

34. On February 23, 2012, L.H. was referred to the office and written up for a bus infraction. L.H. threw a small unknown object at another student after he got off the bus and the object hit the outside of the bus. L.H. received a written warning from the bus driver.

35. On January 23, 2012, L.H. was referred to the office and written up for a classroom disruption and received a one day in school suspension.

36. On January 19, 2011, L.H. was referred to the office by the classroom teacher for

classroom disruption. L.H. was calling out in class and making noise. L.H. was removed from class and received a one day in school suspension<sup>11</sup>.

### FCSD's Organization Structure

37. Flagler County is located on the East Coast of Florida. It is a small county with only 570.76 square miles, of which 15% is water.<sup>12</sup>



38. The county contains the City of Bunnell, the City of Flagler Beach, the City of Palm Coast, the Town of Marineland, the Town of Beverly Beach, Flagler Estates (also in St. Johns County), Hammock, Painters Hill, Espanola, Bimini, Dupont, Korona, Codys Corner, Favoretta, St. Johns Park, Daytona North and Relay.

39. FCSD manages sixteen schools;<sup>13</sup> six elementary schools,<sup>14</sup> two middle schools, two high schools, one alternative school, three charter schools,<sup>15</sup> the Flagler Technical Institute, and iFlagler Virtual School.<sup>16</sup> Seven schools are Title I schools.

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<sup>11</sup> L.H. was written up eleven additional times for minor incidents including sniffing girls as they walked by him, horse playing with a friend, not having his student identification and talking during class.

<sup>12</sup> United States Census. Retrieved 2011-02-13

<sup>13</sup> For the 2011-2012 school year, FCSD cut total full time staff by 8% and African American staff was cut by 15%. Those cuts included a 46% reduction in the number of African American classroom teachers (from 48 to just 26 classroom teachers). In 2011-2012 only 3% of the classroom teachers were African American. Ten years ago that it was 6%. See Exhibit 10.

<sup>14</sup> One of the elementary schools, Phoenix Academy, opened August 2011 and serves only 88 students. It is 4<sup>th</sup> through 6<sup>th</sup> grades only and is a pilot program/research study for students struggling academically in traditional settings. <http://phoenix.flaglerschools.com/>.

### FCSD's Disciplinary Policies

40. The District maintains a written system of disciplinary policies and procedures that govern student conduct within its schools. The system is memorialized in two different documents. These include the following: (1) District School Board Policy Manual of Flagler County, Florida ("Board Policy")<sup>17</sup> and (2) Flagler County Public Schools Code of Student Conduct ("Code").<sup>18</sup> While the District publishes a Parents' Guide each year, it contains little if no information regarding school discipline and generally refers the parent back to the Code of Student Conduct. The 2010-2011 Parents' Guide is attached hereto as Exhibit 8.

41. The School Board is the governing body of the District and is responsible for the control, operation, organization, management, and administration of all the public schools within the District. See Board Policy 102 at Exhibit 1. The Board is "empowered" to determine policies necessary to operate and improve the school system. Board Policy 201 at Exhibit 1.

42. The Superintendent is responsible for the administration of the entire school system as provided by law and the School Board. Board Policy 301 at Exhibit 1. All instructional and non-instructional staff are under the general supervision of the Superintendent and subject to her direction. *Id.* All directives and provisions of the Superintendent are "binding" upon all employees. Board Policy 304 at Exhibit 1.

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<sup>15</sup> One of the Charter Schools, Heritage Academy, has been closed and recently lost its appeal to stay open. Flaglerlive March 13, 2012 <http://flaglerlive.com>. Heritage Academy was K – 12 and was 46% African American. <http://www.heritagek-12.com/>.

<sup>16</sup> See [www.flaglerschools.com](http://www.flaglerschools.com). FCSD is now a B district, after significant drops in the overall reading, math and science proficiency of its students. As a result, just 27% of 4th graders passed the writing FCAT, down from 81% last year. Just 33% of 8th graders passed, down from 82% and 38% of 10th graders passed, down from 80%. For all that, Flagler County improved its ranking, from 29<sup>th</sup> to 19<sup>th</sup> in the state. FlaglerLive July 17, 2012, <http://flaglerlive.com/41292/flagler-county-schools-rating/>.

<sup>17</sup> Portions of the School Board Policy Manual are attached hereto as Exhibit 1. The entire manual can be found at [www.boarddocs.com/fla/flcsd/Board.nsf](http://www.boarddocs.com/fla/flcsd/Board.nsf).

<sup>18</sup> A copy of the 2011-2012 school year Code of Student Conduct is attached hereto as Exhibit 2.



43. The principals have been assigned direct and primary responsibility for his/her school and are responsible for enforcing all School Board rules and directives of the Superintendent. Board Policy 302 at Exhibit 1. Students are subject to the control and direction of the principal or designee while being transported to or from school, at school or during school sponsored activities. Board Policy 511 and 520 at Exhibit 1.

44. Flagler County District School Board has identified that its first obligation is to provide a “safe, secure and orderly learning environment” in all its schools. Board Policy 306 at Exhibit 1. The Board Policy goes on to state that an “orderly environment” is only achieved by developing procedures to “control” students on school property. *Id.* One of the ways identified to “control” students is to keep suspended or expelled students off all school campuses, grounds, or at any school sponsored activities. *Id.* If an expelled or suspended student is found on a school campus or at a school event, he or she can be arrested and charged with trespass. *Id.*

45. The portion of the School Board Policy Manual that addresses discipline in schools is titled “Student Control.” *See* Board Policy Chapter 5: Students at Exhibit 1. The Board sets forth some general philosophies, rules, and definitions regarding student discipline, but the Code of Student Conduct is the mechanism utilized to set forth the details regarding discipline within the District. *See generally* Board Policies: 511, 514-517, 519, 522, 524, 533-536, 538 found in Exhibit 1.

46. The purpose of the Code of Student Conduct is to “provide information relative to policies, rules, rights, responsibilities, and disciplinary actions that may affect students” in Flagler County Public Schools. *See* Code at p. 5 attached hereto as Exhibit 2. The Code is quick to point out that it is not “totally comprehensive” but rather is intended to reflect the basic policies and procedures in effect for the school district. *Id.* The individual school administrators

have the authority and discretion to establish any rules and procedures that do not directly conflict with the Code or School Board Policies. *Id.* The Code grants the District's alternative school the ability to impose even more restrictive disciplinary rules and procedures as the administration determines necessary. *Id.*

47. The clearest example of the individual administrator's authority and discretion over discipline is with regard to the dress code. *See* Board Policy 534; Code p. 9-10. While the School Board Policies and Code set forth detailed rules regarding the dress code, the principal or designee has the ultimate authority to determine if the clothes worn comply with Board Policy and the Code. *Id.* The individual administrator also determines if the student will be sent home to change or disciplined. *Id.* Board Policy allows for the schools to treat repeated dress code violations as "disruptive behavior" subject to disciplinary action. *Id.*

The Code states that Flagler County School District utilizes a positive behavior management system, while allowing each school to set up its own system of rewards and behavioral criteria. *Id.* The Code goes on to state that any violation of any school rule will result in disciplinary action at the discretion of the school administrators.<sup>19</sup> *Id.* at p. 17. The Code more directly states, "You will be disciplined if you do anything at school (or attempt to do anything), during school activities, on the bus, or at the school bus stop that violates a school rule or may hurt, harass, or threaten others; damage property; disrupt class or school; or violate a criminal law." *Id.*

48. The Code identifies thirty-six acts of conduct which can result in discipline

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<sup>19</sup> This rationale does not comport with the established practices of positive behavior intervention services. [www.pbis.org](http://www.pbis.org).

consequences at the discretion of the school administration. *See* Code at p. 18. The list however is not all inclusive and only provides “examples” of misconduct that can be subject to discipline by the individual schools. Code at p. 18. The list includes the violation of any school rule and any other “serious” misconduct. *Id.* The only act which is specifically excluded as being a violation of the Code is the possession of a wireless communication device (such as a cell phone) on school campuses. *Id.* at p. 19. *See also* School Policy 538. The schools can confiscate the communication device but the student may not be otherwise disciplined for this act. *Id.*

49. The Code further identifies eight offenses that require some type of consequence. *See* Code at p. 19. However the type of consequence imposed is left to the discretion of the principal/designee of each school. *Id.* at p. 19 -23.

50. The Code identifies the following actions as possible disciplinary consequences: oral reprimands, counseling, parental conferences, denial of privileges,<sup>20</sup> detention, removal from class or activity (including the bus), in school suspension, out of school suspension, alternative class and school placements or expulsion. *See* Code at p. 17 and 24. This list however is not complete and the school administration has discretion to impose any other disciplinary consequences they determine appropriate. *Id.*

51. The Code provides a glossary of terms that includes definitions of some of the identified acts of misconduct and disciplinary consequences. *See* Code at p. 39 – 44.

52. A student can be removed from class as a discipline consequence through teacher

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<sup>20</sup> The Code defines the term “withdrawal of privileges” as the temporary withdrawal of an opportunity which does not impact the health and safety of the students nor impair the development of the basic academic program for the student. *See* Code at p. 44.



removal from class, work detail at school, detentions, removal from extra-curricular/co-curricular programming or school activities, through in school suspensions, out of school suspensions and alternative class and school placements. *See* Code at p. 24 – 26.

53. Teachers have absolute discretion to remove a student from their classes. *See* Board Policy 536. *See also* Code at p. 24. The student cannot return to the class unless or until the teacher agrees to allow the student back into the classroom. *Id.* If the teacher does not want the student back in the classroom the student will be forever barred from that class unless a school based placement review committee determines that there is no other placement for the student. *Id.*

54. Students can be suspended in school or out of school for up to ten days by the principal for any violation of the Code of Student Conduct or for any other serious breach of conduct as determined by the principal. Board Policy 516. *See also* Code at p. 24. All out of school suspensions will be considered unexcused absences. *Id.* Any absences after fifteen days will be considered unexcused without a doctor's note or court order. Board Policy 533; Code at p. 7. Students who are absent from school without a valid excuse will not have the opportunity to earn credit for any tests, homework, or assignments missed, unless the principal determines otherwise. Code at p. 8; Board Policy 514. The principal has absolute discretion over whether a suspended student can make up work for credit. *Id.* Students with unexcused absences can also lose their driving privileges. Code at p. 9.

55. Students can only be expelled by the School Board. Board Policy 517; Code at p. 25-26. The principal can recommend expulsion. The Superintendent conducts an investigation and makes a recommendation to the Board which ultimately determines if a student will be expelled. *Id.*

56. While Board Policy and Code of Student Conduct set forth some general philosophies, rules and definitions regarding discipline, it does not set forth which disciplinary consequence should be applied to a specific behavior. *See* Exhibit 1 and 2. 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. *Id.* There is little if any oversight regarding how principals implement discipline within their schools. *Id.* Board Policy and the Code vest the principals with the ultimate power to discipline students at their unfettered discretion. *Id.* The only limit placed on a principal's authority is in regard to cell phone use on school campuses and the expulsion of students from the District. Code at p. 19, 25-26. *See also* School Policy 517, 538.

57. The person implementing the discipline has wide, unfettered discretion to determine the type of offense, whether serious, repetitive, willful, 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 16% of the school population in the 2010-2011 school year, they accounted for 31% of students receiving out-of-school suspensions and 31% of students receiving in-school suspensions. *See* Exhibit 3.

58. African American students in Flagler schools are further retained at a disproportionate rate when compared to their white peers. *See* Exhibit 3. While African American students make up 16% of the school population, they make up 22% of the students retained. *Id.*

#### **Availability of Disciplinary Removal for Vague and Minor Offenses**

59. In FCSD, 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 removal from class, work details, detention before school, after school, during lunch or on Saturdays, loss of privileges, suspension, in school and out of school, placement in alternative classes or schools, expulsion or even a referral to law enforcement for such acts as class disturbance, defiance, protesting, failure to give your correct name or for any violation of a school rule. *See* Exhibit 1 and 2. All of these consequences resulted 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 3.

#### **Lack of Standards**

60. While some general definitions are provided, there are no guidelines on what punishment is to be applied to a certain behavior. Exhibit 2. Corresponding punishments vary, without explanation, from school to school, principal to principal and teacher to teacher. *Id.*

61. 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 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.

62. The principal or his/her designee has complete discretion to determine if any misconduct will be subject to disciplinary consequences and has complete discretion on what disciplinary consequence to impose for the offending behavior. *See* Exhibit 1 and Exhibit 2. The



principal or his/her designee also has the unfettered authority to designate an offense as “serious.” *Id.*

63. 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**

64. 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.

65. 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).

66. FCSD maintains a Zero Tolerance policy that is in general compliance with Fla. Stat. 1006. FCSD’s zero tolerance policy can be found in the Board Policy 519 at Exhibit 1. *See also* Code at p. 6.

67. Despite having a Zero Tolerance policy written in general compliance, of the 107

students that were arrested from school during the 2010-2011 school year, eighty-three were for misdemeanor offenses. Sixty-six were for those offenses specifically listed in paragraph sixty-six *infra*. *See* Exhibit 5.

68. While African American students make up just 16% of the student population, they made up 45% of the school based referrals to the criminal justice system in 2010-2011 school year. *See* Exhibit 5.

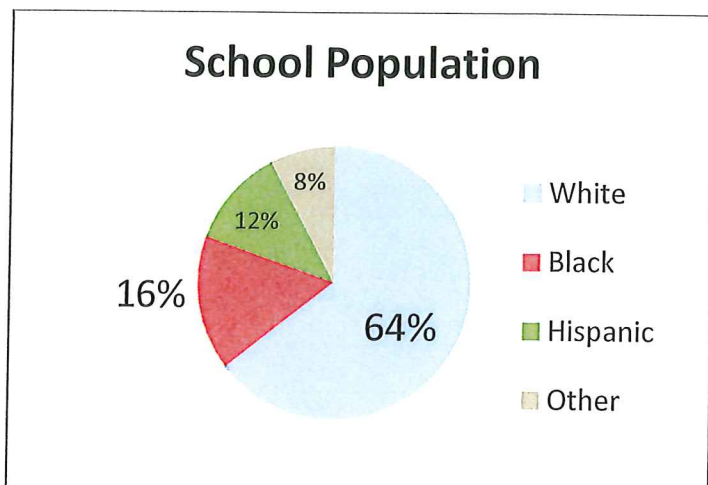
69. While not all misdemeanor offenses may trigger automatic referral to law enforcement or expulsion in FCSD, the District's policies still allow for excessively harsh punishments for these offenses at the discretion of school administrators. *See* Exhibit 1 and 2.

#### **Classwide Allegations**

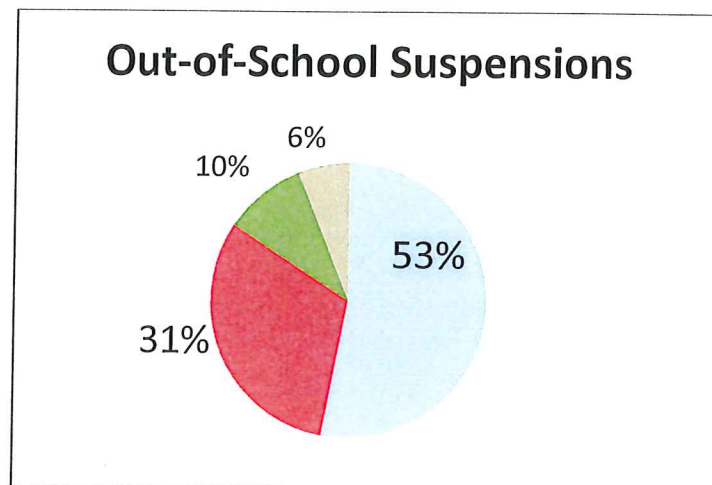
70. FCSD has engaged in an ongoing and systematic pattern of violating Class Complainants' rights and subjecting them to discrimination in violation of Title VI.

71. Data demonstrates that African American students in FCSD schools have been suspended from school for significant periods of time, placed in alternative classrooms or schools, expelled, or unnecessarily referred to juvenile justice authorities at a significantly higher rate than the white students in Flagler Schools. *See* Exhibits 3 and 5.

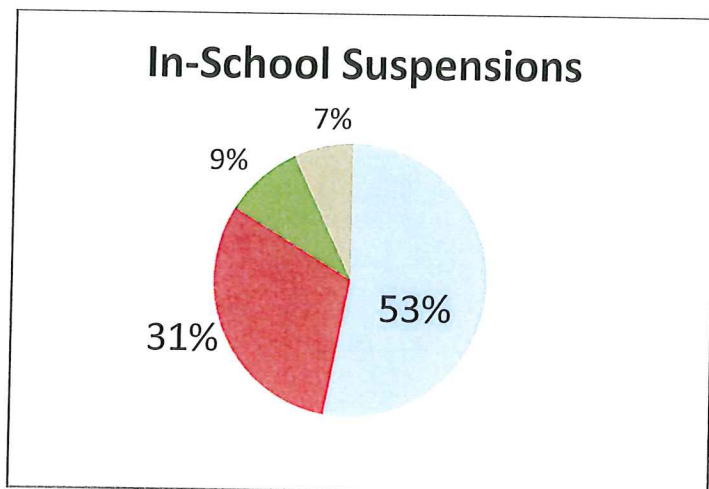
72. As of 2010-2011 school year, the most recent school year for which discipline data is available, the total school population for Flagler Schools was 12,986. *See* Exhibit 3. White students numbered 8,344 or 64% of the total student demographic. African American students numbered 2,100 or 16% of the school population. *Id.*



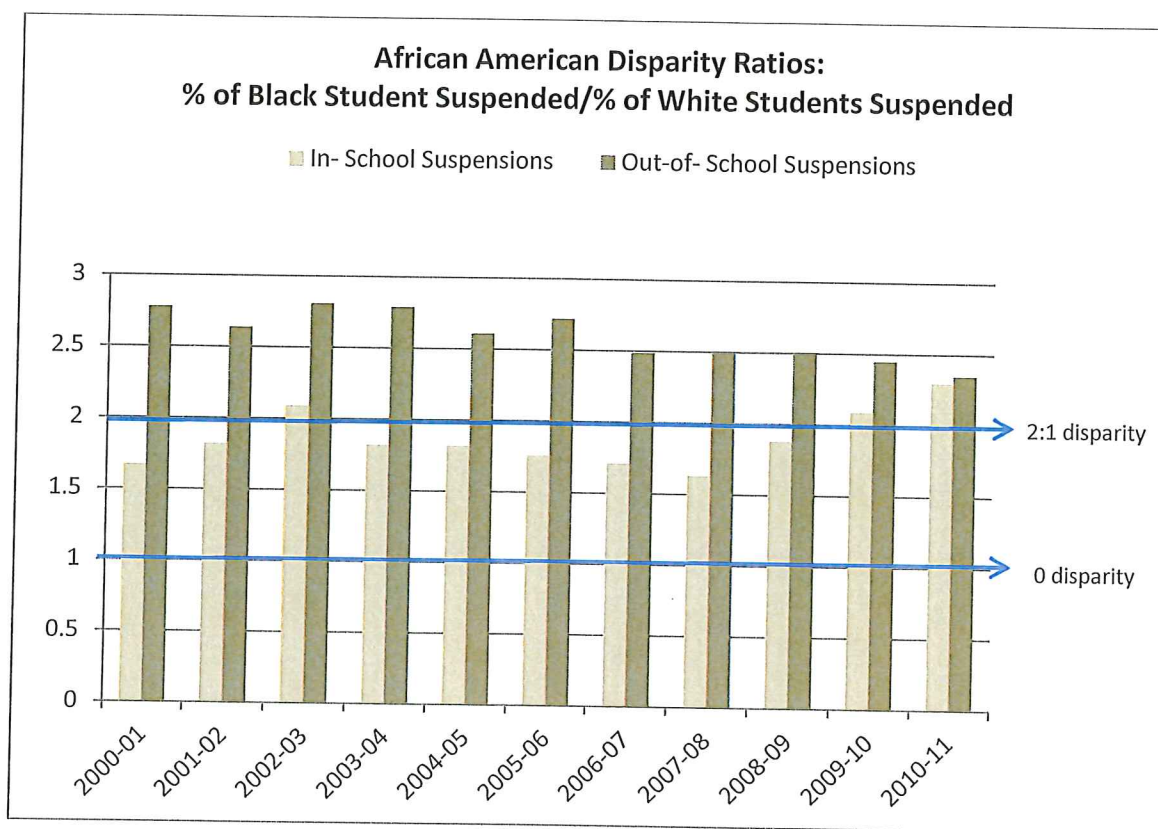
73. Although African American students constituted only 16% of the school population in 2010-2011, they accounted for 31% of students receiving out-of-school suspensions and 31% of students receiving in-school suspensions. *See Exhibit 3.*







74. This disparity has existed for many years. *See* Exhibit 4.



75. 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 4. While out of school suspensions have gone down slightly 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.* In school suspensions have risen consistently for the past five years and are now almost 2.5 to 1 when compared to white peers over the past ten years. *Id.*

76. There is no evidence to show that keeping students out of school improves either behavior or grades. Students who miss classes due to suspensions have a tougher time completing their assignments. They often end up with lower grades and are more likely to be retained, expelled or drop out. In 2010-2011 administrators suspended students out of school at the rate of one suspension for every ten students.<sup>21</sup> Among students who were suspended more than once, almost 32% were African American.<sup>22</sup> African American students were 69% of the students expelled in the 2010-2011 school year and 22% of the students retained.<sup>23</sup> The federal cohort graduation rate for African American students was 58%, compared to 72% for white students. In 2009-10, not a single African American student was enrolled in any Advanced Placement (AP) Science class. Only 35 Black students took even one AP class. In the entire district only 12 African American students were included in the gifted education program.<sup>24</sup> Last year FCSD ranked 66<sup>th</sup> out of 67 Florida counties in terms of the percentage of all high school graduates who planned to continue their education. *See Exhibit 11.*

77. The Flagler County School Board is aware that its schools are in need of reform as evidenced by its School Improvement and Education Accountability policy which requires each school to develop a school improvement plan. See Board Policy 209, at Exhibit 1. Each

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<sup>21</sup> Fla. Department of Education, Discipline by Grade/Race/Gender by District 2010-2011 Survey 5 Final Data as of 3/5/12.

<sup>22</sup> Civil Rights Data Collection, 2009 District or School Reports, <http://ocrdata.ed.gov/Home>

<sup>23</sup> Fla. Department of Education, Discipline by Grade/Race/Gender by District 2010-2011 Survey 5 Final Data as of 3/15/12.

<sup>24</sup> Civil Rights Data Collection, 2009 District or School Reports, <http://ocrdata.ed.gov/Home>

school improvement plan contains a section regarding discipline and/or suspension rates within its school. A sample school improvement plan is attached hereto as Exhibit 7.

78. 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](http://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 FCSD 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, Flagler County School District