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October 5, 2016

VIA MAIL, FACSIMILE, AND ELECTRONIC MAIL

Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**Re: Complaint against Danville Public Schools under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990**

I. Introduction

This Complaint is filed with the U.S. Department of Education Office of Civil Rights (“OCR”) against Danville Public Schools (“DPS”) on behalf of three African-American individual students and all other similarly-situated students who are subjected to discriminatory disciplinary policies and practices that disproportionately harm African-American students and students with disabilities in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and Title II of the Americans with Disabilities Act of 1990 (“ADA”). These policies and procedures have a particularly profound impact on the school division’s African-American students with disabilities in violation of Title VI, Section 504, and the ADA. Applying a “disparate impact” theory, this Complaint seeks to vindicate the rights of all Danville Public Schools students—including African-American students, students with disabilities, and especially African-American students with disabilities—who are disproportionately harmed by disciplinary policies and practices in Danville. In fact, countless African-American students in Danville have been suspended and excluded from class



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mostly for minor, subjective offenses. Similarly, students with disabilities are at greater risk than their non-disabled peers of a negative disciplinary outcome. This Complaint asks OCR to investigate DPS' disciplinary policies and practices and to require the school division to adopt adequate remedies, including those detailed below.

## II. Jurisdiction

DPS 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.

## III. Facts

### A. Representative Complainants' Statement of Facts<sup>1</sup>

#### Q. G.

1. Complainant Q. G. is an 8 year old, African-American student who resides with his family in Danville, Virginia.

2. Q. G. attends Gibson Elementary School where he is a third grader.

3. Q. G. 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 specific learning disability and speech/language impairment.

4. In a classroom-based assessment, his homeroom teacher noted that "Q. G.'s behavior has been a struggle for him," "Q. G. struggles with behaving properly," and "Q. G. . . . struggles with controlling his behavior."

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<sup>1</sup> Consent forms are attached hereto.

5. In November of 2014, a school psychologist evaluated Q. G. This evaluation revealed that Q. G.'s full scale IQ exceeded that of only 10% of children his age. The psychologist noted that Q. G. "may experience difficulty in keeping up with his peers in situations that require age-appropriate thinking and reasoning abilities."

6. During the evaluation, Q. G. "experienced problems with basic concepts such as older and younger and first and last . . . . Although his birthday was a couple of weeks ago, he stated: 'My birthday was yesterday.'"

7. The school psychologist made a number of suggestions for helping Q. G. develop age-appropriate behavior.

[Q. G.]'s teachers should discourage his peers from calling attention to, laughing at, or remarking about [Q. G.]'s inappropriate behaviors.

Teachers are encouraged to ensure [Q. G.]'s understanding of behavioral limits and expectations. Consequences for inappropriate behavior are most likely to be effective when they are developmentally appropriate, well defined, and consistently applied.

Parents and teachers are encouraged to reduce stress on [Q. G.] by using positive reinforcement strategies, avoiding corporal punishment, ensuring that [Q. G.] understands behavioral expectations, ignoring inappropriate behaviors when possible, redirecting [Q. G.]'s unsuccessful efforts to comply with expectations, and recognizing [Q. G.]'s efforts to comply.

8. These findings were consistent with the determination of Q. G.'s IEP Team on May 14, 2014 that Q. G. needed "positive reinforcement and private discussions of behavior." In his current IEP, the team noted that Q. G. needs "positive behavior interventions to keep him motivated to do the right thing and make good choices."

9. Unfortunately, DPS failed to deliver on these reasonable suggestions in the classroom.

10. During the 2014-2015 school year, while he was only in the first grade, Q. G. was written up seven times: once for “obscene language,” once for “obscene actions,” once for “profane language,” and four times for “disorderly conduct.”

11. On December 17, 2015, Q. G. was suspended from school for one day for a “Disruptive Demonstration,” a Level 1 infraction. Specifically, Q. G. was accused of “pushing a student on the floor and punching him in the nose.”

12. On April 11, 2016, Q. G. was reported to have “exposed his genitalia to a female student on the bus ride to school.” DPS stated that Q.G. had engaged in an “obscene gesture,” and suspended him from school for three additional days.

13. During these four days, Q. G. missed substantial instruction time, including the benefit of possible behavioral interventions.

S. S.

14. S. S. is a 16 year old, African-American student who resides with his family in Danville, Virginia.

15. S. 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 other health impairment. He has been diagnosed with attention deficit hyperactivity and generalized anxiety disorders. According to his IEP for the 2015-16 school year, S. S. “can become belligerent and stubborn when he feels embarrassed or threatened.”

16. During the 2014-15 school year, S. S. received so many disciplinary infractions that his parent, as a last resort, agreed with the IEP team that he would no longer participate in the general classroom environment and would be instead placed in DPS’s home-based program due to “behavioral concerns” and “conduct that resulted in [a] recommendation for long-term suspension.”

17. During the 2015-16 school year, he returned to the general education environment as a 10th grader at George Washington High School.

18. Upon his return to school in the 2015-16 school year, S. S. was “written up” a remarkable fifteen times: twice for “disorderly conduct,” four times for “attendance offenses,” twice for “tobacco offenses,” four times for “failure to follow directions” in class and on the bus, twice for “use of communication device,” and once for “disorderly behavior on bus.”

19. For these offenses, S. S. received at least a combined eight days of out-of-school suspension, eight days of in-school suspension, and five detentions during the 2015-16 school year.<sup>2</sup> During the eight days where he was out of school, S. S. missed substantial instruction time, including the benefit of possible behavioral interventions. In addition, DPS was five times as likely to punish S. S. for an offense with suspension than with detention. Several examples of offenses for which S. S. was suspended appear below.

20. On November 6, 2015, a teacher discovered S. S. wandering the halls during 5th period without a note. She also received a call from the band director that he had “chased” S. S. out of his building. For skipping class, S. S. was suspended from school, and thus forbidden to attend class, for one day.

21. On November 16, 2015, S. S. once again skipped 5th period, the class immediately after his lunch period. He was caught on video camera passing a cigarette to another student during this time. S. S. received a one-day, out-of-school suspension for missing class as well as another day for a tobacco offense.

22. On December 11, 2015, “Security” referred S. S. for discipline for “Possession of Pack of Cigarettes.” S. S. was suspended from school for two days.

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<sup>2</sup> Danville Public Schools has not produced complete disciplinary records for the 2015-2016 school year for S. S. We reserve the right to amend this complaint once DPS has produced these records.

23. On February 25, 2016, S. S.'s fourth period teacher asked him to put his phone away, and he failed to do so. Because this was his fifth alleged violation of the school division's "communication device" rule, S. S. was suspended from school for an astounding *three days*.

A. R.

24. A. R. is a 17-year-old African-American student who resides with his family in Danville, Virginia.

25. During the 2015-16 school year, A. R. attended George Washington High School where he was an 10th grader.

26. Since he began as a freshman at George Washington in 2014, A. R. has been "written up" 18 times, receiving a combined 18 days of out-of-school suspension and 10 days of in-school suspension. All suspensions were for "profanity," "disrespectful behavior," "skipping class," and fighting.

27. On August 24, 2015, A. R. received one day of in-school suspension for skipping fifth period.

28. On October 12, 2015, A. R. was suspended from school for one day for asking his teacher "what the fuck you looking at?"

29. On December 1, 2015, A. R. received one day of in-school suspension for arriving at fifth period 12 minutes late.

30. On December 3, 2015, A. R. received one day of in-school suspension for "talking and creating [a] disturbance."

31. On December 7, 2015, A. R. received one day of in-school suspension for once again skipping his fifth period class.

32. On April 20, 2016, A. R. discovered a letter regarding a bomb threat at the school, which he turned into his teacher. He was then suspended for three days for giving false information. On that same day, he was suspended an additional three days for failing to follow directions by refusing to sit in a desk.

33. On May 18, 2016, A. R.'s mother requested that, given A. R.'s chronic disciplinary issues, that the school division conduct a functional behavioral assessment in order to determine whether A. R. needed a behavioral intervention plan. To date, the school division has failed to conduct this functional behavioral assessment.

34. On August 12, 2016, A. R. engaged in a physical altercation with another student who had been bullying A. R. and his brother for months. He was suspended for 10 days and was thereafter placed in DPS' alternative school, the Langston Focus School,<sup>3</sup> for the remainder of this school year.

B. Discipline Disparities in Danville Public Schools Are Fueled by the Division's Vague, Subjective, and Harsh Discipline Policies

35. DPS' disciplinary policies for the 2015-16 school year are contained in the Standards for Student Conduct (Standards).<sup>4</sup> The Standards rely on subjective and vague terms and provisions that allow harsh punishments for minor offenses and drive the unequal treatment of African-American students and students with disabilities.

36. The Standards are promulgated by the City of Danville School Board.<sup>5</sup>

37. The stated objectives of the Standards are: "1. To provide standards and guidelines for student behavior; 2. To assist each student in becoming a responsible, productive and self disciplined citizen; 3. To maintain a safe and orderly environment in the classroom and all other areas of the school."<sup>6</sup>

38. As set forth in the Standards, DPS has adopted a "progressive" disciplinary policy that utilizes a menu of various consequences to address student misconduct. The Standards divide disciplinary violations into five levels of progressive severity: Level 1, minor violations; Level 2, intermediate

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<sup>3</sup> In 2014-15, Langston Focus was 91.5% African American.

<sup>4</sup> Attached hereto as Exhibit 1.

<sup>5</sup> Exhibit 1, p. i.

<sup>6</sup> Exhibit 1, p. 1.

violations; Level 3, major violations; Level 4, severe violations; and Level 5, expulsion violations.<sup>7</sup> In application, DPS' Standards do not circumscribe administrative discretion in a manner that prevents or reduces disparate treatment of African-American students or students with disabilities.

39. Progressive Levels bear little correlation with any reasonable idea of progressive discipline; potential punishments for Level 1 offenses by high schoolers range from a student reprimand to in-school suspension.<sup>8</sup> Punishments for Level 2 violations, regardless of the student's age, range from detention to a 10 day out-of-school suspension, which is the state maximum for short term suspensions.<sup>9</sup>

40. Level 2, "intermediate violations," punishable by up to 10 days of suspension, include: "failing to follow directions," "gambling," "profane language," and "disrespectful behavior."<sup>10</sup> Thus, the Standards allow harsh punishments for seemingly minor misbehavior, which subsequently allows school personnel to disproportionately impose out-of-school suspensions and expulsions on African-American and disabled students.

41. The Standards also heavily punish recidivism. Repeated violations of any offense can result in referral to the next level of punishments.<sup>11</sup> Therefore, even "minor offenses" such as dress code violations, classroom disruptions, and tardiness can result in out-of-school suspensions if repeated.<sup>12</sup> Under the Standards, multiple acts of "disorderly conduct" or insubordination (Level 3 offenses)<sup>13</sup> can be punished to the same degree as bomb threats, robbery, and sexual offenses (Level 4 offenses).<sup>14</sup>

42. The standards define offenses broadly. "Disrespectful behavior," for instance, is defined as "Acting in a rude and impolite manner to someone *or something*" (emphasis added).<sup>15</sup> "Classroom

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<sup>7</sup> Exhibit 1, pp. 13-18.

<sup>8</sup> Exhibit 1, p. 13.

<sup>9</sup> Exhibit 1, p. 15.

<sup>10</sup> Exhibit 1, p. 14.

<sup>11</sup> Exhibit 1, pp. 13-17.

<sup>12</sup> Exhibit 1, pp. 13-15.

<sup>13</sup> Exhibit 1, p. 16.

<sup>14</sup> Exhibit 1, p. 17.

<sup>15</sup> Exhibit 1, p. 27.



disruption,” a Level 1 offense, is defined as “Any conduct or behavior that interferes with or distracts from the teaching and learning process.”<sup>16</sup>

43. DPS’ disciplinary procedures suffer from a lack of definition that leads to disparate application of ambiguous terms. For example, Levels 1, 2, and 3 include subjective and vague offenses such as “classroom disruption,” which is a Level 1 offense,<sup>17</sup> “failing to follow directions,” which is a Level 2 offense,<sup>18</sup> and “insubordination,” which is a Level 3 offense.<sup>19</sup> Indeed, these Levels ultimately provide limited guidance on distinguishing between offenses. They are also silent on potential areas of overlap, such as that between “profane language,” which is a Level 2 offense,<sup>20</sup> “disrespectful behavior,” which is a Level 2 offense,<sup>21</sup> and “disorderly conduct,” which is a Level 3 offense.<sup>22</sup> Alarming, school personnel wield complete and unchecked autonomy to choose which discipline to impose within each category of behavior—ranging from relatively minor interventions, such as a conference, to serious consequences like suspension or expulsion. Accordingly, the corresponding punishments vary, without any explanation for the distinctions among the offenses.

#### IV. Claim: Disparate Impact

44. Section 601 of Title VI of the Civil Rights Act provides that no person shall, “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>23</sup> This section of the Act is applied to Virginia through 34 C.F.R. § 100.1.

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<sup>16</sup> Exhibit 1, p. 26.

<sup>17</sup> Exhibit 1, p. 13.

<sup>18</sup> Exhibit 1, p. 14.

<sup>19</sup> Exhibit 1, p. 16.

<sup>20</sup> Exhibit 1, p. 14.

<sup>21</sup> Exhibit 1, p. 14.

<sup>22</sup> Exhibit 1, p. 16.

<sup>23</sup> 42 U.S.C. § 2000(d) (2016).

45. 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].”<sup>24</sup>

46. It is permissible for these regulations to proscribe actions that the statute itself does not specifically prohibit.<sup>25</sup>

47. As interpreted by Department of Education regulations, Title VI and Section 504 prohibit government practices that have the *effect*—even if not the *intent*—of discriminating by race or disability.<sup>26</sup> Under this “disparate impact” view, if a public school division’s disciplinary policies or practices disparately harm students of color or students with disabilities, they are unlawful unless they are justified by educational necessity *and* there are no less discriminatory means of achieving the same educational goals.

48. DPS’ suspension practices cannot survive this disparate impact analysis. As set forth below, DPS, by giving school officials broad discretion in the application of vague and ambiguous disciplinary policies, punishes students of color more harshly and more frequently than similarly situated White students. In addition, this same broad discretion results in the punishment of students with disabilities more harshly and more frequently than their similarly situated non-disabled peers.

49. These disciplinary policies do not serve an educational necessity. Even if they did, however, equally effective and less discriminatory alternatives exist.

50. In Danville, each step of this analysis demonstrates that the school division’s suspension practices have the unlawful effect of discriminating by race and disability.

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<sup>24</sup> 42 U.S.C. § 2000(d)(1) (2016).

<sup>25</sup> *Alexander v. Choate*, 469 U.S. 287, 292-94 (1985); *Georgia State Conferences of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

<sup>26</sup> 34 C.F.R. § 100.3(b)(2); 28 C.F.R. § 41.51(b)(3).

A. DPS' Disciplinary Policies Have a Disparate, Adverse Impact on African-American Students and Students with Disabilities

51. The school population of the City of Danville is approximately 68.1% African-American, 6.9% Hispanic, and 21% White.<sup>27</sup>

Figure 1: Danville Public Schools Demographics by School<sup>28</sup>

| School                                   | Total Population | African-American | Hispanic | White | Economically Disadvantaged | Students with Disabilities |
|--|------------------|------------------|----------|-------|----------------------------|----------------------------|
| Grove Park Preschool                     | 136              | 61%              | 9.6%     | 20.6% | 47.1%                      | 30.1                       |
| Northside Preschool                      | 127              | 73.2%            | 5.5%     | 15%   | 49.6%                      | Unavailable                |
| Forest Hills Elementary                  | 283              | 38.5%            | 7.4%     | 47%   | 39.2%                      | 12.4                       |
| Gibson Elementary                        | 617              | 74.4%            | 6.3%     | 14.4% | 59.8%                      | 18.3                       |
| Johnson Elementary                       | 589              | 84.2%            | 3.7%     | 9.3%  | 58.1%                      | 10.7                       |
| Park Avenue Elementary                   | 457              | 57.1%            | 11.6%    | 27.4% | 51.4%                      | 13.1                       |
| Schoolfield Elementary                   | 558              | 60.2%            | 9.7%     | 24.7% | 60.8%                      | 12.0                       |
| Woodberry Hills Elementary <sup>29</sup> | 431              | 81.4%            | 3.5%     | 11.8% | 59.6%                      | 13.9                       |
| Bonner Middle                            | 659              | 70.9%            | 6.1%     | 19.9% | 51.9%                      | 15.2                       |
| Westwood Middle                          | 574              | 69.5%            | 8.5%     | 18.6% | 47.2%                      | 18.1                       |
| Galileo Magnet High                      | 287              | 39%              | 6.6%     | 47%   | 26.5%                      | 5.2                        |
| George Washington High                   | 1,472            | 70.4%            | 6.5%     | 20.1% | 37.3%                      | 17.9                       |
| Langston Focus School                    | 59               | 91.5%            | 1.7%     | 6.8%  | 42.4%                      | Unavailable                |

<sup>27</sup> Exhibit 2, Danville City Public Schools Fact Sheet, p. 1. This document summarizes information collected by the Virginia Department of Education.

<sup>28</sup> Exhibit 2, p. 1.

<sup>29</sup> Woodberry Hills, which is 81% percent African-American, was denied accreditation for the 2015-2016 school year. Woodberry Hills is one of 22 schools in the Commonwealth of Virginia that share this ignominious distinction.

52. Students in DPS are suspended out of school more frequently and are at greater risk of suspension if they are African-American or have a disability. Consequently, students of color who also have disabilities are at the greatest risk of out-of-school suspensions.

53. During the 2014-2015 school year, 1,153 students (or 18.26 percent of the student population) were short-term suspended at least once, the third highest rate by total student population in the Commonwealth of Virginia.<sup>30</sup> In contrast, 53 school divisions across the state short-term suspended 5 percent or less of their enrollment that year.<sup>31</sup> Of those 1,153 students, 86% were African-American.<sup>32</sup> At every school in Danville for which there is information available, African-American students were excluded from the classroom more often than their White peers during the 2014-2015 school year.<sup>33</sup>

54. In that same year, 29 students were long-term suspended at least once, the tenth highest rate by total student population in the Commonwealth.<sup>34</sup> Of those 29 students, 90% were African-American.<sup>35</sup>

55. Finally, in the same year, 29 students were expelled, the highest expulsion rate by total student population in the Commonwealth.<sup>36</sup> Of those 29, 79% were African-American.<sup>37</sup>

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<sup>30</sup> Exhibit 2, p. 3.

<sup>31</sup> Jason Langberg and Angela Ciolfi, *Suspended Progress*, JUSTCHILDREN PROGRAM, LEGAL AID JUSTICE CENTER App'x B (May 2016), available at <https://www.justice4all.org/wp-content/uploads/2016/05/Suspended-Progress-Report.pdf>.

<sup>32</sup> Exhibit 2, p. 3.

<sup>33</sup> School-specific disciplinary data was obtained from DPS via several FOIA requests, attached hereto as Exhibit 3.

<sup>34</sup> Exhibit 2, p. 3.

<sup>35</sup> Exhibit 2, p. 3.

<sup>36</sup> Exhibit 2, p. 3.

<sup>37</sup> Exhibit 2, p. 3.

Figure 2: Suspension and Expulsion Rates (2014-15)<sup>38</sup>

|                             | Students Short-Term Suspended at Least Once | Students Long-Term Suspended at Least Once | Students Expelled at Least Once |
|-----------------------------|---|--|---------------------------------|
| Number of Students          | 1,153                                       | 29   | 29                              |
| Ranking in VA (by rate)     | 3rd highest                                 | 10th highest                               | 1st highest                     |
| % African-American Students | 85%   | 90%  | 79%                             |

56. During the 2014-15 school year, African-American students were at a much higher risk of suspension than White students: 18% versus 8%, the third largest disparity between the two groups in Virginia.<sup>39</sup>

57. During the same time period, students with disabilities were also at a higher risk for suspension than students who were not disabled: 25% to 17%, the 42nd highest disparity between the two groups in Virginia.<sup>40</sup> It is not at all obvious why students with disabilities would be suspended more often than students without disabilities. After all, the law mandates that students with disabilities be given extra support and special education services, and the law prohibits schools from suspending these students for more than 10 days if the behavior is a manifestation of the student’s disability. Yet, in Danville, students with disabilities were suspended at a higher rate than their non-disabled peers. This differential was especially pronounced for African-American students. Danville suspended 30.67 percent of its male African-American students with disabilities during the 2014-15 school year.

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<sup>38</sup> Exhibit 2, p. 3.

<sup>39</sup> Exhibit 2, p. 3.

<sup>40</sup> Exhibit 2, p. 3.

Figure 3: Risk of Short-Term Suspension: Race<sup>41</sup>

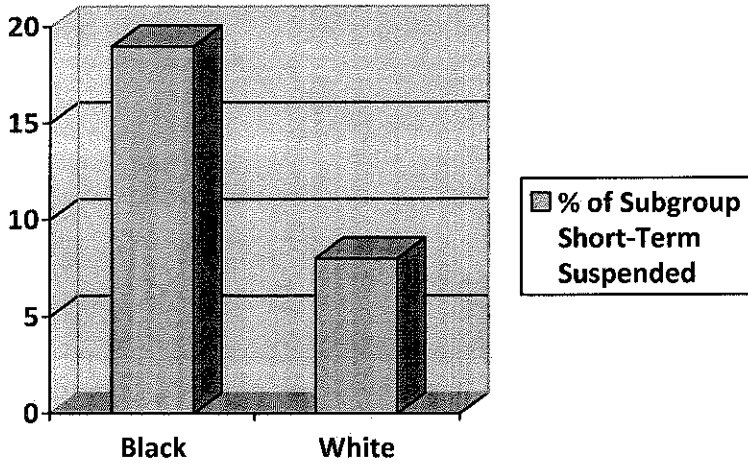
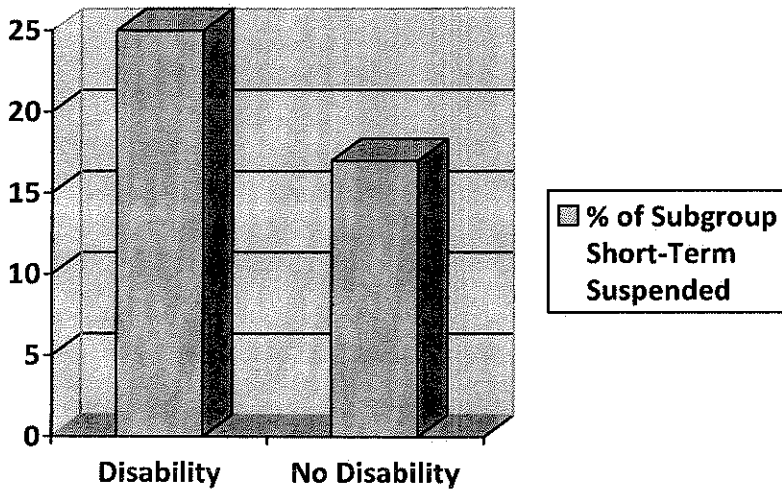


Figure 4: Risk of Short-Term Suspension: Disability<sup>42</sup>



58. Even greater disparities appear when this data is disaggregated by school. At Bonner Middle School, for example, 161 African-American students were short-term suspended 527 times in 2014-15.<sup>43</sup>

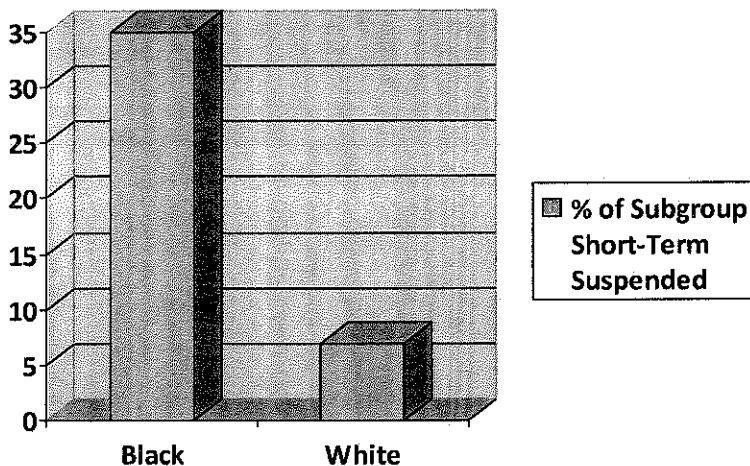
<sup>41</sup> Exhibit 2, p. 3.

<sup>42</sup> Exhibit 2, p. 3.

<sup>43</sup> Exhibit 3.

During the same time period, 9 White students were suspended 25 times.<sup>44</sup> African-American students were nearly 5 times more likely to be suspended than their White peers. Bonner Middle School is 70% African-American and 20% White.<sup>45</sup>

Figure 5: Risk of Short Term Suspension by Race: Bonner Middle School<sup>46</sup>



59. At Forest Hills Elementary, African American students accounted for only 38.5% of the school, but nearly 77% of short-term suspensions in 2014-15.<sup>47</sup> African American students were four times more likely to be short-term suspended than White students.<sup>48</sup>

60. At Galileo Magnet High, which was 39% African American and 47% White in 2014-15, African American students were approximately 13 times as likely to be short-term suspended at least once than similarly situated White students.<sup>49</sup>

61. African-American and disabled students are also more likely to be referred to law enforcement. In 2011-12, African-American students made up 69% of the school population, but 81% of

<sup>44</sup> Exhibit 3.

<sup>45</sup> Exhibit 2, p. 1.

<sup>46</sup> Exhibit 3.

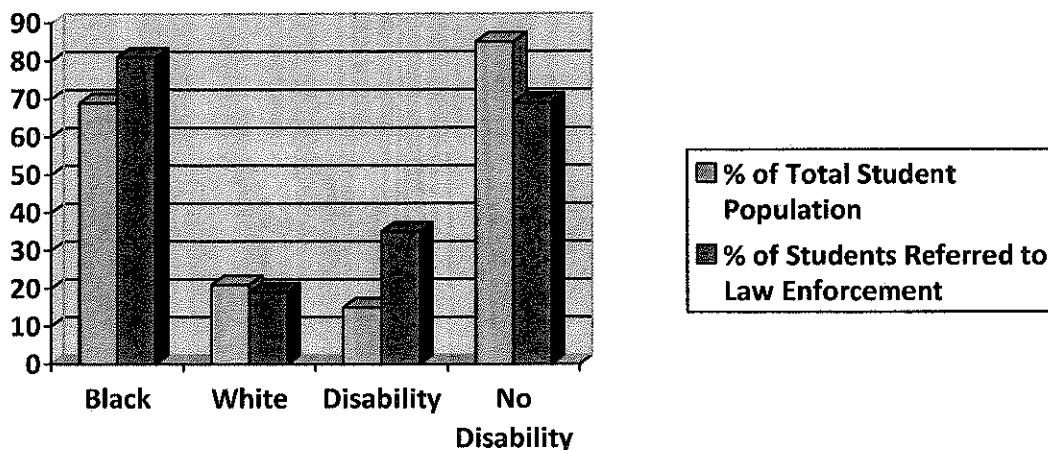
<sup>47</sup> Exhibit 3.

<sup>48</sup> Exhibit 3.

<sup>49</sup> Exhibit 3.

law enforcement referrals.<sup>50</sup> Students with a disability made up 15% of the student population, but 35% of the referrals.<sup>51</sup> White students made up 21% of the student population, but only 19% of the referrals.<sup>52</sup> Students without a disability made up 85% of the student population, but only 69% of these referrals.<sup>53</sup>

Figure 6: Referrals to Law Enforcement<sup>54</sup>



62. These high and disparate rates are not due to written policies that intentionally discriminate against students of color or students with disabilities. In fact, this Complaint does not allege intentional discrimination by anyone involved in Danville Public Schools. Instead, we concede that DPS' policies are facially neutral, and were likely written with the intention of ensuring a safe and orderly learning environment.

63. But DPS' disciplinary policies and practices are unnecessarily harsh with respect to its African-American and disabled students. By making maximum short-term suspensions available for virtually every conceivable student offense, DPS gives teachers and disciplinarians unbridled discretion to

<sup>50</sup> Exhibit 2, p. 3.

<sup>51</sup> Exhibit 2, p. 3.

<sup>52</sup> Exhibit 2, p. 3.

<sup>53</sup> Exhibit 2, p. 3.

<sup>54</sup> Exhibit 2, p. 3.



act on their biases and issue inconsistent and inequitable punishments to students of color and students with disabilities.

64. Indeed, the lack of clarity in the Standards drives the disparities discussed. Both implicit and explicit bias may affect school personnel's disciplinary decisions. First, staff with racial biases can choose to discipline African-American and disabled students more harshly than their similarly situated peers. This different treatment is permitted under the Standards. Second, and likely more common, is the effect of implicit bias on school disciplinary decisions. Implicit bias is the sum of "unconscious biases that people are unaware they hold but influence their perceptions, behaviors, and decision making."<sup>55</sup> In the school disciplinary context, research has found that implicit biases held by school staff may lead to disparities in discipline. "Pervasive societal . . . associations surrounding Blackness" such as African-American students being less respectful, and more aggressive and dangerous impact how African-American students are perceived.<sup>56</sup> Ambiguous or subjective offenses, which rely on school staff's interpretation of a behavior, are shaped by implicit biases. As a result and for example, school disciplinary offenses like "threatening behavior" or "disrespect" are applied more often and more harshly to students of color.<sup>57</sup> Thus, the high rates of disparities in Danville Public School suggest that the developmentally typical behaviors of African-American and disabled students are defined as a violation of DPS' disciplinary policies while the same or similar behaviors by their similarly situated peers are not.

65. This discretion is increased by the vague definitions and overlapping terms contained in the Standards.

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<sup>55</sup> Cheryl Staats, *Implicit Racial Bias and School Discipline Disparities*, KIRWAN INSTITUTE 1 (May 2014), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>.

<sup>56</sup> *Id.* at 2; *see generally* U.S. Dep't of Justice, Investigation of the Ferguson Police Department (Mar. 4, 2015), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) (describing the wide discretion retained by police officers and court officials and how this drove racial disparities at every level of the criminal justice system).

<sup>57</sup> Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, NATIONAL EDUCATION POLICY CENTER 7 (Oct. 2011), available at <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

66. Moreover, the often brutal and severe consequences for recidivism contained in the Standards unintentionally target students with mental and emotional disabilities and students who feel culturally misunderstood in the classroom.

67. The disproportionate impact of DPS' disciplinary policies on African-American students and students with disabilities causes long-lasting harm to these children and can result in fewer opportunities well into their adult lives. Research shows that students who are suspended and expelled from school are more likely to experience decreased academic achievement,<sup>58</sup> increased behavior problems,<sup>59</sup> dropping out,<sup>60</sup> and justice system involvement.<sup>61</sup> In its "Guiding Principles" document issued in January 2014, the U.S. Department of Education noted:

The widespread overuse of suspensions and expulsions has tremendous costs. Students who are suspended or expelled from school may be unsupervised during daytime hours and cannot benefit from great teaching, positive peer interactions, and adult mentorship offered in class and in school. Suspending students also often fails to help them develop the skills and strategies they need to improve their behavior and avoid future problems. Suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system. When carried out in connection with zero-tolerance policies, such practices can erode trust between students and school staff, and undermine efforts to create the positive school climates needed to engage students in a well-rounded and rigorous curriculum. In fact, research indicates an association between higher suspension rates and lower schoolwide academic achievement and standardized test scores. Schools and taxpayers also bear the steep direct and indirect costs from the associated grade retention and elevated school dropout rates.<sup>62</sup>

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<sup>58</sup> Tony Fabelo, et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER xi (July 2011), available at [https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

<sup>59</sup> Daniel J. Losen et al., *Suspended Education in California*, THE CENTER FOR CIVIL RIGHTS REMEDIES (Apr. 10, 2012), available at <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/suspended-education-in-california/SuspendedEd-final3.pdf>

<sup>60</sup> Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, NATIONAL EDUCATION POLICY CENTER 11 (Oct. 2011), available at <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

<sup>61</sup> Tony Fabelo, et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER 61-72 (July 2011), available at [https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

<sup>62</sup> United States Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* 3-4, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (last visited Sept. 20, 2016).

B. Educational Necessity

68. The presumed goal behind DPS' disciplinary policies and practices is to ensure that schools are safe and orderly.

69. While this is an important educational goal, DPS' current disciplinary policies are not necessary, let alone narrowly tailored, to meet this goal.

70. There is no tight fit between the goal of school safety and DPS' vague and overly broad system of school discipline, and there is no evidence that DPS' disciplinary policies and practices actually improve school safety and order.

71. Suspension and expulsion have not been shown to deter misbehavior or improve school safety or school climate, especially when used to punish students for relatively minor misbehavior.

72. To the contrary, high levels of suspension and expulsion can damage school climate and increase misbehavior, according to the American Psychological Association,<sup>63</sup> the American Academy of Pediatrics,<sup>64</sup> the National Association of School Psychologists,<sup>65</sup> the National Education Association,<sup>66</sup> the American Federation of Teachers,<sup>67</sup> the National Parent Teacher Association,<sup>68</sup> and the U.S. Department of Education,<sup>69</sup> as well as many researchers.<sup>70</sup>

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<sup>63</sup> *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, AMERICAN PSYCHOLOGIST 852, 859-60 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

<sup>64</sup> *Policy Statement: Out-of-School Suspension and Expulsion*, 131 PEDIATRICS (Mar. 2013), available at <http://pediatrics.aappublications.org/content/pediatrics/131/3/e1000.full.pdf>.

<sup>65</sup> *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers* (2001), available at [http://www.nascenter.org/factsheets/zt\\_fs.html](http://www.nascenter.org/factsheets/zt_fs.html) (last visited Sept. 27, 2016).

<sup>66</sup> Mary Ellen Flannery, *The School-Prison-Pipeline: Time to Shut It Down* (Jan. 5, 2015), available at <http://neatoday.org/2015/01/05/school-prison-pipeline-time-shut/> (last visited Sept. 27, 2016).

<sup>67</sup> *Reclaiming the Promise: A New Path Forward on School Discipline Practices*, available at <http://www.aft.org/position/school-discipline> (last visited Sept. 27, 2016).

<sup>68</sup> *Addressing the Out-of-School Suspension Crisis: A Policy Guide for School Board Members* 1 (Apr. 2013), available at <https://www.nsba.org/sites/default/files/0413NSBA-Out-Of-School-Suspension-School-Board-Policy-Guide.pdf> (last visited Sept. 27, 2016).

<sup>69</sup> *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline*, U.S. DEPARTMENT OF EDUCATION 11-12 (Jan. 8, 2014) (hereinafter referred to as "Dear Colleague"), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>; United States Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* 3-4, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (last visited Sept. 20, 2016).

73. A recent study by The Civil Rights Project of the University of California-Los Angeles found that even when controlling for other causes, suspension itself increased the risk of not graduating from high school by 12 percentage points.<sup>71</sup>

### C. Less Discriminatory Alternatives

74. Even if out-of-school suspensions served the interests of educational necessity, less discriminatory practices are available that are as effective or more effective.

#### a. School-Wide Positive Behavioral Interventions and Supports

75. Implementing school-wide Positive Behavioral Interventions and Supports (hereinafter referred to as “PBIS”) with high fidelity would reduce student misconduct and disciplinary removal.<sup>72</sup>

76. PBIS seeks to change underlying attitudes and policies concerning how behavior is addressed.<sup>73</sup>

77. PBIS involves three levels to reduce the need for disciplinary action: 1) core strategies for all students to prevent academic and behavioral struggles, 2) interventions of moderate intensity for students at some risk, and 3) interventions of higher intensity for students at high risk.<sup>74</sup>

78. Examples of interventions include effectively designing the physical environment of the classroom, individualized behavioral intervention plans, and functional behavioral assessments. Research

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<sup>70</sup> See *supra* notes 57-60.

<sup>71</sup> Russell W. Rumberger and Daniel J. Losen, *The High Cost of Harsh Discipline and Its Disparate Impact*, THE CENTER FOR CIVIL RIGHTS REMEDIES 16 (July 2016), available at [https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA\\_HighCost\\_6-2\\_948.pdf](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA_HighCost_6-2_948.pdf) (last visited Aug. 22, 2016).

<sup>72</sup> Dear Colleague, Appendix, p. 2.

<sup>73</sup> Emily Morgen et al., *The School Discipline Consensus Report*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER 52 (June 3, 2014), available at [http://csgjusticecenter.org/wp-content/uploads/2014/06/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf).

<sup>74</sup> *Id.*

indicates that PBIS is effective in reducing the need for disciplinary action, improving school climate, and improving students' academic, emotional, and behavioral health outcomes.<sup>75</sup>

#### b. MyTeachingPartner

79. Supportive teacher-student relationships and effective teacher-student interactions are essential to preventing misbehavior. MyTeachingPartner (“MTP”) is a professional development system designed to improve teacher-student interactions and student engagement.

80. MTP provides online resources, activities, coaching, and video feedback for teachers. The MTP coaching model uses the Classroom Assessment Scoring System (“CLASS”) to provide teachers with regular and rigorous feedback about their behavior in the classroom and interactions with students.

81. Teachers are evaluated in the areas of emotional support, classroom organization, and instructional support.

82. Studies of MTP have found statistically significant beneficial effects tied to positive classroom climate, teacher sensitivity, teacher regard for adolescent perspectives, instructional learning formats, and analysis and inquiry.<sup>76</sup>

#### c. Social and Emotional Learning Programs

83. DPS could reduce misbehavior and eliminate punitive behavioral consequences by implementing one or more proven social and emotional learning (“SEL”) programs in all grade levels.<sup>77</sup>

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<sup>75</sup> *Id.*; David Osher et al., *How Can We Improve School Discipline?*, 39 EDUCATIONAL RESEARCHER 48, 50-53 (2010), available at [https://www.district287.org/uploaded/A\\_Better\\_Way/HowCanWeImproveSchoolDiscipline.pdf](https://www.district287.org/uploaded/A_Better_Way/HowCanWeImproveSchoolDiscipline.pdf); Russell Skiba and Jeffrey Sprague, *Safety Without Suspensions*, EDUCATIONAL LEADERSHIP 40-42 (Sept. 2008), available at [http://www.pbis.org/common/cms/files/Coach\\_Trainer/Articles/Safety%20Without%20Suspensions.pdf](http://www.pbis.org/common/cms/files/Coach_Trainer/Articles/Safety%20Without%20Suspensions.pdf); Russell Skiba and M. Karega Rausch, *School Disciplinary Systems: Alternatives to Suspension and Expulsion*, in CHILDREN'S NEEDS III: DEVELOPMENT, PREVENTION, AND INTERVENTION, 95-96 (George G. Bear and Kathleen M. Minke, eds., 2006) available at [http://www.indiana.edu/~equity/docs/Alternatives\\_to\\_Expulsion.pdf](http://www.indiana.edu/~equity/docs/Alternatives_to_Expulsion.pdf).

<sup>76</sup> Daniel Losen et al., *Eliminating Excessive and Unfair Exclusionary Discipline in Schools: Policy Recommendations for Reducing Disparities*, THE ATLANTIC PHILANTHROPIES 7 (Mar. 2014), available at [http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity\\_Policy\\_010915.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_Policy_010915.pdf); University of Virginia Curry School of Education, *Measuring and Improving Teacher Student Interactions in PK-12 Settings to Enhance Students' Learning*, CENTER FOR ADVANCED STUDY OF TEACHING AND LEARNING 3, available at [http://curry.virginia.edu/uploads/resourceLibrary/CLASS-MTP\\_PK-12\\_brief.pdf](http://curry.virginia.edu/uploads/resourceLibrary/CLASS-MTP_PK-12_brief.pdf) (last visited Dec. 14, 2015); University of Virginia Curry School of Education, *My Teaching Partner (Pre-K) A Series of NICHD-Funded Studies*, 1-3, available at [http://curry.virginia.edu/uploads/resourceLibrary/Research\\_Brief\\_MTP-PreK\\_NICHHD2.pdf](http://curry.virginia.edu/uploads/resourceLibrary/Research_Brief_MTP-PreK_NICHHD2.pdf) (last visited Sept. 14, 2016).

84. SEL is the process through which children and adults acquire and apply the knowledge, attitudes, and skills necessary to understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions.<sup>78</sup>

85. SEL programs create learning environments that meet the social and emotional needs of students—including feelings of belonging, safety, and community—and thus provide ideal conditions for academic and personal success.<sup>79</sup>

86. Rigorous studies of several SEL structures demonstrate improvements in student behavior. Significant findings include reductions in aggression and disruptive behavior, decreases in antisocial behavior, increases in socially competent behavior, and less bullying and argumentative behavior.<sup>80</sup>

87. David Osher, the Director of the Safe and Supportive Schools Technical Assistance Center, suggests that “[i]f classroom activities lack holding power, it is unlikely that schoolwide discipline will make up for this deficiency.”<sup>81</sup> Therefore, social and emotional learning approaches are likely most effective if implemented in combination with PBIS.<sup>82</sup>

#### d. Implicit Bias and Cultural Competency Training

88. DPS could reduce disparities in referrals from classrooms to administrators and law enforcement by implementing mandatory, ongoing, high-quality professional development for staff in the

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<sup>77</sup> Dear Colleague, Appendix, p. 2.

<sup>78</sup> Collaborative for Academic, Social, and Emotional Learning, *What is Social and Emotional Learning?*, available at <http://www.casel.org/social-and-emotional-learning/> (last visited Sept. 20, 2016).

<sup>79</sup> Marc A. Brackett and Susan E. Rivers, *Transforming Students' Lives with Social and Emotional Learning*, YALE CENTER FOR EMOTIONAL INTELLIGENCE 4, available at <http://ei.yale.edu/wp-content/uploads/2013/09/Transforming-Students%E2%80%99-Lives-with-Social-and-Emotional-Learning.pdf> (last visited Sept. 20, 2016); see also Maanvi Singh, *Why Emotional Learning May Be as Important as the ABCs*, NPR (Dec. 31, 2013, 11:03 A.M.), available at <http://www.npr.org/sections/ed/2014/12/31/356187871/why-emotional-literacy-may-be-as-important-as-learning-the-a-b-c-s>.

<sup>80</sup> David Osher *et al.*, *How Can We Improve School Discipline?*, 39 EDUCATIONAL RESEARCHER 48, 50-53 (2010), available at [https://www.district287.org/uploaded/A\\_Better\\_Way/HowCanWeImproveSchoolDiscipline.pdf](https://www.district287.org/uploaded/A_Better_Way/HowCanWeImproveSchoolDiscipline.pdf).

<sup>81</sup> *Id.* at 48, 49.

<sup>82</sup> *Id.* at 49, 53.

areas of implicit bias, cultural competency, culturally responsive classroom management, and working effectively with students with disabilities, including de-escalation strategies.<sup>83</sup>

89. Enhancing staff awareness of their own implicit or unconscious biases can help ensure equitable and fair responses to student misconduct.<sup>84</sup>

#### e. Threat Assessments

90. Threat assessment is a violence prevention strategy that involves identifying student threats to commit a violent act, determining the seriousness of the threat, and developing intervention plans that protect potential victims and address the underlying problem or conflict that stimulated the threatening behavior.<sup>85</sup>

91. The Virginia Student Threat Assessment Guidelines (“VSTAG”), an evidence-based model for schools to use in conducting student threat assessments, was developed at the University of Virginia in 2002.

92. According to statewide surveys, schools using the Virginia Guidelines had fairer discipline and lower levels of aggressive student behaviors.

93. Analysis of school records found that the longer a school used the Virginia Guidelines, the lower its long-term suspension rates. All analyses controlled for school size, minority composition, and socioeconomic status of the student body.

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<sup>83</sup> Dear Colleague, Appendix, pp. 2-3.

<sup>84</sup> United States Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* 3-4, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (last visited Sept. 20, 2016).

<sup>85</sup> National Association of School Psychologists, *Threat Assessment for School Administrators and Crisis Teams*, available at <http://www.nasponline.org/resources-and-publications/resources/school-safety-and-crisis/threat-assessment-at-school/threat-assessment-for-school-administrators-and-crisis-teams> (last visited Sept. 20, 2016); Dewey G. Cornell & Shane Jimerson, *Threat Assessment at School: A Primer for Educators*, NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS, available at [https://safesupportivelearning.ed.gov/sites/default/files/NASP\\_Threat%20Assessment\\_Dewey\\_Cornell.pdf](https://safesupportivelearning.ed.gov/sites/default/files/NASP_Threat%20Assessment_Dewey_Cornell.pdf) (last visited Sept. 20, 2016).

#### f. Restorative Justice Processes

94. The U.S. Department of Education defines restorative justice (“RJ”) practices as “non-punitive disciplinary responses that focus on repairing harm done to relationships and people, developing solutions by engaging all persons affected by a harm, and accountability.”<sup>86</sup> This approach “provides high levels of both control and support to encourage appropriate behavior, and places responsibility on students themselves, using a collaborative response to wrongdoing.”<sup>87</sup>

95. The RJ process generally involves the offender, victim, community (e.g. staff, family, and other students), and a facilitator.

96. It proceeds in two steps: a non-adversarial, facilitated dialogue about the harms and needs of participants; and the development of a plan for how everyone involved will contribute to repairing the harm done, preventing future harm, and restoring relationships.

97. Examples of RJ processes include community conferencing, peer juries, class meetings, peer mediation, and circle processes.

98. Empirical studies report a decrease in exclusionary discipline and harmful behavior after the implementation of RJ programs.<sup>88</sup>

#### g. Revising Written Discipline Policies

99. DPS could reduce the frequent and disparate use of harsh discipline by overhauling its entire code of student of conduct to reflect the following:

- discrete categories of prohibited conduct narrowly tailored to ensure school order and safety;

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<sup>86</sup> United States Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* 24, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (last visited Sept. 20, 2016).

<sup>87</sup> Abby J. Porter, *Restorative Practices in Schools: Research Reveals Power of Restorative Approach, Part II*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES 1 (2007), available at [http://www.iirp.edu/iirpWebsites/web/uploads/article\\_pdfs/schoolresearch2.pdf](http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/schoolresearch2.pdf).

<sup>88</sup> Trevor Fronius, et al., *Restorative Justice in US Schools: A Research Review*, WESTED JUSTICE & PREVENTION RESEARCH CENTER 26-27 (Feb. 2016), available at [http://jprc.wested.org/wp-content/uploads/2016/02/RJ\\_Literature-Review\\_20160217.pdf](http://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf).



- policies written according to a reading and intelligibility level that will ensure that parents and students alike will understand what conduct is prohibited and any possible consequences;<sup>89</sup>
- limited and concrete disciplinary consequences to each offense;
- the mandated use of appropriate behavioral interventions and alternatives;
- a prohibition of suspension and expulsion for relatively minor, non-violent offenses;<sup>90</sup> and
- a reduction of the use of suspension for repeat offenders in favor of PBIS and other interventions.

100. In addition, DPS could establish clear and comprehensive policies and regulations governing disciplinary alternative education, including objective criteria and transparency for reassignment and finite lengths of stay.

#### V. Request for Relief

Based on the foregoing, Complainants respectfully request that OCR accept jurisdiction, fully investigate disciplinary practices in Danville, and explore any evidence that those practices violate Title II, Title VI, or Section 504. Our purpose, however, is to improve, rather than vilify, Danville Public Schools. We believe that the administrators and teachers in Danville have the capacity to make substantial changes that will dramatically reduce the use of disciplinary measures while maintaining a safe and orderly learning environment and improving achievement. We have fully demonstrated stark disparities when the data are analyzed by race, by disability status, and by the two combined. Accordingly, Complainants further request that OCR require DPS to eliminate discipline disparities based on race and disability and safeguard against future discrimination through implementing the measures below.

1. DPS should adopt the less discriminatory disciplinary alternatives described above.

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<sup>89</sup> Dear Colleague, Appendix, p. 21.

<sup>90</sup> Dear Colleague, Appendix, pp. 4-6.

2. DPS will collaborate and partner with the Complainants, mutually agreed upon experts, and members of local community groups serving the interests of parents and children from the subgroups represented in this Complaint, to create and monitor a Resolution Agreement designed to eliminate or significantly reduce the adverse and disparate impact of all DPS' discipline policies and practices, with an emphasis on reducing the use of out-of-school suspensions and expulsions.

3. The Resolution Agreement shall contain strategies, objectives, and timelines to ensure that DPS' school discipline policies and practices resort to out-of-school suspension and expulsion only as a measure of last resort and that the use of all disciplinary interventions are monitored for their impact on a quarterly basis. OCR should monitor the Resolution Agreement for a period of no less than five school years.

4. The Resolution Agreement shall place clear limits on the use of out-of-school suspension and expulsions. In-school suspension and other less severe disciplinary sanctions shall be required except for serious offenses to be specified in the Resolution Agreement. DPS will facilitate a safe, inclusive, and positive school climate that provides students, teachers, and administrators with appropriate supports to address behavior without excluding students from school unless there is an immediate and serious safety risk.

5. DPS should make comprehensive discipline data available on a quarterly basis in reports to the School Board and on its website. Data should include office referrals, in-school suspensions, bus suspensions, short-term suspensions, long-term suspensions, expulsions, referrals to law enforcement, arrests, delinquency and criminal complaints, uses of force, and disciplinary placements in alternative education. The data should be disaggregated by: school name; student's grade, race, sex, and disability status; offense(s); and consequence(s).

6. DPS should commission an independent, expert evaluation that:

a. Identifies the sources of its race and disability disparities through site visits; interviews of DPS teachers and administrators at all leadership levels; meetings with parents and students; analysis of policies, regulations, and guidelines; and collection and analysis of data at each decision-making point, including the classroom level, school administration level, and district level;

b. Analyzes the adequacy, quality, and legality (e.g., compliance with special education laws and regulations) of its disciplinary alternative education, including an audit of homebound and home-based education services; and

c. Develops comprehensive recommendations for reform.

7. The Resolution Agreement will require DPS to implement new directives related to students with disabilities. These directives might include the development and implementation of behavioral assessments, behavior intervention plans, and a process for conducting appropriate manifestation determination reviews for students with disabilities whose behavior impedes the child's learning or that of others.

8. DPS should implement a well-publicized grievance procedure that students, parents, and staff may use when school security personnel, including SROs and SSOs, engage in misconduct.

9. DPS should develop a district-level leadership team tasked with reducing discipline disparities.

10. The Resolution Agreement will set a 5-year goal of reducing all disciplinary disparities in the use of out-of-school suspensions for each subgroup to no more than 2 percentage points.

11. DPS should require professional development for all staff, including SROs and SSOs, on positive behavioral interventions, restorative justice, and trauma-informed approaches to education.

12. DPS should convene at least 6 "town hall" sessions on the student code of conduct and best ways to reduce discipline disparities. Town halls should include parents and community members and should be held at accessible DPS locations at convenient times for working families.

Finally, Complainants request that OCR provide any other remedies deemed appropriate.

Respectfully submitted,

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