



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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October 20, 2017

Mr. Michael Muñoz  
Superintendent  
Rochester Public Schools  
615 7th Street SW  
Rochester, MN 55902

Re: OCR Docket No. 05-10-5003

Dear Mr. Muñoz:

On September 1, 2015, the Rochester Public Schools (District or RPS) entered into a Resolution Agreement (Agreement) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), to resolve the above-referenced compliance review and to ensure the District's compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-2000d-7, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, and national origin by recipients of Federal financial assistance from the Department.

OCR's review examined the District's disciplinary policies and practices and, specifically, whether the District discriminates against black students by disciplining them more frequently and more harshly than similarly-situated white students. The review examined whether the District suspended, expelled, and/or referred black students to law enforcement authorities more frequently than similarly-situated white students. Finally, OCR considered whether the District maintains disciplinary policies and procedure that have an unjustified disparate impact on black students. By letters dated August 15 and October 13, 2017, the District submitted information through its counsel regarding the implementation of the Agreement.

Item #1 of the Agreement required the District to document that it published the name and/or title, office address, e-mail address, and telephone number of each of its Discipline Supervisors on its website and in its Student Behavior Handbook (Handbook). Item #1 also required that the District provide OCR a copy of all written complaints the Discipline Supervisors received about the District's discipline policy and documentation of any additional strategies or recommendations the District's discipline expert provided for assessing and eliminating any unlawful discrimination that is causally linked to the District's discipline policies. Item #1 further required the District to submit to OCR for review and approval the changes, if any, that the District has taken or plans to take in response to the recommendations or suggestions.

In its August 15 report, the District provided a link to its website, which contains the names, titles, office addresses, e-mail addresses, and telephone numbers for the District's Discipline

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Supervisor and other administrators assigned to address complaints related to the District's discipline policies. The District also provided a copy of its 2017-2018 Handbook, which contains the same contact information. The District's August 15 report also included a spreadsheet outlining complaints the District's Discipline Supervisor received; none of the complaints related to discipline.

Also included with the District's August 15 submission was a copy of the District's 2016-2017 Implementation Plan Status Update, which the District reported was related to recommendations provided by the Midwest & Plains Equity Assistance Center (formerly known as the Great Lakes Equity Center), its discipline expert.<sup>1</sup> The District stated that it intends for the District's team to use the document to review progress to date and as a discussion tool to support the development of action and implementation plans for the 2017-2018 school year and beyond.

The Implementation Plan Status Update includes, for each goal area, a review of the planned actions/activities and a status update. Under each strategy, there are "Action/Activity" descriptions and for each Action/Activity, there is an update of steps taken. Based on the information provided in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #1 of the Agreement.

Item #2 of the Agreement required the District to provide OCR with written confirmation that the Positive Behavior Intervention Supports ("PBIS") framework is being implemented. In its August 15 report, the District stated that it continues to implement PBIS at all District sites. The District noted that ten District representatives were selected to participate in the 2017 National PBIS Leadership Forum in September 2017 and that those individuals would bring information back to share with all District sites. The District reported that its Discipline Supervisor also continues to meet with building principals on a monthly basis to evaluate discipline data from each site.

Based on the information provided by the District in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #2 of the Agreement.

Item #3 of the Agreement required the District to provide documentation to OCR regarding each meeting of the Student School Board; the number, grade levels, and schools of the students on the Student School Board; a list of the District employees who attended each meeting; and a summary of the concerns and suggestions related to discipline policies, practices, or procedures expressed by students. Item #3 of the Agreement also required the District to submit to OCR for review and approval the changes, if any, that RPS has taken or plans to take in response to the recommendations or suggestions made by the Student School Board members in its annual written report.

The District's August 15 submission included information about the content of and attendance at Student School Board meetings, as well as responses to a reflection activity and a survey

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<sup>1</sup> The District reported that its Discipline Supervisor, Director of Special Education, and Executive Director of Curriculum and Instruction attended the Midwest and Plains Equity Center Leaders Institute on September 5 and 6, 2017.

seeking input from Student School Board members, a summary of Student School Board recommendations provided during the 2016-2017 school year, and a year-end summary related to the 2016-2017 Student School Board's activities, in which the District described the various activities and recommendations of the Student School Board and the District's responses and, where relevant, implementation of those recommendations.

The District also reported that, in the spring of 2016, it developed a survey to assist classroom teachers to make changes in their instructional practices that are informed by student feedback. The District explained that, during the 2016-2017 school year, the survey was reviewed by District administration and union representatives. The District stated that, during the 2017-2018 school year, each Student School Board member will meet with his or her building site administrator and develop a plan for piloting use of the survey. Student School Board members, teachers, and administrators also will provide feedback on the usefulness of the data collected to determine if District-wide use would be beneficial.

Based on the information provided in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #3 of the Agreement.

Item #4 of the Agreement required the District to provide documentation to OCR of any recommendations, suggestions, or reports made by the PBIS teams and to submit for OCR's review and approval a plan and the steps, if any, that the District has taken or plans to take in response to the recommendations, suggestions, or reports. Item #4 states that the documentation will include written explanations for decisions not to implement any written recommendations or suggestions made by the PBIS teams. Item #17 of the Agreement required the District to provide documentation to OCR of the results of the reviews of disciplinary actions at each school conducted by the PBIS teams during the previous school year.

In its August 15 report, the District said that it continues to utilize PBIS teams at each building site. Building PBIS teams meet with building administrators on a monthly basis to review disciplinary data and other discipline issues. The District explained that all building sites had a meeting at the conclusion of the 2016-2017 school year to review discipline data and PBIS strategies. The District provided OCR documentation of the meetings.

The District provided OCR Site Action Plans for the 2017-2018 school year the teams created using the 2016-2017 discipline data reviewed. The District said that, this fall, the Superintendent and members of the District's Cabinet will visit each site to review the Site Action Plans and provide recommendations, building leadership teams will implement their Plans throughout the 2017-2018 school year, and the Superintendent and Cabinet members will have follow-up meetings with each site's leadership team at the conclusion of the 2017-2018 school year to review progress towards goals and to determine next steps moving forward.

Based on the information provided in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #4 of the Agreement. OCR also determined that the District's actions to date with respect to Item #17 are consistent with the terms of the Agreement.

OCR will continue to monitor the District's implementation of Item #17, as specified in the terms of the Agreement.

Items #5 and #7 both addressed the Handbook. Items #5 and #7 contained several specific requirements the Handbook was to meet. In its August 15 letter, the District provided OCR a copy of its revised Handbook. In its October 13 report, the District provided a link to the Handbook online.

OCR previously notified the District that the previous version of the Handbook complied with certain specified requirements of Items #5 and #7. OCR confirmed that the revised Handbook provided to OCR on August 15 continues to comply with those requirements with which the previous version complied. In addition, the revised Handbook addresses all remaining requirements of Item #5 and #7, with the exception of Item #7(h) of the Agreement. In particular, the Handbook does not clearly describe the circumstances that must be present for administrators and, in the case of emergencies, school staff to report a student's conduct to a Police Liaison Officer (PLO), as required by Item 7(h) of the Agreement.

OCR would like to speak with the District's counsel regarding the concerns related to Item #7(h). OCR will contact the District's counsel shortly to schedule this discussion.

Item #6 of the Agreement required the District to place a link on its PBIS website to OCR's Civil Rights Data Collection data for the District and a link to updated data concerning referrals for discipline, suspensions, expulsions, and referrals to law enforcement, disaggregated by race, school, and grade level, and the most frequent reasons leading to discipline involving dismissal. In its August 15 report, the District stated that responsive information is available online by clicking on the link for "PBIS" on its parent tools page.<sup>2</sup> OCR reviewed the information and data at the provided links, and confirmed that the website contains the 2016-2017 school year data.

Based on the information provided in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #6 of the Agreement.

Item #8 of the Agreement required the District to maintain at each school a system of supports to assist students who display inappropriate behavior, including adult and peer in-school mentoring, access to guidance counselors, social workers, or student advocates as appropriate, involvement of parents in the discipline process, assistance with developing self-management skills, and referral for psychological testing or other educational services, where indicated.

In its August 15 report, the District reported that all of its schools have a system of supports in place to assist students who display inappropriate behavior, including adult mentoring, peer mentoring, access to school counselors and social workers, interventions that assist students with developing self-management skills, and referral to in-school and community providers for psychological testing and other educational services. The District stated that it made changes to the Handbook in an effort to increase parent involvement in the process of addressing student behavior, and that a list of resources for family, individual, and school staff to use to increase

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<sup>2</sup> [http://www.rochester.k12.mn.us/families/parent\\_tools](http://www.rochester.k12.mn.us/families/parent_tools)

skills in the areas of emotional and behavioral self-management is available on each school's website.

The District also identified additional steps it is taking in regard to this item, including pursuing a partnership with a foundation that has as its mission to empower youth by supporting and promoting educational attainment through in-school and after-school support, to improve lives by providing programs that strengthen physical health and social and emotional development, and to unite communities by advancing diversity, equity, and community well-being. The District stated that it is also exploring adopting trauma-informed practices and will host the Midwest Trauma-Informed Schools Conference in November 2017.

Based on the information provided in this and earlier monitoring reports, OCR determined that the District has complied in full with Item #8 of the Agreement.

Items #12 and #13 of the Agreement required the District to collect data regarding disciplinary referrals, dismissals, and reports to law enforcement for the previous school year, and conduct an annual evaluation as to whether it is implementing its student discipline policies, practices, and procedures in a non-discriminatory manner. Item #15 of the Agreement required the District to examine annually how disciplinary referrals occurring at each school compare to those at other District schools and whether any data suggest that black students are disproportionately dismissed from school or are disciplined more harshly than similarly-situated students of other races and to take actions as appropriate.

The data shows that during the 2016-2017 school year, approximately 39.5% of referrals resulted in some sort of disciplinary action. During the 2016-2017 school year, black students composed 14.8% of the enrollment and accounted for 42% of office referrals and 42.6% of dismissals.

The data produced by the District shows that referrals to law enforcement during the 2016-2017 school year decreased compared to the 2015-2016 school year overall, from 112 to 71, and among Native American, black, and white students. The District reported that it attributes the decrease in referrals to law enforcement to increased consultation between building administrators and the District's Discipline Supervisor and a more standardized process for when building administrators involve police liaison officers.

The District analyzed the data that it provided to OCR in its August 15 report and reported that it showed that office referrals decreased at every level and for every race category with the exception of Native American students from the 2015-2016 school year to the 2016-2017 school year. The District explained that because referrals for white students declined more than the other race categories, black students nonetheless accounted for a higher percentage of overall referrals compared to the previous year despite fewer referrals for black students in the 2016-2017 school year than the 2015-2016 school year.

The District reported that there are teaching staff whose referral rates for black students during the 2016-2017 school year were notably higher compared to referrals for white students. The District said its analysis shows that in some of these situations, an imbalance of referrals was due

to students who were not having their educational needs met in their current setting or due to a small number of high needs students. The District said it is taking remedial steps to address the discrepancies, including ongoing staff development, monthly monitoring of data, and principal meetings with the Discipline Supervisor and the Executive Director of Elementary and Secondary Education.

The District's analysis also showed there were six buildings in which notably more black students were suspended compared to white students. As a result of an examination of its referrals, the District said it is changing its discipline practices to reduce the number of offenses that can result in suspension.

In its August 15 submission, the District further explained that its examination of data for offense categories including classroom disruption, disorderly behavior, disrespect to staff, and insubordination showed that referral rates ranged from 4% to 52% of all referrals for each offense for the 2016-2017 school year. The District said that for students who are black and white, the top reasons for referrals during the 2016-2017 school year were insubordination, classroom disruption, and physical aggression. Referral rates for black students ranged between 30.2% and 47.9% for the referrals in various offense categories used by the District.

The District reported that in all discipline situations unique and case-specific circumstances such as family- and poverty-related stressors, recent events, other stressors, and disability status may be considered. The District stated that it continues to look at more restorative approaches instead of removal of students.

In its August 15 response, the District reported that penalties imposed during the 2016-2017 school year were consistent with the penalties specified in the 2016-2017 Handbook. The District stated that its review of the discipline data for the 2016-2017 school year did not reveal situations in which a District representative made inappropriate exceptions to the penalties outlined in the Handbook.

In its August 15 submission, the District identified multiple factors it believes may contribute to racial disparities in the rate of disciplinary incidents, including vague, subjective discipline offenses, a continuum of expertise across District personnel, varying degrees of understanding and implementing PBIS among the District's schools, differing levels of implementation of ENVoY strategies, differing levels of understanding of cultural differences, and certain instances in which a small number of students account for a disproportionate number of disciplinary incidents.

The District reported that, in an effort to address the factors, the District has better defined discipline offenses in its Handbook and has removed vague, subjective offenses, such as insubordination, disorderly behavior, and classroom disruption. The District reported it also added definitions to the Handbook in an effort to clarify what types of behaviors should be considered "physical aggression." The District also reported that its Superintendent and Cabinet-level administration held a full-day meeting with building administrators to discuss common discipline-related questions.

The District stated further that a lack of cultural awareness and culturally responsive instruction is another possible factor contributing to the disparity in discipline referrals. The District reported that it is making it a priority to have all certified staff trained in ENVoY and will provide additional trainings with a nationally recognized expert in the area of culturally responsive teaching. In the fall of 2017, during back-to-school week, the District also made a training session from another nationally recognized expert on issues related to historical trauma and working with the African American community available to staff. The District said it hopes such trainings will continue to increase the overall cultural understanding of the District's staff.

The District explained that data show that different offenses resulted in different consequences depending on the building a student attends. In addition, building administrators apparently had different tolerance levels for the same behaviors. Other factors that the District identified as potentially contributing to the disparity include the continued inconsistent implementation of PBIS, some schools utilizing ENVoY strategies more than others, continued inconsistent perception and practice of what behaviors are addressed by the teacher versus referred to a building administrator, differing approaches by building administrators, continued differing implementation of classroom management strategies, varied skills in classroom management by staff, and various levels of cultural sensitivity and culturally relevant teaching practices.

The District said that it responded to its findings about inconsistent practices by holding a series of meetings with representatives from individual buildings to review practices and data. In addition, the District reported that, in June 2017, the Superintendent and other Cabinet-level administrators met with administrative representation from all buildings to build consensus on what constitutes a Level I behavior (no office referral) and a Level II behavior (office referral) and to determine which behaviors should result in an out-of-school suspension. According to the District, the meetings resulted in several changes to the Handbook for the 2017-2018 school year. The District also stated that, moving forward, District administrators will have monthly meetings with building administrators to review discipline data and brainstorm best practices with administration and PBIS teams.

Based on the information provided, OCR determined that the District's actions to date with respect to Items #12, #13, and #15 are consistent with the terms of the Agreement. OCR will continue to monitor the District's implementation of these items, as specified in the terms of the Agreement.

Item #16 required, beginning with the 2016-2017 school year, that each school principal meet annually with the teachers at each school to discuss the data gathered under Item #12 of the Agreement. The Agreement required the District to provide OCR documentation that the meetings have been held as well as a list of the steps it has taken or plans to take as a consequence of information shared at the meetings.

In its October 13 report, the District reported that, in May 2017, District administrators met with the principals at each school to discuss 2016-2017 discipline data and directed the principals to share the information with teachers in their buildings. Principals also received a list of referrals

by the teachers in their building that was disaggregated by race and were directed to meet with individual teachers if data showed a potential issue with disproportionate discipline practices.

The District provided OCR a list of follow-up measures it took with respect to individual employees upon review of the data, including development of a formal improvement plan for a teacher with high numbers of disciplinary referrals; individual meetings with administration about disproportionate referrals, leading to a reduction in referrals by the teachers who attended the meetings; and reconsideration of a student's setting when analysis showed that disproportionate referrals for black students at one school resulted from two students who might need other settings or support in school. The District also provided OCR a list of follow-up measures taken at five specific school sites based on review of discipline data.

Based on the information provided, OCR determined that the District's actions to date with respect to Item #16 are consistent with the terms of the Agreement. OCR will continue to monitor the District's implementation of this item, as specified in the terms of the Agreement.

Item #18 required the District to submit to OCR for review and approval any changes proposed to be made to its discipline policies, practices, or procedures and the rationale for the changes based on its evaluation of the District-wide student discipline data and the other data gathered as a result of the Agreement.

In its August 15 report, the District noted that prior to the start of the 2017-2018 school year, it made a number of changes to its discipline policies, practices, and procedures. As noted above, the District revised its Handbook, as well. The District explained that the District's School Board approved revisions to School Board Policy 506 designed to ensure that the School Board's policy is consistent with the provisions of the Handbook. The District avers that, collectively, the changes to the Handbook and Policy 506 respond to feedback from various stakeholders with respect to the District's discipline policies and procedures, address issues identified through the District's review of discipline data, and meet the requirements of the Agreement.

In addition, the District said that it is making significant investments in professional development opportunities for all staff to supplement changes to the District's discipline policies, practices, and procedures. During back-to-school week for the 2017-2018 school year, the District designated three full days for staff development. Presentations were offered on culturally responsive teaching strategies, trauma-informed practices, the impact of historical trauma, supporting dysregulated students, PBIS, and classroom management. Additionally, a PowerPoint presentation was developed for building leadership to present at staff meetings on the changes in the Handbook and appropriate responses to student behaviors. The District reported that training for all students, at an age-appropriate level, on the revised Handbook was held at the beginning of the school year.

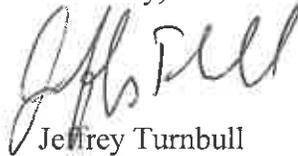
Finally, the District reported that its School Board voted in July 2017 to increase the number of professional development days during the 2017-2018 school year to allow for five full days of professional development, in addition to the three days during back-to-school week. The District said that the additional professional development days were crucial to the District's plan to train

all staff on linguistically and culturally responsive teaching practices, PBIS, and non-verbal classroom management through the ENVoY program. In addition to the added training days, the District said it is developing plans to support ongoing coaching and feedback regarding implementation of those strategies at the building level.

Based on the information provided, OCR determined that the District's actions to date with respect to Item #18 are consistent with the Agreement. OCR will continue to monitor the District's implementation of this item, as specified in the terms of the Agreement.

OCR thanks the District and its legal counsel for its work on its August 15 and October 13 monitoring reports. As noted above, OCR will contact the District's legal counsel shortly to schedule a conference call to discuss Item #7 of the Agreement. If you have any questions regarding this letter, please contact Jackie Wernz, Civil Rights Attorney, at 312-730-1486 or via email at [jacqueline.wernz@ed.gov](mailto:jacqueline.wernz@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Turnbull", is written over a printed name.

Jeffrey Turnbull  
Team Leader

cc: Mr. Mick Waldspurger, District Counsel (by electronic mail)