



April 28, 2015

VIA MAIL AND ELECTRONIC MAIL

United States Department of Education
Office for Civil Rights, Dallas Office
1999 Bryan Street, Suite 1620
Dallas, Texas 75201
Email: OCR.Dallas@ed.gov

Re: Title VI Complaint Filed Against DeSoto County School District and DeSoto County Board of Education for Discrimination of Black Students

I. Introduction

This civil rights administrative complaint is filed against DeSoto County School District (“School District” or “DCS”) and DeSoto County Board of Education (“School Board”) on behalf of DeSoto County Parents and Students for Justice (“DCPSJ” or “Complainant”) to challenge the discriminatory discipline of Black students in DeSoto County, Mississippi. Black students represent 32% of the student population in DeSoto County yet comprised 55% of all students suspended in the 2011-2012 school year.¹ Black students are over 2.5 times more likely to receive a suspension than White students. Four schools in DeSoto County suspended Black students over four times more than their White peers. Countless Black students in DeSoto County have been suspended and excluded from class mostly for minor, subjective offenses. As echoes of the old segregated system, DeSoto County School’s policies and practices subject Black students to a different and more harmful standard of discipline. Research shows that students who are suspended miss valuable instruction and are more likely to fall behind, dropout, and suffer involvement with the juvenile justice and criminal justice systems.² Under the

¹ U.S. DEP’T OF EDUC., CIVIL RIGHTS DATA COLLECTION (2011), <http://ocrdata.ed.gov/> [hereinafter *OCR data 2011-2012*]. Unless otherwise noted, “suspended” and “suspensions” refer to out-of-school suspensions.

² *Dear Colleague Letter On The Nondiscriminatory Administration Of School Discipline*, U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUC. 2 (Jan. 8. 2014) [hereinafter *Dear Colleague Letter*].

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governance of the School Board, the DeSoto County School District has discriminated against Black students on the basis of race through its discipline policies and practices fostering a school-to-prison pipeline and fueling racial disparities in violation of Title VI of the Civil Rights Act of 1964.

Vestiges of state-sanctioned segregation and discrimination that marked DeSoto County Schools for decades still exist today. DeSoto County maintained segregated schools until 1970, sixteen years after the *Brown v. Board of Education* decision.³ For nearly two decades, School District officials openly violated federal orders and mandates.⁴ In 1954, two months after the *Brown* decision, the White Citizens' Council formed chiefly to prevent integration of public schools.⁵ With violence, threats of violence, and other forms of harassment—including denial of employment to Black citizens and their supporters—the White Citizens' Council led a “massive resistance” against school integration.⁶ When DCS finally started to integrate the schools in 1970, hundreds of White students fled to “segregation academies.”⁷ DeSoto County Academy, which still exists today, was initially called “Ark Academy” after the story of Noah’s Ark in the Bible because Noah saved “his family and others from destruction.”⁸ Forty years later, the lingering effects of state-sponsored segregation and discrimination in DeSoto County Schools remain. As recently as 1997, at least one high school in DeSoto County still maintained two class presidents—one Black class president and one White class president.⁹ The same school had a Black principal and a White principal—a practice that existed since integration when a White principal oversaw and monitored White students and a Black principal oversaw and monitored Black students.¹⁰ Racist stereotypes that undergirded the old segregated school system still exist and influence the current discipline system in DeSoto County Schools. Today, there is only one Code of Discipline (“Code”); however, administrators apply that Code more harshly to Black students reflecting a long history of duality in DeSoto County.

DeSoto County School District is the largest and one of the most racially diverse school districts in Mississippi. Its student population of over 30,000 students includes 57% White

³ Charles C. Bolton, *The Last Stand of Massive Resistance: Mississippi Public School Integration, 1970*, MISSISSIPPI HISTORY NOW, (Feb. 2009), <http://mshistory.k12.ms.us/articles/305/the-last-stand-of-massive-resistance-1970> (last visited Mar. 19, 2015); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

⁴ Bolton, *supra* note 3.

⁵ Martin Luther King, Jr. Research and Education Institute Encyclopedia, *White Citizens' Councils*, http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_white_citizens_councils_wcc/ (last visited Mar. 19, 2015).

⁶ Bolton, *supra* note 3.

⁷ *History*, DESOTO COUNTY ACADEMY, http://www.desotocountyacademy.com/viewpage.php?page_id=4&y=2015&m=5 (last visited Mar. 19, 2015).

⁸ *Id.*; The founder of Ark Academy, Ms. Betty Furniss, was a leader in the Citizens' Councils of America, a modern day version of White Citizens' Councils. See *CofCC charter member Betty Furniss passed away*, COUNCIL OF CONSERVATIVE CITIZENS, <http://conservative-headlines.com/2011/06/cofcc-founding-member-betty-furniss-passed-away/> (last visited Apr. 23, 2015); *Council of Conservative Citizens*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/get-informed/intelligence-files/groups/council-of-conservative-citizens> (last visited Mar. 19, 2015).

⁹ Mark Walsh, *Miss. District Drops Race-Conscious Class Elections*, EDUC. WEEK (Nov. 12, 1997), <http://www.edweek.com/ew/articles/1997/11/12/12ocr.h17.html?print=1> (last visited Mar. 19, 2015).

¹⁰ *Id.*

students, 34% Black students, and 6% Latino students.¹¹ Despite a relatively diverse student population, at all but one of 42 schools for which data is available in DeSoto County, Black students were suspended—in-school and out-of-school—at a much higher rate than White students during the 2011-2012 school year, the most recent year that discipline data is available.¹² According to the Civil Rights Data Collection (CRDC), Black students across the nation are disproportionately suspended and expelled from school at higher rates than similarly situated White students. Today, in DCS, Black students are suspended more often, for longer periods of time, and for minor, subjective offenses.

One widely-known example that demonstrates the harsh discipline Black students face in DCS occurred during the 2013-2014 school year. After finishing a science project, a teacher at Olive Branch High School asked fifteen-year-old Dontadrian Bruce and his group to pose for a picture.¹³ In the picture, Dontadrian held up three fingers—the same number on his football jersey.¹⁴ The next school day, Dontadrian was summoned to the office and suspended for allegedly holding up gang signs.¹⁵ Dontadrian strongly denied being in a gang and explained those were the numbers on his football jersey. A few days later, Dontadrian and his mother appeared before a discipline hearing officer who decided that Dontadrian should receive an “indefinite suspension with a recommendation of expulsion.”¹⁶ Dontadrian’s mother launched a national petition and summoned the help of national civil rights organizations to protest her son’s expulsion. After receiving the petition and national pressure to reverse the decision, the Board decided not to expel Dontadrian, but he was still suspended and missed several days of school.¹⁷

Discriminatory use of suspensions is particularly troublesome because of the harsh effects of exclusionary discipline. The consequences of just one out-of-school suspension can be devastating. When students are suspended, they miss valuable instructional time and assignments making it much more likely for them to fall behind and drop out of school.¹⁸ Studies show that harsh, exclusionary discipline can lead to academic disengagement, decreases in academic achievement, and increases in behavioral problems, which often results in students being pushed

¹¹ *Enrollment by Subgroup Data*, MISSISSIPPI DEP’T OF EDUC., <http://reports.mde.k12.ms.us/data/>.

¹² *OCR data 2011-2012*, *supra* note 1. Data in this complaint is from the U.S. Department of Education’s 2011-2012 Civil Rights Data Collection. Advancement Project submitted an Open Records Act request to DeSoto County Schools for more recent discipline data, but has yet to receive the data. DCS does not publish this data and is requiring nearly \$1800 before they produce these documents. Because Black parents and students continue to allege discipline disparities and because DCS discipline policies and procedures have not changed, we believe there are disparities in the current discipline rates. We believe an Office for Civil Rights’ review of the most recent discipline data will reveal that DCS continues to suspend and exclude Black students at much higher rates than White students.

¹³ Nona Willis Aronowitz, *School Spirit or Gang Signs? ‘Zero Tolerance’ Comes Under Fire*, NBC NEWS (Mar. 9, 2014, 9:41 AM), <http://www.nbcnews.com/news/education/school-spirit-or-gang-signs-zero-tolerance-comes-under-fire-n41431>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Carmel Ferrer, *Where Zero Tolerance Makes Zero Sense*, ACLU BLOG (May 1, 2014, 5:02 PM), <https://www.aclu.org/blog/speakeasy/where-zero-tolerance-makes-zero-sense>.

¹⁸ TONY FABELO, ET AL., COUNCIL OF STATE GOVERNMENTS JUSTICE CTR., *BREAKING SCHOOL RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* 54 (2011).

out of school and criminalized—a pattern referred to as the “school-to-prison pipeline.”¹⁹ In Mississippi, the collateral consequences of exclusionary discipline are pronounced particularly for students of color. At present, Mississippi has the second highest incarceration rate in the country and the third lowest graduation rate.²⁰

DeSoto County school officials and board members are aware of racial disparities in school discipline and the problems with the discipline policies and practices yet have failed to address them. Complainant DeSoto County Parents and Students for Justice have petitioned Superintendent Kuykendall and the School Board on numerous occasions to encourage them to overhaul the district’s discipline policies and practices. Members of DCPSJ have testified at school board meetings and have shared data, research, and personal testimonies outlining the harms of discipline disparities, exclusionary discipline, and school suspension. DCPSJ members have urged DeSoto County school officials to revise the Code of Discipline by adopting research-based alternatives to suspensions and best practices. Rather than address these concerns, DeSoto County school officials have maintained and implemented discriminatory discipline policies and practices that exclude Black students from school—often for the most minor or subjective infractions.²¹ Through its discipline policies and practices, the DeSoto County School Board and DeSoto School District discriminate against Black students on the basis of race, harming Black students and denying them equal opportunities for quality instruction time in DeSoto County Schools in violation of Title VI of the Civil Rights Act of 1964. Complainant therefore seeks assistance from the Office for Civil Rights.

II. Jurisdiction

Under Title VI, 42 U.S.C. §§2000c *et seq.*, 34 C.F.R. Part 100, the Office for Civil Rights (“OCR”) has jurisdiction over discrimination based on race, color, or national origin by institutions that receive federal financial assistance. Based on information and belief, both the DeSoto County School Board and DeSoto County School District receive federal funding and are therefore subject to Title VI of the Civil Rights Act of 1964, providing OCR with jurisdiction over this complaint. The discrimination detailed in this complaint is both ongoing and has occurred within the last 180 days.

¹⁹ JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS (2011); *Dear Colleague Letter*, *supra* note 2.

²⁰ ROBERT STILLWELL & JENNIFER SABLE, NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., PUBLIC SCHOOL GRADUATES AND DROPOUTS FROM THE COMMON CORE OF DATA: SCHOOL YEAR 2009-2010 (2013) *available at* <http://nces.ed.gov/pubs2013/2013309.pdf>; *States of Incarceration: The Global Context*, PRISON POLICY INSTITUTE, <http://www.prisonpolicy.org/global/> (last visited Apr. 24, 2015). The graduation rate is particularly low for Black male students, who have a 51% graduation rate in Mississippi, compared with a White male graduation rate of 63%. SCHOTT FOUNDATION FOR PUBLIC EDUCATION, BLACK LIVES MATTER: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES (2015), *available at* <http://www.blackboysreport.org/2015-black-boys-report.pdf>. Although Black Mississippians make up 37% of the total population, they are 57% of the incarcerated population. White Mississippians are 58% of the total population yet only 30% of the incarcerated population. *State Prison Incarceration Rate in Mississippi*, PRISON POLICY INSTITUTE, <http://www.prisonpolicy.org/profiles/MS.html> (last visited Mar. 19, 2015).

²¹ Interview with Mother of J.N., DeSoto, MS (Mar. 11, 2015)

III. Complainant

DeSoto County Parents and Students for Justice (DCPSJ) is a community-based organization committed to ensuring that a safe and equal education is provided for all students regardless of race, economic status, or disability. DCPSJ’s mission is to end the school-to-prison pipeline in DeSoto County. Members of DCPSJ are concerned parents, grandparents, ministers, and community members. Nearly all DCPSJ members are graduates of DeSoto County Schools. DCPSJ also includes former teachers who taught in the School District for more than twenty years. DCPSJ members have witnessed the devastating effects of the District’s discriminatory discipline policies and practices affecting Black children and file this complaint to change those policies. Complainant DCPSJ files this complaint on behalf of all current and future Black students in DeSoto County School District.

IV. Respondents

Respondent DeSoto County Board of Education (“School Board”) is responsible for the governance and oversight of DeSoto County Schools. Under Mississippi law, the School Board, “determines policy, delegates executive, supervisory and instructional authority to its employees, and appraises the results.”²² The School Board is responsible for adopting rules and policies for DeSoto County Schools, including the Code of Discipline. The School Board also hears the final appeal of suspensions lasting more than three days, placements in alternative school, and expulsions.²³ Superintendent Milton Kuykendall serves as Executive Officer of the School Board. The Superintendent and all five members of the School Board are White.

Respondent DeSoto County School District (“School District”) is responsible for the administration and operation of DeSoto County Schools under the governance of the School Board. The School District, under the leadership of Superintendent Milton Kuykendall, is responsible for interpreting and implementing the discipline and security policies set forth in the Code of Discipline for all schools in DeSoto County. In addition, the School District has oversight over all school personnel, including police officers, who are engaged in the enforcement and implementation of the Code of Discipline in DeSoto County Schools.

V. DeSoto County School District

DeSoto County sits at the northwest tip of Mississippi about 15 miles south of Memphis, Tennessee. DeSoto County is made up of several small towns including Horn Lake, Southaven, Olive Branch, Hernando, Lewisburg, Center Hill, and Lake Cormorant. DeSoto County School District is the largest school district in Mississippi. It has 42 schools: ten high schools, eight middle schools, 22 elementary and intermediate schools, one special education school and one alternative



²² DESOTO CNTY. BD. OF EDUC., BOARD POLICY MANUAL, SCHOOL BOARD’S AUTHORITY (2008).

²³ DESOTO CNTY. BD. OF EDUC., BOARD POLICY MANUAL, DISCIPLINARY PROCEDURES (2008).

center.²⁴ At nearly every DeSoto County public school, Black students are suspended at rates much higher than their White peers.²⁵

The discrimination Black students experience today in DeSoto County mirrors the racism and segregation of the past. The active presence and practice of White supremacy was particularly strong in DeSoto County, and senseless acts of violence against Black residents were routine. In 1934, after three Black men were found guilty by an all-White jury of raping a White woman, the DeSoto judge convinced the crowd not to lynch the defendants because the lynching might persuade Congress to pass pending anti-lynching legislation. According to the judge, this would “destroy one of the South’s cherished possessions—the supremacy of the White race.”²⁶ In 1966, civil rights worker, James Meredith, was shot by a White gunman two-miles south of Hernando, Mississippi, during his “March Against Fear” from Memphis to Jackson. Black residents in DeSoto County were not only shot and killed by White residents, they were intimidated from exercising their political rights, including the right to vote.²⁷ Indeed, members of DCPSJ were harassed, threatened and barred from voting in DeSoto County in the 1960s.

There were stark differences between Black schools and White schools in DeSoto County before integration. Several DCPSJ members attended all-Black schools in DeSoto County in the 1950s and 1960s. Schools for Black children were often held in one-room schoolhouses that serviced all grades without books and necessary materials. These schools typified the Supreme Court’s finding in *Brown v. Board of Education* that “[s]eparate educational facilities are inherently unequal.”²⁸

After the *Brown v. Board of Education* decision in 1954, DeSoto County School officials refused to comply with the federal order to integrate.²⁹ Their “massive resistance” to integration lasted over fifteen years until 1970.³⁰ Effects of this massive resistance strategy remain today. Today, Black students make up 34% of DeSoto County School District’s student population yet leadership in DeSoto County remains nearly 100% White.³¹ There are no Black members of the elected School Board. There has never been a Black Superintendent, a position which is also elected. And at present, there are only two Black principals in the district—out of 42 schools.³²

²⁴ *Schools*, DESOTO COUNTY SCHS, <http://www.desotocountyschools.org/?PN=Schools2> (last visited Apr. 26, 2015).

²⁵ *OCR data 2011-2012*, *supra* note 1.

²⁶ RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 89 (1998). On the eastern shores of the Mississippi River in DeSoto County, there is an area called “Dead Negro Slough.” Jack Moore, *It’s Not Just Niggerhead Ranch: 12 Other Places With Racist Names*, BUZZFEED, <http://www.buzzfeed.com/jpmoore/its-not-just-niggerhead-ranch-12-other-place#.weKorqyrV> (last visited Mar. 19, 2015).

²⁷ *DeSoto County*, MISSISSIPPI CIVIL RIGHTS PROJECT, http://mscivilrightsproject.org/index.php?option=com_content&view=article&id=526:desoto-county&catid=1002:desoto-county&Itemid=3057 (last visited Mar. 19, 2015).

²⁸ *Brown*, 347 U.S. 483, 495 (1954).

²⁹ Bolton, *supra* note 3.

³⁰ *Id.*

³¹ MISS. DEPT. OF EDUC., *SCHOOL DISTRICT DATA 2014-2015*, <http://reports.mde.k12.ms.us/data/> (last visited Mar. 19, 2015); *Board members and Schools*, DESOTO COUNTY SCHOOLS, <http://www.desotocountyschools.org/?PN=Schools2> (last visited Apr. 26, 2015).

³² *Id.*

There are no Black high school principals and no Black head football coaches.³³ There is at least one school in DeSoto County with no Black teachers, and most schools only have a handful of Black teachers.³⁴ As illustrated above, the School District's policies and practices coupled with staff biases and stereotypes led to Dontadrian being mischaracterized, suspended, and nearly expelled, and to him missing several days of instruction and being labeled a gang member. The disciplinary policies and practices have devastating consequences for students in DCS.

VI. Factual Background

In nearly every DeSoto County school, Black students were disproportionately suspended in 2011-2012, the most recent year that discipline data is available. In 2011-2012, Black students were two and half times more likely than their White peers to be suspended out-of-school. Black students were close to 32% of the DeSoto County student population but received 55% of the out-of-school suspensions and 48% of the in-school suspensions. Comparatively, White students were 60% of the student population yet comprised only 40% of out-of-school suspensions and only 47% of the in-school suspensions.³⁵

Students with disabilities are also suspended harshly in DeSoto County Schools and most severely at the intersection of race and disability. Black students with disabilities were 2.6 times more likely to be suspended out-of-school than White students in the 2011-2012 school year. Black students were 34% of all students with disabilities yet Black students with disabilities received 57% of all out-of-school suspensions administered to students with disabilities. White students with disabilities were 63% of all students with disabilities yet received only 41% of out-of-school suspensions for the disability subgroup.³⁶

District officials claim discipline incidents have decreased since 2012, a trend they partially credit to the launch of an in-school alternative program called the Restoration and Modification Program ("RAMP").³⁷ Upon information and belief, discipline disparities between Black and White students continue to exist and may even be furthered by programs like RAMP. As discussed in *Section VII* below, as of the date of filing, the same Code of Discipline that was in effect in 2013 is still in effect. This Code includes zero tolerance policies and subjective language that drive discipline disparities. Descriptions of behaviors leading to discipline incidents are not provided by DCS or the U.S. Department of Education's Civil Rights Data

³³ *Id.*

³⁴ Interviews with DCPSJ members (on file with Advancement Project). Studies have found that students of color who attend schools with a diverse teaching staff that reflected the student body viewed their schools as more welcoming and achieved higher academic outcomes than schools with little or no staff diversity. See *Dear Colleague Letter*, *supra* note 2, at 1. Additionally, research has found that "teachers' race matters with respect to perceptions about students' behavior," and that a lot of discipline incidents are based on false perceptions that Black females are defiant and Black males are aggressive and violent. CHERYL STAATS, IMPLICIT RACIAL BIAS AND SCHOOL DISCIPLINE DISPARITIES, KIRWAN INSTITUTE (2014), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>.

³⁵ OCR data 2011-2012, *supra* note 1.

³⁶ *Id.*

³⁷ Henry Bailey Jr., *NAACP Questions DeSoto Schools Discipline Policy, While Board Says Suspensions Reduced*, THE COMMERCIAL APPEAL, Dec. 2, 2014.

Collection; however, upon information and belief, and based on the examples cited below, Black students are disciplined more harshly than White students for similar acts. This complaint includes examples that demonstrate these disparities.

Discipline disparities are felt most severely in communities like Horn Lake, Mississippi—one of the largest neighborhoods in DeSoto County that has become more diverse in recent years. Since the turn of the 21st century, the percentage of White persons in Horn Lake decreased from 83% in 2000 to 56% in 2010. Concurrently, the rates of Black persons living in Horn Lake increased from 12% to 33%.³⁸ At every level of schooling in Horn Lake, Black students were disproportionately suspended during the 2011-2012 school year.³⁹ Black students in Horn Lake schools comprised 54% of the student population yet were 75% of all students receiving in-school suspension, which is often referred to as Alternative Learning Center (“ALC”), and 73% of students receiving out-of-school suspension. Comparatively, White students in Horn Lake were 37% of the student population yet only received 20% of in-school suspensions and 21% of out-of-school suspensions.⁴⁰

Black students who attend the Center Hill feeder schools in the DeSoto County city of Olive Branch, Mississippi are also suspended at rates much higher than White students. In the past two decades, the population in the city of Olive Branch where Center Hill schools are located grew by 83%—making it the fastest growing city in America.⁴¹ Center Hill Elementary, Middle and High Schools boast some of the highest academic rankings in Mississippi.⁴² Yet these same schools also carry some of the highest suspension rates for Black students. In 2011-2012, Black students made up 32% of the student population at the three Center Hill Schools but received 51% of the in-school suspensions and 52% of the out-of-school suspensions.⁴³ At Center Hill High School, Black students made up 36% of all students yet were 64% of all suspensions.⁴⁴ At Horn Lake and Center Hill schools, Black students were suspended at higher rates than White students at every grade level and at nearly every school.

The over-suspension of Black students is closely linked to DeSoto County’s changing demographics, which have also fueled a misplaced hyper-vigilance around student gang involvement, as illustrated by Dontadrian’s story. More than half of the 54,000 people that moved into DeSoto County during 2010 were Black residents.⁴⁵ As Black families began to move into DeSoto County, White families moved out. School district officials responded to new Black students with hostility, false accusations, and harsh discipline. In a 2009 article, DCS Superintendent noted, “Our school district has grown by 8,000 students in six years. Ninety-nine

³⁸ U.S. CENSUS BUREAU, HORN LAKE, MISSISSIPPI DATA, <http://quickfacts.census.gov/qfd/states/28/2833700.html>.

³⁹ *OCR data 2011-2012, supra* note 1.

⁴⁰ *Id.*

⁴¹ Venessa Wong, *Memphis Suburb Is Fastest-Growing City in U.S.*, BLOOMBERG, Apr. 26, 2011, http://www.bloomberg.com/bw/lifestyle/content/apr2011/bw20110426_893708.htm.

⁴² According to recent data, all three schools ranked higher academically than 90% of other schools in Mississippi. MISSISSIPPI DEP’T OF EDUC., 2014 ACCOUNTABILITY INFORMATION, DISTRICT AND SCHOOL-LEVEL RESULTS FILE, <http://reports.mde.k12.ms.us/report/report2014.aspx> (last visited on Apr. 23, 2015).

⁴³ *OCR data 2011-2012, supra* note 1.

⁴⁴ *Id.*

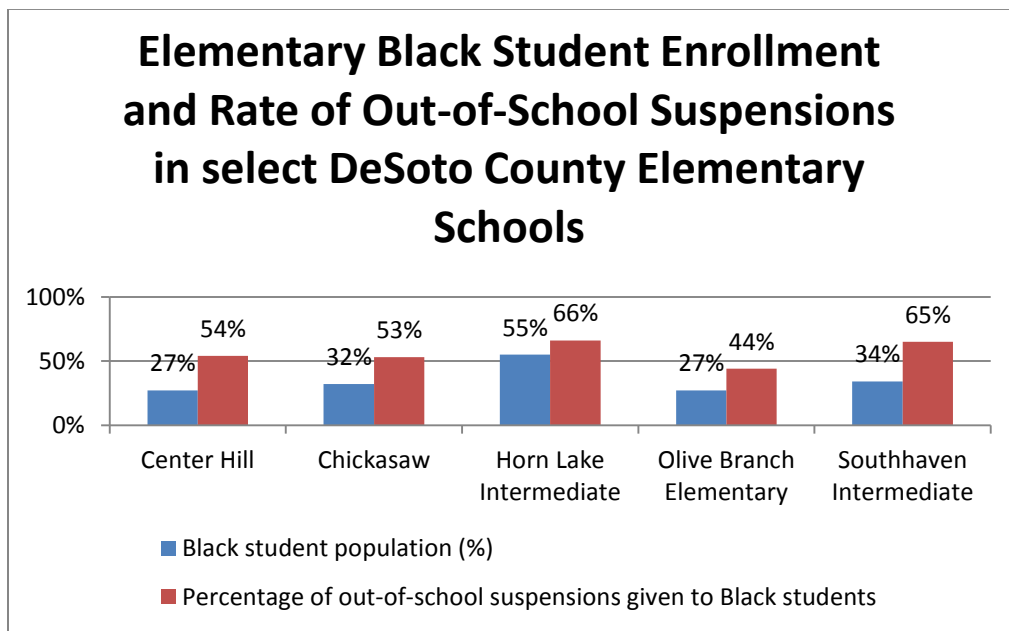
⁴⁵ Bailey, *supra* note 37.

percent of these kids are the greatest kids in the world. However, a small percentage of these students have been involved in gangs and dangerous behavior in schools they last attended and they want to bring this behavior to our schools ... We cannot allow that one-tenth percent to run our schools. When we do, the DeSoto County School District, as we know it, will no longer exist.”⁴⁶ Although the article does not reference race, given the demographics of the population increase in DeSoto County, it is a strong possibility that the Superintendent’s comments were directed at Black students. DCS employed a hyper-vigilant policy of policing the “small percentage” of students. These policies and practices target Black students and disproportionately impact and harm them.

A. Elementary schools

Of the 22 elementary and intermediate schools within the District,⁴⁷ at all but four schools Black students were more likely to be suspended than their White peers during the 2011-2012 school year. At Olive Branch Elementary, Black students were 27% of the student population yet made up 44% of all out-of-school suspensions. At Center Hill Elementary, 54% of all students suspended were Black even though Black students were only 27% of all Center Hill students.⁴⁸ Overall in DeSoto County Schools, there were 581 out-of-school suspensions of elementary school students. Students receiving these harsh suspensions could be as young as five years old.

Graph A.



Note: This chart does not include elementary schools where the number of students suspended was equal to or less than 10.

⁴⁶ Milton Kuykendall, *Guest Column: ACLU Eroding DeSoto Schools Discipline*, THE COMMERCIAL APPEAL, Oct. 24, 2009, available at <http://www.commercialappeal.com/opinion/guest-column-aclu-eroding-desoto-schools>.

⁴⁷ Intermediate schools in DeSoto County include grades 3 through 5.

⁴⁸ See *Graph A* highlighting elementary schools with the most disproportionate rates of out-of-school suspensions for Black students in DeSoto County Schools.

I.D. is a nine-year-old Black student in the fourth grade at Horn Lake Intermediate. He loves math and football. This school year, he has received in-school suspension or Alternative Learning Center (“ALC”) approximately five times for minor misbehavior. Each time lasted approximately three to four days. Once I.D. received ALC for talking in class even though other students were talking. I.D. feels like he is being targeted because he is Black. I.D. does not receive any instruction when he is sent to ALC. His mother is extremely worried that the school has branded him a “troublemaker” and will continue to suspend him for minor infractions. As a result of frequent exclusion from the classroom, I.D., who has always been excited about school, is falling behind in his studies and may be retained.⁴⁹

J.N. is a Black student in third grade at DeSoto Central Elementary School. J.N.’s mother describes her son as “sweet and serious.” J.N. has been very successful academically and loves football. In fall of 2014, J.N. was first disciplined because he responded “yea” instead of “yes, ma’am” to a teacher.⁵⁰ After this, J.N.’s teacher continued to send J.N. to the principal’s office for minor infractions such as burping in class, which was coded as “insubordination”; tapping on the desk; or “looking disrespectful.”⁵¹ Once, the teacher wrote then eight-year-old J.N. up because he tapped her on her shoulder. J.N. told his mother that he feels picked on because his White peers behave the same way, but are not disciplined. In January 2015, nine-year-old J.N. was suspended for three days after a bathroom door fell on him. J.N. ran to tell his teacher about the door, but the teacher sent him to the principal’s office. The principal did not believe J.N., blamed him for breaking the door, and suspended him for three days. The suspension was coded as three different “offenses”: threatening acts; hostile actions; and vandalism. J.N.’s parents appealed the suspension. At the appeal hearing, the discipline hearing officer referred to the disciplinary occurrences as “charges” and required J.N. to say out loud whether he was “guilty” or “not guilty.” Instead of reversing the suspension, school officials threatened to send J.N. to alternative school, gave him three additional days of ALC, and placed him on “probation” for the remainder of the school year, a penalty that is not even discussed in the Code of Discipline and was not explained to J.N.’s parents. J.N.’s parents felt like he was treated like a criminal during this hearing. They are worried that he will internalize this treatment, disengage from learning, and fall behind in his studies. Since this incident, J.N. has become increasingly more nervous and often sleeps with his parents at night, a practice he did not do before these events occurred.

B. Middle schools

At every middle school in DeSoto County, Black students were excluded from the classroom more often than their White peers during the 2011-2012 school year.⁵² Students at Hernando Middle School experience the harshest suspension rates. Although Black students at Hernando Middle comprised 14% of the school population, they received over 40% of all out-of-

⁴⁹ Interview with Mother of I.D., in Washington, D.C. (Mar. 17, 2015).

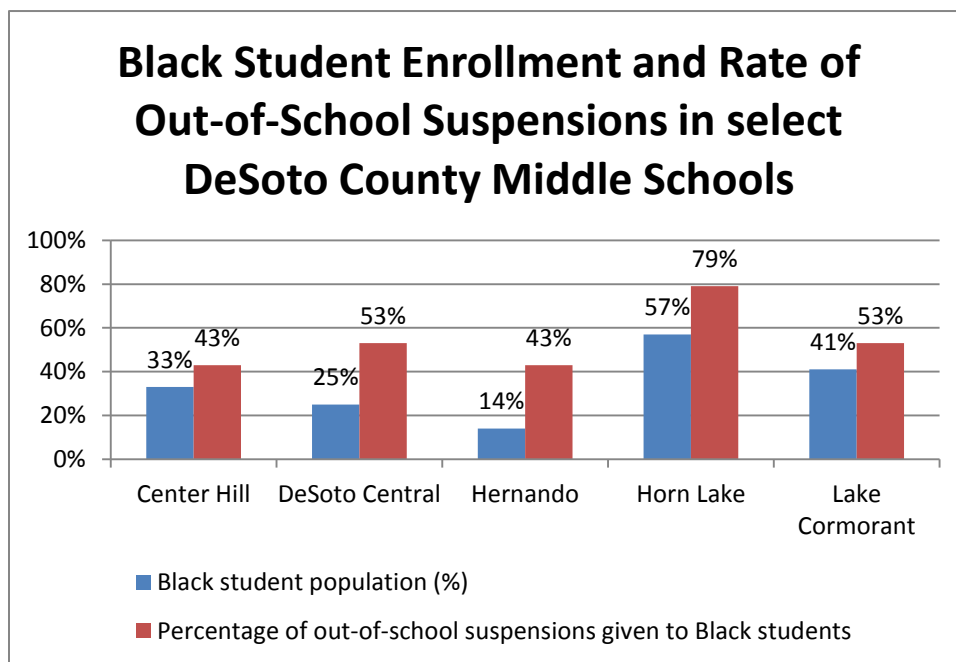
⁵⁰ Interview with Mother of J.N., in DeSoto, MS (Mar. 11, 2015) & J.N.’s Discipline Records (on file with Advancement Project).

⁵¹ J.N.’s Discipline Records (on file with Advancement Project).

⁵² See *Graph B*, which documents the five middle schools with the highest discipline disparity rates.

school suspensions. Black students at Hernando Middle School were four times more likely than White students to receive an out-of-school suspension. Almost half—48%—Black students were suspended at Hernando Middle School during the 2011-2012 school year. At DeSoto Central Middle School, Black students were 3.5 times more likely to be suspended than their White peers. Close to 80% percent of students suspended at Horn Lake Middle School were Black during the 2011-2012 school year even though Black students made up only 57% of the student population.⁵³

Graph B.



Note: This chart does not include middle schools where the number of students suspended was equal to or less than 10.

I.F. is a fourteen-year-old Black student who was born and raised in DeSoto County. She loves math and dancing. Last year, I.F. was in seventh grade at Horn Lake Middle School when she and another student, who is White, got into a fight. Their conflict continued when the students transitioned to eighth grade at Horn Lake Middle. Once, I.F. was sent to ALC for one week and did not receive any instruction. I.F. was also given out-of-school suspension two times—all for conflicts with the same White student. Upon information and belief, after one of these conflicts, I.F. was given ALC, and the other student was not disciplined although they were both participants in the fight. I.F. often told her mother that she felt like things at school were not fair. Due to the suspensions, she missed valuable instruction time and began to lose focus. Her grades began to decline. Despite her mother’s pleas encouraging the school to use alternatives to suspension, Horn Lake continued to suspend I.F. As a last resort, I.F.’s mother withdrew her from Horn Lake and sent her to live with relatives in another state. I.F. is doing well at her new school, has not been suspended, and made As and Bs on her last report card.⁵⁴

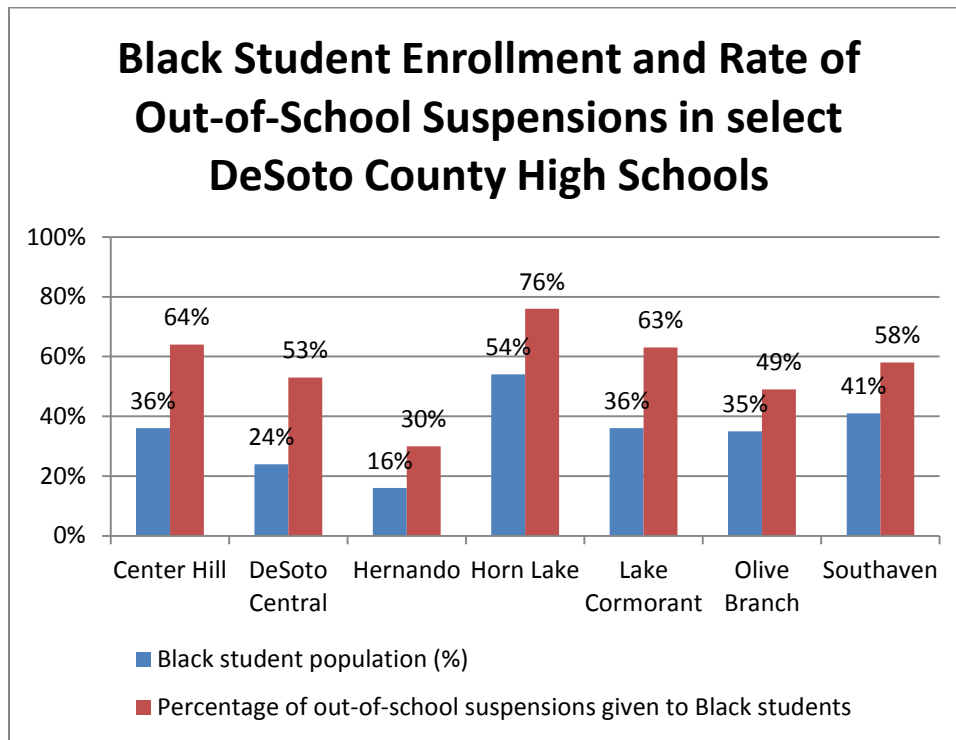
⁵³ OCR data 2011-2012, *supra* note 1.

⁵⁴ Interview with I.F.’s mother, in Washington, D.C. (Mar. 17, 2015).

C. High schools

During the 2011-2012 school year, at every high school in DeSoto County, Black high school students were suspended at a higher rate than their White peers. Black students were 33% of the high school student population in DeSoto County yet they received 57% of all out-of-school suspensions. At Lake Cormorant and Center Hill High Schools, Black students were only 36% of the student population yet they received 63% and 64% of all out-of-school suspensions, respectively. See Graph C. Black students at DeSoto Central High were 24% of the student body yet they received over 50% of all out-of-school suspensions.⁵⁵ Black students there were 3.7 times more likely to receive a suspension than their White peers. At Southaven High School, four out of every ten Black students was suspended from school. In Hernando, DeSoto Central, and Lake Cormorant schools, Black students experience disproportionate rates of suspension at both the middle school and high school levels.⁵⁶

Graph C.



Note: This chart does not include high schools where the number of students suspended was equal to or less than 10.

K.A. is a twenty-year-old, Black alumna of Hernando High School. During her time at Hernando High, K.A. experienced discriminatory treatment in nearly every aspect of her education, including discipline. When K.A. was transitioning from Hernando Middle School to

⁵⁵ See Graph C. As is illustrated in Graphs A, B and C, there are several feeder schools where each school in the feeder school pattern has a high rate of suspensions for Black students.

⁵⁶ OCR data 2011-2012, *supra* note 1.

Hernando High School, she asked to audition for the school band's drum line. The band director told her that female students were not allowed on the drum line; however, when K.A. arrived at Hernando High School that fall, White female students made up more than half the students on the drum line. K.A. was extremely hurt and eventually dropped out of band. One year K.A.'s sister along with several other Black students were suddenly removed from an Advanced Placement class without warning and were replaced with White students. When K.A.'s mother went to talk to the principal about it, the principal questioned why she thought her daughter was college material. The discrimination K.A. and her family experienced in academics and with extracurricular activities was reflected in the way discipline was handled.⁵⁷

When K.A. was in 10th grade, she got into a verbal argument in the hallway with a White female student. There was no physical contact. At the end of the argument, both students were given in-school suspension, or ALC. However, K.A. was assigned one week of ALC while the White female student was assigned two days of ALC. K.A.'s suspension was coded as "disrupting class" even though it occurred in the hallway during a class change.

VII. DeSoto County School District Discipline Policies

A. Discipline Disparities in DeSoto County Schools Are Fueled by the District's Vague, Subjective, and Harsh Discipline Policies.

The DeSoto County School District's Code of Discipline ("Code") divides discipline offenses into five levels. Each level lists a minimum and maximum punishment for the first violation and a minimum and maximum punishment for "repeated or flagrant" violations.⁵⁸ The Code relies on subjective and vague terms and provisions that allow harsh punishments for minor offenses and drive the unequal treatment of Black students.

1. The Code of Discipline Contains Vague & Subjective Terms that Drive the Unequal Treatment of Black Students.

By relying on subjective offenses and failing to provide definitions or examples that clarify what constitutes a violation of that offense, Respondents enforce a discriminatory discipline policy and engage in discriminatory practices that have a disparate impact on Black students. The DeSoto County Schools' Code of Discipline does not define any offenses and fails to provide specific and objective criteria to help administrators choose appropriate discipline.

For example, Levels I, II and III include subjective and vague offenses like "displaying any behavior which is disruptive to the orderly process of education" (Level I), "insubordination" (Level II), "exhibiting any hostile physical actions" (Level II), and "using profane, obscene, indecent, immoral, or offensive language and/or gestures, and/or possession of obscene, indecent, immoral, or offensive materials" (Level III).⁵⁹ The Code does not define these

⁵⁷ Interview with K.A., in Washington, D.C. (Mar. 17, 2015)

⁵⁸ See Attachment A, DESOTO COUNTY BOARD OF EDUCATION POLICY JD, DESOTO COUNTY CODE OF DISCIPLINE (2013) available at <http://images.pcmac.org/Uploads/DesotoCSD/DesotoCSD/Departments/DocumentsCategories/Documents/jd-codeofdiscipline.pdf> [hereinafter *Code of Discipline*]

⁵⁹ *Id.* at 3-7.

offenses or provide examples. The Code of Discipline also does not define “flagrant” violation nor does it define whether “repeated” violations include violations from a previous year or a previous school.⁶⁰

Similarly, administrators have 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.⁶¹ The Code of Discipline offers little guidance to administrators to clarify which type of discipline is appropriate for a particular Code violation. For example, for repeated Level I violations (such as being late to class or being in the hallways without a pass), administrators may not only require a parent conference, but may also impose detention or even a suspension instead.⁶²

The lack of clarity in the Code of Discipline drives the disparities described in *Section VI*.⁶³ Both implicit and explicit biases may affect administrators’ disciplinary decisions. First, administrators or staff with racial biases can choose to discipline Black students more harshly than White students. This different treatment is permitted under the Code of Discipline. For example, as K.A. described, she received a longer punishment than a White classmate for a verbal argument. The Code allows administrators to impose in-school suspension, or ALC, from anywhere from one to ten days.⁶⁴ This racial discrimination is consistent with the long history of discrimination in DeSoto County, where White people actively sought to exclude Black people from housing in certain neighborhoods, voting, schools, and from other power and wealth structures.⁶⁵ It is also consistent with the history of discrimination in DeSoto County Schools where official school policies and practices openly excluded and discriminated against Black students less than fifty years ago.

Second, and likely more common, is the effect of implicit bias on administrators’ school disciplinary decisions. Implicit bias is sum of “unconscious biases that people are unaware they

⁶⁰ *Id.* This is particularly problematic in light of a recent study that demonstrates how racial stereotypes lead teachers to escalate disciplinary responses to Black students whom they are committed repeat infractions. Teachers thought that the students with stereotypical Black names needed more severe disciplinary action after their second infraction than the students with stereotypical White names. JASON A. OKONOFUA AND JENNIFER L. EBERHARDT., TWO STRIKES: RACE AND THE DISCIPLINING OF YOUNG STUDENTS, PSYCHOLOGICAL SCIENCE, ASSOCIATION FOR PSYCHOLOGICAL SCIENCE (2015).

⁶¹ *Id.*

⁶² *Id.* at 3.

⁶³ See *Dear Colleague Letter*, *supra* note 2; see also U.S. Dep’t of Justice, Investigation of the Ferguson Police Department, (Mar. 4, 2015), [hereinafter *DOJ Ferguson Report*], http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (describing the great deal of discretion retained by police officers and court officials, and how this drove racial disparities at every level of the criminal justice system).

⁶⁴ *DeSoto County Code of Discipline*, *supra* note 58, at 4.

⁶⁵ See e.g., *DOJ Ferguson Report*, *supra* note 63 (stating that “the evidence of bias and stereotyping, together with evidence that Ferguson has long recognized but failed to correct the consistent racial disparities caused by its police...demonstrates that the discrimination effects ...are drive at least in part by discriminatory intent in violation of the Fourteenth Amendment”). Similarly, in DeSoto County Schools, the long and recent history of discrimination against Black students, combined with the racial disparities resulting from school discipline, demonstrate a discriminatory intent.

hold but influence their perceptions, behaviors, and decision making.”⁶⁶ 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 Black students being less respectful, and more aggressive and dangerous impact how Black students are perceived.⁶⁷ Implicit bias, for example, leads police officers to view Black boys as much older than they actually are.⁶⁸ Ambiguous or subjective offenses, which rely on school staff’s interpretation of a behavior, are shaped by implicit racial biases. As a result, school disciplinary offenses like “insubordination” or “being disrespectful” are applied more often and more harshly to students of color.⁶⁹ For example, J.N., a Black student, was disciplined for not saying “ma’am.” He was also disciplined several times for the vague and subjective offense of “insubordination.” This discipline included in-school suspension. Employees’ interpretation coupled with the lack of clarity in the Code allowed administrators to define the behavior of J.N. as a violation of the Code of Discipline. Indeed, the high rates of disparities in DeSoto County Schools suggest that the developmentally typical behaviors of Black students are defined as a violation of the Code of Discipline while the same or similar behaviors by White students are not.

2. *The Code of Discipline Allows Harsh Punishments for Minor Misbehavior, Which Subsequently Allows Administrators to Disproportionately Impose Out-of-School Suspensions on Black Students.*

The Code overly relies on school exclusion without offering reasonable, proportionate disciplinary interventions. A student in DeSoto County schools can be suspended for almost any behavior. For example, a student who commits a Level I offense more than once can receive an in-school or out-of-school suspension. The first level of misconduct is reserved for the most minor offenses including tardiness, dress code violations, making excessive noise and “displaying any behavior which is disruptive to the orderly process of education.”⁷⁰ Under a Level I infraction, a student of any age could be suspended if they wear the wrong color shirt more than once, run down the halls more than once, or show up late more than once. A student may receive a one, two, or three-day suspension for the first Level II offense.

⁶⁶ Staats, *supra* note 34.

⁶⁷ *Id.*; See also DOJ Ferguson Report, *supra* note 63 (noting “negative stereotypes about African Americans...further the disproportionate impact of Ferguson’s police and court practices... It causes court and police decision makers to discredit African Americans’ explanations for not being able to pay tickets and allows officials to disown the harms of Ferguson’s law enforcement practices”). Similarly, Complainant asserts that negative stereotypes about Black students in DeSoto lead the administrators and teachers to apply a heightened degree of scrutiny to normative developmental behavior displayed by Black students and perceive these behaviors as particularly disrespectful, defiant, or dangerous, despite similar behavior by White students being perceived as innocent or less serious.

⁶⁸ Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, American Psychological Association Journal of Personality and Social Psychology (2014), available at <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

⁶⁹ DANIEL J. LOSEN, DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE, THE CIVIL RIGHTS PROJECT AT UCLA (Oct. 2011), <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

⁷⁰ *DeSoto County Code of Discipline*, *supra* note 58 at 3.

For Level III, IV, and V offenses, the minimum punishment is out-of-school suspension, Alternative Learning Center, corporal punishment, or referral to law enforcement authorities. For a Level III, IV, or V offense, which can include things like using profane language, gambling, or fighting, there are no non-exclusionary alternatives to suspension.

Students can also be arrested or referred to law enforcement for their behavior in school. There is no guiding document, such as a memorandum of understanding, indicating how law enforcement officers should interact with students who commit disciplinary infractions. The Code requires that principals report illegal activity to law enforcement; both Level IV and V offenses are reported to law enforcement agencies as part of the minimum response.

Administrators also impose, or attempt to impose, sanctions that are not included in the Code of Discipline. For example, as stated in *Section VI* above, school staff gave J.N., a third grader, a year of “probation,” a disciplinary response not contemplated in the Code of Discipline or other district policies.⁷¹ This extra-judicial sanction bears further investigation, as it is likely happening to many students.

As discussed in Part C of this section, these harsh responses lead to lower academic achievement and an increased risk of further suspensions and involvement in the juvenile justice system. These consequences are particularly troublesome when, as here, administrators have broad discretion to determine both if a behavior is a Code violation, and, if it is, what punishment to apply.

B. DeSoto County Board of Education Refuses to Adopt a More Restorative, Less Subjective Code of Discipline.

The DeSoto County Board of Education and Superintendent Kuykendall present the appearance that they are committed to improving the Code of Discipline yet they refuse to amend the Code and instead have maintained it and further deepened mechanisms that exclude and isolate Black students in DeSoto County. Students, parents, and community members in DeSoto County, including members of DeSoto County Parents and Students for Justice (DCPSJ) have repeatedly informed the DeSoto County School Board and the Superintendent of the devastating results of their discipline policies and practices on Black students and urged them to address them.⁷² DCPSJ has also presented less discriminatory, more educationally sound alternatives and urged the District and Board to implement a more restorative and less subjective Code of Discipline. Some of the alternatives to suspension DCPSJ members have advocated for are programs like restorative justice, peer mediation, and referrals to school support staff or other services. However, the District and the Board have maintained discipline policies and practices that promote disproportionate discipline, exclude Black students from school, and set them up for failure.

⁷¹ J.N.’s Discipline Records (on file with Advancement Project).

⁷² See, e.g., Bob Bakken, *Conduct review requested: Parents worried about zero tolerance*, DESOTO TIMES TRIBUNE, April 10 2014, available at <http://www.desototimes.com/articles/2014/04/15/news/local/doc5345ea6918028225890775.txt>; Rankin, LaTrisha, *My Thoughts: Policies on conduct hurt DeSoto students*, COMMERCIAL APPEAL, May 18, 2014, available at <http://www.commercialappeal.com/news/my-thoughts-desoto-county-schools-board-should-a>.

DCPSJ members have spoken before the Board over ten times and had meetings with individual district officials and the Superintendent. Members of DCPSJ first met with School District officials on February 20, 2014 to discuss concerns and proposed changes to the Code of Discipline. On April 8, 2014, DCPSJ members attended the School Board meeting and requested that the Board adopt a new Code of Discipline. After the repeated urging of DCPSJ and undersigned counsel, Advancement Project, the School Board released a new proposed code of discipline for public comment in May 2014. DCPSJ submitted comments on the proposed Code and urged the Board to adopt changes.⁷³ However, at the June 2, 2014 School Board meeting, the School Board removed discussion of the Code of Discipline from the agenda. Since that June 2014 meeting, as of the date of filing, and upon information and belief, the School Board has not added it back to the agenda or nor has the Board re-initiated discussions around the proposed Code at any public Board meetings since June of 2014. Prior to the beginning of the 2014-2015 school year, DCPSJ members reached out to the School Board again, urging the Board to adopt a revised Code of Discipline before the start of the new school year.⁷⁴ At the December 2014 DeSoto County School Board meeting, Complainant member James Mathis addressed the School Board again, urging them to pass a more restorative code of conduct with alternatives to suspension. To date, the Board of Education has not adopted a new Code of Discipline. At the time of filing, the School Board maintains the policy that fuels the disproportionate suspensions of Black students.

C. The Over-Suspension of Black Students from DeSoto County Schools Causes Irreparable Harm.

Decades of educational research and guidance from the U.S. Departments of Education and Justice make it clear: suspensions are harmful and are disproportionately applied to Black students. A suspension can trigger a series of negative consequences for that student and that student's family. Studies prove that the use of exclusionary disciplinary like in-school and out-of-school suspension reduces the amount of time a student spends in the classroom and makes it more likely that the students will be involved with the juvenile justice or criminal justice system, a set of trends that is often referred to as the "school-to-prison pipeline."⁷⁵ As noted in the U.S. Departments of Justice and Education guidance, students lose "important instructional time due to exclusionary discipline."⁷⁶ Suspension predicts grade retention, school dropout, and future

⁷³ See *Attachment B*, Letter from Kaitlin Banner, Staff Attorney, Advancement Project and LaTrisha Rankin, Chair, DeSoto County Parents and Students For Justice to Keith Treadway, DeSoto County Public Schools (May 19, 2014) (on file with Advancement Project) & *Attachment C*, Letter from Kaitlin Banner, Staff Attorney, Advancement Project and LaTrisha Rankin, Chair, DeSoto County Parents and Students For Justice to Keith Treadway, DeSoto County Public Schools (May 27, 2014) (on file with Advancement Project).

⁷⁴ See *Attachment D*, Letter from Kaitlin Banner, Staff Attorney, Advancement Project and LaTrisha Rankin, Chair, DeSoto County Parents and Students for Justice to Milton Nichols, Chair, DeSoto County Public Schools Board of Education (August 1, 2014) (on file with Advancement Project).

⁷⁵ The increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the "school to prison pipeline." *Dear Colleague Letter*, *supra* note 2, at 4.

⁷⁶ *Dear Colleague Letter*, *supra* note 2, at 7-9.

involvement in the juvenile and criminal justice systems.⁷⁷ Students also face lasting consequences, for example, when applying for college.⁷⁸ Suspending students does not address misbehavior instead it punishes the student, which is harmful academically and emotionally.⁷⁹ Suspensions are serious deprivations of learning time and should be reserved for the most serious offenses.⁸⁰

VIII. Claims

DeSoto County School District and the Board of Education violate Title VI of the Civil Rights Act of 1964 because they discriminate against Black students under their disciplinary policies and practices through their different treatment of Black students and because their disciplinary policies and practices have a disparate impact on Black students.

A. *DeSoto County School District and the Board of Education Discriminate Against Black Students Under Their Disciplinary Policies and Practices.*

Different treatment claims under Title VI include both policies that are discriminatory on their face and policies that are administered in a discriminatory manner. This includes situations when policies are selectively enforced and imposed on certain students more than others and when students of different races are disciplined differently for the same offense.⁸¹ Upon information and belief, administrators in DeSoto County School District are engaging in intentional discrimination by giving Black students harsher discipline, including in-school and out-of-school suspensions, and for longer periods of time, for the same offenses as their White counterparts; by selectively enforcing disciplinary policies against Black students; and by acting based on racially discriminatory motives. The U.S. Department of Education's Office for Civil Rights should investigate direct and circumstantial evidence to determine that this type of discrimination has occurred.

1. *DeSoto County School District and Board of Education Denied Education Services, Benefits, and Opportunities to Black Students by Treating Them Differently than Similarly Situated White Students.*

⁷⁷ See RUSSELL SKIBA ET AL, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? A REPORT BY THE AMERICAN PSYCHOLOGICAL ASSOCIATION TASK FORCE (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>; Tony Fabelo et al., *supra* note 18. See also Robert Balfanz et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade* (Dec. 2012) (*Closing the School Discipline Gap: Research to Practice* national conference working paper Jan. 10, 2013) (finding that students who were suspended even one time in ninth grade doubles their chance dropping out of school).

⁷⁸ See MARSHA WEISSMAN ET AL., THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS (2010): <http://www.communityalternatives.org/pdf.Reconsidered-criminal-hist-recs-in-college-admissions.pdf>.

⁷⁹ *Id.*

⁸⁰ Well-intentioned, alternative programs that exclude students have the same harms and can be used to drive the same disparities. DCS recently reported that they instituted a pilot program called the Restoration and Modification Program ("RAMP") Program that will further exclude students and deny students access to class instruction and materials. Despite promises to provide members of DCPSJ information about this program, the Board and District have not provided any additional descriptions or data on enrollment or academic offerings of the program.

⁸¹ *Dear Colleague Letter*, *supra* note 2, at 7-9.

DeSoto County School District has denied Black students education services, benefits, and opportunities through excessive and unnecessary school discipline. Black students make up a disproportionate number of the students excluded from school through in and out-of-school suspension. Upon information and belief, these disparities are due at least in part to different treatment or selective enforcement of school discipline policies.⁸² Black students report that they are more likely to receive longer and harsher discipline than their White peers when they engage in the same behavior. Sometimes Black students receive unauthorized sanctions, such as “probation” when no such sanction exists under the Code of Discipline. Upon information and belief, the District gives Black students more serious discipline code violations and imposes harsher punishments even when substantially similar behavior is displayed by White students. The Office for Civil Rights should investigate specific incidents of discipline, to which Complainant does not have access, to determine whether the District and Board are engaging in impermissible discrimination.

2. *There Are No Legitimate, Non-Discriminatory Reasons for the Different Treatment.*

Upon information and belief, there are no legitimate, non-discriminatory reasons for treating Black and White students differently, and any rationale for that treatment proffered by the District and the Board is likely pretext. The District’s and the Board’s actions should be viewed in the context of the long history of racial discrimination and segregation in DeSoto County Schools.⁸³ The District and Board have, as recently as 1997, approved of a segregated administrator and class president system in DeSoto County.⁸⁴ The U.S. Department of Education’s Office for Civil Rights can and should consider the history of discriminatory conduct towards Black students in DeSoto County when investigating and analyzing the District’s disciplinary policies and practices.⁸⁵

B. *DeSoto County’s Discipline Policies & Practices Have a Disparate Impact on Black Students.*

Under Title VI, disparate impact claims are evaluated by asking first, if the policies and practices have an adverse effect on students of a particular race; second, if the policy is necessary to meet an important educational goal; and third, if it is important to meet an important educational goal, if there are less discriminatory alternatives that would meet that goal.⁸⁶ Here, DeSoto County’s policies and practices have an adverse effect on Black students and are not necessary to meet the goal of keeping students safe, in their regular classrooms, and learning. There are viable, less discriminatory alternatives like restorative justice that DeSoto County is

⁸² *Id.*

⁸³ See *supra* Section V.

⁸⁴ See *DOJ Ferguson Report, supra* note 63, at 76 (“some within Ferguson still have difficulty coming to terms with Ferguson’s changing demographics and seeing Ferguson’s African American and white residents as equals in civil life”). This historical context showing that African Americans were treated differently under the law is “probative as to whether that practice is grounded in part in discriminatory purposes.” *Id.* Similarly, the history of segregation and efforts to exclude Black students from the public education system is probative of the discriminatory purposes of biased exclusionary discipline.

⁸⁵ *Dear Colleague Letter, supra* note 2, at 9.

⁸⁶ *Dear Colleague Letter, supra* note 3.

aware of because of the advocacy of Complainant DCPSJ. The Office for Civil Rights should find that the School Board engaged in discrimination against Black students because they maintain these discriminatory policies and refuse to adopt more effective, less discriminatory alternatives.

1. *DeSoto County's Discipline Policies & Practices Have an Adverse Impact on Black Students.*

DeSoto County's disciplinary policies and practices have a disparate impact on Black students. Black students are more likely to receive in and out-of-school suspension and receive harsher punishments than students of other races. District-wide, Black students are two and half times more likely to be suspended as their White peers. Black students report—and we believe that a thorough investigation will show—that they are more likely to be suspended for subjective offenses, such as being disrespectful. As noted in recent guidance from the U.S. Departments of Education and Justice, “research suggests that the substantial racial disparities... are not explained by more frequent or more serious misbehavior by students of color.”⁸⁷ Evidence presented in this Complaint shows that Black students are disproportionately and adversely affected by DeSoto County's disciplinary policies and practices; there is prima facie evidence of discrimination.

2. *DeSoto County's Discipline Policies & Practices Are Not Necessary to Meet an Important Goal.*

The District and the Board have not articulated a reason for maintaining their disciplinary policies and practices in light of evidence that they are producing discriminatory results. The Code of Discipline is intended to “ensure a stable learning environment in an atmosphere which encourages academic excellence” and to be “enforce[ed]...with equity and consistency for all students.” [emphasis in the original].⁸⁸ This goal is important and laudable but the methods chosen by the District and the Board are not achieving that goal. In fact, frequent and racially disparate suspensions do not create stable learning environments or an environment of equity. Suspensions and expulsions harm students and make it less likely that students will succeed.⁸⁹ Students who are suspended from school are more likely to be held back, receive additional suspensions, drop out of school, and be arrested.⁹⁰ DeSoto County's discipline policies and practices are not necessary to meet an important educational goal.

3. *There Are Less-Discriminatory, More Educationally Sound Alternatives to DeSoto County's Discipline Policies & Practices.*

There are educationally sound policies and practices that will address student behavior and encourage academic excellence while not having adverse and disparate impacts on Black students. There are research-based alternatives to suspension that have been proven to reduce misbehavior and overall discipline incidents. Districts across the country have implemented

⁸⁷ *Id.*

⁸⁸ DeSoto County Board of Education Policy JD, *DeSoto County Code of Discipline, Supra.*

⁸⁹ See, e.g., Russell Skiba et al., *supra* note 77.

⁹⁰ See, e.g., Tony Fabelo, et al., *supra* note 18.

alternatives that maintain safety and order without discriminating against Black students.⁹¹ For example, in Denver, Colorado, the city’s school district partnered with community groups to create a school discipline code that created clear and workable definitions of student behavior, limited the use of suspensions, and provided alternatives that addressed student behavior.⁹² In Broward County, Florida, stakeholder groups created an agreement to ensure students would not be arrested or removed from school for minor misbehaviors.⁹³ Instead, young people were referred into the PROMISE program, designed to help address and correct troublesome behaviors.⁹⁴ In Meridian, Mississippi, as part of a consent decree, Meridian Public Schools agreed to a number of changes to their disciplinary policies and practices that would eliminate the harsh discrimination Black students were experiencing. The Meridian consent agreement included limiting the use of suspensions and expulsions; introducing a District-wide behavior management system; training teachers and staff in cultural competency; and creating a process for community voice in both the writing and implementation of disciplinary policies.⁹⁵

Many of these alternatives are endorsed by the Department of Education’s “Guiding Principles.”⁹⁶ For example, to manage behavior and create safe, engaging learning environments that do not discriminate, schools have several options. They can use evidence-based school climate programs;⁹⁷ draft codes of conduct that use proportionate responses and use student removal only as a last resort;⁹⁸ rely on interventions and supports designed to keep students in the classroom;⁹⁹ and train staff on how to apply school discipline procedures in a fair and equitable manner.¹⁰⁰ There are viable, effective, and less discriminatory alternatives to DeSoto County’s vague and harsh disciplinary policies.

⁹¹ EMILY MORGAN ET. AL, THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM (2014), *available at* <http://csgjusticecenter.org/wp-content/uploads/2014/08/SDCPExecutiveSummary.pdf>.

⁹² See PADRES Y JOVENES UNIDOS, 3RD ANNUAL COMMUNITY ACCOUNTABILITY REPORT CARD: TOWARDS ENDING THE SCHOOL-TO-JAIL TRACK IN DENVER PUBLIC SCHOOLS 2012-2013 (NOVEMBER 2014), http://padresunidos.org/sites/www.padresunidos.org/files/media-root/2013_DPS_REPORT_CARD_FINAL_WEB_-_ENG_1_0.pdf

⁹³ *Broward Agreement on School Discipline*, *available at* <http://safequalityschools.org/resources/entry/broward-agreement-on-school-discipline>. In school year 2013-1014, 2,128 students entered PROMISE in lieu of arrest. Under PROMISE, there has been a 62.9 percent decrease in misdemeanor arrests, a 32.9 percent decrease in felony arrests, a 36 percent decrease in suspensions, a 27 percent decrease in expulsions, and only an eight percent recidivism rate (on file with Advancement Project).

⁹⁴ *Id.*

⁹⁵ Consent Order, Barnhardt et. al and United States v. Meridian Municipal Separate Sch. Dist., No. 4:65-cv-01300-HTW-LRA (D. Miss.) Mar. 22, 2013, *available at* <http://www.justice.gov/iso/opa/resources/850201332211248646502.pdf>.

⁹⁶ U.S. Dep’t of Educ., Guiding Principles A Resource Guide for Improving School Climate and Discipline, (January 2014), *available at* <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁹⁷ *Id.* at 5.

⁹⁸ *Id.* at 12.

⁹⁹ *Id.* at 15.

¹⁰⁰ *Id.* at 16.

Moreover, the District and Board are aware of the disparate impact of their discipline policies and practices, and have failed to take corrective steps.¹⁰¹ Complainant DCPSJ has presented testimony at Board meetings, met with District and Board officials, and documented their concerns in letters and in the media.¹⁰² The District and Board proposed a new Code of Discipline, in part in response to the actions of Complainant, yet have failed to pass and implement it. Upon information and belief, the Board and District have taken no steps to eliminate the policies and practices that are leading to the extreme racial disparities in the administration of school discipline.

IX. Requests for Relief

Because the DeSoto County Schools' disciplinary policies and practices have a disparate impact on Black students, we request that the Department of Education's Office for Civil Rights secure the following remedies and any additional remedies that OCR believes will remedy the discipline disparities:¹⁰³

1. Create a non-discriminatory, fair, and age-appropriate Code of Discipline with meaningful input from students, parents, and community members.
2. 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.
3. Order on-going training and professional development for all staff on any and all topics, including implicit bias, that will reduce racial disparities and end the school-to-prison pipeline in DeSoto County Public Schools.
4. Define the appropriate use of law enforcement in the schools that limits their role to issues of safety.
5. Impose a system of accountability that prioritizes community participation in creating, reviewing, revising, and implementing a non-discriminatory disciplinary system.
6. Collect disaggregated school discipline data designed to assess racial disparities and differential treatment in school discipline (including data disaggregated by offense and by the staff member administering the discipline), review that data on a regular basis, and make the data publically available at no cost.

X. Conclusion

For the foregoing reasons, we respectfully request that the U.S. Department of Education's Office for Civil Rights conduct a full investigation of the discriminatory impact of the disciplinary policies and practices in DeSoto County Schools.

¹⁰¹ *DOJ Ferguson Report, supra* note 63, at 76-78 (describing Ferguson officials' failure to take steps to address racial disparities in law enforcement practices).

¹⁰² *See Attachments B, C and D. See also supra* note 74 and accompanying text.

¹⁰³ *See Dear Colleague Letter, supra* note 2.

Respectfully submitted by:

ADVANCEMENT PROJECT

/s/ Judith Browne Dianis

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APPENDIX

ATTACHMENT A	DeSoto County Schools Code of Discipline
ATTACHMENT B	Letter from DCPSJ and Advancement Project to DeSoto County School Board (May 19, 2014)
ATTACHMENT C	Letter from DCPSJ and Advancement Project to DeSoto County School Board (May 27, 2014)
ATTACHMENT D	Letter from DCPSJ and Advancement Project to Superintendent Kuykendall (August 1, 2014)