



Boston Office
Office for Civil Rights
U.S. Department of Education
8th Floor
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Boston, MA 02109-3921

June 20, 2012

Re: Complaint against the Fall River Public Schools under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973

This Complaint, filed by the Center for Civil Rights Remedies at the Civil Rights Project of UCLA (CRP) and the ACLU of Massachusetts (ACLUM), alleges that the frequent use of out-of-school suspension in the public schools of Fall River, Massachusetts, violates the Department of Education’s regulations interpreting Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.¹

Applying a “disparate impact” theory, the Complaint seeks to vindicate the rights of all Fall River students—including Black and Latino students, students with disabilities, and especially Black and Latino students with disabilities—who are disproportionately harmed by suspension policies and practices in Fall River. The Complaint asks the Department of Education’s Office for Civil Rights (OCR) to investigate the Fall River Public Schools and encourage the district to adopt new policies and practices that use out-of-school suspension only as a last resort.

I. Introduction and Summary

The Fall River Public Schools (FRPS) suspend many students out of school, and they disproportionately suspend Black students, Latino students, and students with disabilities. For the 2009-2010 school year, data recently published by OCR itself show that FRPS suspended 25.9 percent of Black students, 23.1 percent of Latino students, and 13.4 percent of White students

¹ 42 U.S.C.A. §§ 2000d-2000d-7 (Title VI); 29 U.S.C.A. § 794 (Section 504).

enrolled in Kindergarten through 12th Grade. FRPS also suspended 23.8 percent of all students with disabilities.²

When race and disability overlapped, suspension rates were even higher. Most alarmingly, *the district suspended 42.1 percent of all Black students with disabilities*. Yet, for white students without disabilities, the suspension rate was 11.8 percent.

Moreover, data on out-of-school suspensions published by the Massachusetts Department of Education show that in 2010-11, Fall River suspended 18.1 percent of all students. That suspension rate was the second highest in the state (excluding charter schools). In contrast, nearly 100 school districts across the state (again excluding charter schools) suspended 1 percent or less of their enrollment that year.

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

But Fall River's suspension policies and practices are unnecessarily harsh. In addition to adversely impacting students of color and students with disabilities, they result in frequent out-of-school suspensions for all students. This approach to school discipline is not supported by research on best educational practice. To the contrary, research indicates that relying on out-of-school suspensions will undermine rather than enhance the goal of providing a safe and productive learning environment. The Fall River Public Schools' suspension policies and practices therefore violate Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability.

As interpreted by Department of Education regulations, Title VI and Section 504 prohibit government practices that have the *effect*—even if not the *intent*—of discriminating by race or disability.³ Under this “disparate impact” view, if a public school district's disciplinary policies or practices disparately harm students of color or students with disabilities, they are unlawful unless they are justified by educational necessity *and* there are no less discriminatory means of achieving the same educational goals.

² The data we analyzed are for students with Individual Education Plans (IEPs), who are protected under Section 504. The available data for students with disabilities who did not have IEPs were not disaggregated by race.

³ 34 C.F.R. § 100.3(b)(2); 28 C.F.R. § 41.51(b)(3).

Fall River’s suspension practices cannot survive this disparate impact analysis. Most important, the data establishing disparities by race and disability in Fall River were collected and certified by the Fall River Public Schools themselves, in response to a “Civil Rights Data Collection” survey conducted by OCR on the 2009-2010 academic year. These data were publicly reported for the first time in March 2012.

The now-public data show clear disparities based on race and disability. The largest single disparity was for students of color who also had disabilities. For example, there was more than a 30 percentage point difference between the rate of suspension for Black students with disabilities and White students without disabilities.

There is ample evidence that these disparities persist today. Although data disaggregated by race and disability are available only for the 2009-2010 academic year, more recent data show that Fall River’s overall suspension rate is on the rise. Meanwhile, both during the 2009-2010 year and now, the Fall River Public Schools have used disciplinary codes that authorize out-of-school suspension not only for acts of violence, but also for public-order offenses. For example, Fall River’s middle school students can be suspended for detracting from “good order,” and its high school students can be suspended for failures of “courtesy.”

These practices and policies are not justified by educational necessity for purposes of either Title VI or Section 504. Research from the Council of State Governments, the American Pediatrics Association, the American Psychological Association, and several other sources has demonstrated that frequently suspending students out of school is associated with higher levels of grade retention, academic failure, dropping out, and involvement in the juvenile justice system. Despite the good intentions of teachers and administrators, frequent out-of-school suspensions simply do not create safer or more productive learning environments.

Based on this research, some states are taking steps to limit the use of out-of-school suspensions to only the most serious offenses. In Maryland, the state Board of Education has proposed regulations intended to reduce the use of out-of-school suspensions and eliminate racial disparities in discipline.⁴ In Connecticut, which enacted legislation limiting out-of-school suspensions, Governor M. Jodi Rell explained:

Students should be removed from the school setting only under the most exceptional circumstances. . . . Keeping children out of school is a direct line to

⁴ Maryland State Board of Education, *A Safe School, Successful Students, and a Fair and Equitable Disciplinary Process Go Hand in Hand: A Study of School Discipline Practices and Proposed Regulatory Changes* (2012), at http://msde.state.md.us/School_Discipline_Report_02272012.pdf.

delinquent behavior. Students get farther behind in their course work. They lose hope of catching up. It's a recipe for failure.⁵

Because Fall River's suspension practices have a disparate impact and are not supported by educational necessity, they fail the disparate impact analysis under both Title VI and Section 504. But even if it were necessary to consider the existence of less discriminatory alternatives, Fall River's suspension practices would fail that inquiry, too.

Alternative disciplinary policies would likely lower Fall River's high rates of out-of-school suspension for all students—including students of color and students with disabilities—while at the same time enhancing school discipline. Many alternatives are available. One especially promising option is the practice known as Positive Behavioral Interventions and Supports. Schools in Florida that have implemented this alternative *with high fidelity* have reduced out-of-school suspensions from an average of 43 days per 100 students to 25 days per 100 students.⁶ Alternatives like PBIS improve circumstances for all students, including students of color and students with disabilities, because they improve discipline while using out-of-school suspensions only as measures of last resort.

This Complaint's goal is to turn those alternatives into Fall River's reality. We hope to reach a Resolution Agreement with the Fall River Public Schools that will call for new policies and practices that are less severe and more effective. Consistent with our hope for a mutually agreeable outcome, this Complaint does not allege that the Fall River Public Schools intentionally discriminated against anyone. Instead, it asserts that the administration of Fall River's discipline policy has an unlawful disparate impact on Black students, Latino students, students with disabilities, and most profoundly on Black and Latino students with disabilities.

We believe that OCR is uniquely situated to investigate our Complaint and facilitate a Resolution Agreement. OCR is the only administrative body that can find an unlawful disparate impact or enforce a remedy pursuant to such a finding. Therefore, we hope that OCR's further investigation will lead to new discipline practices and procedures in the Fall River Public Schools that do not have unjust and harmful outcomes.

⁵ State of Connecticut Executive Chambers, Governor Rell Signs In-School Suspensions Bill (2007), at <http://www.ct.gov/GovernorRell/cwp/view.asp?A=2791&Q=385306>.

⁶ See Florida's Positive Behavior Support: RtI for Behavior Project, Annual Report 2008-2009: Outcome and Evaluation Data (2009), at www.pbis.org/common/pbisresources/publications/FLPBS_RtIB_Project_Annual_Report20082009.pdf (OSS Rates by Implementation Level Across School Years, p. 23).

II. Timeliness

This Complaint is timely because the disparate impact of Fall River's suspension practices is likely ongoing, and because evidence of disparate impact was not publicly available until March 6, 2012. That is when OCR released data on out-of-school suspensions in Massachusetts schools during the 2009-2010 academic year. Because those data were disaggregated by race and disability, they permitted an analysis of the disparate impact of Fall River's suspension practices along those lines. That analysis follows.

III. Factual Background

Students in Fall River are suspended out of school frequently and are at greater risk of suspension if they are Black, Latino, or have a disability. Consequently, students of color who also have disabilities are at the greatest risk for out-of-school suspension. In addressing those disparities, this Complaint relies on three main sources of information.

First, the Office for Civil Rights has recently published data, sortable by race and disability, on out-of-school suspensions in Fall River during the 2009-2010 academic year.⁷ Second, the Fall River Public Schools have published to the Internet some of their disciplinary codes, which show that the district has consistently authorized out-of-school suspension for even minor infractions.⁸ Third, statistical and anecdotal evidence suggests that the district continues to impose suspensions frequently and for minor infractions.

A. Evidence of Disparate Impact

Although OCR's data for 2009-2010 cover most Massachusetts school districts, Fall River stands out. Fall River suspended 16 percent of all students in Kindergarten through 12th Grade, compared to a statewide average of 6 percent.⁹ Not only was Fall River's suspension rate high—the sixth highest in Massachusetts—it was imposed unevenly. Suspensions were imposed disproportionately on students of color and students with disabilities.

⁷ Department of Education, Civil Rights Data Collection: Fall River LEA Summary of Selected Facts (2009), at <http://ocrdata.ed.gov/Page?t=d&eid=30931&syk=5&pid=119>.

⁸ Fall River Public Schools, District Handbook for Elementary and Middle School Students 2010-2011 (2010), at <http://www.fallriverschools.org/Staff%20Notices/Policy%20or%20Procedure/English%20handbooks%201-6-11.pdf?size=496640> (pp. 17–21); 2011-2012 Student Handbook, B.M.C. Durfee High School of Fall River (2011), <http://www.fallriverschools.org/Student%20Handbook%2011-12.pdf> (pp. 36–44).

⁹ See Massachusetts Department of Elementary & Secondary Education, District Analysis, Review & Assistance Tools Headlines, at <http://www.doe.mass.edu/apa/dart/> (publishing data revealing the unduplicated suspension rates for Fall River and for the State).

1. Race

In the 2009-2010 academic year, Fall River students experienced clear racial disparities in out-of-school suspensions. Fall River's educators suspended 13.4 percent of White students enrolled in Kindergarten through 12th Grade, but they suspended 25.9 percent of Black students and 23.1 percent of Latino students. The 12.5 percentage point differential between the suspension rates for Black and White students was the fifth highest in Massachusetts among districts with at least 100 Black students enrolled. Similarly, Fall River's Latino suspension rate was the third highest out of 172 districts, and the 10 percentage point differential between the suspension rates for Latino and White students was the fifth highest in the Commonwealth.¹⁰

These differences are profound. Instead of proving *only* that out-of-school suspensions are common in Fall River, or *only* that the school district's policies disparately affect students of different races, these percentages prove *both* points. The suspension rate for all students is itself substantial; 13 of every 100 White students were suspended out of school at least once. But, even compared to that high baseline, the suspension rates for Black and Latino students were roughly twice as high with well over a 10 percentage point difference.¹¹

2. Disability

In addition to highlighting racial disparities, the OCR data also reflect disparities based on disability. It is not at all obvious why students with disabilities would be suspended more often than students without disabilities. After all, the law mandates that students with disabilities be given extra support and special education services, and the law prohibits schools from suspending these students for more than 10 days if the behavior is a manifestation of the student's disability.

Yet, in Fall River, students with disabilities were suspended far more often than their non-disabled peers. This was true for Black, Latino, and White students, but it was especially

¹⁰ These rankings are based on analysis of the OCR data by The Civil Rights Project at UCLA, but are not yet published. We will provide the Massachusetts spreadsheet to OCR upon request.

¹¹ Differences in percentage points are useful measures of disparate impact precisely because they can reflect a given practice's overall frequency and its disparate impact across different populations. For example, in Fall River the suspension rate for Black students (25.9 percent) is nearly double the rate for White students (13.4 percent). The same would be true if the rates were instead 2 percent for Blacks and 1 percent for Whites. But those hypothetical rates would be far preferable to the actual Fall River suspension rates because they would reflect low overall suspension rates and a racial disparity—a difference of 1 percentage point—affecting only one of every 100 Black students. The reality in Fall River is more worrisome. It reflects both high overall suspension rates and a racial disparity—12.5 percentage points—affecting more than 12 of every 100 Black students.

pronounced for Black students. Fall River suspended *42.1 percent* of its Black students with disabilities, a number exceeding by *nearly 22 percentage points* the 21.7 percent suspension rate for Black students without disabilities. Latino students with disabilities experienced a disparity of 7 percentage points: the district suspended 28.6 percent of those students, while suspending 21.6 percent of Latino students without disabilities. Finally, White students with disabilities experienced a disparity of nearly 9 percentage points: the district suspended 20.6 percent of those students, while suspending 11.9 percent of White students without disabilities.

3. *Race and Disability*

The Fall River Public Schools' disparate suspension of students of color and students with disabilities combined to produce particularly high suspension rates among Black and Latino students who also had disabilities.

Black students with disabilities fared worst of all. As shown in Table 1, Fall River suspended out of school *42.1 percent* of those students. Among all Massachusetts school districts with at least 100 Black students with disabilities, only one district—Worcester—suspended members of this group at a higher rate.¹² Fall River also suspended out of school 28.6 percent of Latino students with disabilities. In contrast, 20.6 percent of White students with disabilities were suspended out of school.

A comparison involving White students without disabilities establishes the magnitude of the combined impact of the race- and disability-based disparities in Fall River's suspension practices. Even though Fall River had Massachusetts' sixth highest suspension rate for White students without disabilities—roughly 13 of every 100 students—the suspension rate for Black students with disabilities was roughly 30 points higher.

¹² Based on the analysis of the OCR data for each district in the state of Massachusetts included in the OCR sample for 2009-2010. We will provide this spreadsheet to OCR upon request.

Table 1: 2009-2010 Office for Civil Rights (OCR) Suspension Data for the Fall River Public Schools: By Race, By Disability, and For All Students Combined¹³

		Black	Hispanic	White	All Students**
Students with Disabilities*	Students with IEPs Suspended Once	35	35	100	170
	Students with IEPs Suspended Two or More Times	45	65	145	255
	Total Enrollment of Students With IEPs	190	350	1190	1785
	Suspension Rate	42.1% (=80/190)	28.6% (=100/350)	20.6% (=245/1190)	23.8% (=425/1785)
Students without Disabilities*	Students without IEPs Suspended Once	75	150	360	605
	Students without IEPs Suspended Two or More Times	90	130	300	535
	Total Enrollment of Students Without IEPs	760	1295	5560	8090
	Suspension Rate	21.7% (=165/760)	21.6% (=280/1295)	11.9% (=660/5560)	14.1% (=1140/8090)
All Students**	All Students Suspended Once	110	185	460	775
	All Students Suspended Two or More Times	135	195	445	790
	Total Enrollment	945	1,645	6750	9875
	Suspension Rate	25.9% (=245/945)	23.1% (=380/1645)	13.4% (=905/6750)	15.8% (=1565/9875)

* Students with disabilities are those with “Individualized Education Programs” (IEPs). The number of students without disabilities was derived by subtracting the number of students with IEPs from total enrollment.

**Includes American Indians, Asian Americans and students in two or more racial groups.

All numbers were rounded by OCR to the nearest 5. All percentages were rounded by CRP at UCLA to the nearest tenth.

¹³ A description of how these risks were determined appears in Appendix 1. The data underlying this Table are available at <http://ocrdata.ed.gov/Page?t=d&eid=30931&syk=5&pid=119>.

B. Additional Evidence of Disparities

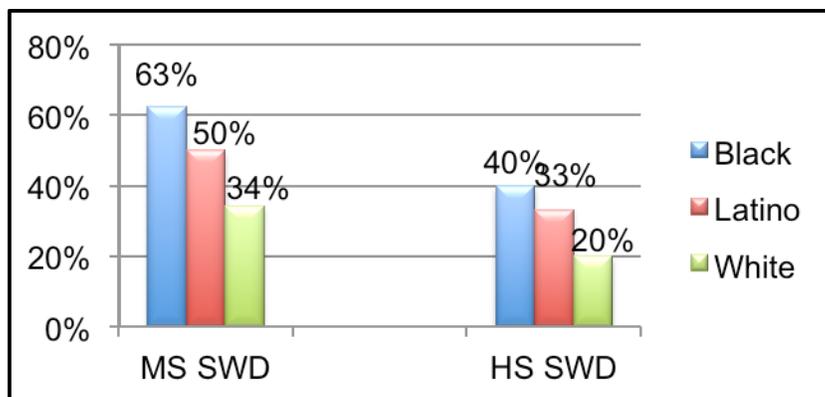
The suspension rates cited above, though troubling, actually understate both Fall River’s reliance on suspensions and the disparities arising from those suspensions. They understate Fall River’s reliance on suspensions because they include data for elementary schools, where out-of-school suspensions are used less often. They understate the disparate impact of Fall River’s suspension practices because they do not account for students who were suspended out of school multiple times.

1. Secondary School Suspensions

Suspension rates and disparities were at their highest in Fall River’s middle schools. During the 2009-2010 academic year, Black and Latino middle school students were suspended at rates of 41 percent and 39.7 percent, respectively. White students that same year were suspended at 19.4 percent of their enrollment.

As shown in Figure 1, students of color who also had disabilities were far more likely to be suspended than their White counterparts. *Half or more* of all Black and Latino middle school students with disabilities—62.5 percent and 50 percent, respectively—were suspended out of school at least once during the 2009-2010 academic year. Those rates were much higher than the still-considerable 34.4 percent suspension rate for White students with disabilities.

Figure 1: Percentage of Middle and High School Students with Disabilities suspended at least once in 2009-2010 by Race/Ethnicity.¹⁴



¹⁴ A description of how these risks were determined appears in Appendix 2. The data underlying this Figure are available at http://ocrdata.ed.gov/flex/Reports.aspx?type=school#/action=addSearchParams&tbSearchDistrict=fall%20river&btnSearchParams=Search&cblYears_3=1.

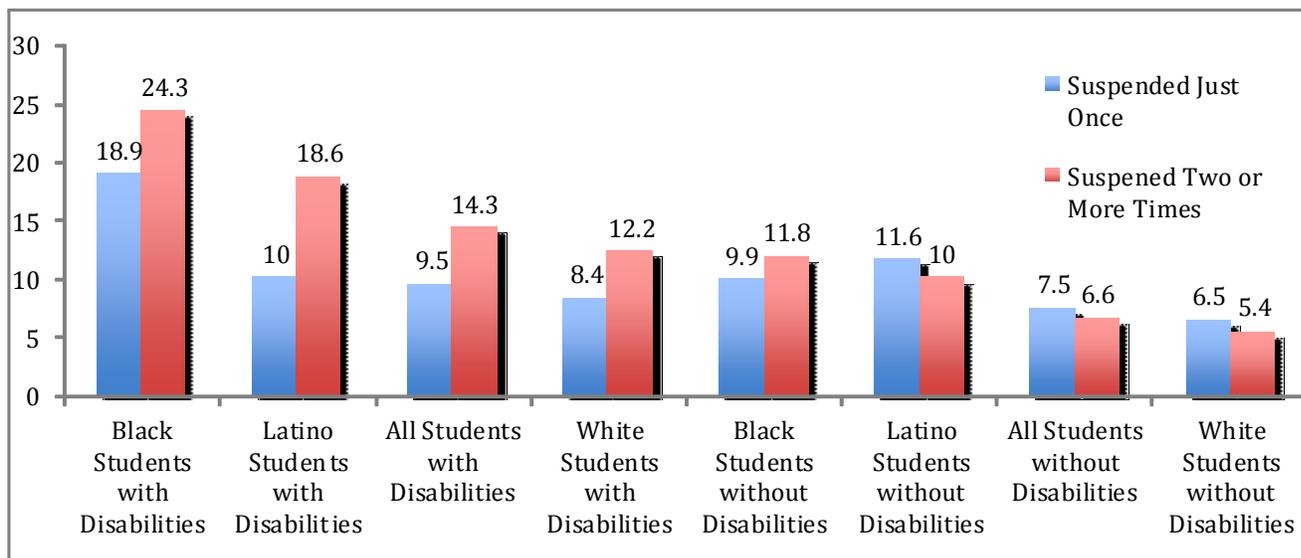
2. Multiple Suspensions

Although the suspension rates discussed above do not reveal the length or precise number of suspensions in Fall River, it is possible to say something about students who were suspended more than once. That is because the Department of Education reported separate data sets for students who were suspended only once and students who were suspended more than once.

As shown in Figure 2, students of color and students with disabilities again fared worst. Black students were more likely to be suspended repeatedly than to be suspended just once. So, too, were students with disabilities. In contrast, students without disabilities, and especially White students without disabilities, were more likely to be suspended just once than to be suspended repeatedly.

Thus, although Fall River imposed multiple suspensions on roughly 5 of every 100 White students without disabilities, it imposed multiple suspensions on nearly 19 of every 100 Latino students with disabilities, and on over 24 of every 100 Black students with disabilities.

Figure 2: OCR 2009-2010 Data on Multiple Suspensions



C. Fall River's Disciplinary Policy and Practice

Although there is no publicly available information on the reasons behind the out-of-school suspension that Fall River imposed during the 2009-2010 academic year, there are two indications that relatively minor infractions are driving a substantial proportion of them.

First, information from the Massachusetts Department of education establishes that the vast majority of Fall River students who were suspended out of school in 2010 were suspended

for conduct that was noncriminal, unrelated to drugs or tobacco, and nonviolent.¹⁵ In 2010 there were 3,608 incidents resulting in an out-of-school suspension. Of those, only 721—just under 20 percent—were criminal, drug or tobacco-related, or violent.

Second, Fall River suspension policies have, since at least the 2009-2010 academic year, given school administrators discretion to impose out-of-school suspensions in response to public-order or property infractions.

A “District Handbook” governs discipline in Fall River’s elementary schools, where out-of-school suspensions are at their nadir, and its middle schools, where out-of-school suspensions reach their peak. For elementary school students, the 2010-2011 District Handbook—the only version we could find online—stated that violent acts like fighting, assault, and weapons possession would “lead[] to suspension.”¹⁶ But it also favored suspension for less serious offenses, including “stubbornness,” “vandalism,” “obscenity,” “insubordination,” “harassment,” and “theft.”¹⁷

For middle school students, public-order and property offenses are punished even more harshly. Like the elementary-school policy, the middle-school policy provided that “suspension should be considered the usual punishment” for insubordination, obscenity, harassment, vandalism, and theft. But the middle-school policy also added a catch-all provision that prescribed suspension for *any* disruption to public order—*i.e.*, any offense that “detracts from the good order of the school, intrudes on another person’s rights, or creates an atmosphere not consonant with the educational goals of the school.”¹⁸

The 2010-2011 District Handbook appears to reflect the disciplinary policies in effect during the 2009-2010 academic year—when Fall River imposed the suspensions described in this Complaint—and in effect today. For example, the 2009-2010 Handbook for Morton Middle School—one of five middle schools in Fall River, and the only one whose 2009-2010 Handbook we found online—listed all of the grounds for suspension that appeared in the 2010-2011 District

¹⁵ See <http://www.doe.mass.edu/apa/dart/>. The attached Excel sheet is from this tool. None of the data available are disaggregated by race or disability status. We assume that the discipline data for 2010 reflect the data for the school year ending in 2010.

¹⁶ Fall River Public Schools, District Handbook for Elementary and Middle School Students 2010-2011 (2010), at <http://www.fallriverschools.org/Staff%20Notices/Policy%20or%20Procedure/English%20handbooks%201-6-11.pdf?size=496640> (p. 17).

¹⁷ *Id.*

¹⁸ *Id.* at 18.

Handbook, *including the public order catch-all*.¹⁹ The Morton Handbook also added that tardiness was another potential ground for out-of-school suspension.²⁰

At the high school level, Fall River has also consistently authorized out-of-school suspension for a wide range of disciplinary infractions. Fall River's main high school,²¹ B.M.C. Durfee High, used the same suspension policies from the 2009-2010 academic year through the present 2011-2012 academic year. Although the school's Student Handbook asserts that out-of-school suspension "ordinarily addresses serious conduct issues,"²² suspension is actually authorized for offenses that do not seem particularly serious.

For example, just like middle-school provision on public order, the Durfee High Student Handbook imposes an overarching "courtesy" obligation that is punishable by out-of-school suspension. The courtesy obligation requires each student to "act with courtesy towards faculty, staff, and fellow students" to "maintain[]self-respect and self-discipline," and to "consider[] . . . the rights and property of others."²³ Students can be suspended for discourtesy and for other public-order violations, such as "refus[ing] to comply" with the school's prohibition against cell phones.²⁴

D. Ongoing Suspension Practices in Fall River

Because the Fall River Public Schools have not materially changed their suspension policies since the 2009-2010 academic year, there is no reason to believe that Fall River students have seen reductions in suspension rates or in disparities by race and disability. In fact, there is some evidence that those problems are getting worse.

For example, according to data released by the Massachusetts Department of Education for 1st through 12th Grade, in the 2010-2011 academic year Fall River suspended 18.1 percent of all enrolled students.²⁵ This rate was more than three times the state average, and it was substantially higher than the 15.8 percent suspension rate indicated by the OCR data for the

¹⁹ Morton Middle School Handbook at 18-19 (2009-2010), at <http://www.fallriverschools.org/Morton%20Student%20Handbook%202009-2010.pdf> (p. 8).

²⁰ *Id.*

²¹ Fall River has an alternative high school, Resiliency Preparatory High School, but its handbook does not appear to be available on the school's web site.

²² 2011-2012 Student Handbook, B.M.C. Durfee High School of Fall River (2011), at <http://www.fallriverschools.org/Student%20Handbook%2011-12.pdf> (p. 38).

²³ *Id.* at 36.

²⁴ *Id.* at 37, 43.

²⁵ Massachusetts Department of Elementary and Secondary Education, State Indicators Report for Fall River (2010-2011), at <http://profiles.doe.mass.edu/profiles/student.aspx?orgcode=00950000&orgtypecode=5&leftNavId=303&> (hereinafter "State Indicators Report").

2009-2010 academic year (albeit for Kindergarten through 12th Grade). In fact, according to the Massachusetts Department of Education, the 18.1 percent suspension rate for 2010-2011 was Fall River's highest suspension rate since 2004-2005, when it was 18.6 percent.²⁶ In contrast, during the 2010-2011 academic year approximately 95 districts in MA suspended 1 percent or less of their enrollment (not including charter schools).²⁷

In 2011-2012, we believe that Fall River has continued its frequent use of suspension for minor misconduct and that this unsound policy continues to have an especially harmful impact on Black and Latino students with disabilities. For example, on information and belief, John or Jane Doe (J.D.), a student of color who also has a disability, was suspended out of school twice in the 2011-2012 school year. A parent of J.D., though wishing to remain anonymous, told us that one of J.D.'s suspensions was for using a cell phone.

We also spoke with one Fall River Public Schools employee who has regular contact with Fall River students. Though wishing to remain anonymous, this employee confirmed that this current year students of color, students living in poverty, and students with disabilities were frequently suspended out of school. In the employee's view, these suspensions were not helping the district's students.

We anticipate that an OCR investigation will reveal that J.D.'s experience is not unique. The evidence suggests that Fall River disproportionately suspends students of color and students with disabilities, and it does so under policies that favor out-of-school suspension for minor offenses.

IV. Reasons for Investigating this Complaint

The Fall River Public Schools' suspension practices raise serious questions about their compliance with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Title VI prohibits recipients of federal financial assistance from discriminating based on race, color, or national origin. 42 U.S.C §§ 2000d-2000d-7. Section 504 likewise prohibits recipients of federal financial assistance from discriminating based on disability. 29 U.S.C. § 794.

Department of Education regulations implementing these statutes prohibit practices that have a *disparate impact* by race or disability, even if there is no *discriminatory intent* behind those practices. The regulations prohibit school district conduct that has "the effect of subjecting [people] to discrimination" due to race or disability, as well as conduct that has "the effect of

²⁶ State Indicators Report, *supra* n.27, at http://profiles.doe.mass.edu/state_report/indicators.aspx?mode=&year=2011&orderBy=OUTSUSPPCT%20DESC.

²⁷ The Massachusetts Department of Education web site on "student indicators" allows for a ranking of all districts by rate of suspension. The out-of-school suspension rate is the number of students suspended one or more times as a percentage of total enrollment. For definitions, see <http://profiles.doe.mass.edu/help/data.aspx#indicators>.

defeating or substantially impairing accomplishment of the objectives of the [school's] program” with respect to students of a particular race or students with disabilities. 28 C.F.R. § 41.51(b)(3); 34 C.F.R. § 100.3(b)(2).

In the education context, a disparate-impact analysis proceeds in three steps. The first step is to ascertain whether a school district’s facially neutral practice has a disproportionate and adverse impact on children of a particular race or children with disabilities. If so, then there is a *prima facie* case of disparate-impact discrimination. Next, if there is a *prima facie* case of disparate impact, the practice is unlawful unless the district demonstrates that it serves an educational necessity. Finally, even if the practice does serve an educational necessity, it is unlawful if equally effective and less discriminatory alternative practices are available.

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

A. Fall River’s Suspension Practices Disparately Impact Students of Color and Students with Disabilities.

Fall River’s frequent use of out-of-school suspensions disparately impacts students of color and students with disabilities. Even assuming that these disparate impacts are inadvertent—and thus do not reflect intentional discrimination—they still establish a *prima facie* case of disparate-impact discrimination under Title VI and Section 504.

The evidence of disparate impact will not be repeated at length here because it is simply overwhelming. We have demonstrated stark disparities when the data are analyzed by race, by disability status, and by the two combined. But certain disparities from the 2009-2010 academic year warrant emphasis:

- The most pronounced disparities were revealed when the risks for suspensions by race *with* disability are compared. The Fall River Public Schools suspended 42 percent of all Black students with disabilities (K-12) and 62.5 percent of Black students with disabilities enrolled in middle school. Suspension rates for Whites were 20 to nearly 30 percentage points lower. Similarly, FRPS suspended 50 percent of Latino students with disabilities enrolled in middle school. Suspension rates for Whites with disabilities were nearly 20 percentage points lower.
- Independent of disability status, the data reflect large disparities by race. The most pronounced difference was in Fall River’s four middle schools, where the overall suspension rates were 41 percent for Black students and 39.7 percent for Latino students. For White middle school students, in contrast, the suspension rate was 19.4

percent.²⁸ Fall River has the fifth largest Black/White difference for any district in the state included in the OCR sample with at least 100 Black students.²⁹

- Independent of race, the data reflect large disparities by disability status. Across the Fall River Public Schools, nearly one in every four students with disabilities was suspended at least once (23.8 percent), ranking Fall River among the highest suspending 10 districts in the state for students with disabilities. That suspension rate was nearly 10 percentage points higher than the suspension rate for those without disabilities. Moreover, 14.3 percent of students with disabilities were suspended repeatedly, while just 6.6 percent of students without disabilities were suspended repeatedly.

Under a disparate-impact theory, this *prima facie* evidence of discriminatory impact cannot be undermined by a showing that students of color or students with disabilities actually engage in a disproportionate share of behaviors punishable by suspension. The Department’s disparate-impact regulations prohibit unjustified practices that have the “effect” of discriminating even when they are applied neutrally. The core questions are whether out of school suspension is a justifiable response, and even so, whether there is an equally or more effective response that is less harmful.

B. Frequent Out-of-School Suspensions Are Not Educationally Necessary.

Fall River’s frequent out-of-school suspensions are not educationally necessary, under the second step of the disparate-impact analysis, because the relevant research supports imposing out-of-school suspensions only as a last resort. In contrast, research does not suggest that there is an educational purpose for suspending students—and thus denying them access to school—for anything less than the most serious offenses. In fact, the American Psychological Association has determined that out-of-school suspension is not only ineffective but, for some students, it can actually reinforce misbehavior.³⁰

The Civil Rights Project at UCLA has found no research linking frequent out-of-school suspensions with improvements in school safety or student behavior. Our review of the literature merely confirms a previous review by the American Psychological Association, which found no

²⁸ According to our calculations, this large difference remained when only students without disabilities in the middle school were compared. The rates for middle school students without disabilities was 39.6 percent for Latinos, 35.4 percent for Blacks, and 16 percent for Whites.

²⁹ A spreadsheet that permits the user to rank order the districts in the sample by this comparison point can be provided to OCR on request.

³⁰ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, Vol. 63 No. 9 American Psychologist 852, 854 (2008) at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

evidence that zero-tolerance disciplinary policies, as applied to mundane and non-violent misbehavior, improve school safety or student behavior.³¹ Vague rules—such as Fall River’s rules authorizing suspension for derogations of “good order” and “courtesy”—are likewise flawed. Research suggests that when school administrators are afforded such discretion, they tend to punish Black students more harshly than White students who engage in identical conduct.³²

In fact, there is evidence that frequent out-of-school suspensions exacerbate the problems they are supposed to cure. A study by the Council of State Governments, which tracked over one million middle school students for six years, linked suspensions to dropping out and high risk of involvement with the juvenile justice system.³³ Likewise, a study showed that Indiana schools with low suspension rates achieved higher test scores, even when controlling for race and poverty.³⁴ That is why professional organizations like the American Pediatrics Association and the American Psychological Association have concluded that out-of-school suspensions do not work.³⁵

Of course, the evidence discrediting harsh suspension policies has not stopped school districts from implementing them. In general, defenders of these policies argue that suspensions (1) improve the educational environment for well-behaving students; (2) improve outcomes for students who have been suspended; and (3) deter future misconduct. Each of these arguments lacks merit.

First, although school officials who order suspension often believe they are shielding the students who remain in school from the misbehaving students, research does not show that chaotic classroom settings can be properly blamed on a few “bad apples.” Instead, disruptive classroom behavior depends largely on the district and on the school and classroom environments. Researchers have shown, for example, that the same student can behave very

³¹ *Id.* at 583-584.

³² Tony Fabelo et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, Council of State Governments Justice Center (2011), at http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf.

³³ *Id.*

³⁴ M. Karega Rausch & Russell Skiba, *Discipline, Disability, and Race: Disproportionality in Indiana Schools*, Center for Evaluation & Education Policy (2006), http://www.indiana.edu/~equity/docs/discipline_disability_race_indiana.pdf.

³⁵ American Academy of Pediatrics Committee on School Health, *Out-of-School Suspension and Expulsion*, Vol. 112 No. 5 Pediatrics, 1206 (2003), at <http://pediatrics.aappublications.org/content/112/5/1206.full.pdf+html?sid=b76baf23-07bf-4cdf-8fa0-10587add04f3>; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, Vol. 63 No. 9 American Psychologist 852 (2008), at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

differently in different classrooms.³⁶ Disruptions tend to increase or decrease with the skill of the teacher in providing engaging instruction and in managing the classroom. As engagement goes up, misbehavior and suspensions go down.³⁷ The American Psychological Association has therefore explained: “When applied correctly, effective classroom management principles can work across all subject areas and all developmental levels. . . . They can be expected to promote students’ self-regulation, reduce the incidence of misbehavior, and increase student productivity.”³⁸

Certainly a “bad apples” theory cannot explain the data for the Fall River Public Schools, which suspend one out of every four Black students, and nearly one of every seven White students, in Kindergarten through Twelfth grade, or why Fall River suspends a higher percentage of the enrolled student body than all but one of the other (non-charter) districts in Massachusetts.

Second, far from improving outcomes, suspension hurts the students who are suspended. Quite simply, as Connecticut Governor Rell has noted, students do not receive academic or behavioral instruction when they are not in school.³⁹

Out-of-school suspension also tends to harm the suspended students by exacerbating personal challenges that led to misbehavior in the first place. For example, students at risk of suspension can include children with single and impoverished parents who cannot afford to miss work when their children are suspended. For these students, as the Academy of American Pediatrics’ Committee on Social Health has observed, “academic suspension in turn provides yet another life stress that . . . may predispose them to even higher risks of behavioral problems.”⁴⁰ The lack of professional assistance at the time of exclusion from school, in turn, increases the risk of permanent school drop-out.⁴¹ Many in law enforcement have echoed the Academy’s concerns about the consequences of having high numbers of unsupervised suspended students.⁴²

Viewed in this light, Fall River’s disproportionate suspension of students with disabilities is particularly troubling. Those students and their parents already face substantial educational challenges. If out-of-school suspensions were nevertheless helpful to them, then the suspensions

³⁶ Beth Harry & Janette Klingner, *Why Are So Many Minority Students in Special Education? Understanding Race & Disability in Schools* (Teachers College Press 2006).

³⁷ Osher, Bear, Sprague, & Doyle, 2010, How can we improve school Discipline? *Educational Researcher*, 39(1), 48-58.

³⁸ Tom Kratochwill, *Classroom Management: Teachers Modules*, American Psychological Association at <http://www.apa.org/education/k12/classroom-mgmt.aspx> (p. 5).

³⁹ State of Connecticut Executive Chambers, Governor Rell Signs In-School Suspensions Bill (2007), at <http://www.ct.gov/GovernorRell/cwp/view.asp?A=2791&Q=385306>.

⁴⁰ American Academy of Pediatrics Committee on School Health, *Out-of-School Suspension and Expulsion*, Vol. 112 No. 5 Pediatrics 1206, 1207 (2003), at <http://pediatrics.aappublications.org/content/112/5/1206.full.pdf+html?sid=b76baf23-07bf-4cdf-8fa0-10587add04f3>.

⁴¹ *Id.*

⁴² Fight Crime: Invest in Kids. (2009). *Comments pursuant to notice of proposed information collection request*. New York [on file with authors]. See generally <http://www.fightcrime.org/>.

would lead to marked improvements in behavior and academic outcomes. But that is not what the data suggest. Instead, the data show a high frequency of students suspended repeatedly in Fall River.

Third, there is no evidence that out-of-school suspension, as applied to nonviolent misbehavior, deters student misbehavior or improves school safety. In fact, there is ample evidence for the opposite proposition. Longitudinal studies have consistently shown that students suspended in Sixth grade are *more* likely to receive office referrals or suspensions in subsequent grades. For example, Raffaele Mendez, who studied longitudinal data on students from 150 schools in Florida’s Pinellas County, found a strong relationship (after controlling for other at-risk factors) between the number of sixth-grade suspensions and the number of seventh-and eighth grade suspensions.⁴³

Thus, although school teachers and administrators surely face substantial challenges in educating and disciplining students, there is no evidence that frequently suspending students helps to meet those challenges. For that reason, Fall River’s disparate suspension of students of color and students with disabilities violates Title VI and Section 504.

C. Less Discriminatory Discipline Practices Provide Greater Benefits.

Even if Fall River’s suspension policies conferred some benefit on Fall River students—though they do not—they would still violate Title VI and Section 504. That is because the Fall River Public Schools could substantially improve educational outcomes and school discipline through policies that do not disproportionately harm students of color and students with disabilities.

As a threshold matter, replacing even some of Fall River’s out-of-school suspensions with less severe punishments would be less discriminatory even if the less severe punishments were imposed at the same disparate rates that now prevail in Fall River. The less *severe* punishment is necessarily less *discriminatory* because it avoids the most damaging feature of out-of-school suspension: excluding students from the learning environment. Thus, replacing all of Fall River’s out-of-school suspensions with in-school suspensions would be less discriminatory even if the district continued to suspend 42 percent of its Black students with disabilities, in school. The fact that Fall River’s 18.1 percent suspension rate was second highest in the Commonwealth (excluding charter schools), together with the fact that approximately 95

⁴³ Raffaele Mendez, L. (2003) *Predictors of suspension and negative school outcomes: A longitudinal investigation*. In Wald & Losen (Eds.), (2003). *Deconstructing the School to Prison Pipeline*. San Francisco: Jossey-Bass. 24-25; Raffaele Mendez, L.M. & Knoff, H.M. (2003). Who gets suspended from school and why: A demographic analysis of schools and disciplinary infractions in a large school district. *Education and Treatment of Children*, 26. 30-51.

school districts suspended 1 percent or less of their enrolled student body, also suggests that better disciplinary alternatives are available.

Recent research from The Council of State Governments suggests that even high-suspending districts like Fall River can reduce out-of-school suspension if the adults change their approach to managing student behavior. Researchers analyzed disciplinary variations in Texas’s largest school districts, controlling for both individual traits—including disability type, test scores, and prior disciplinary history—and school traits such as teacher experience and percentage of socio-economic disadvantage.⁴⁴ They found that the actions of school administrators “can make a difference in whether students are successful in avoiding disciplinary actions independent of their risk factors.”⁴⁵

When disciplinary actions are unavoidable, school administrators can choose actions that work better than out-of-school suspension. For example, in 2010 Connecticut passed a law requiring that out-of-school suspensions be imposed only rarely. Under the law, out-of-school suspensions can be imposed only on students who pose a danger to themselves or others, or instead as a last resort for students who engage in persistent and egregious misbehavior. Even disobedient students that need to be removed from their classrooms are supposed to remain in school.⁴⁶

The alternatives to out-of-school suspension are many, so we address only a few specific examples here.

1. Student-Specific Alternatives

Perhaps the most obvious alternative to out-of-school suspension is in-school suspension. That tactic provides students with supervision and gives them the opportunity to stay productive and avoid falling behind in class.

But even in-school suspensions are usually more severe than other effective means of discipline. Mediation, counseling and parent conferences, to name a few examples, are more constructive interventions that provide an opportunity to better understand and address the root cause of student misbehavior.

⁴⁴ Fabelo, *supra* n.35, at 80.

⁴⁵ *Id.* at 83.

⁴⁶ Conn. Gen. Stat. Ann. §10-233c (West 2012).

2. *Training in Classroom and Behavior Management*

There are also systemic means of improving school discipline that do not hinge on direct intervention with misbehaving students. One approach is to provide training and support for teachers in classroom and behavior management. Researchers from two national centers—the National Comprehensive Center for Teacher Quality and the National Evaluation and Technical Assistance Center for the Education of Children and Youth who are Neglected, Delinquent, or At-Risk—have described four ways in which teachers and school administrators can improve the classroom environment: (1) through their relationships with students, (2) through their attitudes and social-emotional competence, (3) by contributing to the conditions for learning and (4) through their responses to student behavior.⁴⁷ On this last point the researchers noted that “educator practices often contribute to students’ indiscipline and oppositional behavior.”⁴⁸

Consistent with those recommendations, the Fall River Public Schools could seek out training on the best ways to manage classrooms and interact with students. Indeed, in 2009 Fall River was identified by the Massachusetts Department of Education as a district in need of recovery in several areas, including leadership and support for programs with English language learners and students with disabilities.⁴⁹ Although subsequent reviews indicate that the district has made some progress,⁵⁰ its suspension rates suggest that there is still work to be done. In fact, a recent report concludes that Fall River needs to “strengthen the expertise of teachers to improve the achievement of students with disabilities.”⁵¹ The district should therefore expand its programs for training teachers in educating students with disabilities, and it should provide ongoing support and professional development in this area.

3. *School-Wide Positive Behavioral Interventions and Supports*

The implementation of School-Wide Positive Behavioral Interventions and Supports (SWPBIS) is another less discriminatory alternative to out-of-school suspension. SWPBIS seeks

⁴⁷ Jane G. Coggshall, David Osher, & Greta Colombi, *Enhancing Educators’ Capacity to Stop the School-to-Prison Pipeline*, American Institutes for Research, at 169-186 (2012) at <http://www.psesd.org/conferences/alt2suspension/docs/EnhancingEducatorsCapacity.pdf>.

⁴⁸ *Id.* at 174 (citing D.A. McFarland, “Student Resistance: How the Formal and Informal Organization of Classrooms Facilitate Everyday Forms of Student Defiance.” *American Journal of Sociology* 107 (2001), 612-667).

⁴⁹ Massachusetts Department of Elementary and Secondary Education, Center for School and District Accountability, Progress Report for Fall River Public Schools at 1 (Oct. 12, 2011) [on file with authors].

⁵⁰ *Id.* at 1-2.

⁵¹ The Massachusetts Department of Elementary And Secondary Education Center for School and District Accountability Progress Report, Attachment #1: Fall River Progress Report (2011), at http://www.fallriver schools.org/Fall_River_Progress_Report_Final_3%2011_11.pdf.

to change underlying attitudes and policies concerning how behavior is addressed,⁵² and it comprises three levels of intervention. The first level is school-wide. Its goal is to ensure a safe and effective learning environment by monitoring office referrals for discipline and setting school-wide goals for reducing these referrals. The system of interventions and supports is designed to shift the focus from the individual student to the collective behaviors, structures, and routines in the school as a whole.

Numerous studies have found positive results with this approach.⁵³ As noted in the introduction to this Complaint, Florida schools that implemented SWPBIS with high fidelity saw out-of-school suspensions decrease from an average of 43 days per 100 students to 25 days per 100 students.⁵⁴

The second and third levels of SWPBIS provide additional supports and services for smaller numbers of students who exhibit challenging behavior. These include interventions conducted in individual classrooms and focus more on specialized instruction of school expectations, skills training for students, or other strategies tailored to specific behaviors.

⁵² George Sugai & Robert Horner, *The Evolution of Discipline Practices: School-wide Behavior Supports*, Vol. 24 No. 1/2 Child and Family Behavior Therapy 23–50 (2002).

⁵³ Catherine P. Bradshaw, et al., *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, Vol. 102 No. 2 Journal of Educational Psychology 508–520 (2010); Robert H. Horner, et al., *A Randomized Wait-list Controlled Effectiveness Trial Assessing School-wide Positive Behavior Support in Elementary Schools*, 11 Journal of Positive Behavior Interventions 133 (2009); Stephen R. Lassen, et al., *The Relationship of School-wide Positive Behavior Support to Academic Achievement in an Urban Middle School*, 43 Psychology in the Schools 701–712 (2006) at <http://flpbs.fmhi.usf.edu/revision07/research/research%20articles%20supporting%20pbs/middleschoolimplementation.pdf>; Carol W. Metzler, et al., *Evaluation of a Comprehensive Behavior Management Program to Improve School-wide Positive Behavior Support*, 24 Education and Treatment of Children 448–479 (2001) Howard S. Muscott, et al., *Positive Behavioral Interventions and Supports in New Hampshire: Effects of Large-Scale Implementation of Schoolwide Positive Behavior Support on Student Discipline and Academic Achievement*, Vol. 10 No. 3 Journal of Positive Behavior Interventions 190-205 (2008).

⁵⁴ See Florida's Positive Behavior Support: RtI for Behavior Project, Annual Report 2008-2009: Outcome and Evaluation Data (2009), at www.pbis.org/common/pbisresources/publications/FLPBS_RtIB_Project_Annual_Report20082009.pdf (OSS Rates by Implementation Level Across School Years, p. 23). In addition, in a public comment on a briefing before the U.S. Commission on Civil Rights on School Discipline and Disparate Impact, the Leadership Conference on Civil Rights articulates several places where PBIS helped reduce racial disparities in school discipline. See www.usccr.gov/pubs/School_Disciplineand_Disparate_Impact.pdf. (at pp. 129-133).

4. *Ecological Approaches*

Ecological approaches to classroom management “deal[] with school discipline by increasing the strength and quality of classroom activities.”⁵⁵ Some of the defining features of the ecological approach are well-planned lessons, varied methods of instruction, clear and developmentally appropriate behavioral expectations, and careful monitoring of student engagement.

5. *Social and Emotional Learning*

Social and emotional learning is perhaps best described as “the process through which we learn to recognize and manage emotions, care about others, make good decisions, behave ethically and responsibly, develop positive relationships, and avoid negative behaviors.”⁵⁶ Social and emotional strategies aim to develop student assets that foster self-discipline. The Director of the Safe and Supportive Schools Technical Assistance Center, David Osher, suggests that “if classroom activities lack holding power, it is unlikely that schoolwide discipline approaches [schoolwide positive behavioral supports and social emotional learning] will make up for this deficiency.”⁵⁷ Therefore, social and emotional learning and ecological management approaches are likely most effective if implemented in combination with SWPBIS.⁵⁸

6. *Restorative Justice*

Restorative justice “provides high levels of both control and support to encourage appropriate behavior, and places responsibility on students themselves, using a collaborative response to wrongdoing.”⁵⁹ Teachers implementing this approach use core strategies like conferencing circles to resolve conflict and engage students in managing the environment.”⁶⁰ At a March 2012 conference sponsored by the New York State Permanent Judicial Commission on

⁵⁵ Osher, Bear, Sprague, & Doyle, *supra* n.37, at 49.

⁵⁶ Joseph E. Zins, et al., *The Scientific Base Linking Social and Emotional Learning to School Success*, Building Academic Success on Social and Emotional Learning: What Does the Research Say? Zins et., al Eds., Teachers College, 4 (2004), at <http://digilib.bc.edu/reserves/py633/mont/py63340.pdf>.

⁵⁷ Osher, Bear, Sprague, & Doyle, *supra* n.37, at 49-50.

⁵⁸ *Id.* at 49, 53.

⁵⁹ Abby J. Porter, *Restorative Practices in Schools: Research Reveals Power of Restorative Approach, Part II*, International Institute for Restorative Practices (2007) at http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/schoolresearch2.pdf.

⁶⁰ Nancy Fishman & Dory Hack, *School-based Youth Courts: Creating a Restorative Justice Alternative to Traditional School Disciplinary Responses*, Keeping Kids in School and out of Courts: A Collection of Reports to Inform the National Leadership Summit on School-Justice Partnerships, New York State Permanent Judicial Commission on Justice for Children (2012), at http://www.school-justicesummit.org/papers/paper_11.cfm.

Justice for Children, several experts presented very promising examples of how restorative justice improved school climate and reduced out-of-school suspensions.⁶¹ While the researchers who study restorative justice are only beginning to develop empirical proof of its effectiveness, increasing reports of success suggest that this may be a viable and less discriminatory alternative worth exploring in Fall River.

V. Relief Requested

We request that OCR thoroughly investigate out-of-school suspension practices in Fall River and explore any evidence that those practices violate either Title VI or Section 504.

Our purpose, however, is to improve rather than vilify the Fall River Public Schools. We believe that the administrators and teachers in Fall River have the capacity to make substantial changes that will dramatically reduce the use of out-of-school suspensions while maintaining safe and orderly learning environments and improving achievement. We request that OCR encourage the Fall River Public Schools to enter into a formal and public Resolution Agreement with both the ACLU of Massachusetts and The Center for Civil Rights Remedies at The Civil Rights Project of UCLA. In fact preliminary discussions with Fall River Public Schools suggests that they are amenable to such a solution. We anticipate that we would not press OCR for a formal finding of a Title VI or Section 504 violation, provided that the Resolution Agreement includes the following kinds of prescriptions:

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

2. The Resolution Agreement shall contain strategies, objectives, and timelines to ensure that FRPS school discipline policies and practices resort to out-of-school suspension only as a measure of last resort, and that the use out-of-school suspension and all other disciplinary interventions are monitored for their impact on a quarterly basis.

3. The Resolution Agreement shall place clear limits on the use of out-of-school suspensions and expulsions. In-school suspensions and other less severe disciplinary sanctions shall be required except for serious offenses to be specified in the Resolution Agreement. These serious offenses might include violence or physical threats, weapons possession, or illegal drug offenses.

⁶¹ Summit materials are available at http://www.school-justicesummit.org/presentations/presentation_details.cfm?topicID=5.

4. The Resolution Agreement will create and authorize a review team, including parties to this Complaint or their assignees, to further analyze and revise the FRPS student code of conduct.

5. FRPS will contract with an independent consultant, that must be selected by the team and approved by the complainants with expertise in classroom management, to identify means of reducing out-of-school suspensions and improving school climate and safety without relying on frequent disciplinary exclusions.

The review team and the independent consultant shall consider and implement at least three of the following interventions:

- FRPS will implement of School Wide Positive Interventions and Supports in its schools. The Superintendent should establish and train a district-wide Leadership Team in SWPBIS as well as other evidence based alternatives to Zero Tolerance policies such as “ecological approaches to classroom management” and “social emotional learning.” Ideally this would be combined with training on multi-cultural competency.
- FRPS will implement a restorative justice approach, where the students who cause conflicts are instrumental in resolving them. This may include methods such as conflict management, mediation, restorative conferencing and circles.
- FRPS will implement specific training for teachers and administrators in classroom management and discipline as well as social and emotional learning. This training may be provided through professional development or by working with a consultant such as that provided by Research for Better Teaching. However, the mere expansion of extant training programs in Fall River, if they are not associated with fewer out-of-school suspensions, would not be sufficient.
- FRPS will provide training for parents who request support around behavioral issues.

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

7. The Resolution Agreement will require Data analysis, periodic review, and reporting: FRPS will agree to collect all discipline data on a quarterly basis on disciplinary responses disaggregated by race and/or ethnicity, gender, disability status, and type of offense. We also request that the data be publicly reported to the Fall River community on an annual basis.

8. The Resolution Agreement will set a 5-year goal of reducing the frequency of out-of-school suspensions to less than 6 percent (approximately the statewide average for all students

for 2009-10) for each subgroup, which shall also result in reducing all disciplinary disparities in the use of out-of-school suspensions to no more than 6 percentage points.

9. The Resolution Agreement will include other measures, goals and actions to respond to additional issues discovered in the course of OCR's investigation.

If the Fall River Public Schools do not enter into a mutually agreed upon Resolution Agreement along these lines, or if they fail to implement the terms of such an Agreement, we urge OCR to complete their investigation and find that FRPS employs policies and engages in practices that disparately impact each of the aforementioned subgroups in violation of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

VI. Conclusion

The Civil Rights Project at UCLA and the ACLU of Massachusetts respectfully ask that OCR investigate this Complaint and facilitate or require the relief requested.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
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APPENDIX 1
Calculation of Out-of-School Suspension Risks
in the Fall River Public Schools

To find the total number of students with disabilities, without disabilities, and combined (with and without disabilities):

1. Go to <http://ocrdata.ed.gov/DistrictSchoolSearch#districtSearch>.
2. Type in the district's name, Fall River. Click district search.
3. Select Fall River.
4. Under Additional Profile Facts (on the right), select Students with Disabilities (IDEA).
5. At the top right, select Chart>Table and View Data as Counts.
6. The first table shows the total number of students in the district by race and the total number of students with disabilities by race. To find the number of students without disabilities, we subtracted the students with disabilities from the total number of students.
 - Example: Number of Black students without disabilities = $945 - 185 = 760$
7. To find the out-of-school suspensions, then select Discipline, Restraints/Seclusion, Harassment/Bullying (on the left).
8. On the right, select One Out-of-School Suspension, and then With Disabilities.
9. Select Chart> Table (at the top right). This page shows you the percentages that we will find by calculating the actual numbers.
10. Then select View Data as Counts. Here is the number of students by race who have been suspended only one time.
11. On the right, select More than One Out-of-School Suspension, and then With Disabilities.
12. Select Chart>Table and then View Data as Counts. Here is the number of students by race who have been suspended more than one time. These counts are unduplicated, so to get the number of students who have been suspended at least once, add the number of students who have been suspended only once with the number who have been suspended more than once.
 - Example: Black students suspended at least once = $35 + 45 = 80$
13. For the number of students without disabilities suspended, repeat steps 8 through 12, but select Without Disabilities for steps 8 and 11.

To get the percentage of students per race suspended:

1. To get the risk for students with disabilities, divide the number of students with disabilities who were suspended at least once by the number of students with disabilities.
 - Example: Risk of suspension for Black students with disabilities = $80 / 190 = 42.1\%$
2. To get the risk for students without disabilities, divide the number of students without disabilities who were suspended at least once by the number of students without disabilities

- Example: Risk of suspension for Black students with disabilities = $165 / 760 = 21.71\%$
3. To get the risk for all students of a given race, first add the number of students of that race with and without disabilities who were suspended at least once. Then, divide the number of students suspended by the total number of students of that race.
- Example: Risk of suspension for all Black students = $245 / 945 = 25.93\%$

APPENDIX 2
Calculation of Out-of-School Suspension Risks
in Fall River’s Public Middle Schools and High School

To find the number of high school and middle school students by race, with disabilities, without disabilities, and combined:

1. Go to <http://ocrdata.ed.gov/flex/Reports.aspx?type=school>, and type the district’s name into the district box, Fall River. Click search.
2. Deselect the box marked “School,” and select the two high schools: B M C Durfee High and Resiliency Preparatory. We did not include Resiliency Preparatory in our High School calculations because some students were sent to the alternative school for disciplinary reasons.
3. Select Discipline of Students With Disabilities (2009+). This graph shows the total number of students in high school, the total number of students with disabilities (IDEA) and the number of students suspended only once or more than once.
4. To get the number of students without disabilities suspended, exit out of this chart, and select Discipline of Students Without Disabilities (on the right).
5. To get the number of middle school students suspended, exit out of the high school data, deselect the high schools, and select the middle schools: Edmond P. Talbot Middle, Henry Lord Middle, Matthew J. Kuss Middle, and Morton Middle. Repeat steps 3 and 4.

To get the percentage of students per race suspended, or the risk that students of a given race will be suspended:

1. For student with disabilities, combine the number of students with disabilities from all of the high schools or middle schools who were suspended at least once and more than once.
 - Example: 15 Black high school students with disabilities were suspended at least once.
2. Then divide the number of students with disabilities suspended at least once at the high school or middle school level by the total number of students with disabilities.
 - Example: Risk of suspension for Black high school students with disabilities =
 $15 / 35 = 42.86\%$
3. For students without disabilities, exit out of the chart for students with disabilities and select Discipline of students without combine the number of students from all of the high schools or middle schools who were suspended at least once and more than once. Repeat steps 1 and 2 for students without disabilities.