

LEGAL CHALLENGES TO STUDENT DISPROPORTIONALITY IN DISCIPLINE: A  
LEGAL CONTENT ANALYSIS OF OCR CASE RESOLUTION LETTERS AND  
AGREEMENTS

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Across the United States, African American and Latino students are being systematically removed from their schools through discriminatory disciplinary practices. While judicial challenges have failed to provide the necessary remedies for these students, the Office for Civil Rights (OCR) has the authority to enforce civil rights laws and hold districts accountable for discriminatory practices. Through a legal content analysis of OCR Case Resolution Letters and Agreements from January 2011 to June 2019, this research explores trends in resolution letters and agreements and makes recommendations for principals to reduce exclusionary discipline.

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## CHAPTER 1: INTRODUCTION

In the 1954 landmark school desegregation case, *Brown v. Board of Education of Topeka*, Chief Justice Earl Warren cited the importance of equality within our public schools. He stated that schools were responsible for providing equal opportunities for all students, regardless of race. However, nearly 70 years after this decision, students of color students are still denied equal access to a public education. African American and Latino students are overrepresented in special education, overrepresented in academic remediation programs, and underrepresented in gifted education (Hibel, Farkas, & Morgan, 2010; Morgan et al., 2015). Furthermore, since as early as the 1970's, studies have shown that African American and Latino students are more likely to face harsher punishments for misbehavior (CDF, 1975).

In the following chapter, I present an introduction to my study which explores a potential legal remedy for exclusionary discipline of students based on race. In the first section, I summarize why discriminatory discipline is problematic. Specifically, I describe types of discrimination faced by students of color during the school discipline process and present evidence on the impact of exclusionary practices. I then explore the purpose of my study from the perspective of an acting school principal. In the third section, I present my research questions and methodology. Finally, I end Chapter 1 with an explanation of the significance of this study and I articulate how my study is necessary to advance the research on this topic.

### **Problem Statement**

Out of school suspensions and expulsions, also referred to as “exclusionary discipline practices,” segregate students from their school environments. These traumatic removals can impact students for years to come, including increasing the likelihood of dropping out of school (Jordan & Anil, 2009; Skiba et al., 2002). While issues of student misconduct occur in all school



environments, regardless of the racial or socioeconomic makeup of the student body, data shows that exclusionary practices disproportionately impact students of color (Skiba et al., 2002). The term “disproportionate” refers to the overrepresentation of a specific subgroup (McIntosh, et al., 2018).

Previous research has established the existence of disproportionality and additional studies have demonstrated a negative educational impact for students who face such consequences (Anyon et al., 2014; Carter et al., 2017; Skiba et al., 2011 Skiba et al., 2002; Wallace et al., 2008). When a child is removed from their classroom environment, it becomes difficult for that student to stay engaged in the learning process. This detachment from the school environment has been shown to negatively impact the student’s academic future:

Given that educational research has consistently shown that the strongest predictor of academic achievement is active academic engagement, strategies such as suspension and expulsion pose a dilemma for administrators by removing students from the opportunity to learn (Skiba, Eckes & Brown, 2009, p. 1073-74).

As noted in the 2014 *Dear Colleague Letter* (DCL), published by the U.S. Department of Education (USDOE) and the U.S. Department of Justice (DOJ), exclusionary practices can have lasting consequences for students: “the increasing use of disciplinary sanctions...creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been called the ‘school to prison pipeline’” (Lhamon & Samuels, 2014, p. 4). The school to prison pipeline is a specific term given to the practice of criminalizing student behavior and creating certain conditions that make students more likely to go to prison than college (Lhamon & Samuels, 2014).

## **Background on the Problem**

Historically, the legal system has provided an avenue for justice for those who have faced discrimination in the United States. For example, it was through the court system that Linda Brown, a plaintiff in *Brown v. Board of Education* (1954), was able to convince a nation that segregating students on the basis of race was unconstitutional. However, students have faced significant challenges when using the judicial system to assert claims of discrimination in discipline.

Although the Supreme Court has addressed the issue of school discipline in two landmark cases; these cases do not provide specific precedent for racial discrimination in the discipline process. Instead, these cases outline the type of due process that students are owed when they are expelled from school. In both cases, *Goss v. Lopez* (1975) and *Honig v. Doe* (1988), the students prevailed under the 14<sup>th</sup> Amendment's Due Process Clause. Thus, modern-day students wishing to challenge discipline in their schools typically only find an avenue for success when they claim a violation to their "property right" to education under the Due Process Clause of the 14<sup>th</sup> Amendment (Frydman & King, 2006). *Goss* established that "at the very minimum, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and some kind of hearing" (*Goss v. Lopez*, 1975, p. 597). *Honig* provided further clarity regarding procedural due process, including a limit on the number of days a student who receives special education services can be suspended (*Honig v. Doe*, 1988). While both court decisions fail to provide specific relief for students who face racial discrimination, the second clause of the 14<sup>th</sup> Amendment, the Equal Protection Clause could also support a claim of illegal discrimination.

Under the Equal Protection Clause, students have argued that disproportionality in school discipline is a violation of their civil rights (Nauman, 2012). Yet, at this time, the standard that the lower courts have used to find institutional discrimination has been too high for students to succeed in their lawsuits claiming Equal Protection Clause violations based on school discipline (Nauman, 2012; Skiba, Eckes & Brown, 2009). Skiba, Eckes and Brown (2009) articulated the standard needed to prevail on a claim for equal protection, explaining that students would need to show *intentional* discrimination. Proving intentional racial discrimination is very difficult. If students only needed to provide that disproportionate numbers of students of color had been suspended or expelled, it would be easier. However, this type of case, referred to as a disparate impact case, has not been used successfully for students of color (Nauman, 2012).

While students have attempted to seek relief in the lower courts, judges have been wary of becoming too involved in school discipline cases, citing the importance of not interfering with administrative decision making (Skiba, Eckes & Brown, 2009). That said, there are legal avenues outside of the traditional court system that students can pursue if they face discrimination. Most notably, they can file a complaint with the federal Office for Civil Rights (OCR).

During the 1960's, Congress enacted the Civil Rights Act of 1964 (Civil Rights Act, 1964). Within this federal law is Title VI, which prohibits discrimination on the basis of race, color, or national origin in organizations that receive federal funding (OCR, n.d.). Since public schools are recipients of federal education funding, they must abide by Title VI and are legally prohibited from discriminating based on race, color, and national origin. The OCR, a division of the US Department of Education, is one of the enforcement authorities for anti-discrimination laws including Title VI of the Civil Rights Act. Specifically, the OCR handles complaints

alleging educational agencies have violated Title VI. Thus, the OCR has the responsibility of resolving civil rights complaints at the administrative level.

There are two avenues for the OCR to open an investigation (OCR, n.d). First, if there is an allegation of discrimination in schools, the OCR is responsible for conducting an investigation. These allegations can be made from a variety of sources and include parents, students and community members. However, in addition to individual allegations, the OCR reserves the right to initiate an investigation as a compliance review if they identify problematic data during the annual OCR discipline data collection. Once the OCR decides to conduct an investigation, the process looks identical for individual allegations and compliance reviews (OCR, n.d.).

Both compliance reviews and individual allegations of discrimination allow the OCR to investigate the concerns and determine if the district has engaged in discriminatory practices. If the OCR determines wrongdoing on behalf of the school during the course of their investigation, school corporations are given the opportunity to voluntarily submit to a case resolution process (OCR, n.d.). The case resolution process allows public schools to avoid litigation; however, the school is responsible for implementing all of the terms outlined in a written document called a “Case Resolution Agreement” (OCR, n.d). If the schools fail to follow the mandates within that document, or refuse to sign, the OCR can then file a lawsuit against the district (OCR, n.d.). While research has documented that OCR Case Resolution Agreement remedies are substantial and costly for school districts (Worthington, 2017), there has yet to be significant research done about how the OCR interprets each complaint and which sanctions are issued.

## **Purpose of Study**

Thus, the purpose of this study is to examine rarely analyzed OCR Case Resolution Letters and Agreements in order to make recommendations for school principals on how to avoid entanglement with the OCR and reduce exclusionary discipline. This study seeks to fill this gap in the research. Most of the current education research on disproportionality in school discipline is focused on documenting the problem (CDF, 1975; Lhamon & Samuels, 2014; Skiba et al., 1997; Skiba & Nardo, 2002). For decades, researchers have increased awareness of the problem and clarified the prevalence and types of disparities in discipline based on race, gender and special education status (CDF, 1975; Lhamon & Samuels, 2014; Skiba et al., 1997; Skiba & Nardo, 2002). Moreover, much of the current legal research on disproportionality in school discipline has been focused on the role of the courts, instead of the administrative remedies of the OCR. Importantly, I am extending beyond the fact that disproportionate discipline exists for students of color. My study seeks to identify how to address the problem of exclusionary discipline.

## **Researcher's Positionality**

Positionality is a term that refers to a researcher's unconscious bias based on their own personal or professional background (Savin-Baden & Howell Major, 2013). In qualitative research, it is important for the researcher to be aware of their own potential for bias; therefore, in the following section, I address my own positionality, as well how I limited researcher bias.

I have been engaged in educational equity work since I was a young child. I grew up watching my mother teach in communities of poverty and I experienced the differences in the lives of those children when compared to my own. I recognized the incredible privilege of being white within our public school system before I could even name that privilege. While my

mother's students faced nearly insurmountable challenges in their access to highly qualified teachers or appropriate classroom resources, I attended elementary school with countless parent volunteers and an active school community to support student needs both inside and outside of the classroom.

This understanding of my own privilege shaped the rest of my educational future. I joined Teach For America, an education reform organization, aimed at supplying enthusiastic college graduates into low-income communities as teachers. At 22-years-old, I was teaching 2<sup>nd</sup> grade in a school of over 1000 African American children. In this role, I was able to learn more about my students and the daily challenges that they faced outside of the school. My 2<sup>nd</sup> grade students had experienced traumas that would invariably impact the rest of their lives, and as a teacher, I often felt ill equipped to meet their needs. In fact, the continual feeling that *I was not enough* is what led me to school leadership and ultimately into pursuing this research. I wanted to change the educational systems that fostered such inequities in order to better outcomes for all of the students I had encountered.

However, when I got into the principalship, I realized how quickly principals can become part of the problem, instead of the solution, despite the best of intentions. I wanted to create a “high performing” school for my students so I utilized suspensions to create a culture of structure within the building. However, in doing this, I wasn't considering the implications of my choices on the students that were being excluded from school. In my fourth year as a principal, I started to learn more about the impact of exclusionary discipline and wanted to better understand additional options that would be available to me. I began working on restorative justice as an alternative to excluding students from school.

In presenting all of the information above, I seek to acknowledge my own experiences within the field of education and carefully consider how these experiences could influence my interpretations of this study's data. That said, to mitigate the concern of bias, I conducted a thorough literature review on education research, as well as legal research, in order to fully understand the context around my research questions. By grounding my coding categories in previous research studies, I was able to check my own opinions against general research on this topic. In Chapter 3, I will further address the steps that I took to increase the validity and reliability of my research.

Finally, while my positionality as a school principal could be viewed as a subjective limitation, I would argue that in other ways, it is a strength. I am passionate about this topic and willing to seek my own academic growth as a means to explore this issue. I want to provide principals, like myself, with relevant research to reduce exclusionary discipline practices.

### **Research Questions and Methodology**

Specifically, this dissertation seeks to answer the following questions:

- 1) What types of allegations and legal claims were present in the OCR Case Resolution Letters and Agreements from January 2011 to June 2019 resulting from allegations of Title VI disciplinary violations in K-12 public schools?
- 2) What general trends emerged from the Case Resolution Letters and Agreements?

To explore my research questions, I utilized a legal content analysis: a hybrid methodology that combines techniques from traditional legal research and content analysis (Salehijam, 2018). Salehijam (2018) outlined the process for conducting a legal content analysis into five primary stages: 1) the development of a research question, 2) the identification of a data set, 3) document coding, 4) analysis of data, and 5) the presentation of research findings. In

Chapter 3, I more fully address each of these stages; however, to summarize my methods, I first analyzed OCR voluntary Case Resolution Letters and Agreements from January 2011 to June 2019 in which a student alleged a violation of their civil rights during the discipline process, or the OCR had initiated a compliance review due to a notable finding of disproportionality in the OCR data collection process. Using techniques from content analysis, I coded each document to collect data on the variables outlined in my research questions. Most notably, I examined different factors regarding the students in each case (race, age, gender, location, special education status), as well as the overall findings of each case and sanctions issued to the school or district.

Finally, I utilized the lens of a building-level administrator to analyze what other school leaders could do to avoid discriminatory discipline. I presented recommendations for leaders to reduce the possibility of OCR involvement based on the requirements of past OCR Resolutions.

### **Significance**

Although exclusionary discipline and disproportionality in discipline are not novel topics, this study fills a gap within the research on exclusionary discipline. This study examines the content of the OCR Case Resolution Letters and Agreements to craft specific recommendations for school and district administrators who seek compliance with civil rights laws.

The remainder of this dissertation is organized into four chapters. In Chapter 2, I review the current literature on school discipline, including potential causes of disproportionality. I address the impact of zero-tolerance policies, the school-to-prison pipeline and school based law enforcement. I outline the legal context for claims of discrimination, including judicial and extra-judicial remedies.



In Chapter 3, I provide an overview of the research methods. I begin with an explanation of legal content analysis, and outline how this methodology compares to legal research methods and content analysis. I present my process for data collection, including a description of my code book and code process, as well as the steps I took to increase reliability and validity in my research.

Chapter 4 outlines the findings of my study and provides answers to my research questions. Specifically, I present three general themes within my data: 1) multiple types of OCR investigations existed with several legal claims; 2) OCR complaint information remains hidden from general public; and 3) OCR responses varied significantly in length and complexity. To answer my second research question, I compiled data that would inform school and district leaders. I organized this data into the following eight themes: 1) the majority of cases involved African American male students, 2) cases involving female students were rare, 3) special education status was rarely emphasized or even identified, 4) nearly half of the cases were from urban districts, the other from rural districts, leaving only one from a suburban district, 5) about one third of cases arose in the South; another third of the cases arose in West (most from California), 6) physical aggression was the most common misbehavior, 7) most school districts volunteered to resolve the complaint before the investigation was completed and 8) resolutions usually included five primary sanctions.

Within Chapter 5, I focus on the implications of my findings for students as well as education practitioners. I then address school and district leaders through practical recommendations on how to avoid discrimination in the discipline process. These recommendations include increasing community engagement, reconsidering discipline policies and significantly improving professional development. Additionally, I formulated a one-page

information sheet for school and district leaders to be used in conjunction with professional development sessions on exclusionary discipline. By summarizing my findings in a user-friendly document, I am hopeful that this research can be directly applicable to the work that happens in schools every day.

## CHAPTER 2: LITERATURE REVIEW

The following chapter is intended to provide relevant background information for my research, as well as synthesize the literature that informs my research questions. My research questions ask:

- 1) What types of allegations and legal claims were present in the OCR Case Resolution Letters and Agreements from January 2011 to June 2019 resulting from allegations of Title VI disciplinary violations in K-12 public schools?
- 2) What general trends emerged from the Case Resolution Letters and Agreements?

From my review of the literature, three overarching themes emerged: disproportionality in school discipline, the legal context surrounding school discipline, and role of school leaders in administering consequences for student misconduct.

In the first section, I present an overview of the literature on disproportionality in discipline. First, to better understand issues of discrimination in the discipline process, I focus on the national discipline data and further explore studies that discuss disproportionality by race, gender, and special education status, three themes related to my research questions. I then summarize research on zero-tolerance policies and the school-to-prison pipeline. Finally, I address how school leaders are responding to the disproportionality in discipline, including the implementation of culturally sustaining practices, reducing administrative bias, and enacting restorative justice and school-wide positive behavior intervention and supports (PBIS).

In the second section of my literature review, I explore the legal context surrounding claims of Title VI discrimination in schools. My dissertation is centered on an analysis of OCR Resolution Letters and Resolution Agreements, so in this section I describe the legal framework that grants the OCR the authority to enter into legally-binding agreements. I begin with an

analysis of constitutional law, followed by an exploration of statutory law and case law. In the last portion of this section, I address the federal policy guidance that exists surrounding school discipline. The final section of this chapter explores the impact of local policies on disproportionality.

I conclude this chapter with an explanation of how my study informs the existing literature. My study utilizes data that has seldom been reviewed: OCR Case Resolution Letters and Agreements. This research also extends beyond focusing on the problem of exclusionary discipline, the focus of the majority of past studies, and instead, seeks to offer recommendations for school leaders.

### **Discrimination in School Discipline**

This section focuses on discrimination in student discipline. First, I discuss the disproportionate rate of suspension and expulsion based on race and gender. Next, I present potential reasons for the disproportionality in discipline including: 1) zero-tolerance policies and 2) the school-to-prison pipeline. I conclude this section by discussing the attempts that have been made to remedy discrimination in discipline such as restorative justice practices and PBIS.

**Disproportionate suspension and expulsion.** There are numerous ways scholars have defined disproportionality. Disproportionality is a term that refers to an overrepresentation of a specific sub-population within a data set (Gastic, 2017). Within the literature on school discipline, disproportionality has been studied by examining race, gender, socio-economic status, and special education classification (CDF, 1975; Skiba et al., 1997; Skiba et al., 2017, Skiba & Nardo, 2002). For the purposes of my study, which examines discrimination based on race (under Title VI), I define disproportionality as the overrepresentation of students of color within the K-12 school discipline process (Skiba & Nardo, 2002). However, because my research

questions also explore trends based on gender and special education, the following section examines research on the historical background of disproportionality and research studies that explored the impact of race, gender, and special education status on school discipline practices.

***OCR Reports.*** Nationally, the OCR is responsible for the collection of discipline data for K-12 public education. Every two years, districts are required to submit this information. The OCR analyzes the data and publishes national reports (OCR, n.d.). In the past 15 years of OCR data collection on student discipline, the data has consistently showed that student of color are disproportionately overrepresented (Lhamon & Samuels, 2014; OCR 2012; OCR, 2016; OCR, 2018). In examining OCR data reports, I present information from all of the data collect reports that were released between 2011 until 2019. According to OCR, data is released publically about two years after the year that the data was collected, and current reports are available from 2011-12, 2013-14, and 2015-16, as of September 2019 (OCR, n.d).

OCR data from 2011-12 showed public school districts issued suspensions to 3.5 million students and expelled an additional 130,000 students in that one academic year (OCR, 2014). Of the 3.5 million incidents of suspension and expulsion in 2011-2012, African American students were three times more likely to be suspended or expelled than their white peers (OCR, 2012). The average suspension rate for male African American middle school students was 28.3%, compared to 10% for White male students. Additionally, American Indian students were disproportionately overrepresented in suspensions and expulsions. Lhamon and Samuels (2014) asserted that while rising discipline may be explained by a range of variables, the evidence of discrimination was alarming: “significant and unexplained racial disparities in student discipline give rise to concerns that schools may be engaging in racial discrimination that violates the Federal civil rights laws” (Lhamon & Samuels, 2014, p. 4).

Data from 2013-14 continued to show a disproportionate rate of exclusionary discipline for students of color (OCR, 2016). Despite representing 15% of the overall student population, Latino students represented 19% of the overall rate of suspensions and expulsions. Additionally, African American males made up 19% of the total amount of students expelled from school, despite representing only 8% of the total school population (OCR, 2016).

In the most recently released OCR data collection from 2015-16, released in April 2018, African American male students made up only 8% of the overall student population and yet represented 25% of the total number of students who were suspended from school (OCR, 2018). Thus, the rate of disproportionate discipline for African American males increased by 6% from the previous release. Additionally, African American female students were 8% of the total population; however, they accounted for 14% of the total suspensions (OCR, 2018). Further, African American male and female students were overrepresented in the use of law enforcement data; African American students represented 15% of the overall population of students, yet represented 31% of the total number of students who were referred to law enforcement by school officials. Additionally, as it related to expulsions, African American males represented 23% of the overall number of students who were expelled, despite representing only 8% of the total population. The trend of overrepresentation was consistent for African American females and American Indian males (OCR, 2018).

Within the OCR data, there have been other types of disproportionality outside of race and gender; most notably regarding students with disabilities (OCR, 2018). While special education disproportionality is not the primary focus of my research, students with disabilities are particularly impacted by school discipline, which is why I present specific research on students with disabilities later in this chapter.

**Research studies.** In the following section, I present relevant research studies conducted on disproportionality in student discipline. While the topic of disproportionality has been studied at length, the following section highlights key studies that have made a significant contribution to the research on this topic. Specifically, I examined studies on race, gender and special education status. While I have separated the research into these categories for the purposes of organizing the main themes of this research, it is important to note that multiple studies cite the impact of intersectionality or the connection between race and other student characteristics such as gender or special education status. Crenshaw (1989) provided an analogy which further explains how intersectionality may exist between these variables:

Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in an intersection, her injury could result from sex discrimination or race discrimination...But it is not always easy to reconstruct an accident: Sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm. (p. 149)

While I acknowledge the existence of intersectionality, for the purposes of clarity, the following section of my paper is divided into three sections: race, gender and special education status.

**Race.** Gastic (2017) defines the phenomena of disproportionality as the *racial discipline gap*: “the finding that Black and Latino students are more likely to be disciplined at school than White students, and often more harshly” (p. 163). The earliest mention of a racial discipline gap

was a 1975 study produced by the Children’s Defense Fund (CDF). The study, citing a data collection by the OCR, provided three significant findings. First, the CDF (1975) confirmed that more than a million students experienced exclusionary discipline during the 1972-73 school year. Further, they found that African American students were nearly three times as likely to be suspended when compared to White classmates (CDF, 1975). Finally, the study outlined the likelihood of race as a predictive indicator of discipline by citing evidence that one in eight African American students were suspended from school (CDF, 1975).

Since my study is specifically examining racial discrimination in the discipline process, this section of my literature review is quite comprehensive. The following section is divided into four sub-sections. The first, entitled, “Skiba studies” presents evidence from one of the most prominent researchers on disproportionality in school discipline data. The second sub-section, “school level studies,” provides information from research studies conducted at the school level. The next sub-section examines state and national studies and the final subsection, entitled “meta-analysis,” outlines significant findings from meta-analyses on disproportionality.

*Skiba studies.* Since the publication of the report by the CDF in 1975, disproportionality has continued to be documented within the research (Gordon, 2018; Skiba et al., 2017; Rausch & Skiba, 2014). One of the predominant researchers on this topic is Russell Skiba, an education researcher from Indiana University. Skiba has been actively involved in research on disproportionality for several years. In the following section, I summarize three of his studies on this topic.

Skiba et al. (2011) conducted a study on disproportionality utilizing data from over 4000 schools from the 2005-2006 school year. Their quantitative study addressed the following questions: “1) To what extent does racial/ethnic status make a contribution to rates of [office



referrals for discipline] in elementary or middle schools? 2) In which categories of [office referrals for discipline] are racial or ethnic disparities evident?” (p. 90). The study specifically gathered data on both office referral data and administrative disciplinary decisions. They found that there was significant data to support disparities for African American and Latino students in office referrals (Skiba et al., 2011). The authors further concluded that there was a “pattern of differential treatment” when considering the application of administrative consequences for the same behavior type depending on the race of the student (Skiba et al., 2011, p. 102). In the discussion, Skiba et al. (2011) advocated for federal intervention to examine student discipline by race and “mandate the development and implementation of corrective action plans where disparities are found” (p. 102).

Following the 2011 study, Skiba coauthored an article in 2016 focused on how to assist districts with creating proactive discipline models (Skiba & Losen, 2016). Within the article, Skiba and Losen (2016) encouraged districts to examine their disciplinary practices and improve relationship building between staff and students to help reduce the overall use of exclusionary discipline. They argued that politicians and administrators had relied on more restrictive discipline codes and harsher punishments to reduce student misconduct. However, they cited evidence that this approach had failed students stating, “research has overwhelmingly shown that these approaches are ineffective and increase the risk for negative social and academic outcomes, especially for students from historically disadvantaged groups” (Skiba & Losen, 2016, p. 4). They concluded that school discipline reform should be a joint effort between policymakers and school administrators to understand the research on best practices and provide ongoing training and support for staff.

Additionally, in 2017, Carter, Skiba, Arredondo, and Pollock (2017) drafted an article on the importance of acknowledging race within our schools. The authors advocated for schools to create dialogue within their communities on the impact of bias, race and racial disparities. Specifically, they addressed the impact of stereotypes of African American male students and the potential impacts of these stereotypes on the adults charged with addressing misconduct. Within the recommendations that they outlined, they encouraged schools to consider how training creates environments for teachers and administrators to confront these issues and develop deeper self-awareness.

*School level studies.* Researchers have also examined specific school contexts. Wallace, Goodkind, Wallace and Bachman (2008) conducted a study on impact of race in student discipline. Wallace et al. (2008) authored a study that utilized high school student questionnaires over a 14-year period of time from 1991-2005. Data within the study included more than 74,000 student responses. Race was further defined into the following variables: White, Black, Hispanic, Asian American and American Indian. When comparing the percentage of students within the 10<sup>th</sup> grade who received out of school discipline, the authors found that all racial sub-groups, with the exception of Asian American, had higher rates of discipline when compared to White peers (Wallace et al., 2008). Prior to the Wallace et al. (2008) study, previous research had indicated that perhaps socioeconomic status was a greater influencer on disproportionate discipline; however, the authors controlled for socioeconomic status and the results of disproportionality remained significant (Wallace et al., 2008).

Rocque (2010) built on the work of Wallace et al. (2008), however, his quantitative study focused on issues of student behavior within the elementary school setting. His work centered on the idea that previous research had not controlled for certain variables that could generate

spurious relationship between discipline and race. Specifically, the study examined student misconduct, focusing on disparities in office referrals and teacher ratings of misconduct, rather than administrative discipline. Using data from 45 elementary schools, including 28,634 students, Rocque (2010) captured any behavioral incidents reported to an administrator during the 2005-2006 school year. Rocque (2010) found, through a linear regression analysis, that African American students were more likely to receive a referral than White students. Rocque (2010) also examined data for Latino students, but did not find that Latino students were overrepresented, a finding that would contradict the later work of Skiba et al. (2011). Both of the findings mentioned above controlled for other factors, including socioeconomic status, gender and academic performance.

*State and national studies.* Losen, Martinez and Gillespie (2012) conducted an analysis of discipline data from California, utilizing student discipline data from 500 school districts. The authors provided evidence of significant disparities in disciplinary practices for students of color. Examining the findings across school districts, African Americans were more likely to be suspended than any other racial group. African American males in the Los Angeles Unified School District were nearly five times more likely to be suspended when compared to White males (Losen et al., 2012). Additionally, American Indian and Latino students were more likely to be suspended than their White peers. Losen et al. (2012) further disaggregated the data to examine specific groups of school districts, focusing on districts with the highest rates of overall suspensions in the state. The authors found that in the districts with the highest suspension rates, more than 41% of African American students had been suspended at least once during the 2009-10 school year.

Building upon the need for additional research to examine how teacher or administrator bias could impact the discipline process, Girvan, Gion, McIntosh and Smolkowski (2017) examined national statistics on student misconduct to explore potential causes for disproportionality. Specially, the authors sought to understand the impact of bias during the discipline process and examined the data from office referrals made by teachers to isolate the potential for bias prior to an administrative consequence for discipline. In a study that included data from 1,154,686 students, the authors sought to categorize behavior as “objective” or “subjective.” Using a panel of education researchers, the authors labeled behaviors such as “defiance” or “disrespect” as subjective, in that, they could be defined differently by different adults, and behaviors like “tardiness” were considered objective. The authors concluded that while there was evidence of a different application of classroom discipline based on race, the authors found that this was more noticeable in subjective behaviors, implying the impact of teacher bias (Girvan et al., 2017).

Gastic (2017) conducted a quantitative study of racial discipline data in Massachusetts to specifically examine the application of discipline for students who are cited for fighting. The study utilized data from the Massachusetts Department of Elementary and Secondary Education (MA-DESE), the Youth Risk Behavior Surveillance System (YRBS) of the Centers for Disease Control and Prevention (CDC), and the Common Core of Data (CCD) of the National Center for Education Statistics (NCES) (Gastic, 2017). Data was collected and organized into categories of disciplinary data, incident data, and school enrollment data (Gastic, 2017). The methodology focused on analyzing data to determine if there was a difference in the application of school discipline based on the race of the involved students. According to the study, data was collected based on a sample of nearly 300,000 students; however, Gastic (2017) specifically examined

incident data from 4000 referrals for fighting. Since the study utilized data from two separate database systems, Gastic (2017) did not consider other student factors such as gender, special education status or income level as this information was not easily accessible. In the analysis of this data, Gastic (2017) found that Black students were disciplined twice as often for fighting when compared to white peers. Further, in examining the data as percentages, the study concluded that even though 14.5% of physical altercations resulted in discipline, if the student involved was African American, 24.7% of those incidents received discipline. These findings contributed to the ongoing body of research that establishes racial discrimination in the discipline of African American students, even when the behavioral infraction is held constant.

When comparing Latino students with their White peers, Latino students were 1.05 times more likely to be disciplined for fighting. When cross referencing the higher rate of Latino students who reported being in a fight, Gastic (2017) concluded that the confidence interval for Latino-White students was not significant, confirming the previous findings of Rocque (2010). In the discussion of the study's findings, Gastic (2017) explained that the role of the school administrator as a possible factor in the unequal application of discipline. Gastic (2017) argued it is necessary for further research to understand how administrative discretion is exercised during the disciplinary process.

While there has been significantly more research conducted on African American and Latino students related to discipline, Brown (2014) furthered this research by specifically examining the racial discipline gap for American Indian students. Her study utilized student data from the Arizona Department of Education from 2010-11 (Brown, 2014). In Arizona, American Indian students comprise 5.4% of the total student population; one of the highest concentrations of American Indian students in the nation (Brown, 2014). Brown (2014) found similar concerns

with disproportionality as mentioned above for Latinx and African American students (e.g. Skiba et al., 2011, Gastic, 2017). Brown (2014) concluded that American Indian students were nearly three times as likely to be disciplined within the school setting. This finding was consistent with data from California from Losen et al. (2012).

*Meta-analysis.* One of the most recent studies on disproportionality was a meta-analysis of all of the literature on this topic for nearly 30 years. Welsh and Little (2018) utilized a comprehensive, systematic review to examine studies on K-12 discipline that occurred between 1990 and 2017. Methodologically, the authors originally utilized criteria that included more than 1300 sources, including books, theses, dissertations, and peer-reviewed articles; however, the sources were further refined to include studies on K-12 public schools that specifically addressed the issue of disproportionality in discipline and alternatives to exclusionary practices. Through an analysis of the findings from 183 studies, Welsh and Little (2018) confirmed that “the overrepresentation of male students in exclusionary discipline has remained consistent over time as studies in the 1990s and 2000s have documented similar disparities” (p. 758). Additionally, in examining the impact of race, Welsh and Little (2018) found evidence that African American students were more likely to experience overrepresentation in teacher behavioral referrals, corporal punishment, and out of school consequences. In looking at Latino students, Welsh and Little (2018) cited inconsistencies in the research with some research showing a disproportionate impact on Latino students and other studies not citing results as significant (e.g. Anyon et al., 2014; Skiba et al., 2011; Skiba, Michael, Nardo, & Peterson, 2002; Wallace et al., 2008). While several of their findings were previously addressed in the studies mentioned above, the authors highlighted the significance of disproportionality and its prevalence since 1990.

*Summary on race.* There has been significant research conducted on the intersection between race and exclusionary discipline. Findings suggest an ongoing pattern of African American students being overrepresented in suspensions and expulsions in schools (Skiba et al., 2017; Rausch & Skiba, 2014). This data is consistent across districts and states (Losen et al., 2012; Welsh & Little, 2018). Additional studies suggest that Hispanic students are disproportionately impacted; however, these results are inconsistent within the research and more studies on this topic are necessary (Anyon et al., 2014; Skiba et al., 2011; Skiba, Michael, Nardo, & Peterson, 2002; Wallace et al., 2008).

*Gender.* In addition to race, my research questions explore the potential impact of gender in OCR Case Resolution Agreements and as such, I reviewed literature pertaining to gender disproportionality. The following section is organized by the major themes that emerged in my research on gender and disproportionate discipline. While I organized this section to specifically address studies on gender (male/female), it is also important to note the intersectionality between race and gender, as discussed in a previous section.

*Males.* Gagnon, Gurel and Barber (2017) examined discipline data from Florida to compare the application of disciplinary practices by race and gender. In their quantitative study, they used data from 2010-11 Florida Department of Education data collection which included data from 71 school districts throughout the state. To answer the first research question, “do associations exist between the frequency and type of punitive discipline practice used (i.e., suspensions, expulsions, restraints, corporal punishment, changes of placement) and student characteristics (i.e., grade level, gender, and race),” Gagnon et al. (2017) utilized descriptive statistics and a regression analysis (p. 67). In their findings, Gagnon et al. (2017) noted that male students were more likely to be expelled from school, when all other variables were held

constant, including race, indicating that male students were disproportionately represented in the data.

Losen, Martinez and Gillespie (2012) conducted a similar analysis of discipline data from California as previously discussed; however, in addition to the startling findings on the impact of race, Losen et al. (2012) examined the data by gender, looking specifically at the largest districts within the state. In all ten districts with the highest average suspension rates, male students were more likely to be suspended, regardless of race. In examining one specific district, African American female students in Los Angeles were half as likely to be suspended when compared to African American male students (Losen et al., 2012).

Welsh and Little (2018) completed a meta-analysis of existing literature on disproportionality from 1999-2017.<sup>1</sup> Of the 183 studies they examined, the authors concluded that gender was an important factor in exclusionary discipline. Welsh and Little (2018) reported that male students had a higher likelihood of facing suspensions when compared to female students. Additionally, they found that this finding has been confirmed in several studies over the past 30 years (e.g. Bradshaw, Mitchell, O’Brennan, et al., 2010; Hinojosa, 2008; Jordan & Anil, 2009; McFadden, Marsh, Price, & Hwang, 1992; Raffaele Mendez & Knoff, 2003; Skiba et al., 2002).

*Females.* While the studies addressed disproportionality for male students, Morris and Perry (2017) explored the relationship between race, gender and administrative disciplinary practices, with a specific focus on African American females. The quantitative study utilized a longitudinal data set from the Kentucky School Discipline Study (KSDS) from 2007-2012. The study included data from 22,512 students in grades 6-12 (Morris & Perry, 2017). Morris and

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<sup>1</sup> Study was described in detail in the previous sub-section entitled “Race.”



Perry (2017) sought to understand how gender intersected with race during the discipline process. Overall, they found that even when controlling for socio-economic status and academic achievement, African American female students received a disproportionate number of disciplinary referrals (Morris & Perry, 2017). Their findings addressed the issue of administrative bias within the discipline process. They argued that the descriptions of student misbehavior were subjective and open to interpretation by school administrators: “we assert that the ambiguous and comparatively inconsequential nature of behaviors like disobedience and disruptiveness may create a space for unintentional, implicit racial and gender bias” (Morris & Perry, 2017, p. 44).

Annamma, Anyon, Joseph, Farrar, Greer, Downing and Simmons (2019) conducted a mixed-methods study to examine disproportionality in school discipline, specifically related to African-American females. Within the literature review, Annamma et al. (2019) cited an ongoing trend of increasing suspensions for female students throughout the country. Based on their review of data from the OCR in 2014, the authors presented evidence that African American female students were disciplined at a rate six times greater than White students (Annamma et al., 2019).

Within their study, Annamma et al. (2019) used quantitative data from the Denver Public Schools for students in grades K-12. Additionally, qualitative data was gained from policy documents within the district to further understand how disciplinary terms were operationalized. Annamma et al. (2019) found that there was a statistically significant difference between the disciplinary consequences for female students by race. For all female students receiving an office referral, 52% of African American students were suspended, while only 31% of White students were suspended (Annamma et al., 2019). Based on this information, the authors concluded that

“even when Black girls are referred to the office for the same behaviors as other girls, holding for other identity markers, Black girls are punished more harshly” (Annamma et al., 2019, p. 232).

*Special education status.* Students with disabilities (SWD) receive additional legal protections beyond those of a general education student through Individuals with Disabilities Education Act (IDEA). To comply with IDEA, school districts are required to track disproportionality as it pertains to special education identification:

Each State...shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and (B) the placement in particular educational settings of such children. (20 U.S.C. §1418(c), 1998)

In addition to tracking potential disproportionality in the identification process, schools are also required to submit discipline data for SWDs. In 2004, Congress added reauthorization of specific language around discipline in the reauthorization of IDEA (Voulgarides, Fergus, & Thorius, 2017). The Office of Special Education Programs (OSEP), a branch of the federal Department of Education (DOE) is responsible for reviewing this data (Voulgarides, Fergus, & Thorius, 2017). With the reauthorization of IDEA, states are required to monitor 20 indicators through a document called a “State Performance Plan.” A State Performance Plan outlines how a district will meet the requirements of IDEA (Voulgarides, Fergus, & Thorius, 2017). State Performance Plans are reviewed by OSEP to investigate how the state is implementing IDEA and if corrective action is needed.

Within the State Performance Plan, there is a specific provision that articulates the protections for SWDs against disproportionality. Voulgarides, Fergus and Thorius (2017) outlined the provisions of Indicator 4A and 4B within State Performance Plans: “4A refers to significant discrepancies in the rates of long-term suspensions of students with disabilities compared to districts in a state. 4B refers to significant discrepancies in the rates of long-term suspensions of students with disabilities, based on race and ethnicity, compared with districts in a state *due to inappropriate policies, procedures, or practices*” (p. 69). For the purposes of 4A and 4B, a long-term suspension is considered any suspension longer than 10 days.

Violations of Indicator 4A and 4B can have serious consequences for school districts. If districts are found to be out of compliance, they have to implement a corrective action plan which can include multiple components (Voulgarides, Fergus and Thorius, 2017). Financially, if districts are found to have significant disproportionality under OSEP then schools can be required to reallocate up to 15% of IDEA funding for intervention supports. Additionally, school districts could be required to generate reports, revise policies, and shift internal practices.

Students with disabilities have historically faced disproportionality in exclusionary discipline practices. Often, if schools are out of compliance for disproportionate discipline of special education students, they have high rates of disproportionality with other sub-populations (Losen, 2018). Losen (2018) cited discipline data from 2014 and 2015 showing that African American students with disabilities are overrepresented in exclusionary discipline. Specifically, his report examined the impact of exclusionary discipline by calculating the lost instructional time for students. Losen (2018) found that African American SWDs lost 77 more days of instruction than their white peers. Additionally, Losen (2018) confirmed that in 2015-16, of

approximately 13,000 school districts throughout the country, 236 were cited by OSEP for disproportionality.

*Summary of disproportionality research.* Since 1975, discipline data has shown ongoing evidence of different treatment for students of color (CDF, 1975). Further, disproportionality within the school discipline process is evident by race, gender and special education status (Annamma et al., 2019; Morris & Perry, 2017; Gastic, 2017; Rocque, 2010; Wallace et al., 2008; Lhamon & Samuels, 2014). However, while the data above establishes the existence of discrimination, the aforementioned research does not address potential causes. In the following section, I present previous research that seeks to identify the root causes of disproportionality in school discipline, including zero-tolerance policies and the use of law enforcement within the school setting.

**Zero-tolerance policies.** One compelling argument for why students of color are disproportionately impacted by school discipline involves the rise of zero-tolerance policies. A zero-tolerance policy is defined as the utilization of a mandatory consequence for a specific student action (Curran, 2016; Mitchell, 2014). In 1994, the Gun-Free Schools Act (GFSA) required schools that received federal funding to implement a specific disciplinary policy for a student to be expelled for up to a year if a student brought a weapon onto school property (Gun-Free Schools Act, 1994). In 1997, this Act was expanded to include drugs as well as weapons (Curran, 2016). However, since the initial adoption of the law, school districts and school sites implemented these policies in cases not involving drugs or weapons: “instead of restricting zero-tolerance policies to potentially violent and dangerous behaviors as indicated in the legislative directives of the Act, schools proceeded to create policies that far exceeded the intended scope of the Act” (Mitchell, 2017, p. 279).

Studies have identified significant concerns with zero-tolerance policies. First, legal scholars have presented evidence that zero-tolerance policies could be viewed as a due process violation, depending on the details of the student misconduct (McCarthy, Eckes & Cambron-McCabe, 2014). They encouraged school administrators to exercise discretion and not blindly implement a culture of zero tolerance. Specifically, they cited details from a Sixth Circuit case that involved a student who was subjected to a zero-tolerance policy and disciplined for a weapon in a vehicle that was unknown to the student. In that case, *Seal v. Morgan* (2000), the court did not find in favor of school district, stating that school board was required to consider the individual facts of the case prior to implementing an expulsion (McCarthy, Eckes & Cambron-McCabe, 2014).

Another issue with zero-tolerance policies is the limited consideration for additional factors that may have impacted the student. Mitchell (2014) drafted a law journal article on the rise of zero-tolerance policies and their impact on public school students. Mitchell (2014) argued that school tragedies such as the Columbine Shooting increased public support for policies that appeared tough on school violence. Additionally, Mitchell (2014) outlined how the implementation of zero-tolerance policies specifically limit administrators' ability to utilize judgment when making a determination on referring a child to law enforcement for a misbehavior. As a result, such policies have increased the presence of law enforcement within the schools (Mitchell, 2014).

Zero-tolerance policies may appear to limit potential discrimination because it could be assumed that they would be applied equally regardless of race, gender or special education status. However, Curran (2016) examined racial discipline gaps in the application of zero-tolerance policies. Curran (2016) sought to fill an identified gap in the research by providing an

analysis of the “relationship between state zero-tolerance discipline laws and the rate of exclusionary discipline” (p. 648). Methodologically, Curran (2016) utilized data from the National Center for Education Statistics and the U.S. Department of Education. Through a quantitative longitudinal analysis of data from 1989-2013, Curran (2016) found that “exclusionary discipline disproportionately affects certain subgroups of students, specifically racial minorities” (p. 657). Further, the study confirmed findings from Skiba et al. (2002), which showed that zero-tolerance policies “exacerbated this disparity,” and specifically for Black students, the rate of proportion for suspensions and expulsions increased with state zero-tolerance laws (Curran, 2016, p. 657). Curran (2016) also addressed the issue of principals’ perceptions of student misbehavior and identified a need to study how the laws/policies of a particular district would influence an administrator’s understanding of student conduct. The study recommended that states examine the impact of zero-tolerance policies (Curran, 2016).

In a law review article, Fedders (2017) explored how different states have applied zero-tolerance policies. Fedders (2017) established the basic premise of zero-tolerance as it “mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context” (Fedders, 2017, p. 891). In the application of zero-tolerance policies, Fedders (2017) found that reducing subjectivity in discipline was the initial advantage, as it would limit administrators’ ability to consider race, ethnicity or socioeconomics, consciously or unconsciously. However, zero-tolerance policies have expanded significantly beyond the initial intent and individual states utilized zero-tolerance policies to include minor offenses like dress code violations, fighting, or objects that could be perceived as weapons (Fedders, 2017). Fedders (2017) argued that zero-tolerance policies made exclusion from school more acceptable.

Additionally, she asserted that the use of exclusionary practices is rooted in desegregation, stating that exclusionary discipline rates increased post-*Brown* in desegregated schools, noting that African American students are more likely to experience exclusionary discipline. Fedders (2017) also found geographical significance in the likelihood of race being an important factor in exclusion, citing evidence that 50% of Black students who faced an expulsion from school came from the 13 southern states.

**School-to-Prison Pipeline.** In 2014, the OCR found that 50% of the students who encountered law enforcement within their public schools were students of color (OCR, 2014). When discussing this racial disproportionality, some scholars have paired it with the term “school-to-prison” pipeline. There are multiple definitions for the school-to-prison pipeline within the literature. Meiners (2011) defined the school-to-prison pipeline as “a complex network of relations that naturalize the movement of youth of color from our schools and communities into permanent detention” (p. 550). Owens (2017) operationalized the phrase school-to-prison pipeline as “a social phenomenon where students become formally involved with the criminal justice system as a result of school policies that use law enforcement, rather than discipline, to address behavioral problems” (p. 11). Both of these definitions seek to explain the increased criminalization of student misconduct and Meiners (2011) explored the intersectionality between a student’s race and the likelihood of encountering law enforcement during school.

Since the 1970’s, the total number of incarcerated adults has continued to increase exponentially (Meiners, 2011). The United States represents 5% of the total population of the world, and yet, 25% of the total amount of prison population worldwide (Meiners, 2011). Mallett (2017) drafted an article that summarized existing research on the criminalization of school

discipline and the impact of such practices on specific sub-groups of students. Mallett (2017) cited the increased presence of law enforcement, the prevalence of extremely strict disciplinary codes, and zero-tolerance policies as some of the key indicators of the school-to-prison pipeline. He examined the increasing numbers of students who are encountering the juvenile justice system as a result of misconduct within the school environment and the connection to later rates of adult incarceration. Mallett (2017) cited findings that the “pipeline disproportionately affects and involves certain child and adolescent groups: those who experience poverty, students of color, students who have special education disabilities, children and adolescents who have been traumatized or maltreated” (p. 571). Based on this finding, he concluded school communities must understand the impact of local discipline policies on students, specifically students with increased factors of vulnerability, including race.

***Law enforcement presence.*** One possible factor contributing to the school-to-prison pipeline is the increased use of School Resource Officers (SROs). SROs are defined as school-based police officers who are tasked with school safety and security (Owens, 2017). Owens (2017) conducted a study on the role of SROs from 1994 to 2004 including data from 3000 SRO positions. The study focused on the interactions between SROs and students based on the data regarding the type of infraction that garnered SRO involvement. The study focused on understanding if SROs had a positive impact on increasing school safety (Owens, 2017). Owens (2017) found that SROs increased the likelihood that students could encounter law enforcement for misconduct rather than the traditional school discipline process: “introducing police officers into schools does appear to change the dynamics of the school environment, and does lead to an increase in the arrest rates of young children” (p. 34). In the discussion, Owens (2017) discussed



the complications that can arise for students if student misconduct is considered criminal behavior.

Blad and Harwin (2017) drafted an article on the increased presence of SROs and racial disproportionality. Citing evidence from the 2013-14 OCR data collection, African American students were more likely than White peers to be arrested at school. Interestingly, Blad and Harwin (2017) also found that students of color were more likely to attend schools with police when compared to White peers, therefore, routine discipline that could occur without the presence of law enforcement would be more likely handled by the SRO. They confirmed that 74% of African American students attended a high school that had an SRO, despite only 65% of White students having an SRO. The increased police presence may account for the 33.4% of African American students who are arrested at school, despite accounting for only 15.5% of the total population. Within their study, Latino students did not show significant evidence of being overrepresented in school-based arrests (Blad & Harwin, 2017).

In 2018, the National Center for Safe Supporting Learning Environments (NCSSLE) published information on the role of police within public schools. The guidance package included information for states, as well as schools, to reconsider how SROs would be utilized within schools. As part of that guidance, schools were advised to distance SROs from the discipline process: “school districts that choose to use SROs should incorporate them responsibly into school learning environments and ensure that they have no role in administering school discipline” (King, 2016, p. 2). Further, King (2016) advocated for schools to focus on non-exclusionary disciplinary approaches to keep students in the classroom and proactively address misconduct.

**Approaches to reducing discriminatory discipline practices.** With discriminatory discipline practices well documented in the research, school districts have begun to implement strategies to reduce exclusionary practices, specifically for students of color. In this section, I will provide a synthesis of research on approaches to reduce disproportionality.

**Culturally sustaining practices.** Within the literature, scholars recommend that school personnel who are interested in reducing discipline cannot simply follow a prescription of recommendations; there must be a true shift in the culture of the school. To further explore the idea of culturally relevant schools that seek to understand and support the cultural differences of diverse students, I also explored how schools could utilize culturally sustaining pedagogy to reshape culture. The idea of a “culturally relevant school” is not new within the research. Gloria Ladson-Billings (1995) defined a culturally relevant school as, “a theoretical model that not only addresses student achievement but also helps students to accept and affirm their cultural identity while developing critical perspectives that challenge inequities that schools (and other institutions) perpetuate” (p. 469). Essentially, under this definition, schools should seek to understand the cultural backgrounds of the students within the school and help students develop their own cultural awareness. In regard to discipline, school leaders should examine their discipline policies through the lens of cultural awareness, asking questions like “does this policy disproportionately impact one group of students” or “how can we be supportive of students’ experiences while also maintaining a safe school culture?”

A culturally sustaining pedagogy goes another step further to honor the diverse experiences of students by recognizing that schools should “sustain—linguistic, literate, and cultural pluralism as part of the democratic project of schooling” (Paris, 2012, p. 93). Paris (2012) argued that only through truly embracing the differences of our students can schools be

supportive to individual student needs. This type of school environment would adapt to the individual students within the school rather than force students to conform to the culture of school. In order to make these shifts within a school, the school leader must understand these practices and have the ability to implement large-scale change. The following sub-sections explore the role of the principal in the discipline process.

**Role of building principal.** In order to outline how schools are implementing new approaches to reduce exclusionary discipline, I want to first articulate the role of the building principal in administering discipline. Within the school setting, principals are tasked with school safety and as such, student discipline; however, considerable research has shown that principals utilize many different philosophies for discipline which could result in varying levels of compliance with civil rights laws. Skiba and Edl (2004) utilized an online survey to study administrator attitudes and beliefs on school discipline within Indiana. Data was collected from 325 principals from a variety of school settings. While there were some commonly-held values, Skiba and Edl (2004) reported several differences in opinion of key topics including the application of zero-tolerance policies, the need to remove students from class in the event of misbehavior and the ability of teachers to manage their students. Most notably, Skiba and Edl (2004) confirmed the impact of individual administrator beliefs regarding consequences for students: “such data suggest that school suspension and expulsion are not an invariant response determined only by changes in student behavior, but are to some extent a choice made by individual educators, based on their own attitudes concerning the purpose and function of the disciplinary process” (p. 4). If school administrations are guided by their own beliefs, rather than the legal implications of their discipline practices, there is a potential for discrimination to occur at individual school sites.

DeLoreto (2012) further explored how principals make decisions on student suspensions. DeLoreto (2012) conducted a quantitative analysis of principal's beliefs, as reported in the "Principals Perceptions Survey," a survey administered to high school administrators in the state of Connecticut. DeLoreto (2012) examined data by looking at individual belief statements on the survey. DeLoreto (2012) found that administrator beliefs impacted the use of suspensions. For example, administrators who strongly agreed that students "are responsible for their own behavior," reported a higher likelihood of suspension usage (p. 100).

Findlay (2015) also sought to understand why principals make certain disciplinary decisions. Findlay (2015) interviewed 10 elementary school principals and found that principals considered a wide range of issues before disciplining students (Findlay, 2015). In the findings, Findlay (2015) concluded that administrators struggled to articulate directly why a specific decision would be made for a specific case. For example, principals felt guided by their own moral judgment and allowed their own understanding of what is right and wrong to alter the consequence for the individual child (Findlay, 2015). Findlay (2015) identified potential bias of principals as a factor of consideration, citing differences in behavior interpretation, "what one educator may view as free expression, another may see as disruption" (Stefkovich, 2006, as cited in Findlay, 2015, p. 158).

Since the courts have deferred to administrators to make decisions on discipline, DeLoreto (2012), Skiba and Edl (2004) and Findlay (2015) present concerning evidence regarding how administrators may make these decisions.

**Reducing administrator bias.** One of the concerns with principal discretion in discipline decision making is the potential for administrator bias. Silva, Langhout, Kohfeldt and Gurrold (2014) published a study that examined the relationships between positive behavior incentives,

race and gender. Silva et al. (2014) used a data analytic strategy to determine the relationship between the aforementioned variables at one urban elementary school. Silva et al. (2014) confirmed that race and gender were significant variables when determining the likelihood of a conduct referral. African American males were more likely to receive a negative referral when compared to White males.

However, more notably, their findings showed differences in the impact of race and gender based on the type of referral. Black boys were “more likely to receive a conduct report for safety, respect, and self-responsibility than were girls” (Silva et al., 2014, p. 804). Citing previous research from Ferguson (2001), Silva et al. (2014) posited that this finding was rooted in teacher and administrator bias. Based on these findings, Silva et al. (2014) suggested an increased examination of racial and gender bias within the school environment. This research informed the development of my codebook and the inclusion of gender and race.

Anyon et al. (2017) conducted a study of an urban school district to determine the relationship between a student’s race and the physical location of a behavioral infraction (e.g. playground, parking lot, classroom lunchroom, etc.). Using Critical Race Theory (CRT), Anyon et al. (2017) explored the following research question: “What is the relationship between student race and the sub-contexts in which youth are disciplined?” (p. 6). Specially, the study focused on understanding if students were more likely to be disciplined in various school settings, indicating that there was a connection between any pre-existing relationship between the adult and the student.

Anyon et al. (2017) found that students of color were more likely than White peers to face disciplinary consequences within their classrooms. This finding confirmed that teachers who had the greatest knowledge of the student were more likely to over identify students of color for

disciplinary consequences. Citing research from Pettigrew and Trump (2000), Anyon et al. (2017) confirmed that schools do not typically provide training on implicit bias; a training that is rooted in helping teachers develop a deeper understanding of their own understandings, preconceptions or dispositions regarding race. Anyon et al. (2017) advocated for districts to provide additional training for staff on the impact of structural racism. Structural racism training would address the institutionalized conditions of schooling that could cause inequities to persist for students of color. This study is significant to my research because it specifically names recommendations for school leaders to reduce discipline for students of color.

Smolkowski, Girvan, McIntosh, Nese and Horner (2017) also explored the role of implicit bias as a factor of consideration when examining disproportionate discipline. Their study drew on a previous piece of research that established the “Vulnerable Decision Points Model,” a framework for understanding how racial bias contributes to school discipline. Specifically, the authors focused on understanding the difference between explicit and implicit bias and how bias impacts different decisions made within the school discipline process. The “Vulnerable Decision Points Model” identifies the intersection between the psychology of racism and the unconscious biases that exist when administrators make decisions regarding student discipline. Specifically, the authors addressed the increased feelings of “criminalization” or the identification of the other when administrators are addressing discipline for students of color. Smolkowski et al. (2017) utilized a quantitative methodology to examine if African American students were more likely to be overrepresented in subjective discipline and if there was a connection between the VDRs [vulnerable decision points] and increased discipline. Within the research, a vulnerable decision point was defined as “contextual events or elements, such as those that increase the likelihood of

implicit bias affecting discipline decision making, including a teacher's decision to issue an ODR or an administrator's decision to suspend the student" (Smolkowski et al., 2017, p. 7)

The authors utilized data from 482,686 office referrals in 1,666 elementary schools in 45 different states (Smolkowski et al., 2017). Smolkowski et al. (2017) analyzed the data based on five criteria: race, gender, time of day, classroom and incident type. The findings confirmed that African American students were overrepresented in the office referrals. Additionally, they concluded that the rate of disproportionality increased when the referral type was a subjective offense. Smolkowski et al. (2017) advocated for an increased understanding about how different understanding of the types of discipline are operationalized within the school setting. By providing more training for staff on the impact of the subjective nature of categories of discipline such as disrespect, or by recognizing the impact of the time of day on the educator's response, the authors argued that there would be a possible reduction to these practices (Smolkowski et al., 2017).

To further explore how schools could reduce bias in disciplinary decisions, Gregory, Skiba and Mediratta (2017) authored a framework for school administrators to increase equity for students of color. The article confirmed that there is a gap in the research on successful intervention programs that lead to a true decrease in discriminatory discipline. Their work compiled research from multiple sources to provide both a framework for school administrators to change disciplinary practices (Gregory, Skiba & Mediratta, 2017). Within their research, they outlined the need for school administrators to focus on creating bias-free environments throughout the building. By helping educators understand their own biases and providing training on culturally relevant practices during professional development, the authors argued that schools could make a meaningful shift away from exclusionary discipline. Their framework,

shown below in Table 1, outlined efforts that can be taken within the school environment by administrators (Gregory, Skiba & Mediratta, 2017, p. 255).

**Table 1: Equity Framework**

**TABLE 1**  
**Framework for Increasing Equity in School Discipline**

|                             |   |  |
|-----------------------------|---|--|
| Prevention                  | 1. Supportive Relationships   | Authentic connections are forged between and among teachers and students.  |
|                             | 2. Bias-Aware Classrooms and Respectful School Environments                 | Inclusive, positive classroom and school environments are established in which students feel fairly treated.   |
|                             | 3. Academic Rigor   | The potential of all students is promoted through high expectations and high-level learning opportunities.   |
|                             | 4. Culturally Relevant and Responsive Teaching                              | Instruction reflects and is respectful of the diversity of today's classrooms and schools.   |
|                             | 5. Opportunities for Learning and Correcting Behavior                       | Behavior is approached from a nonpunitive mind-set, and instruction proactively strengthens student social skills, while providing structured opportunities for behavioral correction within the classroom as necessary. |
| Intervention                | 6. Data-Based Inquiry for Equity  | Data are used regularly to identify "hot spots" of disciplinary conflict or differential treatment of particular groups.   |
|                             | 7. Problem-Solving Approaches to Discipline                                 | Solutions aim to uncover sources of behavior or teacher–student conflict and address the identified needs.   |
|                             | 8. Inclusion of Student and Family Voice on Conflicts' Causes and Solutions | Student and family voice are integrated into policies, procedures, and practices concerning school discipline.   |
| Prevention and Intervention | 9. Reintegration of Students after Conflict or Absence                      | Students are supported in reentering the community of learners after conflict or long-term absence has occurred.   |
|                             | 10. Multitiered System of Supports  | Schools use a tiered framework to match increasing levels of intensity of support to students' differentiated needs.   |

*Note.* Reprinted from *Eliminating Disparities in School Discipline* from Gregory, Skiba & Mediratta, 2017

The authors underscored the categories above by articulating that the list is not meant to serve as the only possible interventions or prevention steps that should be taken. Further, they addressed an ongoing thread throughout the literature by underscoring the importance of cultural awareness and bias reduction through the utilization of the framework (Gregory, Skiba &



Mediratta, 2017). However, based on the synthesis of multiple studies, the authors concluded that these steps would be important considerations in the process of reducing exclusionary, discriminatory discipline (Gregory, Skiba & Mediratta, 2017).

**Implementation of restorative practices.** In addition to the research on administrator bias and decision-making, there has also been an increase in literature on restorative practices and alternative approaches to suspensions/expulsions in recent years (Gardner, 2014; Wachtel, 2016). Restorative practices have been identified as a strategy to keep students within the school environment, despite misbehaviors (Wachtel, 2016). Restorative practices include working with students to repair harm that was done by their behavior and prevent future misconduct (Gardner, 2014). Wachtel (2016) published a guidance document for organizations to implement restorative practices. As defined by Wachtel (2016), a restorative practice focuses on helping students “build social capital and achieve social discipline through participatory learning and decision-making” (p. 1). Wachtel (2016) further advocated for the use of restorative practices as a means to strengthen relationships and reduce misconduct. Wachtel (2016) encouraged schools to consider the multiple methods of restorative justice in place of traditional, exclusionary consequences.

Gardner (2014) authored an article promoting the usage of restorative discipline models in place of traditional school discipline approaches. He discussed the need for students to truly understand the consequences of their actions in term of their impact on other and the school community, rather than a detached consequence that removes the student from the harm that they caused (Gardner, 2014). In detailing the implementation of restorative-based practices, Gardner (2014) advocated for school administrators to work through difficult behaviors directly with students. Through a case study example, Gardner (2014) explained how administrators can use

misbehavior as an opportunity for re-teaching and assist students with understanding the impact of their actions.

**Implementation of Positive Behavior Intervention Support (PBIS).** In addition to restorative discipline models, a PBIS model has been explored in the research as a possible way to reduce exclusionary discipline (Jolivette, Swoszowski, & Ennis, 2013; McIntosh, Ellwood, McCall & Girvan, 2018; Positive Behavior and Intervention Supports, n.d.). PBIS refers to a school culture model that provides consistent, school-wide expectations and incentives for positive behavior (McIntosh, Ellwood, McCall & Girvan, 2018; Positive Behavior and Intervention Supports, n.d.). Further, Jolivette, Swoszowski, and Ennis (2013) define PBIS as “a multi-tiered framework differentiating interventions and intensity of delivery based on student needs and data” (p. 1). PBIS emphasizes the use of data to drive decision-making which has been shown to decrease evidence of disproportionality (McIntosh, Ellwood, McCall & Girvan, 2018).

Scott, Hirn and Barber (2012) conducted a case study of a medium sized high school that implemented a data protocol to analyze student discipline data with the goal of decreasing disproportionality. They utilized data from referrals and monthly meetings with staff to determine if sharing data on student misconduct could lead to a decrease in disproportionality. Through the process of educating staff on referral data and providing additional information on referral data by type, race and referring teacher, the school was able to see a significant decrease in overall office referrals, from 20.8 per day to 7.4 per day (Scott et al., 2012). Additionally, for students of color, referrals fell by 65.8% during the implementation of data disaggregation methods. While this study only focused on one high school, Scott et al. (2012) confirmed the findings of Sugai and Horner (2009) that a systematized process for looking at behavioral data could decrease incidents of student misconduct.

In addition to examining data on incidents of student misconduct, Carter, Skiba, Arrendondo, and Pollok (2014) asserted that school administrators have a responsibility for disaggregating discipline data by race. Furthermore, they advocated for school leaders to understand the impact of racial context on the disproportionality within the data:

It is impossible to tell the full story of racial discipline disparities without considering the full range of racialized historical and current factors that shape school life in the United States. The ravages of slavery and Jim Crow, forced migration, and policies that enforced unequal treatment placed African Americans and most people of color at an economic and social disadvantage that persists to this day. (Carter, Skiba, Arrendondo & Pollok 2014, p. 2)

Their research exemplified the need for school districts to implement processes to address the issue of racial disparities using a transparent approach with all stakeholders.

McIntosh, Ellwood, McCall, and Girvan (2018) conducted a case study that explored using data to increase equity in school discipline. The study focused on the PBIS Disproportionality Data Guide, a four-step method for schools to utilize discipline data to decrease racial disparities. Within the PBIS Disproportionality Data Guide, the first step of the process instructs school teams to identify the problem within the data (McIntosh et al., 2018). During the second and third steps of the protocol, the school teams conduct a problem analysis and develop an intervention plan that addresses the identified problem. Finally, the school teams carefully monitored the progress of their interventions (McIntosh et al., 2018). Through their study of one particular school, McIntosh et al. (2018) concluded that a consistent, systemic approach to data analysis decreased disproportionality: "...using data to identify challenges, select interventions, and monitor effectiveness appears to be a promising component of a

comprehensive approach” (McIntosh et al., 2018, p. 151). While their case study only highlights one particular school environment, the results provide insight on the potential for data analysis and data disaggregation to support districts in their efforts to curb disproportionate discipline.

Since PBIS has been shown to decrease exclusionary discipline, there has been additional research on how PBIS models are successfully implemented. Bradshaw, Reinke, Brown, Bevans and Leaf (2008) conducted a study of 37 elementary schools to determine the impact of teacher training on PBIS implementation. Schools were selected utilizing a randomized trial design and demographic information was used to determine which schools were similar to other schools within the study. Twenty-one schools were identified as “PBIS trained schools” and sixteen schools represented the control group, or the “untrained” schools (Bradshaw et al., 2008). The study utilized the School-wide Evaluation Tool (SET) to compare data between the two groups. Within the findings, Bradshaw et al. (2008) reported an increase in implementation success in the trained schools. Additionally, in the trained schools, teachers were able to quickly establish the program with fidelity. Bradshaw et al. (2008) found that trained schools had more effective methods for capturing and reviewing student behavioral data.

The aforementioned studies have addressed discriminatory discipline as well as common approaches to reduce such concerns. The following section will present the legal context surrounding discipline in schools.

### **Legal Context**

Since my methodology for this study is a legal content analysis, this section presents the legal context surrounding discriminatory school discipline. First, I discuss the constitutional law related to school discipline cases. Next, I turn to the relevant state and federal statutory law. Third, I discuss administrative law and I explore the role of the OCR, including the process for

filing an OCR complaint and research on how the OCR interprets complaints. Fourth, I examine relevant case law found in multiple levels of the courts. Finally, I turn to law journal articles that provide additional legal context regarding discrimination in discipline.

**Constitutional Law.** Constitutional challenges in student discipline cases fall under the 14<sup>th</sup> Amendment. The two relevant clauses of the 14<sup>th</sup> Amendment are the Due Process Clause and the Equal Protection Clause. The Due Process Clause states, “No State shall ... deprive any person of life, liberty, or property, without due process of law” (Constitution of the United States of America, 14<sup>th</sup> Amendment). The Equal Protection Clause continues to state, “nor deny to any person within its jurisdiction the equal protection of the laws” (Constitution of the United States of America, 14<sup>th</sup> Amendment). While most discipline cases have asserted a Due Process Clause violation, both clauses provide protections for students throughout the discipline process.

***Due Process Clause.*** The Due Process Clause establishes that schools should follow certain requirements when issuing discipline for students. While the U.S. Constitution does not establish education as a fundamental right, under the 14<sup>th</sup> Amendment, education is considered a property right (McCarthy, Eckes & Cambron-McCabe, 2014). The Due Process Clause provides protection for students on the basis of substantive due process and procedural due process.

***Substantive due process.*** Substantive due process “requires state action to be based on a valid objective with means reasonably related to attaining the objective” (McCarthy, Eckes & Cambron-McCabe, 2014, p. 10). To define this clause into more simplistic terms for school discipline cases, substantive due process means that a school district must be able to show that the discipline was reasonable and necessary to ensure the school safety. The standard for substantive due process has been built on “reasonableness:”

To be reasonable, rules must have a rationale and a school related purpose and the school must employ reasonable means to achieve compliance with the rule. Schools may not prohibit or punish conduct that has no adverse effect on public education. (Yell, 2012, p. 337)

In the application of the substantive due process clause in cases of discrimination, students would need to allege a lack of reasonableness in the school or district policy or the application of the policy. To illustrate, in *Fuller v. Decatur Public School Board of Education School District 61* (2001), the plaintiffs, who were African American students, argued that the consequences they received as the result of a violent fight during a football game met the standard for a substantive due process violation. Throughout the course of the trial, the students alleged that the district had a “policy and practice of arbitrary and disparate expulsions with regard to African-American students” (p. 823). However, the federal district court’s findings stated that a successful substantive due process claim requires an “extraordinary departure from established norms,” and “a court must look for an abuse of power that ‘shocks the conscience’” (p. 822). Based on the court’s understanding of substantive due process in school discipline cases, the standard for students to prove racial discrimination is extremely high.

*Procedural due process.* In addition to challenges on substantive due process, students are also able to challenge disciplinary actions on the basis of a procedural due process violation. Procedural due process violations would include allegations of a lack of protection, via a violation of the students’ rights to certain procedures, within the discipline process (McCarthy, Eckes & Cambron-McCabe, 2014). One seminal procedural due process case was heard in 1975 by the Eighth Circuit Court of Appeals. In *Wood v. Strickland* (1975), two high school students were suspended after confessing to a prank. The students in the case alleged that while they did

confess to their homeroom teacher, they did not receive procedural due process, as they did not believe that their confession to the teacher was comparable to providing an admission of guilt to a school administrator. The students involved felt that the teacher would be responsible for issuing the consequence and they alleged that they did not understand that their confession would be given to the principal. The students then asked that their suspensions be revoked, but the school board refused their request. In this case, the court found for the school district, stating that school administrators are not liable for violating the Due Process Clause if they are acting in good faith. The court stated, "...it is not the role of the federal courts to set aside decisions of school administrators that the court may view as lacking a basis in wisdom or compassion" (p. 346). Therefore, while there is a requirement of due process, it is difficult to establish what exact protections exist for students and courts often defer to school administrators.

In addition to the substantive due process claim in *Fuller v. Decatur Public School Board of Education School District 61* (2001), the students also alleged a violation of their procedural due process rights. The students argued that the school had failed to notify all of the students' families of the disciplinary hearings. Again, the court did not find in favor of the students, instead noting that students had a formal hearing with a hearing officer. The court felt that this meeting with the hearing officer provided students with enough opportunity to hear the charges against them and present their own evidence; therefore, the court held that this met the standard for procedural due process.

***Equal Protection Clause.*** The Equal Protection Clause ensures that similarly situated people are treated the same way. It is often cited when a person alleges discrimination on the basis of race. A violation of the Equal Protection Clause was the basis for *Brown v. Board of Education of Topeka* (1954), the landmark case that declared school segregation was illegal.

*Brown v. Board* (1954) overturned *Plessy v. Ferguson* (1896), which had previously allowed schools to operate under a “separate but equal” doctrine. While the plaintiffs in *Brown* were able to establish that separate school facilities had a detrimental effect on the learning environment for students and that this form of segregation violated the Equal Protection Clause, students have not been successful when challenging school discipline on similar grounds (Nauman, 2012).

Arguments alleging an equal protection violation are analyzed on the basis of three primary tests: strict scrutiny, intermediate scrutiny or rational basis (McCarthy, Eckes & Cambron-McCabe, 2014). To determine which test would be utilized, the courts consider if the student was a member of a “suspect class.” At present, race is considered a “suspect class,” as defined by the Supreme Court; therefore, discipline policies involving race are considered under strict scrutiny. Under strict scrutiny, the courts might uphold a school discipline policy where students of color were treated differently than White students if the district’s policy presented a compelling governmental interest that was narrowly tailored (McCarthy, Eckes & Cambron-McCabe, 2014, p. 128). Intermediate scrutiny would be the consideration given to cases involving gender. This judicial test would determine if the actions of the administrator were “substantially related to the achievement of an important government interest” (McCarthy, Eckes & Decker, 2019, p. 135). Finally, the judicial test of rational basis would be utilized for cases alleging an equal protection violation on the basis of age, disability, or a variety of other student characteristics. Under a test of rational basis, the courts consider if there was a “rational relationship” between the interests of the government and the actions of the school (McCarthy, Eckes & Decker, 2019).



**Statutory Law.** A second source of United States law is statutory law. Russo and Osborne (2017) define statutory law as the “act of a legislative body” (p. INT 9). The following sections address the federal and state statutes that relate to discriminatory school discipline.

**State statutes.** The U.S. Constitution does not make specific mention of a protected right to an education. However, within the court’s interpretation of students’ rights, there has been significant progress (Black, 2017). In more than half of the states within the United States, education is protected within state constitutions as a “right” or “duty” (Black, 2017, p. 6). With the increasing role of states in establishing education as a right, state statutes are an important consideration for my research question. State statutes have a significant impact on the functioning of public schools, as state laws expand upon federal laws (McCarthy, Eckes & Decker, 2019).

Sparks (2018) cited evidence that 22 states have created laws that limit exclusionary practices. While my research questions do not target any specific state, I present evidence of efforts to limit exclusionary practices from three states that have examined exclusionary discipline within their state legislatures. I selected three states (i.e. Maryland, Colorado, and Illinois) that were located in geographically diverse parts of the United States (i.e., East Coast, Southwest, and Midwest) as my research question considers themes that emerge regarding the location of the student.

*Maryland.* In 2009, the Maryland State Board of Education issued a decision in *Atanya C. v. Dorchester County Board of Education* finding that the school district had failed to provide appropriate education services to a 9<sup>th</sup> grade student who was expelled from school (Maryland State Board of Education, 2012). Following that case, the Maryland State Board of Education commissioned a study to examine discipline data within the state and then generated regulatory

requirements as a result of their findings (Maryland State Board of Education, 2012). In 2017, Senate Bill 651, a bill that prohibits exclusionary discipline for students under Grade 3, was adopted (Maryland State Board of Education, 2017). With the implementation of S.B. 651, administrators are limited in their application of suspensions. Suspensions are only permitted if an administrator and a mental health professional deem that the behavior is a significant threat to school safety (Senate Bill 651, 2017). In addition to the statutory requirements, S.B. 651 authorized the Maryland Department of Education to create further regulations to ensure implementation of the law (Maryland State Board of Education, 2017). Within the regulatory requirements, administrators are not permitted to suspend students beyond five days for each incident of misconduct. Further, districts are required to provide behavioral supports and interventions to students under 3<sup>rd</sup> grade who demonstrate misconduct.

*Colorado.* In Colorado, advocacy groups such as The ARC Colorado, a special education advocacy group, and Padres & Jovenes Unidos, a parent advocacy group, have been strongly supporting the passage of a bill that would reduce the use of suspensions and expulsions for students in grades K-2 (Schimke, 2019). Previous attempts have been made to pass a bill on this topic in 2017 and 2018, but both years were unsuccessful (Schimke, 2019). However, during the 2019 legislative session, a bill that limits suspensions and expulsions was passed and signed into law beginning in the 2020-2021 school year (HB. 19-1194, 2019). Based on the language of this statute, suspensions would be extremely limited for students in grades K-2:

“suspension/expulsion for a student in grades K-2 can only occur if the student is in possession of a dangerous weapon as defined in CRS 22-33-102, uses, sells, possesses drugs or controlled substances, or creates a substantial threat to the safety of others” (HB. 19-1194, 2019, p. 3).

Additionally, the statute outlines provisions for principals to seek approval from a higher-level

district official, designated by the Superintendent, to utilize a suspension longer than three days (HB. 19-1194, 2019).

*Illinois.* Public Act 099-0456, also known as Senate Bill 100, passed in Illinois in 2015, and sought to bring significant reform to the state’s ongoing issues with the use of exclusionary discipline. Within the law, school districts are required to implement several changes to the structure of their discipline models, including eliminating zero-tolerance policies, providing required training for educators and administrators, and complying with stricter regulations on when suspensions could be utilized (Public Act 099-0456, 2016). Protections were outlined for students who faced a suspension, including a provision that required students to receive any missing work. Additionally, in the case of a suspension longer than four days, the school or school district would be responsible for providing home based academic instruction (Public Act 099-0456, 2016). Further, there was an increased emphasis on understanding student misconduct and providing supports, rather than punitive consequences. The law requires that school staff attend training on student misconduct to identify potential root causes of misbehavior and develop appropriate site-based supports such as the implementation of positive behavior systems (Public Act 099-0456, 2016).

***Federal Statutory Law.*** In the following section, I explore Title VI, the specific federal statute addressed in my research question. However, it is also important to note that the OCR has the responsibility to enforce several anti-discrimination laws, listed below in Table 2.

Table 2: Federal Statutes Enforced by OCR

| Statute Name                                  | Statute Overview   |
|---|--|
| Section 504 of the Rehabilitation Act of 1973 | Prohibits discrimination on the basis of disability in federally funded programs |
| Title VI of the Civil Rights Act of 1964      | Prohibits discrimination on the basis of race, color, or national origin         |

|   |  |
|---|--|
| Title IX of the Education Amendments of 1972            | Prohibits discrimination on the basis of sex (gender) in Federally-Assisted Education Programs |
| Title II of the Americans with Disabilities Act of 1990 | Prohibits discrimination on the basis of disability  |
| Age Discrimination Act of 1975                          | Prohibits discrimination on the basis of age   |

*Title VI.* At the federal level, the U.S. Congress is responsible for enacting statutory law. Many of these laws apply to any state or local education agencies that accept federal funds (Russo & Osborne, 2017). The most relevant statutory law related to this study’s research questions is federal anti-discrimination legislation. Specifically, this section discusses Title VI of the Civil Rights Act of 1964 which is titled Nondiscrimination in Federally Assisted Programs, Section 601 (Civil Rights Act of 1964, Sec. 601).

Passed by Congress, the Civil Rights Act of 1964 established legal protections for citizen against discrimination. Title VI states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

. . . Compliance with any requirement adopted pursuant to this section may be effected... by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement. (42 U.S.C. §§ 2000d to 2000d-1, 2006).

Since public schools receive federal funding, schools must comply with Title VI (Best, 2011). While Title VI does not provide further clarity on the definition of discrimination on the

basis of race, the courts have established disparate treatment and disparate impact considerations in cases on discrimination, "...if a student is subjected to different treatment based on the student's race, and second, if a policy is neutral on its face...and is administered in an evenhanded manner but has a disparate impact" (Lhamons & Samuels, 2014, p. 3).

*Disparate treatment.* In examining allegations of disparate treatment, sometimes referred to as different treatment, the courts would consider evidence of intentional discrimination against students on the basis of race. There are two primary types of intentional discrimination. First, there would need to be evidence that race was specifically considered differently, "a policy that [is] discriminatory on its face: one that included explicit language requiring that students of one race be disciplined differently from students of another race, or that only students of a particular race be subject to disciplinary action" (Lhamons & Samuels, 2014, p. 7). Essentially, an argument of different treatment on the basis of the language above would need evidence that students were specifically disciplined because of their race.

The second form of intentional discrimination would include the administrative application of discipline. Under this argument,

Discrimination occurs when a school has a discipline policy that is neutral on its face (meaning the language of the policy does not explicitly differentiate between students based on their race), but the school administers the policy in a discriminatory manner or when a school permits the ad hoc and discriminatory discipline of students in areas that its policy does not fully address. (Lhamons & Samuels, 2014, p. 7)

For students to prevail in a case using the second form of intentional discrimination, the student would need to show a pattern of how school administrators unfairly targeted one racial group differently than another (Lhamons & Samuels, 2014).

*Disparate impact.* The second consideration in cases involving discrimination is disparate impact. The basic premise of disparate impact is that discrimination does not always need to have discriminatory intent. Instead, despite neutral intent, if a policy negatively impacts one specific group, policies may be considered unlawful (Flynn, Hirji, Morris & Brown, n.d.). Sughrue et al. (2017) cited evidence that the OCR may consider policies discriminatory if one racial group is more heavily impacted than another. However, the standard within the courts has proven to be extremely difficult for students to prevail (Skiba, Eckes & Brown, 2009).

The first Supreme Court case that established disparate impact as a consideration for discrimination was *Lau v. Nichols* (Best, 2011). In *Lau v. Nichols*, a group of Chinese students argued that a school district's policy of English-only instruction violated their 14<sup>th</sup> Amendment rights (Best, 2011). The Court found in favor of the students, but not on the basis of intentional discrimination. Instead, the Court found that the school district had provided equal treatment and yet, there was a discriminatory impact from the policy that negatively impacted the Chinese students (Best, 2011).

In a later Supreme Court case, *Guardians Associations v. Civil Service Commission of New York*, in a dissenting opinion, the judge established the criteria for a claim of disparate impact (Best, 2011). Plaintiffs must show that a policy has negatively impacted a specific racial group; however, the court is still able to determine if there is significant justification for the policy and ultimately, "the court must balance the competing interests of those asserting the disparate impact claim on the one hand against the interests of the recipient of federal funds on the other" (Best, 2011, p. 1684).

In other cases involving disparate impact and public school students, the courts have utilized two additional standards when determining the outcome of these cases. First, some cases

in lower courts have required students to provide causation, namely that the policy in question caused the disparate impact (Best, 2011). The Eleventh Circuit established causation stating, “the plaintiff’s duty to show that a practice has a disproportionate effect by definition requires the plaintiff to demonstrate a causal link between the defendant’s challenged practice and the disparate impact identified” (*Elston v. Talladega Cnty. Bd. of Education*, 1993, cited in Best, 2011, p. 1686). In an Eleventh Circuit case, *Sandoval v. Hagan* (1998) still required evidence that the policy “casts” a discriminatory impact (Best, 2011). Skiba et al. (2009) articulated the difficulty for students to prevail in disparate impact cases: “regardless of the extent of the negative disparate impact of school discipline policies and practices... federal courts will view such outcomes as the unfortunate result of racially neutral decision making that does not violate the Equal Protection Clause” (p. 1106).

The second consideration by the courts would be the necessity for the school district’s policy (Best, 2011). The courts have interpreted this to mean that the school district is responsible for showing how the policy is necessary for educational purposes (Best, 2011). Best (2011) argued that this consideration is often why students are unsuccessful in their claims of discrimination since the school districts are often able to provide legitimate rationale for their policies.

Additionally, courts have regularly showed deference to school administrators and school boards to create local policies (McCarthy, Eckes & Cambron-McCabe, 2014; Skiba, Eckes & Brown, 2009). Citing evidence from *Hawkins v. Coleman* (1974), Skiba et al. (2009) presented evidence that “even though the court agreed that school disciplinary practices were racially discriminatory, the court did not wish to interfere with school officials’ discretion to discipline students” (p. 1093). School districts can argue the discipline policies are necessary for school

safety which creates a significant challenge for the courts, if they rule in favor of the students (Best, 2011). Best (2011) concluded that “the existing framework for evaluating Title VI disparate impact claims has made it exceedingly difficult for disparate impact claimants to successfully challenge a federal grantee’s practices that create a disproportionate adverse effect according to race, color, or national origin” (p. 1692). Further, Skiba et al. (2009) found that for students to successfully prevail in a Title VI complaint, they “must generally prove that school officials were motivated by discriminatory intent when they adopted or implemented [discipline policies]” (p. 1099)

***OCR, the Administrative Agency Enforcing Title VI.*** Administrative law, or regulatory law, refers to the authority of the executive branch to create regulations to ensure that the statute is enacted (Russo & Osborne, 2017). Russo (2006) argues that educators come into contact with regulations more so than statutes within the day to day business of schooling. Regulations provide clarity about how a statute should be implemented (McCarthy, Eckes & Cambron-McCabe, 2014). Different governmental agencies are tasked with creating regulations that “generally carry the full force of the law unless courts interpret them as conflicting with the legislation” (Russo & Osborne, 2017, p. INT11). Examples of authorizing agencies would be the United States Department of Education and the United States Department of Justice.

The Civil Rights Act of 1964 granted the U.S. Department of Education the authority to conduct investigations into alleged discrimination (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1). Violations of Title VI fall under the jurisdiction of the OCR, a branch of the U.S. Department of Education.

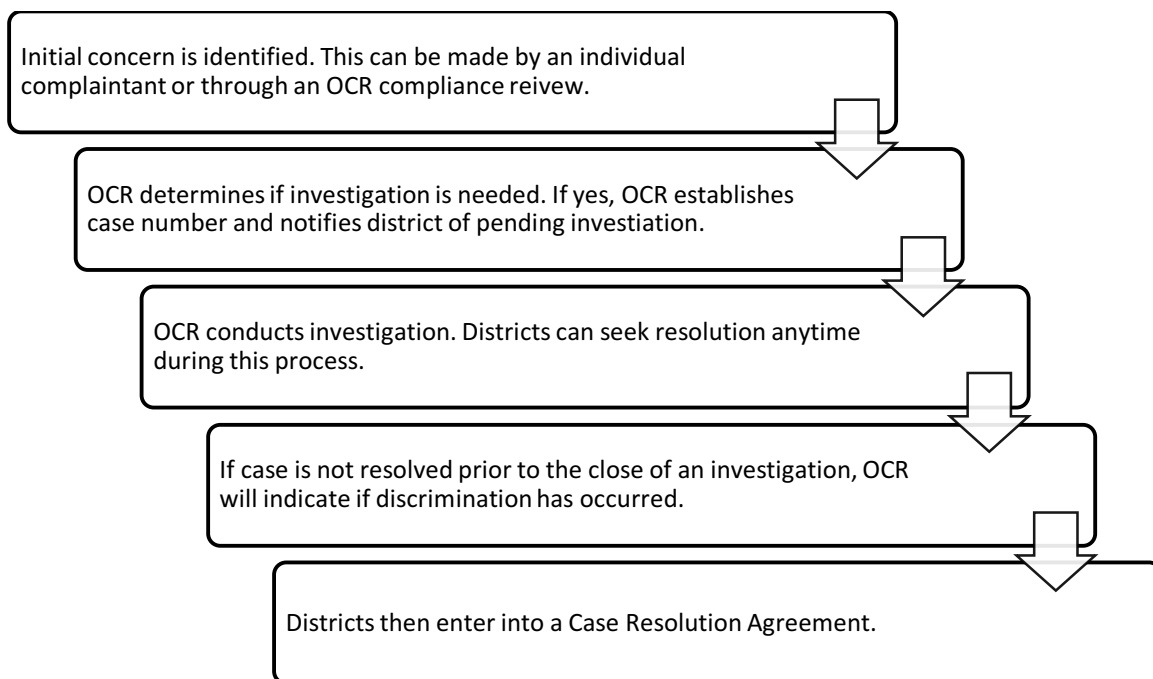
***History of OCR.*** Under the Civil Rights Act of 1964, the U.S. Department of Education (USDOE) was granted authority to enforce anti-discrimination laws within public schools. The



USDOE created the OCR to gather and analyze district level disciplinary data as well as implement Title VI of the Civil Rights Act of 1964. Structurally, the OCR is composed of one central office in Washington D.C and 12 enforcement districts throughout the country (OCR, n.d). The published mission of the OCR is to: “Ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights” (OCR, n.d., p. 6). The mission of the OCR is carried out through the enforcement the Title VI of the Civil Rights Act of 1964, as well as Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975 and Title II of the Americans with Disabilities Act of 1990. Because my study analyzes OCR Case Resolution Letters and Agreements, the following sub sections outline the investigative process used to determine if schools have engaged in Title VI violations.

*Investigation process.* The OCR has the authority to resolve grievances that fall under the scope of the aforementioned laws. The investigative process is shown in Figure 3 (OCR, n.d.).

Figure 3: OCR Complaint Process



The OCR processes are publically posted on their website and additional information is provided in the Case Processing Manual (OCR, n.d.). The Case Processing Manual outlines how the OCR investigatory process occurs. There are two primary ways that a concern with discrimination can be initiated: a private allegation or a compliance review. The process for a private allegation begins with a written complaint that is evaluated by the OCR. At that time, if there is a need for further information, the OCR can open an active investigation and will issue letters to the complainant and the recipient. At this time, the complaint is formally established within the OCR and is assigned a case number (U.S. Department of Education OCR, 2018).

A compliance review is the second way that districts can face an investigation. Compliance reviews are periodic data reviews conducted by the OCR after a data collection once OCR has identified concerns within the data. If the OCR chooses to initiate a compliance review, the investigative process looked similar to an individual allegation. Districts are notified of a OCR investigation through a OCR Resolution Letter. The Resolution Letter outlines the concerns reported to the OCR, or determined from the data collection, and outlines the applicable laws.

During an investigation, the OCR is considered neutral party and is responsible for fact finding. This analysis of information may include “reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient’s personnel, and other witnesses, and/or site visits” (OCR, n.d., p. 2). At any time during the investigation, districts can enter into a voluntary agreement to end the investigation. If the district chooses to enter into an agreement prior to the end of the investigation, the OCR will outline the terms required by the district.

*Resolution.* If the district does not enter into an agreement during the investigation, at the close of the investigation, the OCR will examine each allegation from the initial complaint, or the data from the compliance review, to determine one of two conclusions: “there is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or a preponderance of the evidence supports a conclusion that the recipient failed to comply with the law” (OCR, n.d.).

If the decision is made that the evidence shows noncompliance with the law, the OCR works with the district to agree to a voluntary Case Resolution Agreement. The primary difference between this Case Resolution Agreement and those created during an investigation is that the OCR specifically names the discrimination that occurred (OCR, n.d.). If the accused party is willing to resolve the complaint, the OCR drafts a Case Resolution Agreement that “describes the specific remedial actions that the recipient must undertake to address the areas of noncompliance identified by OCR” (OCR, n.d., p. 3). A Case Resolution Agreement is a binding legal document that outlines the requirements that a specific district must meet to be considered compliant with the law (OCR, n.d.). School districts have 30 days from the receipt of the initial Case Resolution Agreement to complete negotiations. If the organization does not willingly enter into a resolution, then the OCR may begin proceedings to “suspend, terminate or refuse to grant or continue Federal financial assistance” (OCR, n.d., p. 3). If the agreement is confirmed, the OCR issues a Case Resolution Agreement which outlines the following information:

- A statement of the allegations investigated and an analysis of the evidence obtained to date.
- A statement that the recipient has signed a resolution agreement.

- A statement that, when fully implemented, the resolution agreement will address all of the allegations investigated and that OCR will monitor the implementation of the agreement.
- The following statement: “The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation. (USDOE OCR, 2018, p. 17)

Case Resolution Agreements must be signed by someone within the organization who has the authority to act on behalf of the entity, such as a district superintendent (OCR, n.d).

Resolution agreements provide the specific information about the actions that must be taken to remedy the concerns, as well as the timeliness for addressing each item (U.S. Department of Education Office of Civil Rights, 2018).

*Frequency of OCR involvement.* To understand the prevalence of OCR complaints, I researched statistics regarding the frequency of complaints. In a press release produced under Betsy DeVos, the U.S. Secretary of Education under President Trump, the OCR shared that in 2017 and 2018, the OCR resolved, on average, 16,000 complaints of discrimination each year (Devos, 2019), shown below in Table 4.

**Table 4: Number of Complaints Processed by OCR from 2009-2018**

### Complaints Processed, FY 2009-2018

| FY                        | Pending <sup>[1]</sup> | Received      | Resolved <sup>[2]</sup> | Resolutions w/Change |
|---------------------------|------------------------|---------------|-------------------------|----------------------|
| <b>2018</b>               | <b>7,019</b>           | <b>12,435</b> | <b>14,074</b>           | <b>1,690</b>         |
| <b>2017</b>               | <b>11,936</b>          | <b>12,842</b> | <b>17,797</b>           | <b>1,751</b>         |
| 2016                      | 3,848                  | 16,764        | 8,639                   | 1,111                |
| 2015                      | 2,693                  | 10,397        | 9,245                   | 1,031                |
| 2014                      | 2,098                  | 9,992         | 9,407                   | 1,015                |
| 2013                      | 2,273                  | 9,956         | 10,123                  | 1,294                |
| 2012                      | 2,604                  | 7,834         | 8,161                   | 1,201                |
| 2011                      | 2,195                  | 7,840         | 7,435                   | 1,098                |
| 2010                      | 2,087                  | 6,936         | 6,832                   | 1,010                |
| 2009                      | 1,876                  | 6,369         | 6,149                   | 823                  |
| <b>2017-2018 Avg/Year</b> | <b>9,477</b>           | <b>12,638</b> | <b>15,935</b>           | <b>1,720</b>         |
| 2009-2016 Avg/Year        | 2,459                  | 9,511         | 8,249                   | 1,073                |
| 10 Year Avg/Year          | 3,863                  | 10,136        | 9,786                   | 120                  |

[1]. Pending/open complaints at the beginning of each fiscal year (October 1).

[2]. Resolved cases include cases that resulted in dismissal, administrative closure, a finding of no violation, an early complaint resolution, or a resolution agreement. Note: the number of cases resolved in any given fiscal year includes cases received prior to that fiscal year.

**Note: Reprinted from Devos, 2019**

While this table indicates that there have been more investigations under the DeVos administration, it is important to note the differences between Resolved cases, which can include cases that were dismissed or closed, and the Resolutions with Change, which specifically highlight the cases that were resolved to include mandatory changes for schools. In 2010, approximately one seventh of the received complaints resulted in corrective action while in 2018, only one twelfth of the cases required district action.

**OCR Guidance.** Outside of the four sources of law, different administrative agencies are tasked with providing non-binding legal guidance to ensure compliance with federal and state laws. While the United States Department of Education (USDOE) has the authority to enforce anti-discrimination laws, the USDOE is also charged with providing policy guidance to help districts create local policies and practices that comply with the law. Below is a table of the most relevant Dear Colleague Letters (DCL) that have been issued on Title VI or student misconduct, as presented Wheeler (2017), from 2011 until 2016 (pp. 1-8). In Table 5, I list all of the guidance documents that have been produced on the topic of discipline. Some of the guidance has been archived (indicated in the footnote) or withdrawn (noted with an \*) (Balingit, 2017).

**Table 5: DCLs that address Title VI or student misconduct.**

| Year of Issue | Guidance Topic   | Statute            |
|---------------|--|--------------------|
| 2016          | Rights of Students with Disabilities in Public Charter Schools                                 | Title II           |
| 2016          | Use of Restraint and Seclusion in Schools  | Title II           |
| 2016          | Prevention of Racial Discrimination in Special Education                                       | Title VI; Title II |
| 2015          | English Learner Students Have Equal Access to a High-Quality Education                         | Title VI           |
| 2014          | All Students Have Equal Access to Educational Resources  | Title VI           |
| 2014          | Equal Access for All Children to Public Schools Regardless of Immigration Status               | Title VI           |
| 2014          | Protecting Civil Rights in Juvenile Justice Residential Facilities                             | Title II           |
| 2014          | Supreme Court ruling in <i>Schuette v. Coalition to Defend Affirmative Action</i> <sup>2</sup> | Title VI           |
| 2014          | Enhance School Climate and Improve School Discipline Policies/Practices <sup>3</sup> *         | Title VI           |

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<sup>2</sup> Archived

<sup>3</sup> Archived

|      |  |                     |
|------|--|---------------------|
| 2014 | Nondiscriminatory Administration of School Discipline <sup>4*</sup>  | Title VI            |
| 2013 | Prohibition against retaliation under Federal Civil Rights laws      | Title II, VI and IX |
| 2011 | Voluntary Use of Race to Achieve Diversity or Avoid Racial Isolation | Title VI            |
| 2011 | Addressing Sexual Harassment/Sexual Violence*                        | Title IX            |

Since policy guidance is issued by administrative agencies, politics can lead to a shift in recommendations. During the Trump Administration, there has been a significant shift in the philosophies of the USDOE as it pertains to student discipline, including rescinding several key policy documents (Eden, 2018). In 2018, the Department of Education published a report from the Federal Commission on School Safety (Devos, 2018). Within the report, there were significant shifts to policies created under President Obama.

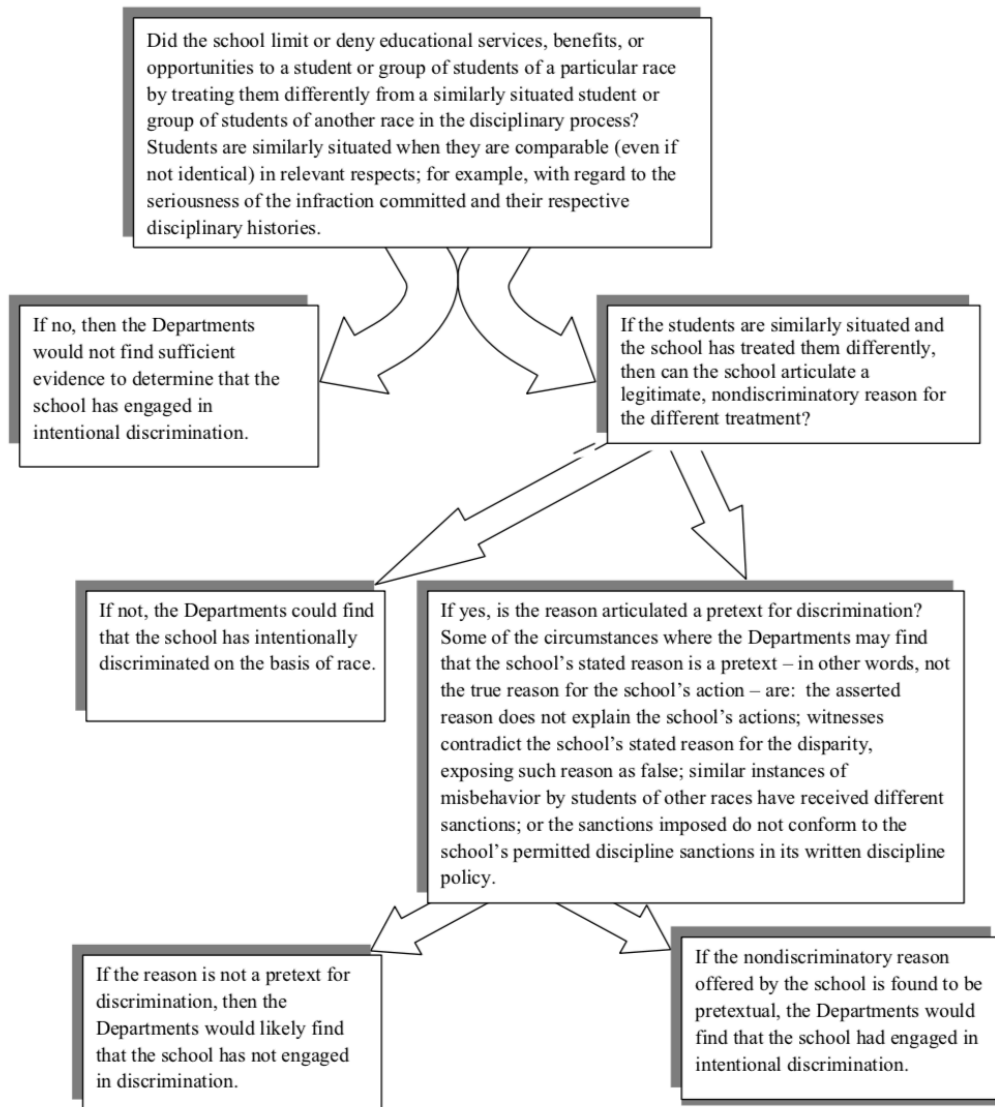
However, while these shifts have occurred, I wanted to include policy guidance from the entire timespan of my research. Previous to the Trump Administration, President Obama had been heavily focused on student discipline issues and multiple agencies had worked on guidance regarding disproportionality, exclusionary practices and law enforcement within schools (Ali, 2011; King, 2016; Lhamon & Gupta; 2014). In 2014, the United State Department of Justice (USDOJ) and the USDOE produced a guidance package for schools, including a DCL that addressed school discipline. Within the guidance, the USDOE asserted that schools have an obligation to “avoid and redress racial discrimination in the administration of student discipline” under Title IV and Title VI (Lhamons & Samuels, 2014, p. 1). Lhamons and Samuels (2014) further expanded upon the definitions of disparate treatment and disparate impact, as discussed

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<sup>4</sup> Archived

above in the section on statutory law. Table 6 includes a visual representations of these definitions to assist school districts in determining if a disciplinary practice was a violation of Title VI.

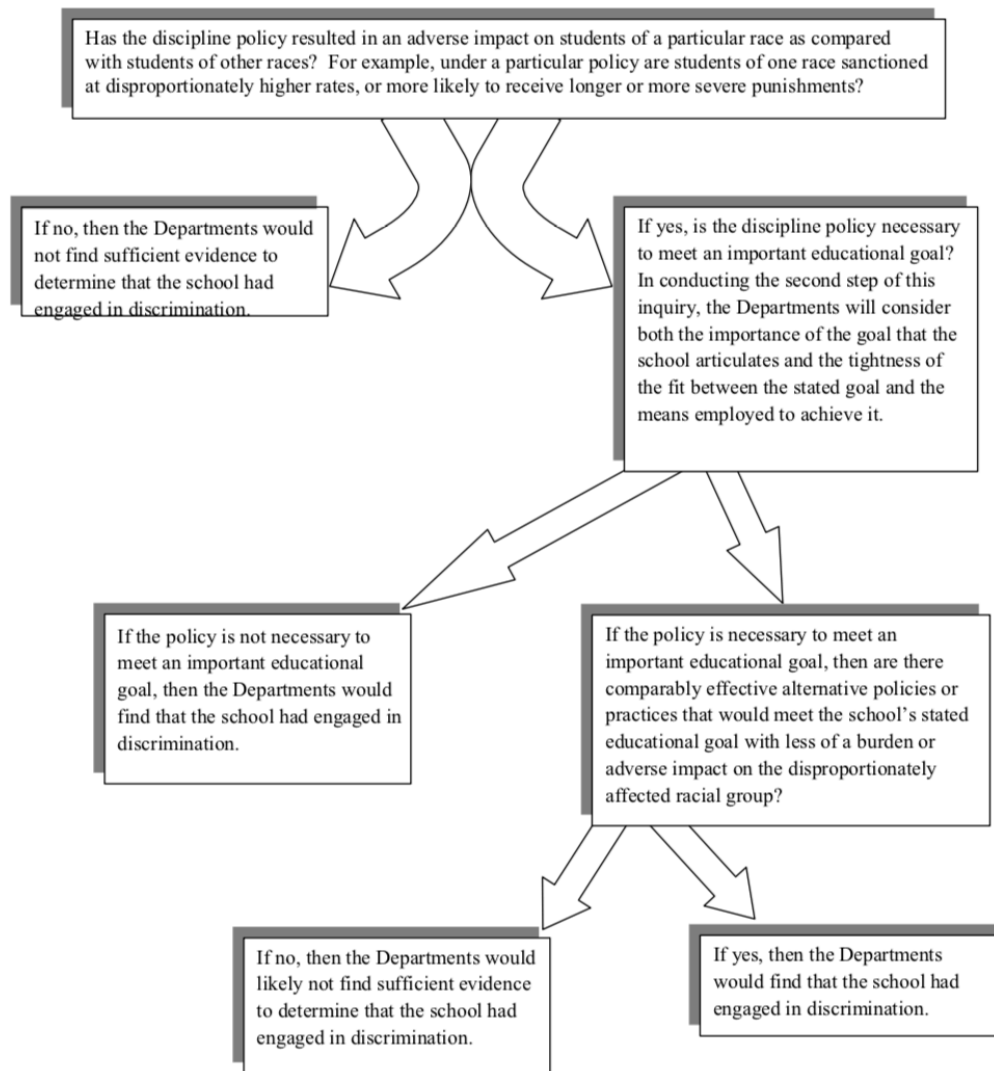
**Table 6: DCL explanation of disparate treatment**



Reprinted from DCL on the Nondiscriminatory Administration of School Discipline, Lhamons & Samuels, 2014, p. 10



**Table 7: DCL explanation of disparate impact**



Reprinted from DCL on the Nondiscriminatory Administration of School Discipline, Lhamons & Samuels, 2014, p. 13

The authors then compiled recommendations for school districts. First, the authors outlined the importance of creating school climates that promoted safety. Second, Lhamons and Samuels (2014) recommended professional development for school based staff. These recommendations included an emphasis on cultural awareness and inclusionary responses to student misconduct. The third recommendation provided that schools should limit their usage of

law enforcement and increase the use of data on the role of SROs. Further recommendations included working closely with community members and parents to share information, provide opportunities for collaboration and the use of data to drive decision-making (Lhamons & Samuels, 2014).

However, the 2014 guidance from the Obama era, was rescinded in 2018, and there has not been additional guidance created in its place (Eden, 2018). While this could change the interpretations of Title VI, it is important to note that while the guidance may be subject to the political will of the executive branch, the law remains in place until action is taken by the legislative branch.

***Research on OCR complaints.*** There is very limited research on OCR complaints for student discipline or the specific considerations made by OCR during an investigation. I was only able to identify two previous studies. In the following section, I present information from the two articles that addressed OCR complaints. In the first study, Worthington (2017) specifically examined the complaint process for the OCR and how K-12 school cases have been addressed by the OCR. Methodologically, the study examined data from 536 OCR investigations in Pennsylvania filed between April 1, 2011 and November 30<sup>th</sup>, 2015. Worthington (2017) examined data from the National Center for Education Statistics (NCES) and the OCR to determine if there were factors that increased the likelihood of an OCR complaint being filed.

The results of the study revealed several important factors to be considered in future research. While the study included all OCR investigations, including violations of Title IX, Section 504, Title II and Title VI, 27% of the overall cases included racial discrimination. Worthington (2017) argued that OCR complaints were significantly more common in disability cases (59% of the total investigations) because students with disabilities had been shown to take

legal action more often than students alleging racial discrimination.

The study concluded that charter schools were less likely to receive complaints when compared to traditional public schools. Because my study examines school type, it was important to note that Worthington (2017) hypothesized that charter schools may be less likely to have OCR investigations because students were more likely to move schools, instead of filing a complaint, since they had chosen to attend the specific school. An additional finding examined the impact of city size and location. Larger cities were also more likely to be the location of complaints (Worthington, 2017). Additionally, the study found a significant relationship between Free and Reduced Lunch (FRL) percentages and an increased amount of OCR complaints.

Finally, Worthington (2017) examined the connection between race-based complaints and the role of the local education agency (LEA) in shifting policies surrounding race. He concluded that LEA's were, "less likely to change their policies and practices as a result of race complaints, compared to other complaints" (p. 93). Worthington (2017) posited that this could be due to a lack of governmental regulation on racial discrimination. Therefore, Worthington (2017) recommended an increased focus on the civil rights protections of students through a deeper analysis of OCR resolution agreements citing the importance of qualitative research on this topic. Additionally, Worthington (2017) encouraged an increased dialogue on racial discrimination to heighten awareness of these concerns.

The second study that examined the OCR was published by Losen and Welner (2001). Their law review article addressed the possible legal challenges for students who faced discrimination with the school discipline process, specifically for students with disabilities. In Part I, Losen and Welner (2001) presented research on the overrepresentation of minority students in special education programs. In Part II, the authors reviewed legal challenges that had

been taken in previous cases. They cited a three-pronged analysis that would be considered by the courts and articulated how difficult it would be for students to prevail in the courts under Title VI. In Part III, the authors explored potential alternatives to the traditional legal process for students who had faced discrimination within their schools. Based on the high standard needed to succeed in the courts, Losen and Welner (2001) explored the role of the OCR and cited that this was a more popular avenue for overrepresentation challenges. Over a four-year period of time, from 1996-2000, the OCR received 130 complaints and initiated 110 compliance reviews (Losen & Welner, 2001). They explained how the OCR operates as a “partner,” seeking to resolve complaints through a legal agreement between parties. However, due to the nature of each individual agreement, the authors cited the problematic nature of the OCR, in that, every case is subjective and can lead to “a high degree of enforcement inconsistency” (Losen & Welner, 2001, p. 445).

As Losen and Welner (2001) discussed, the OCR is more common for a legal dispute on discrimination in school discipline than the courts. However, the OCR doesn’t operate under a system of precedent and is able to interpret each case differently and make agreements that vary from case to case. Losen and Welner (2001) outlined concerns with the “lack of guidelines” that clearly communicate how the OCR would interpret complaints (p. 445). As such, the authors argued that practitioners are “left guessing as to the OCR’s interpretations of its own regulations” (Losen & Welner, 2001, p. 445). Their research cited concerns with OCR remedies and significant variance in monitoring requirements. While the OCR has a framework posted on the websites, this is not legally binding like case law, and instead serves as a suggestion for how the OCR will interpret complaints (Losen & Welner, 2001).

Additionally, the authors cited concerns with the political entanglement of the OCR. They presented evidence from 1995 in which the OCR had internal communication that certain protections would only be applied in specific cases (Losen & Welner, 2001). The OCR is an administrative agency and while Title VI has not changed since 2011, the change in executive leadership may influence how the OCR understands the requirements of Title VI. Betsy DeVos, the US Secretary of Education under President Trump, has advocated to repeal previously established civil rights protections for students (Eden, 2018).

Finally, after completing a review of OCR case resolution agreements, Losen and Welner (2001) found concerns with varying depths of investigations and remedies, as well as differences in monitoring requirements. These differences in depth of investigation were troubling as they did not create a compelling understanding of how remedies would be determined (Losen & Welner, 2001).

**Case Law.** While the OCR provides an avenue for students who face discrimination, the courts also play a significant role in civil rights protections and the next section addresses the role of case law. Within the United States, the judicial branch is responsible for interpreting laws by deciding cases that require the courts to apply the law to a specific set of facts (Russo & Osborne, 2017). This body of work is called case law. The federal judiciary is responsible for addressing constitutional issues that arise across the country and is organized into three levels. At the lowest level of the federal court system, there are district courts. Case law from a district court would only be applicable within the specific district of the case. Challenges to a district court decision would be made in a U.S. Court of Appeals, the second level of the federal court system (Russo & Osborne, 2017). As with district courts, case law from a Court of Appeals would only be applicable in the specific circuit of the case. For example, a 10<sup>th</sup> Circuit Court of

Appeals case would not directly apply in a 2<sup>nd</sup> Circuit case. There are 13 federal circuits throughout the US (Russo & Osborne, 2017). At the highest level of the federal court system, the U.S. Supreme Court, decisions apply to every jurisdiction (Russo & Osborne, 2017). Therefore, in an analysis of student disciplinary cases, the most important decisions are those made by the Supreme Court.

I divided the section on case law into three sections: Supreme Court cases, U.S. Circuit Court cases, and an explanation of why court intervention is inadequate. Under the Supreme Court cases, this analysis focuses on *Goss v. Lopez* (1975) and *Honig v. Doe* (1988). There are several lower court decisions on student discipline, but these cases are only binding within their respective jurisdictions, so consideration is given to these cases only to provide additional context as to why it is necessary to examine additional legal remedies for students who face discrimination.

***Supreme Court Cases.*** *Goss v. Lopez* was a Supreme Court case from 1975 in which the plaintiff, Lopez, with several other students, was suspended from his high school for destroying school property and causing disruption to the learning environment. Lopez was a student in Ohio, a state without procedural due process requirements codified in the state statutory code. The U.S. District Court for the Southern District of Ohio held that the suspension had violated students' right to due process. As a result of this finding, the court required the district to remove any references to the suspension from the students' records and required the school board to draft a new policy for exclusionary discipline (*Goss v. Lopez*, 1975). However, the district appealed the case to a U.S. Court of Appeals and later to the Supreme Court. The Supreme Court affirmed the decision of the circuit court of appeals, finding that the suspension had violated students' rights to due process (*Goss v. Lopez*, 1975). In the decision, the majority opinion provided that:

At the very minimum, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all its unfortunate consequences. (*Goss v. Lopez*, 1975, p. 582)

Ultimately, the Court established that students facing suspension are entitled to notice and "some kind of hearing" (*Goss v. Lopez*, 1975, p. 582). Additionally, the Court provided that in matters of school discipline, "the risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." (*Goss v. Lopez*, 1975, p. 579). Although this has been regarded as a victory for students' rights, specifically as it outlined the responsibility of the Courts to consider education as a property right, the case did not specifically address the issue of student race or ethnicity.

It is also worth noting that this case was a 5-4 decision, with several justices filing dissenting opinions. In dissent, the other justices argued that it was not the role of the court to involve itself in the practices of school operations, stating, "the decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education" (*Goss v. Lopez*, 1975, p. 585). The dissenting justices asserted that the Court should not insert itself into the general functioning of schools and they considered discipline to be one of the primary functions of school administrators. This philosophy of non-intervention by the courts has persisted, as the Supreme Court has reviewed only one case on student discipline since *Goss*.

*Honig v. Doe* (1988) is the only other Supreme Court case that addressed the issue of student discipline and specifically the due process protections for students who are involved in behavioral infractions. In *Honig v. Doe* (1988), the Court examined a case involving the San

Francisco Unified School District and a 17-year-old high school student who received special education services. The minor student, referred to as “John Doe,” was a child with an emotional disability who got into a physical altercation with another student. Following the incident, he broke a window within the school. Doe alleged that that the district had failed to implement the Education for All Handicapped Children Act, as he has been suspended indefinitely pending an expulsion, thus denying his right to a public education (*Honig v. Doe*, 1988). Doe felt that his indefinite suspension was a violation of the stay-put provision of the Education for All Handicapped Children Act, which required that he be allowed to continue to attend his home school due the discipline process.

The case was initially reviewed in a district court that issued an injunction, which allowed Doe to return to his school throughout the duration of the trial. The district judge determined that the school district could not suspend students for more than five days. Upon appeal, the Ninth Circuit Court of Appeals expanded the earlier decision by increasing the length of suspension beyond 10 total days. Honig, the California Superintendent of Public Education, appealed to the Supreme Court asked for deeper consideration of the exception to be made on the basis of a “dangerousness exception” (*Honig v. Doe*, 1988). On appeal, the Supreme Court confirmed, in a 6-2 decision, the decision of the lower court and found that special education students cannot be suspended for longer than 10 days (*Honig v. Doe*, 1988). Moreover, the ruling of the Supreme Court interpreted the statutory language to mean that, “Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school” (*Honig v. Doe*, 1988, p. 323).



**U.S. Circuit Court Cases.** Nauman (2012) conducted a dissertation study of U.S. Circuit Cases that included allegations of discrimination in student discipline. The study focused on eight federal and state cases heard in the courts from 1974 until 2001. While Nauman (2012) did not specifically identify the criteria used to select these cases, in each case, the student alleged a violation of the 14<sup>th</sup> Amendment. Additionally, the cases addressed in Nauman (2012) are frequently cited in the lower courts when students are alleging complaints of due process (See Table 8).

Table 8: Title VI Court Cases Reviewed by Nauman (2012)

| Case Name                 | Date | Court         | Allegation  | Outcome   |
|---------------------------|------|---------------|---|---|
| <i>Hawkins v. Coleman</i> | 1974 | Fifth Circuit | The student involved, Hawkins, alleged that his suspension from school violated his constitutional rights under the 14 <sup>th</sup> Amendment. In the facts of the case, the plaintiff argued that there was a clear disproportionality in the application of certain disciplinary consequences, including suspensions for students of color | While an expert in the case testified that 60% of the exclusionary discipline within the district was a result of non-violent offenses and that African American students were overrepresented in these findings, the court held that it was not the role of the court to interfere in matters of school discipline.  |
| <i>Sweet v. Childs</i>    | 1975 | Fifth Circuit | The plaintiffs alleged racial discrimination and a 14 <sup>th</sup> Amendment violation on the basis of discriminatory disciplinary practice.   | The court reviewed a summary judgment from the district court that had dismissed the case and found that the burden of proof was on the plaintiffs to prove that the suspensions were “arbitrary.” The plaintiffs also needed to demonstrate that white students were considered differently given the same misconduct. The court held that the students were not able to establish this evidence and the district court’s decision was upheld. |

|                       |      |               |   |  |
|-----------------------|------|---------------|---|--|
| <i>Tasby v. Estes</i> | 1981 | Fifth Circuit | The plaintiffs, a group of parents, alleged a violation of students' due process rights, citing discriminatory practices against African American students. The parents felt that the district's disciplinary policy was unclear and had a discriminatory impact. | The district court that first heard the case dismissed the case, citing the district had not violated students' due process rights. The case was then heard by the Fifth Circuit Court of Appeals that affirmed the finding of the lower court, adding, "official conduct is not unconstitutional merely because it produces a disproportionately adverse effect upon a racial minority" ( <i>Tasby v. Estes</i> , 1981, p. 1108). |
|-----------------------|------|---------------|---|--|

As detailed in the cases described above, Nauman (2012) found that in none of the cases students “were able to establish their procedural and/or substantive due process rights had been violated” (p. 75). Furthermore, in only one of the cases was there any significant consequence for the school district. Instead, these cases continue to provide evidence that students are unable to find legal remedies for discrimination within the judiciary.

*Research concludes court intervention is inadequate.* Based on a law review article, Skiba, Eckes and Brown (2009/10) argued that the courts have failed to provide relief for students for three reasons:

- 1) the courts continue to grant deference to school officials (ignoring the existing research base on school discipline), and 2) the courts have narrowed the legal claims available for students claiming racial discrimination in school disciplinary matters, and 3) the Supreme Court has moved towards embracing a colorblind approach to racial discrimination in schools. (p. 1110)

Through their analysis, the authors concluded that school administrators have significant authority when determining consequences for students as the courts have been fairly “hands off” with respect to school discipline cases (p. 1110). In one of the cases they reviewed, *Hawkins v.*

*Coleman*, they found that the court made specific mention to deference for school administrators. The court observed that school discipline was an essential function of local school boards and superintendents, and as such, the courts should not be involved in the local decision making.

Additionally, while students have been awarded basic procedural due process requirements, these protections fall short of protecting students against discriminatory disciplinary practices. In the lower courts, plaintiffs have failed to establish a successful argument on the basis of the 14<sup>th</sup> Amendment's Due Process Clause as, "the lower courts cite language from the *Goss v. Lopez* decision to demonstrate the extreme deference given to school officials in disciplinary matters" (Skiba, Eckes, & Brown, 2009/10, p. 1110). In a related study, through a legal analysis of court findings on claims of disparate impact, Best (2011) confirmed that the likelihood of a successful case to be extremely low:

A disparate impact claim based on racially disproportionate outcomes in school discipline would face significant barriers, most notably the ambiguous causation requirement and the historical unwillingness of judges to weigh civil rights interests of students against the interests of schools. (p. 1715)

Skiba, Eckes, & Brown (2009/10) argued that students' best opportunity for relief from discrimination may be "extra-judicial" (p. 1112). Extra-judicial remedies would include any opportunities for students to utilize other means, outside of the court system, to seek relief for complaints of discrimination. However, while Skiba, Eckes and Brown (2009/10) acknowledged the importance of alternatives to litigation for students who face discrimination during the disciplinary process, the focus of their article was not to study the outcomes of these options, or the impact of "extra-judicial" remedies. Because the courts have granted significant authority to

school administrators to make disciplinary decisions, the next section provides a review of the literature on how local policies are impacting school discipline. .

**Local Policies.** Fenning et al. (2008) sought to understand the impact of local policies on administrative disciplinary decision-making by examining two previous studies on the topic of discipline. The first study within the article articulated the prevalence of school discipline issues, citing research that nearly 40% of administrators address student misconduct daily (Fenning et al., 2008). For the purposes of this study, however, I want to focus on exploring the second study within their article which utilized a content analysis to better understanding local policies throughout Illinois. Based on the data coded from the discipline policies, the authors concluded that policies tended to focus on negative, punitive measures. Proactive or positive discipline methods that focused on reteaching were extremely rare, existing in less than 10% of school districts (Fenning et al., 2008). Further, Fenning et al. (2008) confirmed that exclusionary practices were common in all disciplinary policies, included the use of expulsion for “classroom disruptions” in 41% of the policies (p. 136).

Scott, Moses, Finnigan, Trujillo and Jackson (2017) conducted a review of local and state policies throughout the nation that lead to an increase in disproportionality. Scott et al. identified the expansion of zero-tolerance policies and profiling in policing as significant contributors to the over identification of students of color during the discipline process. Scott et al. (2017) drafted a list of recommendations for local policies (See Table 9).

**Table 9: Local Policy Recommendations**

## Local

1. Develop systematic communication and planning between municipalities and school districts, including integrated city and school policies on policing, housing, transportation, and racial disparity. While this kind of municipal coordination can be challenging, cities with mayoral control of schools, such as Chicago and New York, are in a unique position to pilot such an effort.
2. Redirect funds currently spent on school resource officers to expenditures shown to improve student engagement and social connectivity, including increasing the number of guidance counselors, advanced-level and enrichment courses, socio-emotional learning curricula, and high-quality extracurricular activities.
3. Invest in the creation or support of racially and socioeconomically integrated schools.
4. Integrate community-based policing programs with school restorative and transformative justice initiatives to shift the emphasis from discipline and punishment toward capacity building, relationship building, and positive behavioral interventions and supports.

*Note:* Reprinted from *Affecting Disproportional Outcomes* from Scott et al., 2017

In examining the recommendations above, Scott et al. (2017) advocated for the increased understanding of systemic, structural and institutional racism. Scott et al. (2017) underscored the importance of districts understanding how race-blind policies can still have a disparate impact based on the complexity of race relations within a specific community.

As discussed in the section above, the OCR DCL was intended to provide guidance for administrators and districts when drafting local policies. That said, there has also been resistance to this guidance in certain districts (Butcher, 2018). In Alabama, Governor Kay Ivey advocated for districts to have the authority to determine how they wanted to proceed on matters of school safety, including student discipline (Butcher, 2018). Further, Butcher (2018) explored the outcome of a 2018 hearing by the Federal Commission on School Safety. Butcher (2018) reported the local community leaders requested the right to formulate their own policies and not be “micromanaged” by federal guidelines (p. 1).

However, in other communities, there has been an increased focus on how to decrease exclusionary practices. For example, in Minnesota, the Department of Human Rights is working

with 40 districts on a voluntary review of school board policies (Vanderwerf, 2019). While the review process is in year one, there is already evidence of school districts that have decreased their suspension rates (Vanderwerf, 2019).

### **Study Relevancy**

Since the first report of disproportionality in 1975, researchers have been studying racial inequities within the discipline process. One could argue that another study on disproportionality would only seek to confirm what is already established within the research. However, my research questions are not intended to confirm or deny the existence of disproportionate discipline based on race. Instead, I seek to understand how complaints of racial discrimination are resolved by the OCR and determine themes that emerge from this data to assist school leaders with decision-making surrounding student misconduct.

The existing literature articulated that legal relief available within the courts is limited. The standard used by the courts for a 14<sup>th</sup> Amendment claim on the basis of discipline discrimination continues to be difficult for students to prevail and as such, students who face discrimination are often unsuccessful. However, while it is easy to be discouraged from the relevant case law, students have another option: filing complaints with the OCR. The OCR is authorized to evaluate complaints of discrimination and develop agreements to remedy concerns. While this option may be a more common avenue for students to pursue, it is very rarely researched within the literature. Traditional legal studies and law review articles have focused mainly on case law, ignoring the OCR as a possible avenue for relief. Furthermore, the studies that have been conducted on the OCR call for additional research on how the OCR applies the law to specific fact patterns. My study explores relevant OCR case resolution agreements from January 2011 to June 2019 to fill a gap in existing research.

## CHAPTER 3: METHODS

### Introduction

In building upon the previously established literature, this study examines OCR investigations of complaints on the basis of racial discrimination in student discipline. Specifically, through an analysis of OCR Case Resolution Letters and Agreements, this research addresses the following questions: 1) What types of allegations and legal claims were present in the OCR Case Resolution Letters and Agreements from January 2011 to June 2019 resulting from allegations of Title VI disciplinary violations in K-12 public schools? 2) What general trends emerged from the Case Resolution Letters and Agreements?

To situate my research within the literature, I begin Chapter 3 by explaining the limitations of previous studies on disproportionality. Following this information, I outline the methodological approach that I utilized, presented through four sub-sections: 1) a description of legal content analysis, 2) an explanation of my study design including data collection and analysis, 3) information on validity and reliability, and 4) potential limitations.

### Limitations of Previous Studies

In previous studies of student discipline, researchers have focused on understanding the root cause of the disproportionality and legal researchers have explored the role of the courts as a legal remedy. However, as discussed in Ch. 2, students who are facing discrimination in the discipline process have been unsuccessful in courts and therefore, there is a need to explore other options, including the OCR complaint process.

Researching the OCR complaint process is needed for several reasons. First, there have only been two school discipline cases that have reached the U.S. Supreme Court (*Goss v. Lopez* and *Honig v. Doe*). Thus, universal legal precedent across all schools in every jurisdiction is

limited. However, administrative mandates at the federal level are available through OCR. From January 2011-June 2019, 27 complaints have led to OCR resolutions; therefore, the OCR process is a possible legal remedy for students, indicating that school administrators would benefit from knowing more about OCR Case Resolution Agreements. Additionally, while there are certain financial resources necessary to file a lawsuit against a school district, OCR complaints can be filed by an individual, without the assistance of an attorney.

Finally, while there have been lower court decisions that addressed the issue of disproportionality in school discipline, nearly all of these cases have failed to establish guidelines for schools regarding race and student discipline (Nauman, 2012). Additionally, as Worthington (2017) established, the OCR's process has not been studied with the same depth as court case findings and therefore, there is less information available on Case Resolution Agreements. Despite the OCR settling 27 cases from January 2011 to June 2019, there has not been a legal analysis of these documents to determine themes that emerge or create recommendations for districts to avoid OCR involvement.

In the following section, I explain my method for filling this void in the existing research, specifically I describe the foundations of legal content analysis, the methodological approach that I utilized for my study. Since legal content analysis is not as common as other qualitative or quantitative methods, my goal in presenting this information is to provide a frame of reference for future researchers to understand why this methodology was a good fit for my study.

### **Foundations of Legal Content Analysis**

Hall and Wright (2008) posited that legal analysis could be strengthened through the use of content analysis techniques, describing legal content analysis as the “standard applications of basic social science methods to subject of legal interest” (p. 63). While they coined the term



“legal content analysis,” components of content analysis pre-date their study, as I discuss in a later section on content analysis. Hall and Wright (2008) argued that the essential components of legal content analysis have been in existence since the 1960’s.

Sughrue and Driscoll (2012) defined legal content analysis as a “specialized approach to investigation” that allows researchers to address legal questions to better assist practitioners in serving students and families (Sughrue & Driscoll, 2012, p. 2). Simply put, within a legal content analysis, a research question is investigated through a detailed analysis of legal sources to determine how the law is impacting students, families or other stakeholders (Salehijam, 2018; Sughrue & Driscoll, 2012).

While legal content analysis is a relatively new methodology, it is rooted in two methods that are not new: content analysis and traditional legal research (Hall & Wright, 2008). The following sections explore these two methodologies as I utilized components of both to answer my research questions. Traditional legal research, the first methodology described below allowed me to situate my study within the larger framework of anti-discrimination legal claims. The second methodology, content analysis, guided the specific steps that I took to make meaning from the OCR documents that I reviewed.

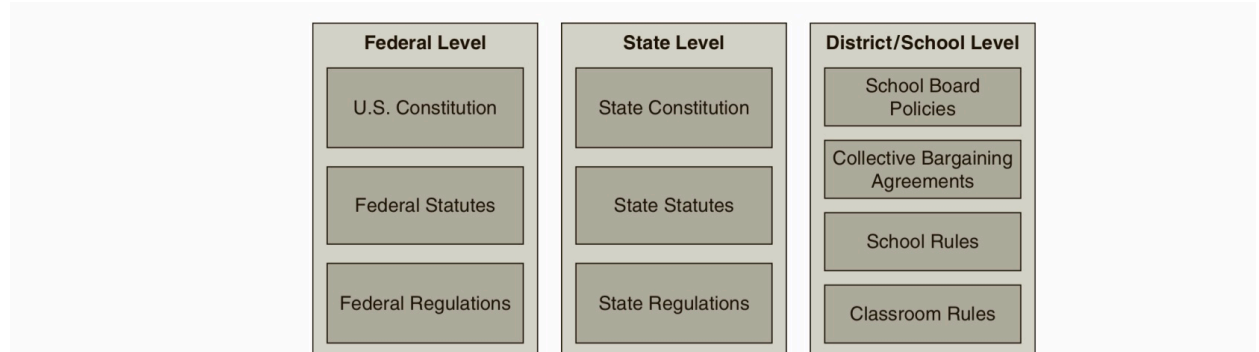
Since my research questions explore legal issues through the application of content analysis techniques, I chose to use a blended method: legal content analysis. The following section describes each method in isolation and then concludes with a section explaining why neither method alone was appropriate.

**Traditional legal research.** I utilized traditional legal research methods to understand how the OCR is authorized to address discrimination claims within the U.S. legal process. Traditional legal research is “a systematic investigation into a question of law that requires the

researcher to trace the legal issue from its origin to its current status and application” (Sughrue & Driscoll, 2012, p. 8). It allows education researchers an opportunity to explore legal questions and create a deeper understanding of specific legal issues (Russo, 2006). Traditional legal research begins with the formation of a legal question, most commonly aimed at understanding how a specific legal question would be addressed by the courts (Russo, 2006). During the research stage, the researcher typically utilizes legal sources, including past court cases, statutes or regulations, to answer a research question; therefore, the researcher must understand how different legal sources interact (Russo, 2006). Legal issues are rarely addressed by just one branch of government, or source of law, given the structure of checks and balances with the U.S. legal system. Instead, a common practice for legal scholars is to analyze various sources of law in order to understand all of the legal considerations for a particular issue (Russo, 2006). In the next section, I explore sources of law and explain how the branches of government function to create the legal framework for legal questions that arise in public education.

***Legal sources.*** There are three main sources of legal information: primary sources, secondary sources and research tools (Russo, 2006). Traditional legal research begins with an analysis of the primary sources of law. Examples of these include the U.S. Constitution, federal and state statutes, regulations, and case law. The following figure outlines the primary sources of law that impact public school.

Figure 2: Sources of Law Impacting Public School



Note: Reprinted from McCarthy, Eckes & Cambron-McCabe, 2014, p. 14

Secondary sources provide additional information about primary sources of law. These may include law review articles or legal encyclopedias (Russo, 2006). I utilized traditional legal research methods during my literature review to develop context for my study. I addressed the primary and secondary sources of law that relate to my research question. Specifically, I summarized the relevant primary sources including: constitutional law, case law and statutory law established in Title VI. Additionally, I examined secondary sources such as: law review articles that addressed Title VI and the OCR. In the following section, I provide background information about each branch of government because knowledge of the legal framework is needed when conducting traditional legal research

**Branches of government.** Each branch of government serves a specific function within the legal system and as previously named in the literature review, issues involving student discipline are addressed by all three branches of government. The U.S. Constitution is the foundational source of law within the United States. The U.S. Constitution is organized by amendment and is readily available online. The U.S. Constitution is the binding document for all laws within the United States:

The Constitution (a) defines the fundamental rules by which the American system functions, (b) sets the parameters for governmental action, and (c) allocates power and responsibility among the legislative, executive and judicial branches of government. (Berring & Edinger, 2005, cited in Yell, 2012, p. 3)

The Constitution established a system of checks and balances within the United States through the utilization of three branches of government (Russo, 2006). The first branch, legislative branch, is responsible for creating statutes, or laws. Federal statutes are codified in the United States Code (U.S.C) (Russo & Osborne, 2017; Russo, 2006). The U.S.C. is available online and is indexed by chapter. Further, to locate specific statutes, researchers can utilize a legal search engine such as LexisNexis or Westlaw (Russo, 2006). For example, for my study's research questions, I reviewed literature about the federal statute, Title VI of the Civil Rights Act of 1964. Additionally, I used a version of LexisNexis called LexisUni, to examine different state statutes from geographically diverse regions of the country to understand how state legislatures have approached issues of exclusionary discipline. NexisUni provides a smaller sub-database of the LexisNexis database. It is available at academic libraries and serves as an academic search engine that allows researchers to access legal information (LexisNexis, n.d).

In addition to the legislative branch, the second branch of government created by the Constitution is the judicial branch. While the judiciary is not responsible for creating laws, this branch of government is responsible for the enforcement of laws and through the determination of cases; thus, the judicial branch creates case law, or "common law" (Russo, 2006, p. 10). McCarthy, Eckes and Cambron-McCabe (2014) further define common law as use of legal precedents from previous cases to determine the outcome of specific legal challenges.

Within the U.S. court system, cases can be heard at multiple levels (McCarthy, Eckes & Cambron-McCabe, 2014).<sup>5</sup> As noted in Chapter 2, the jurisdiction of the court determines where the precedent will be applicable and once a case has been decided, the court's findings are legally binding within its jurisdiction (Russo, 2006). Cases decided in the U.S. Supreme Court provide a universal precedent that must be applied across the country; however, as described above, Supreme Court cases on school discipline are rare. It would be more likely that a challenge to disproportionate disciplinary practices would be made in a lower court. In order to locate case law, researchers can search online, specifically on the U.S. Supreme Court website for cases decided by the Supreme Court, or utilizing a search engine like LexisNexis (Russo, 2006).

The final branch of government, the executive branch, is responsible for creating regulations that provide additional clarity on statutory requirements (Russo, 2006). McCarthy, Eckes and Decker (2019) outlined this process explaining how regulations are created by administrative agencies that are authorized through a specific statute. At the federal level, the USDOE creates the greatest number of regulations that apply to public schooling (McCarthy, Eckes & Decker, 2019). To locate federal regulations, researchers can search the *Federal Register*, a document available online through the Office of the Federal Register, or individual regulations are available online at the U.S. Department of Education website (Russo & Osborne, 2017). Similarly, state legislatures can assign regulatory authority to state administrative agencies (McCarthy, Eckes & Cambron-McCabe, 2014).

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<sup>5</sup> In the "Case Law" section of Chapter 2, I describe, in detail, the process of how case law is applied.

To answer my research questions, I focused most heavily on the laws enforced by the OCR. Sughrue and Driscoll (2012) articulated the role of regulations as “essential sources of data for those legal researchers interested in tracking the transformation of education law into policy and practice” (p. 4). Since my study utilizes OCR Case Resolution Letters and Agreements, in Chapter 2, I described, in detail, the process of an OCR complaint.

In considering the most effective methodology to address my research questions, I choose not to use traditional legal methods in isolation for three primary reasons:

- 1) One of the limitations of traditional legal research is the lack of description regarding case selection: “the traditional legal scholarly enterprise relies, like literary interpretation, on the interpreter's authoritative expertise to select important cases and to draw out noteworthy themes and potential social effects of decisions” (p. 66). As a practitioner without a formal legal background, I anticipated that I may struggle to understand how specific cases were selected within a legal study and determine if the study’s findings would be applicable. However, with legal content analysis, the researcher is more descriptive in the explanation of why specific data was selected for the study (Hall & Wright, 2008).
- 2) As a school leader, I wanted my study to specifically address building level leaders and provide valuable information on how to avoid discrimination in the discipline process. Russo (2006) argued that one of the primary limitations of traditional legal research is the strict focus on court precedent without considering the implications for practitioners.
- 3) I wanted my study to provide building level and district level leaders with practical recommendations for how they could improve their approaches to discipline. Russo

(2006) explained that legal researchers should also utilize “other modes of inquiry to complement their findings” to create a deeper understanding of a particular legal question and the impact within our schools (p. 20).

**Content analysis.** Traditional legal research methods alone could not meet the needs of my study; therefore, this section outlines the essential components of a content analysis, another methodology that contributes to an understanding of a legal content analysis. Weber (1990) described content analysis as “a research method that uses a set of procedures to make valid inference from text” (p. 9). Hsieh and Shannon (2005) established that content analysis is “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (p. 1278). Content analysis first appeared in formal research in the 1940’s in the field of sociology; however, there are references to content analysis in literature as early as the 17<sup>th</sup> century, primarily as it provided a deeper understanding of religious texts (Krippendorff, 2004). Since that time, the field of content analysis has continued to change and evolve over the past 30 years (Hsieh & Shannon, 2005; Rosengren, 1981; Weber, 1990).

In earlier depictions of content analysis, Weber (1990) focused heavily on the use of frequencies and described machine-based coding strategies. For example, Weber (1990) provided a method of content analysis that focused on counting individual words. He then noted that this type of content analysis could be viewed as problematic as word meaning can change depending on the additional context within the text (Weber, 1990). From Weber’s (1990) early work, he outlined four primary stages for content analysis, beginning with the researcher determining what information would be collected from the text. Following an identification of the coding scheme, in the second stage, the researcher is responsible for defining categories for

the data (Weber, 1990). Then, once the categories have been developed, the researcher is responsible for testing a portion of the data using the proposed categories to determine the reliability of the coding process. After the researcher has determined that the coding scheme is accurately capturing the desired data, the entire text is coded (Weber, 1990).

However, since Weber's (1990) initial descriptions of this method, content analysis has been an evolving and flexible methodology in the education studies field (Hsieh & Shannon, 2005). Researchers have now been expanding the use of content analysis to move beyond word or phrase coding to a focus on identifying relevant themes through a more holistic approach to the data (Hsieh & Shannon, 2005; Krippendorff, 2004). Krippendorff (2004) provided six primary components needed to conduct a content analysis and includes an understanding of the context surrounding a piece of text:

- 1) A body of text
- 2) A research question that the analyst seeks to answer by examining the body of text
- 3) A context of the analyst's choice within which to make sense of the body of text
- 4) An analytical construct that operationalizes what the analyst knows about the context
- 5) Inferences that are intended to answer the research question, which constitute the basic accomplishment of the content analysis
- 6) Validating evidence, which is the ultimate justification of the content analysis (pp. 29-30)

Building on the work of Krippendorff (2004), Hsieh and Shannon (2005) further refined content analysis into three primary approaches: conventional, directed and summative. Within a conventional content analysis, the study begins with observation and inquiry. As the researcher reviews the data sets, codes are created as the researcher views the text. In a conventional content



analysis, codes would emerge throughout the data collection process and data would be reviewed multiple times to ensure that emergent codes were applied to previously-reviewed data (Hsiech & Shannon, 2005).

Conventional content analysis is different than a directed content analysis that begins with a preexisting theory that shapes the researcher's creation of the coding schedule. In a directed content analysis, researchers are aware of previous research that applies to their data set and as such, they are reviewing new data to determine its alignment to past research (Hsiech & Shannon, 2005). Essentially this style of content analysis is applicable in research that is trying to confirm or negate previously held findings (Hsiech & Shannon, 2005).

The third and final type of content analysis defined by Hsiech and Shannon (2005) is a summative content analysis. In a summative content analysis, keywords can be defined prior to the data analysis stage based on a preexisting knowledge of literature on the topic (Hsiech & Shannon, 2005). A summative content analysis would be more similar to the previous literature from Weber (2009) on the depiction of content analysis, in which individual words or phrases are counted and analysis is based on how the words are used to communicate specific meanings. My study utilizes components of each of these aforementioned descriptions of content analysis.

My goal in presenting information on content analysis is to provide information about how applying content analysis methods allowed me to develop a deeper understanding of OCR documents. Applying these methods to OCR Case Resolution Letters and Agreements enabled me to gather information from multiple documents to create a new understanding of the OCR investigative process. However, in isolation, content analysis would not provide enough information about the legal authority granted to OCR; therefore, I also needed to complement

this methodology with legal research methods. In the following section, I present evidence as to why this hybrid methodology was needed in my study.

### **Legal Content Analysis Rationale**

Neither content analysis or legal research methods would allow me to fully answer my research questions. By conducting a legal content analysis of OCR Case Resolution Letters and Agreements, I was able to analyze OCR data from January 2011 to June 2019. Hall and Wright (2008) cited the ability to draw conclusions from multiple pieces of data as one of the primary strengths of legal content analysis: “content analysis allows the researcher to deal with larger numbers of cases, which provides a truer measure of broad patterns in the case law” (p. 65). Content analysis methods provides an opportunity to reduce a significant amount of research into meaningful themes, in the hopes of making a more practical source of information for school leaders.

However, while content analysis most closely resembles a legal content analysis, a content analysis methodology would not be sufficient in my study as it would fail to understand the legal context surrounding the OCR. While I used content analysis techniques when reading Resolution Letters and Agreements, there was a need to understand how the legal issues are being addressed within the agreements; therefore, a legal content analysis better allowed me to meld these needs.

Finally, legal content analysis requires that a researcher understand the legal context and framework, but it does not require a law degree or years of experience analyzing legal issues. To ensure that I was prepared to address legal content, I completed a minor in education law, taking five courses in legal research methods and school law. Then I researched the specific context surrounding OCR involvement, which is summarized in Ch. 2. This included literature about

OCR and its complaint and resolution procedures, racial discrimination, Title VI, state expulsion statutes, and relevant federal and state court cases.

In combining content analysis and traditional legal research, I am able to provide a rich, contextual understanding of the legal issues that authorize the OCR to conduct investigations while also focusing on reducing hundreds of pages of data into meaningful themes for practitioners.

### **Research Study Design**

In the following section, I outline the specific procedures that are recommended within the literature to complete a legal content analysis. The process for conducting a legal content analysis was first proposed by Hall and Wright (2008) and included a three-part investigation. The first stage included the selection of the legal documents, followed by coding the legal documents and ending with an analysis of the results. Salehijam (2018) further expanded this process to include five stages, with an increased focus on the research questions and the utilization of an appropriate data set. Within my study, I followed the five steps proposed by Salehijam (2018): 1) the development of a research question, 2) the identification of a data set, 3) document coding, 4) analysis of data and 5) the presentation of research findings.

The first stage includes the formation of a research question. Salehijam (2018) argued this step of the process is critical for the success of the study since not all research questions can be answered by a legal content analysis. One of the primary considerations should be “the analyses of large volumes of data such as case law with equal weight/value” (Salehijam, 2018, p. 36). Additionally, in providing guidance for future studies, Salehijam (2018) provided examples of previous topics of legal content analysis, including a study that examined Alternative Dispute Resolutions (ADR). In the provided example, Salehijam (2018) explained how the author was

interested in exploring outcomes from numerous ADRs. This example was similar to my research, in that, both studies utilized legal documents as the primary source of data.

The second stage of a legal content analysis is the identification of the data that is utilized (Salehijam, 2018). Salehijam (2018) advocated for researchers to determine if they would be using a data sample or the entire data set. As Salehijam (2018) established, legal research lends itself to sampling as legal researchers are often compiling only certain cases. My study examined the entire set of OCR Case Resolution Letters and Agreements from January 2011 to June 2019. In a later section on search procedures, I further articulate the exclusionary and inclusionary criteria that I utilized to ensure the Case Resolution Agreements in my sample were relevant to my research questions (e.g., I removed Case Resolution Agreements that did not focus on a Title VI discipline violation).

The third stage includes coding the legal documents (Salehijam, 2018). Hall and Wright (2008) articulated four steps of document coding within a legal content analysis. In Table 10, I present the recommendations of Hall and Wright (2008) and an explanation of how I utilized these recommendation within my study.

**Table 10: Document Coding Process**

| Recommendation by Hall and Wright (2008)  | Actions taken within my study   |
|---|---|
| 1) [...] create a tentative set of coding categories a priori. Refine these categories after thorough evaluation, including feedback from colleagues, study team members, or expert consultants (p. 107). | My research question began with a few pre-established codes that I utilized during the data collection process; however, I added additional codes as my research unfolded based on input from my literature review and my dissertation committee. |
| 2) Write a coding sheet and set of coding instructions (called a “codebook”) ... (p. 107).  | I created an excel document to collect data and recorded each code from the data.   |

|  |  |
|--|--|
| <p>3) Add, delete, or revise coding categories based on this pilot experience, and repeat reliability testing... (p. 107).</p> | <p>Through a peer debriefing process, I also piloted my codebook using two documents to ensure reliability and to gain feedback from a researcher outside of my study. I scheduled phone conversations to outline the process of a legal content analysis, provided my codebook, including an explanation of each code, and OCR documents.</p> <p>I worked through the investigations one at a time, coding the Resolution Letter first, before reading the Resolution Agreement. For demographic information, I identified the information within the text, highlighted this information and then entered the data into my codebook. For more difficult variables, I recorded any information that I considered relevant to that code within my codebook and as I worked through additional cases, I continued to refine the exact information that I was seeking</p> |
| <p>4) When the codebook is finalized, apply it to all the material (p. 107)</p>  | <p>I applied my codebook to my entire data set, a total of 54 documents.</p>   |

The fourth step in a legal content analysis includes an analysis of the results. In this stage, the researcher is responsible for developing inferences and conclusions based on the data (Salehijam, 2018). During this stage of my research, I reviewed the data collected in my codebook. I will describe my data analysis in more detail, but I used a color coding system to identify common themes within 54 documents and utilized this data to develop themes. As recommended by Weber (1990), this process required multiple reads of my codebook to ensure that I was capturing data for each variable discussed in my research questions.

Finally, during the fifth stage of the process, the researcher is responsible for reporting the results (Salehijam, 2018). In Chapter 4 and Chapter 5, I provide a summary of my findings, an analysis of the Case Resolutions Letters and Agreements, implications for future research and recommendations for school and district administrators based on the outcomes of OCR investigations.

**Data collection.** To answer my research questions, I utilized 54 OCR documents, 27 OCR Case Resolution Letters and 27 OCR Case Resolution Agreements that alleged a violation of Title VI, as it pertained to student discipline. In the following two sections, I present my search criteria (inclusionary and exclusionary), search procedures, and a description of the coding rubric.

***Inclusionary and exclusionary criteria.*** In the following section, I address the inclusionary and exclusionary criteria used to determine which Agreements I reviewed. Inclusionary criteria refers to the conditions that must be present in order for a case to be included in the study; exclusionary factors prevented the case from being considered. My inclusionary criteria were: (a) Agreements from public institutions<sup>6</sup>, (b) Agreements within the K-12 school setting (including traditional, charter), (c) Agreements resolved between January 2011-June 2019, (d) Agreements that addressed exclusionary discipline (e.g. suspensions or expulsions), (e) Agreements that allege a violation of Title VI.

To determine if a case would be included based on the criteria listed above, I reviewed the front page of the Case Resolution Letter. Since Resolution Letters include all of this information on the first page of the letter, I was able to identify key information for each case. I then documented evidence of each criteria within my codebook.

My exclusionary criteria were: (a) Agreements in non-public institutions, (b) Agreements outside of the K-12 school setting (e.g. higher education or preschool programs), (c) Agreements outside of the January 2011-June 2019 timeframe, (d) Agreements that did not address exclusionary discipline, (e) Agreements that did not allege a violation of Title VI. Additionally,

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<sup>6</sup> Public institutions are subject to the requirements of Title VI (McCarthy, Eckes & Cambron-McCabe, 2014).

Case Resolution Agreements are only created when a district enters into an agreement with the OCR; therefore, any other type of OCR action (e.g. appeals, cases that did not enter the resolution process, or unfounded complaints) were not included.

I examined cases that occurred over an eight and a half year time span (January 2011-June 2019). I bound my study within this time frame for several reasons. Initially, I had set the date range from 2013-2019, primarily based on the availability of cases on the OCR website. According to the Reading Room webpage, the OCR provides access to all cases dated after October 1<sup>st</sup>, 2013. However, when I conducted my research, I was able to locate three additional cases that were determined prior to 2013 that met the other criteria of my study, so I adapted my inclusive criteria in order to increase my data set.

In addition to the availability of the cases, I had several other considerations for selecting this date range. Since my study is focused on providing practical recommendations for practitioners, I wanted to focus on current cases. However, based on my literature review regarding the shifting interpretations of the law by the OCR given the desires of the executive branch, I wanted to consider Agreements resolved under President Obama and President Trump. Finally, because the OCR released federal guidance for school districts in 2014, I was curious to analyze Case Resolution Agreements that came before and after this guidance was published. I was interested in analyzing how the OCR was interpreting the law and providing sanctions following this publication.

***Search procedures.*** In conducting this study, I began with a search of all Case Resolution Letters and Agreements on the OCR website, located at <https://www2.ed.gov/about/offices/list/ocr/index.html>. According to the website, documents are published on the OCR website within a sub-site entitled, “Reading Room,” which can be found

at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>. The Reading Room is organized by search fields used to filter and identify similar resolutions. Searches can be conducted by keyword or advanced search parameters that identify the statute in question. According to the OCR website, cases are available beginning in 2013; however, as I discuss later in the limitations section, I was able to access cases from 2011.

For the purposes of this research, I was interested in reviewing both Case Resolution Letters and Case Resolution Agreements. Case Resolution Letters provide an overview of the complaint with specific details about the allegations of discrimination. Case Resolution Agreements are focused on the requirements for schools and districts based on the original allegations. Both documents were needed because I wanted to understand the situation that prompted the complaint, how the OCR interpreted the incidents, and what sanctions were issued.

The process of locating *all* the Case Resolution Agreements from 2011 to June 2019 was difficult. The OCR website appears to have a transparent process for public records access because it claims to publically post all cases from 2013 until present; however, it was extremely difficult to locate cases that matched my search perimeters and despite information available on the OCR website, I found that the search tools did not align to what the OCR stated would be available. For example, the OCR states that cases are not available online prior to 2013, but I located three cases on the search feature of the OCR website that included dates prior to this time. The following list reflects the steps I took to identify the data used in my study:

1. Within the OCR Reading Room, I first conducted my search using the keyword “discipline” and identified violations of “Title VI of the Civil Rights Act.” These perimeters yielded 56 total cases (Search #1).



2. I reviewed these documents using the exclusionary criteria described above and found that only a total of 16 cases met the criteria for my study.
3. Based on this limited number of available cases, I decided to conduct additional research about the OCR website and learned that by identifying the statute, I was limiting my cases to only that violation and would not include cases that alleged violations of multiple statutes. Because the OCR is responsible for the enforcement of four statutes, it would be possible that a discipline case could allege a violation of Title VI but also include other violations. I wanted to include all of the possible cases that alleged a violation of Title VI, so I considered the best option for how to access these cases.
4. I then broadened my search to include the keyword “discipline” and I removed the statute (Search #2). I also decided to limit my initial search to Case Resolution Letters to ensure the initial compliant met my criteria for inclusion into the study. This parameter yielded 477 Resolution Letters.
5. I opened each letter to conduct a preliminary review of the letter to determine if the allegation included language regarding unfair disciplinary action based on race.
6. On the front page of each document, I looked for evidence of unfair treatment of an individual student (e.g. language such as “whether the School treated the Student differently because he is an African-American male”); or evidence of a school-wide pattern of mistreatment (e.g. language such as “whether the School discriminates against students based on race by disciplining African American students more harshly than their white peers”). Both of the previous examples were copied from the OCR Complaint Letter: No. 11-14-1224; a letter and agreement included in this

- study. Using this method to make a preliminary judgment on the Resolution Letters narrowed the applicable cases to 30.
7. I then cross referenced the original 16 Resolution Letters from my initial search to ensure that each of these had been included and confirmed that all 16 were captured within the 30 identified.
  8. Once I identified the Case Resolution Letters that would be included, I searched for each Resolution Agreement by entering the same of the school district into the keyword search field (Search #3).
  9. Since the OCR Reading Room was more difficult to utilize than I anticipated, I also conducted several other searches to ensure that I had captured every case that I wanted to include within the study. I used the keyword search feature to examine the following keywords to ensure that there were no additional cases that needed to be included:
    - “Disparate impact” (Search #4)
    - “Discrimination on the basis of race” (Search #5)
    - “Discrimination on the basis of race discipline” (Search #6)
    - “Unfair treatment discipline race” (Search #7)
  10. Using these keywords, I would review the Resolution Letters included in each search to determine if the case met the criteria to be included.
  11. Upon a further review of the 30 cases initially included in my study, I found that 3 studies did not fit within my inclusionary criteria, which further narrowed my research to 27 different cases.

12. I downloaded 27 Case Resolution Letters and 27 Case Resolution Agreements in June of 2019. These 54 documents served as the data set used within my study.

**Coding rubric.** Following the selection of the cases, I developed an initial coding rubric. Hall and Wright (2008) asserted that the coding stage of the process reduces confirmation bias within the research, stating, “a defined coding scheme focuses attention more methodically on various elements of cases and is a check against looking, consciously or not, for confirmation of predetermined positions” (p. 81). Each code was recorded within an excel spreadsheet. In developing the coding rubric, I utilized the guidance put forth by Krippendorff (2004) who argued that a coding rubric must be “exhaustive,” in that it must capture all of the data for a particular theme, and be “mutually exclusive,” as each piece of data should only count for one code (p. 147).

I utilized both an a priori and open coding approach to developing the coding rubric, recognizing that my initial categories would shift once I began my research. A priori coding is the pre-development of some codes prior to the beginning of the data collection (Creswell, 2014). Open coding refers to the development of codes as the data collection process occurs (Creswell, 2014). In Table 11, I present my codes and how each term was coded.

**Table 11: Codebook Terms**

| Variable                 | Label   |
|--------------------------|---|
| Resolution name          | Open  |
| Resolution #             | Open  |
| Resolution year          | 2011-2018, NA   |
| Age of student           | Elementary, Middle, High School, NA                   |
| Sex of student           | Male, Female, NA                                      |
| Race of student          | African American, Latinx, American Indian, Somali, NA |
| Special education status | Yes, No, Previously Yes, NA                           |

|                           |  |
|---------------------------|--|
| School type               | Traditional, Charter, Alternative, Residential, NA   |
| State                     | All U.S. States and Territories  |
| Legal claims              | Title II; Title VI; Section 504; Title IX, NA  |
| Fact pattern              | Individual allegation, systemic allegation, individual and systemic, compliance review, NA |
| Requirements of agreement | Open; reported in a list. Column created for each requirement. <sup>7</sup>                |
| Other outcomes            | Open   |
| Lessons learned/Notes     | Open   |

Each document was coded and data was captured within the codebook. If there was relevant information within the case for each code, I recorded “NA.”

**Analysis of data.** To begin the process of data analysis, I gathered frequency counts of the different codes within my rubric. Krippendorff (2004) defined this as the process of tabulation. During the tabulation process, the data was compiled to show the frequency of each code within the reviewed resolution agreements. For the more-straight forward variables (age, race, school type, special education status), I counted the frequency of each response. I then utilized the frequency counts to develop inferences to address my research questions. Krippendorff (2004) articulated this phrase of the research process as the formation of “abductive inferences,” inferences created when data is utilized to draft a hypothesis or belief statement that seeks to explain how the data collected could be used to predict future outcomes (p. 36).

My study also included variables that were not as straightforward as those mentioned above. Specifically, in looking at the fact patterns, legal claims or district requirements, I needed

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<sup>7</sup> Once I began the coding process, it became clear that there were several different district actions that would be required. So, I numbered each requirement and created an individual column for each requirement within the agreement. If a case did not have as many requirements as I had columns, I would record an “NA.”

to identify how I would make meaning from the data that I captured. I followed the recommendation of Creswell (2014) to look for similar ideas within the data and I color coded the cells in my codebook that represented the same idea. For example, in some of the OCR cases, the OCR mandated the creation of new role, called a “discipline supervisor;” however, in other cases, the agreement would refer to this role as an “expert consultant.” Both roles would support district wide changes in discipline analysis and policy; therefore, both roles were coded yellow on my codebook and reported in my results as “personnel requirements.” I used a similar process to code for other variables (See Table 12).

**Table 12: Codebook Organization by Theme**

| Original Data Code        | Theme Identified         | Color on Codebook |
|---------------------------|--------------------------|-------------------|
| Requirements of Agreement | Community Engagement     | Blue              |
| Requirements of Agreement | Professional Development | Green             |
| Requirements of Agreement | Personnel Requirements   | Yellow            |
| Requirements of Agreement | Data Collection          | Purple            |

To respond to my first research question regarding general themes within the data, I drafted short statements in the “Lessons Learned” column of my codebook. In qualitative research, the researcher records field notes as a process for documenting the richness of the data (Creswell, 2014). I utilized this column in the codebook for a similar purpose. I identified information that was specific to each case that helped me understand the OCR’s process or draw a connection to other cases.

I then read through the statements I previously created and worked to consolidate these statements into primary themes. During this stage in my research, I reread several cases to ensure

that I had captured enough information about the cases. Creswell (2014) defined themes as “similar codes aggregated together to form a major idea in the database” (p. 245).

By forming my individual codes into themes, I was able to revisit my data to look for specific evidence of these themes that I want to present within my findings. This was another stage in the data collection where I would reread cases to look for specific examples from the cases that would illuminate a specific finding. Creswell (2014) articulated this process as “description,” or the process of providing direct evidence from my data to help my reader understand how I operationalized a particular theme. However, in addition to creating common themes from the lessons learned, I also identified pieces of information that struck me as interesting or unexpected. While elements of certain cases were not evident as overarching themes, the information in these cases was worthy of noting, especially considering the implications for future research; therefore, these findings were recorded as well.

### **Ensuring Validity and Reliability**

Some scholars have criticized legal content analysis as “trivial;” (Hall & Wright, 2008, p. 64). However, this characterization fails to acknowledge the significant measures that I took to produce a valid and reliable study. In the following section, I outline the research on validity and reliability, while outline the steps that I took within my study.

**Research on validity and reliability.** Since legal content analysis has components of qualitative research (e.g. content analysis) and components of quantitative research (e.g. tabulation, frequency counts), I took several steps to ensure validity and reliability with my study.

Creswell (2014) defined validity as “the development of sound evidence to demonstrate that the test interpretation (of sources about the concept or construct that the test is assumed to

measure) matches its proposed use” (p. 159). Reliability is a term that means “scores from an instrument are stable and consistent” (p. 159). To be a valid study, my research methods must ensure that I can fully answer my research questions. Creswell (2014) established validity as a potential strength for qualitative research, but also provided instructions for qualitative researchers to increase study validity.

***Steps to increase validity.*** The following list represents the steps that I took to increase the validity of my research:

- 1) *Transparent description of data.* Creswell (2014) provided eight possible techniques for addressing validity. One of those recommendations includes the need to provide a full account of the information, including any cases that did not fit within the themes.
- 2) *Present data, even if it doesn't fit within a theme.* Creswell (2014) puts forth the assertion that while most of the data should fit within a specific theme, there is significance in providing information that doesn't fit within a specific theme. Since I recorded frequencies, I presented specific findings based on the counts of each code in order to accurately present the data.
- 3) *Remain specific with language.* As I constructed themes from the data, I was careful when writing my discussion that I not overly generalize or provide vague language that would allow the reader to believe that a certain theme was present in every case.
- 4) *Seek advice.* I wanted to ensure that my study provide a comprehensive understanding of the legal frameworks surrounding the OCR. To increase my own understanding of the legal context of my research questions, I utilized an

attorney as a reviewer. My reviewer was able to provide me feedback on my interpretations of the due process clause, as well as the process of discrimination claims within the courts. He provided specific feedback on how the courts have interpreted school discipline cases and helped me refine my legal framework.

- 5) *Understanding my own background.* Zirkel (2014) articulated the need for legal scholars to have a traditional legal education and has identified this as a potential barrier to conducting valid legal study. To mitigate potential shortcomings, I completed five school law courses and consulted frequently with two of my dissertation committee members who are lawyers.

***Steps to increase reliability.*** I also considered the reliability of my study, or the ability for my work to be replicated (Creswell, 2014). In the following section, I outline the steps that I took to ensure reliability.

- 1) Legal documents are considered “non-reactive” data sources, which can be read and reread, even after the research has been completed (Bowen, 2009, p. 31). Since the documents are publically available, it would be easy for fellow researchers to review my work and quickly determine if my methods were reliable.
- 2) By submitting my codebook with this research, further researchers would be able to understand how I categorized my data.
- 3) To further increase the reliability of my study, I read each OCR Case Resolution Letter and Agreement multiple times to ensure that I did not make errors in the coding. By conducting multiple reads of my data set, I decreased the likelihood of information being



left out of the study. I also ensured that my codes remain consistent throughout the data collection process (Creswell, 2014).

- 4) Further, as discussed in the next section, I utilized a peer debriefer to increase the reliability of my codebook and confirm that my rubric was measuring what I planned to measure. Throughout the coding process, I built in multiple opportunities for revision of my codebook based on the feedback from my debriefer.

*Peer debriefing.* To increase reliability, I used a peer debriefer. During the data coding stage, my peer debriefer cross checked my use of the codebook and consulted with me during my data analysis. Lincoln and Guba (1985) defined peer debriefing as “the process of exposing oneself to a disinterested peer in a manner paralleling an analytic session and for the purpose of exploring aspects of the inquiry that might otherwise remain only implicit within the inquirer's mind” (p. 308). Given (2008) further defined peer debriefing as a qualitative research strategy that increases the reliability of a given study by utilizing someone outside of the study to consult on the researcher's thinking and verify the findings within a sample of the research (Given, 2008).

Lincoln and Guba (1985) suggested that peer debriefing served these four functions 1) the peer would be helpful in reducing researcher bias, 2) the researcher would be able to discuss possible hypothesis and explore the data with someone outside of the study, 3) the peer would be able to test the methods to determine if the research was creating a reliable study and 4) it would provide emotional support for qualitative researchers throughout the study. In considering the possible functions put forth by Lincoln and Guba (1985), I was most interested in using this approach to 1) test my methodological approach, 2) ensure consistency with case coding and 3) provide support throughout this process.

My peer debriefer was a fellow doctoral student who had completed coursework in qualitative research methods. She and I collaborated by phone and email at five times throughout my study. While I used an attorney to review my understanding of the legal issues that surrounded my researcher, my peer debriefer worked through my research methodology and provided emotional support during the dissertation process, as I will describe in detail.

First, prior to beginning my study, I spoke with my peer debriefer about what I was hoping to study and why my study was important. Once I developed my initial coding scheme, I discussed my methodology with my peer debriefer to gather feedback. I then worked independently to code a Case Resolution Letter and Agreement. At that time, I shared the codebook with my debriefer and asked for her to code the same Agreement, independent of my data collection. Through a discussion with my peer debriefer, I gained general feedback on my codebook and discussed potential challenges.

Third, at the end of my data collection, I engaged my peer debriefer with another Case Resolution Letter and Agreement, and my completed coding rubric to ensure that my data was able to be replicated based on my coding scheme. My results were identical to hers for the closed coding variables (e.g. resolution year, age of student, sex of student, race of student, special education status, school type, state, legal claims, fact pattern); therefore, no adjustments were made to these codes. For the following open codes, “resolution name” and “resolution number,” our coding was identical; however, there were two open codes that did not have word for word alignment (e.g. requirements of the agreement and other outcomes). That said, the overall gist of the information was similar, so I did not alter these codes and instead determined that our coding was aligned for each variable. Our collaboration further validated my research methodology.

Finally, outside of the data collection process, I utilized my debriefer for emotional support throughout this process. Lincoln and Guba (1985) addressed the need for this support in qualitative research citing the potential for loneliness throughout the data collection process. I found that it was helpful to work alongside a peer who was conducting her own study and was therefore very understanding about the requirements of this type of research, and the overall dissertation process. In reflecting on the work of Lincoln and Guba (1985), I greatly appreciated the emotional support that she provided to me beyond a simple coding of my documents. She was able to act as a thought partner for me as I considered how my data analysis would transfer into concrete recommendations for school leaders.

### **Limitations**

While I am confident that this methodology provided informative data to answer my research questions, it is important to note that legal content analysis is not without criticism from some scholars. Sughrue and Driscoll (2012) believe that practitioners may not easily understand this form of research. Since the process does not involve traditional elements of social science research like interviews, surveys, or case studies, it could appear that this research will not create a full understanding of the research. However, Hall and Wright (2008) argued that the potential advantages can outweigh concerns, stating that legal content analysis “brings the rigor of social science to our understanding of case law, creating a distinctively legal form of empiricism” (p. 64). Legal content methodology is an important research method for the legal profession as well as education practitioners.

Another potential limitation of this study is the amount of Case Resolution Letters and Agreements were available for my research. Since I was not able to locate as many cases as I first identified in Search #1, it was difficult to generalize my findings. Unlike in qualitative

research where new information is being shared as the result of an interview or case study, my data set was already in existence. When I began my study, I had intended to include a higher number of cases within my data set. However, when I used the aforementioned methods to gather my data, I quickly realized that more cases were not available. I included every OCR resolution since 2011 that met my inclusionary criteria. However, in order to ensure enough data to answer my research questions, I expanded my initial research to include Case Resolution Letters which provided a significantly deeper understanding of the OCR and its processes for handling discrimination allegations.

A final limitation is my own knowledge of the legal system. Zirkel (2014) argued that legal scholars are best equipped to conduct a legal analysis, and he advocated for researchers to disclose their own professional backgrounds. I have not attended law school nor am I a legal expert. However, Zirkel (2014) recommended that researchers outside of the legal field consult regularly with several advisors from the legal field in order to understand how their legal question fits within a larger context. In conducting this study, I worked closely with my dissertation advisor and committee members; two of whom are education law professors and attorneys. Additionally, as a doctoral student, I completed a minor in education law, which included coursework specific to school law and legal research methods.

I would also assert that to answer my research questions, it was beneficial to not use only the lens of a legal scholar. Instead, my experience as a school administrator allows me to understand the complexities of recommendations made by the OCR. One such example of this would include the monitoring requirements. As a principal, I understand the constant demands on my own time and would therefore be more likely to understand how a monitoring requirement would be truly implemented within the school.

**Conclusion.** Through my application of legal content analysis, my study provides school administrators an in-depth understanding of the sanctions used by the OCR to remedy violations of Title VI. As highlighted above, my study was strengthened by a legal content analysis methodology, as I was able to understand the legal context surrounding the OCR while providing specific content analysis on OCR Resolution Letters and Agreements.

#### **CHAPTER 4: FINDINGS**

The following chapter will address the results of my study and provide answers to my research questions:

- 1) What types of allegations and legal claims were present in the OCR Case Resolution Letters and Agreements from January 2011 to June 2019 resulting from allegations of Title VI disciplinary violations in K-12 public schools?
- 2) What general trends emerged from the Case Resolution Letters and Agreements?

My study included an analysis of 54 Case Resolution Letters and Resolution Agreements from January 2011 to June 2019. As discussed in Chapter 3, I independently coded each document and recorded data into a codebook (see Appendix I). I then used the codebook to determine frequencies of each variable, draw inferences, and identify themes, as described in detail in the previous chapter. I chose to organize this chapter by research question, beginning with the allegations and legal claims, followed by an examination of the general trends that emerged within my data. See Table 13 for the complete list of Resolution Letters and Agreements that I reviewed as well as descriptive information regarding each case.

**Table 13: OCR Case Descriptions**

| School District   | Resolution Year | Legal Claims                              | Resolved prior to OCR determination | Required Sanctions Issued by OCR  |
|---|-----------------|---|-------------------------------------|---|
| Independent School District #761                          | 2011            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Policy Revision                                      |
| Christina School District                                 | 2012            | Title VI                                  | No                                  | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Oakland Unified School District                           | 2012            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Lincoln Unified School District                           | 2013            | Title VI; Section 504; Title II           | Yes                                 | Human Resources; Professional Development; Community Outreach; Policy Revision                  |
| North Colonie Central Schools                             | 2013            | Title VI                                  | Yes                                 | Professional Development; Policy Revision   |
| Platteville Public Schools                                | 2013            | Title VI                                  | No                                  | Human Resources; Community Outreach; Policy Revision  |
| Cartwright School District #83                            | 2013            | Title VI; Section 504; Title II; Title IX | Yes                                 | Professional Development  |
| Hamlin Independent School District                        | 2014            | Title VI                                  | No                                  | Professional Development; Community Outreach; Policy Revision                                   |
| Minneapolis Public Schools                                | 2014            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Tupelo Public School District                             | 2014            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Amherst County Public Schools                             | 2015            | Title VI; Title IX                        | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Yav Pem Suab Academy                                      | 2015            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Lodi Unified School District                              | 2016            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Oklahoma City Public Schools                              | 2016            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Cleveland Heights-University Heights City School District | 2017            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Data Monitoring; Policy Revision                     |
| District School Board of Pasco County                     | 2017            | Title VI; Title IX                        | No                                  | Professional Development; Policy Revision   |
| East Side Union High School District                      | 2017            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Loleta Union Elementary School District                   | 2017            | Title VI; Section 504; Title II           | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Onslow County Schools                                     | 2017            | Title VI                                  | Yes                                 | Professional Development; Policy Revision   |
| Tangipahoa Parish School Board                            | 2017            | Title VI; Section 504; Title II           | Yes                                 | Professional Development; Policy Revision   |
| Ash Grove R-IV School District                            | 2018            | Title VI; Title IX                        | Yes                                 | Professional Development; Policy Revision   |
| Deming Public Schools                                     | 2018            | Title VI                                  | Yes                                 | Community Outreach; Policy Revision   |
| Milwaukee Public Schools                                  | 2018            | Title VI                                  | Yes                                 | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |

|                                       |                       |                                 |     |   |
|---------------------------------------|-----------------------|---------------------------------|-----|---|
| Worth County Schools                  | 2018                  | Title VI                        | Yes | Professional Development; Policy Revision   |
| Fort Bend Independent School District | 2018                  | Title VI                        | Yes | Professional Development; Data Monitoring; Policy Revision                                      |
| Durham Public Schools                 | 2018                  | Title VI; Section 504; Title II | Yes | Human Resources; Professional Development; Community Outreach; Data Monitoring; Policy Revision |
| Pitt County Schools                   | Redacted <sup>8</sup> | Title VI                        | Yes | Professional Development; Data Monitoring; Policy Revision                                      |

## RQ #1: Allegations and Legal Claims

My first research question explored the allegations and legal claims found within my study. I will begin by presenting the types of OCR investigations followed by an examination of the legal claims.

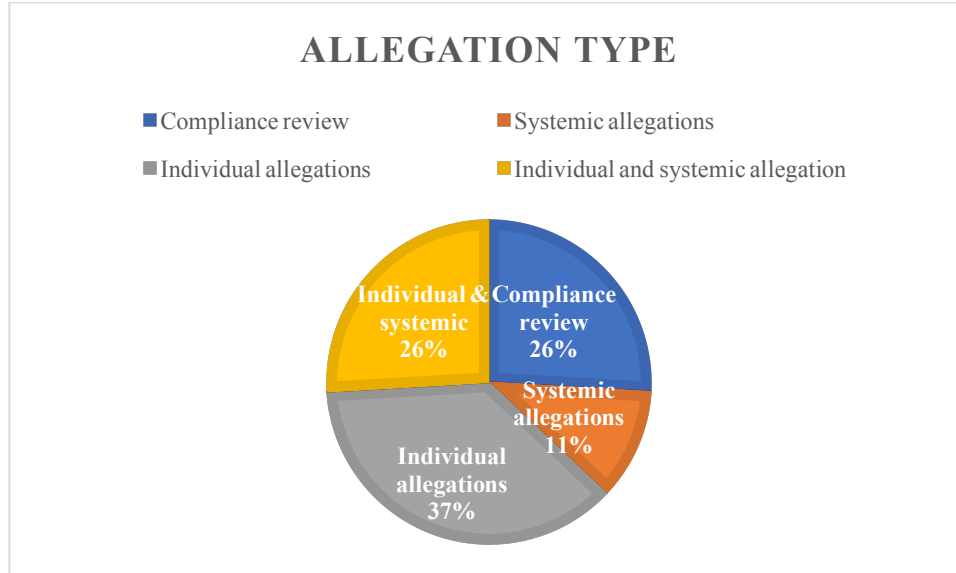
**Allegation Types.** My review of 54 Resolution Letters and Resolution Agreements indicated that the OCR has several pathways to open an investigation. Unlike court cases, the OCR does not include specific descriptive information for the person who alleged the discrimination. Instead, throughout the OCR process, this person is simply referred to as a “Complainant.” Therefore, I could not identify much detail about the specifics of the students involved. I could, however, disaggregate based on the type of allegation. The following list shows the types of OCR allegations that were included in my study (See Table 12):

- 1) *Individual*: the complainant reported a specific incident of discrimination.
- 2) *Systemic*: the complainant reported systemic concerns with discrimination.
- 3) *Individual and systemic*: the complainant reported a specific incident and systemic concerns with discrimination.
- 4) *Compliance reviews*: the OCR initiated the investigation based on concerns noted in the annual data review process.

### Table 14: Visual Representation of Investigation Type in OCR Agreements

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<sup>8</sup> 2018 is listed as the date of compliance. Case Resolution Letter and Agreement do not include dates.



In 10 of the 27 cases (37%), the complainant alleged discrimination during a specific incident that occurred during the discipline process. For example, in the Hamlin Independent School District (2014) case, a student ripped a poem created by another student and the complaint alleged that he/she was disciplined more harshly as a result of race.

The smallest selection of cases included two allegations (7%) of systemic discrimination. In the case of Loleta Union Elementary School District (2017) the allegation included all Native American students to determine “whether the District subjected Native American students at the School to more frequent or more severe disciplinary actions than non-Native American students who engaged in similar or more serious misconduct” (Loleta Union Elementary School District, 2017, p. 9).

Eight cases involved allegations of both individual and systemic discrimination (29%). In these cases, the complaint included information about a specific incident, but also alleged that there was a pattern of discrimination for a specific racial group within the school. In the case of



Pitt County Schools<sup>9</sup>, the complaint was filed regarding a specific incident that took place when a child was disciplined (the OCR Resolution Letter includes 4 redacted paragraphs that describe the specific incident), but then also names unfair treatment of African American students within the school.

Seven of the cases (26%) were compliance reviews initiated by the OCR. In a compliance review, the OCR investigated the entire district and would include data for all racial minority groups. This would include examining evidence from interviews, policies, site visits and discipline data to determine if the district was engaged in discriminatory discipline practice (See Table 15).

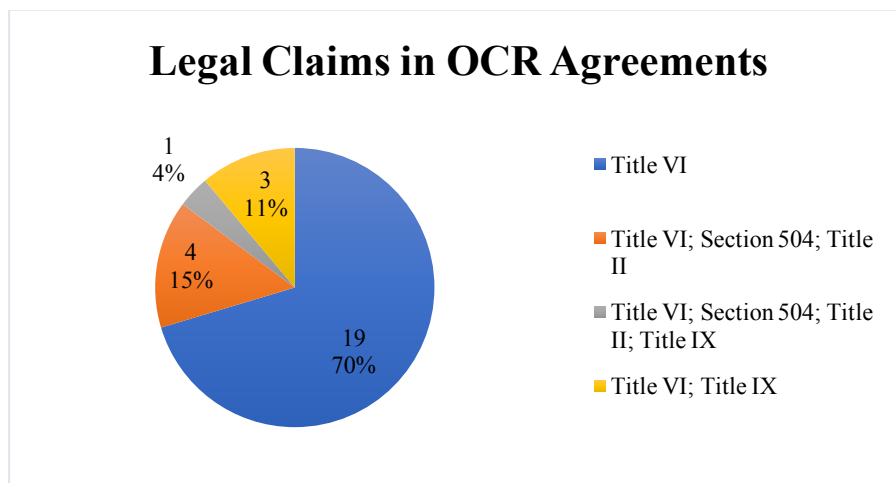
**Table 15: List of OCR Agreements by Investigation Type**

| <b>Compliance review<br/>n= 7</b>                         | <b>Systemic allegations<br/>n= 2</b>    | <b>Individual allegations<br/>n= 10</b> | <b>Individual and<br/>systemic allegations<br/>n=8</b> |
|---|---|---|--|
| Christina School District                                 | Independent School District             | Amherst County Public Schools           | Durham Public Schools                                  |
| Cleveland Heights-University Heights City School District | Loleta Union Elementary School District | Ash Grove R-IV School District          | Deming Public Schools                                  |
| Fort Bend Independent School District                     |   | Cartwright School District #83          | East Side Union High School District                   |
| Milwaukee Public Schools                                  |   | District School Board of Pasco County   | Lincoln Unified School District                        |
| Minneapolis Public Schools                                |   | Hamlin Independent School District      | Oklahoma City Public Schools                           |
| Oakland Unified School District                           |   | Lodi Unified School District            | Onslow County Schools                                  |
| Tupelo Public School District                             |   | North Colonie Central Schools           | Pitt County Schools                                    |
|   |   | Platteville Public Schools              | Yav Pem Suab Academy                                   |
|   |   | Tangipahoa Parish School Board          |  |

<sup>9</sup> Date redacted

**Legal claims.** In addition to the multiple types of OCR investigations, the OCR explored several different legal violations. The OCR is authorized to review violations of five statutes: Title VI, Title II, Section 504, Title IX, and the Age Discrimination Act of 1975. None of the cases that I examined included a legal claim under the Age Discrimination Act of 1975, so this was not included within my codebook. To determine the legal claims made in each case, I sorted cases by the statute violation that was alleged in the Case Resolution Letter. Allegations included a singular violation (only a violation of Title IV) or multiple violations (Title IV and additional statutes) (See Table 16).

**Table 16: Legal Claims in OCR Agreements**



Seventy percent of the cases (19/27) included a singular legal claim of the Title VI violation.<sup>10</sup> For example, in the case of Hamlin Independent School District (2014), the student

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<sup>10</sup> Christina School District, Cleveland Heights-University Heights City School District, Deming Public Schools, East Side Union High School District, Fort Bend Independent School District, Independent School District #761, Lodi Unified School District, Milwaukee Public Schools, Minneapolis Public Schools, North Colonie Central Schools, Oakland Unified School District,

alleged a complaint of discrimination only on the basis of Title VI: “Student B was treated differently on the basis of race with regard to discipline” (p. 1). In the case of Christina School District, the different treatment of African American students was specifically named within the Case Resolution Letter:

The extraordinary disparities in referrals for disciplinary action and to law enforcement, and the extraordinary disparities in the imposition of penalties, combined with the examples of individual African American students who received harsher discipline than similarly-situated white students, are sufficient to establish different treatment on the basis of race. (Christina School District, 2012, p. 2)

An additional four cases (15%) included a special education violation of Section 504 and Title II. One case (4%) alleged a violation of Title VI, Section 504, Title II and included an additional claim of a sex-based Title IX violation. Eleven percent or 3/27, of the cases included a Title VI and Title IX violation.

**Summary of RQ #1.** In summary, the data within my study confirmed three important findings about the trends that emerged from the 54 documents that I examined. First, there are multiple avenues for the OCR to get involved with a school or school district. The most common investigation was opened through an individual allegation of discrimination, but complaints can also include systemic allegations. Additionally, investigations can be initiated by the OCR through a review of the annual OCR data.

## **RQ #2: General Themes**

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Oklahoma City Public Schools, Onslow County Schools, Pitt County Schools, Platteville Public Schools, Tupelo Public School District, Worth County Schools, Yav Pem Suab Academy

Due to a significant gap in the literature on OCR investigation, my second research question answers the following question: what general trends emerged from the Case Resolution Letters and Agreements?

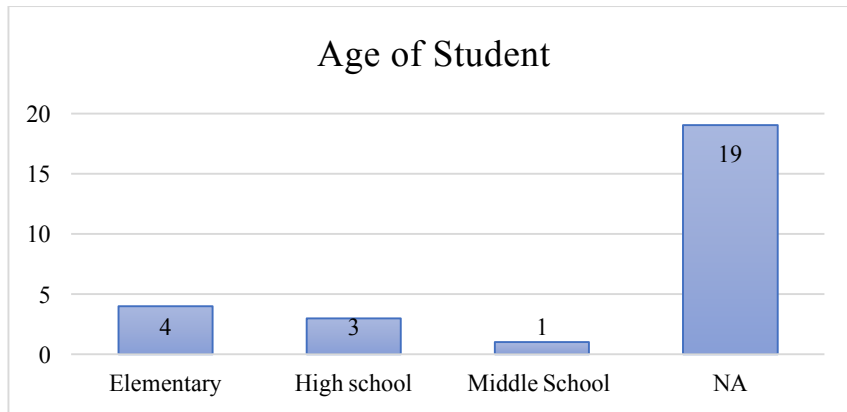
This section is organized into ten sections: 1) OCR complaint information remains hidden from general public, 2) OCR responses varied significantly in length and complexity, 3) the majority of cases that identified race involved African American male students, 4) cases involving female students were rare, 5) special education status was seldom emphasized or even identified, 6) nearly half of the cases were from urban districts, the other half from rural districts, leaving only one from a suburban district, 7) about one third of cases arose in South; another third of the cases arose in West (most from California), 8) physical aggression was the most common misbehavior, 9) most school districts volunteered to resolve complaints before the investigation was completed and 10) resolutions usually included five types of sanctions.

**1) OCR complaint information remains hidden from general public.** Case Resolution Letters and Resolution Agreements had a significant amount of demographic information redacted. Also, the redactions appeared to be deleted in an inconsistent manner. The lack of consistency supported critiques of OCR subjectivity by Losen and Welner (2001). The OCR exercised significant discretion when providing demographic information, without any sort of rule or pattern. To further illuminate the discrepancies in redacted information, the following section will examine three of the demographic variables that I examined that included significant redaction: sex, age and race of the student.

*Age of student.* Initially, I intended to report the individual ages of the students who alleged a violation of discrimination. This information would help identify patterns or trends based on the age of the student involved in the incident. However, there was a lack of uniformity

about how the age of the student was shared. Of the 27 cases, age was not provided in 19 cases as shown in the table below (70%).

**Table 17: Age of Student**



Of the 27 cases, seven cases (26%) were compliance reviews; therefore, the OCR investigated the entire K-12 district and did not specify students' ages. However, in the remaining 12 cases, the age of the student was specifically redacted. For example, in the Onslow County Schools Resolution Letter, the age of the student was not identified and instead the case read, "During the XXXX school year the Student was in the XXXX grade and had a Section 504 Plan" (Onslow County Schools, 2017, p. 2).

Even when age was provided, the OCR presented this information in inconsistent ways. In two of the cases involving elementary students, Yav Pem Suab Academy (2015) and North Colonie Central Schools (2013), the only information that was provided was the level of the school (e.g. elementary) and in the other two cases, District School Board of Pasco (2017) and Loleta Union Elementary School District (2017), the specific grade level of the student was provided. Therefore, to classify the age of the students involved in the allegation, I created four categories: elementary aged students (kindergarten through fifth grade), middle school aged

students (sixth grade through eighth grade), high school aged students (ninth grade through twelfth grade) and cases with unavailable data were coded as “NA.”

From the cases that were included, 50% percent of the students were elementary aged students. I was surprised by the even distribution between elementary and non-elementary cases. Primarily, the literature on disproportionate discipline centers on middle and high school students (Welsh & Little, 2018). That said, given the significant amount of redacted information on the age of the student, it is not possible to draw a generalized finding about the impact of age on the OCR investigation process.

***Sex of student.*** In addition to the inconsistencies in reporting the age of the students within the cases, there was a lack of transparent information about the sex of the students. To code student sex, I identified three categories: male, female or “NA” if data was not available within the data set. Student sex was provided in 15 of the 27 cases; 13 of the 15 cases that provided this information cited discrimination for male students (86%). This finding confirmed previous literature which showed that male students were more likely to face racial discrimination during the discipline process (e.g. Bradshaw, Mitchell, O’Brennan, et al., 2010; Hinojosa, 2008; Jordan & Anil, 2009; McFadden, Marsh, Price, & Hwang, 1992; Raffaele Mendez & Knoff, 2003; Skiba et al., 2002). However, since student sex was not included in five of the cases that were included in this study, this finding should be interpreted with an understanding that 25% of the data on this variable was missing. Within these cases, this missing data was specifically redacted with language like, “the Complainant alleged that the TPSB discriminated against XXXX XXXX (Student) on the basis of race (XXXX), disability (XXXX XXXXXXXXXXXX), and sex (XXXX) (Tangipahoa Parish School Board, 2017, p. 1). Given this level of redaction, it was not possible to identify the sex of students within these cases.

***Race of student.*** Of the 27 cases, the students' race was provided in 20 of the cases (74%). Of the 7 cases that did not include students' race, two of the cases included a redacted race and the other five involved compliance reviews that did not include information regarding a specific racial group. Overall, race was not provided in 26% of the cases, despite language like "the complainant also alleged that the District treated the Student differently on the basis of his race, and subjected the Student to racial harassment, by disciplining the Student more harshly than non-XXXXXXXXXX students during school year" (North Colonie Central Schools, 2013, p. 1). In the above example, the complainant was alleging racial discrimination without the OCR providing evidence of the specific racial group of the student in question. Since these are public documents, I recognize the rights of the complainant to protect personal information; however, in the other 76% of the cases reviewed, this information was released publically. Perhaps there is a reason that some cases' information was redacted and not others; however, the OCR failed to be transparent in its reasoning. By redacting critical information about the incident in question, the OCR complicates the ability for an outside researcher to generalize conclusions about how a specific incident would be handled.

**1) OCR responses varied significantly in length and complexity.** Within the documents that I reviewed, there did not appear to be a specific formula for how the OCR would respond to a complaint of discrimination. Similarly, Losen and Welner (2001) posed a concern about the varying interpretations of individual cases by the OCR and argued that the OCR struggles with internal inconsistencies, citing evidence that the OCR has "failed to provide the sort of clear guidelines that would be provided by more direct and public enforcement efforts" (p. 445).

To illuminate my concern with the structural differences in OCR documents, I examined the format of the Resolution Letters and Resolution Agreements. I found that Resolution Letters varied significantly in length. In comparing two compliance reviews, Cartwright School District #83 and Oakland Unified School District, there were noticeable differences in the content of the Resolution Letters and Agreements. For example, OCR issued Cartwright School District #83 a Resolution Letter of two pages, while Oakland Unified School District received a letter that was eight pages. The differences in length of these documents highlights a significant issue with the amount of information that was provided to the public about each case. Cartwright's letter indicated that the district had entered into the resolution process to resolve the concerns and included very little additional information about the concerns, while the Oakland letter included data regarding the problem of disproportionality, evidence of specific concerns, and then identified that the district was entering into the resolution process.

There was also significant variance in the length of Case Resolution Agreements. Several agreements were longer than 20 pages while others were only a few pages long. I considered if these differences were the result of a difference in case allegation type (i.e. compliance review or individual allegation), but there was not a common observation of length for these different types of allegations. Additionally, I reviewed the data to see if there was a connection between the resolution process (i.e. did the district enter into an agreement prior to a full investigation), however, there was not a noticeable difference in the length of Agreements when examining this variable. Since information is not redacted consistently, it was difficult to determine the cause of the structural differences within the cases. Finally, given the research regarding the OCR's responses shifting under different presidents (e.g. Devos, 2019; King, 2016; Lhamon & Gupta; 2014), I examined my data by grouping the cases together by the two presidential



administrations within this timeframe (e.g. Obama & Trump), but again, there was no evidence to support that shifting leadership accounted for the wide discrepancies within the documents.

**2) Majority of cases that identified race involved African American students (13/20 = 65%).** When examining student race, I determined that it would be important to include the race of the student who had brought the allegation as well as any specific racial information provided during a compliance review. To categorize this data, I used the racial information that was provided within the OCR documents: African American, Hispanic/Latinx (both terms were used by the OCR), White, Native American and Somali. While the terms “Hispanic” and “Latinx” were used synonymously by the OCR, for the purposes of this study, the data is reported as “Latinx.”

Overall, cases involving only African American students were most common, representing 65% of the cases in which race was provided. An additional case included a biracial student who identified as Latino and African American. Given my literature review, this finding was not surprising but instead supports the findings of previous literature on the topic of disproportionality which cited African American students as most highly impacted (Wallace et al., 2008). For example, in the case of Christina School District (2012), during the compliance review, the OCR cited specific evidence of different treatment in regard to subjective offenses: “for students whose first disciplinary referral was for Inappropriate Behavior, African American students were nearly seven times more likely to receive OSS than white students” (p. 2). This finding confirms the Smolkowski et al. (2017) finding that students of color are specifically impacted by subjective offenses that may be influenced by implicit bias.

Given the 2014 study by Brown, I did find it significant that one case, Loleta Union Elementary School District (2017) specifically addressed discrimination faced by a Native

American student. Brown (2014) cited research that showed disproportionate treatment for Native American students, specifically in California, which was the location of this OCR case. While this was only one of the 27 cases, the individual case had several findings that were important to note. In the Loleta case, the OCR investigated a complaint of systemic discrimination of Native American students by the leadership (principal and superintendent) within the district. Per OCR policy, the administration entered into a resolution prior to a determination of discrimination; however, in the Case Resolution Agreement, the OCR cited significant concerns with Title II and Section 504, and determined that discrimination had occurred for those allegations. Additionally, the Resolution Letter outlined 37 pages of information found throughout the course of the investigation, representing one of the lengthiest resolution letters reviewed in my data collection.

Another important finding in regard to race was the existence of two cases involving Somali students who alleged discrimination during the discipline process. In presenting this data, I coded “Somali,” as its own racial group rather than grouping it together with African American since it was referenced as such in the OCR documents. The two cases that involved Somali students were Independent School District (2011) in Minnesota and Deming School District (2017) in New Mexico. In the case of Independent School District, the OCR conducted a joint investigation with the Department of Justice to investigate a fight that occurred following continued racially charged comments made by white students to Somali students. The complaint alleged that Somali students were treated differently in the discipline process. In the case of Deming School District, the complaint cited concerns with the referral of Somali students to law enforcement as part of the school discipline process. While the OCR did not provide a list of the evidence that was reviewed in the Deming case, the Agreement included individual remedies for

the student involved in the allegation as well as expectations for all communication to occur in the native language of the family.

**3) Cases involving female students were rare.** Although sex was not provided in 12 out of 27 cases (44%), there were two cases of the 27 (7%) that specifically identified the complainant as “female.” This was consistent with the literature on that male students were more likely to face discrimination during the discipline process (e.g. Bradshaw, Mitchell, O’Brennan, et al., 2010; Hinojosa, 2008; Jordan & Anil, 2009; McFadden, Marsh, Price, & Hwang, 1992; Raffaele Mendez & Knoff, 2003; Skiba et al., 2002).

In one of the two cases involving a female student, Worth County Schools (2018), the student alleged that she received different treatment on the basis of race following a fight that she had with another student. The student was subsequently expelled for the misbehavior. Unfortunately, due to the lack of information provided in the case, I was unable to determine how this treatment was different than the White student mentioned in the Case Resolution Letter. Additionally, Worth County (2018) chose to enter into the resolution process prior to a determination by the OCR.

In the other case involving a female student, Cartwright School District #83 (2013), the student alleged discrimination on the basis of disability, sex, and race. She alleged that the school was harsher in their application of discipline, but the Case Resolution Letter did not provide specifics about the incident that prompted the investigation. Similar to the case of Worth County (2018) the district chose to enter into a resolution prior to the OCR’s investigation determination.

**4) Special education status was seldom emphasized or even identified.** Given the literature on the intersectionality between race and special education status, I wanted to determine if special education status was a consideration within the cases. To code for special

education status, I created four categories within my data: a student with a disability, a student without a disability, a previously identified student who was no longer qualified, and cases that did not include this information (“NA”). Five of the cases, (18%), included a child who received special education services. 12 of the cases (44%) involved students without an identified disability; however, in the table below, I isolated one case (3%) where the child was previously identified for special education services, but was disqualified prior to the incident that promoted the OCR investigation. While the case did not specify why the child was disqualified, I included this case outside of the designation of “a student without a disability” because the OCR had included that information within the report, and had thus considered that information within the investigation.

**Table 18: Special Education Designation of Student**

| Special Education Status                        | Number of Cases | Percent of Cases |
|---|-----------------|------------------|
| Student with a disability                       | 5               | 19%              |
| Student without a disability                    | 11              | 41%              |
| Previously yes; removed label prior to incident | 1               | 3%               |
| Not Included                                    | 10              | 37%              |

In 10 of the 27 cases (37%), the special education status of the student was not provided; this includes three cases of individual allegations and 7 compliance reviews. One additional point of concern regarding special education consideration was the OCR’s handling of compliance reviews. Within the seven compliance reviews, OCR did not disaggregate data for special education status. Given the work of Crenshaw et al (2015), this was a noticeable absence within the data.

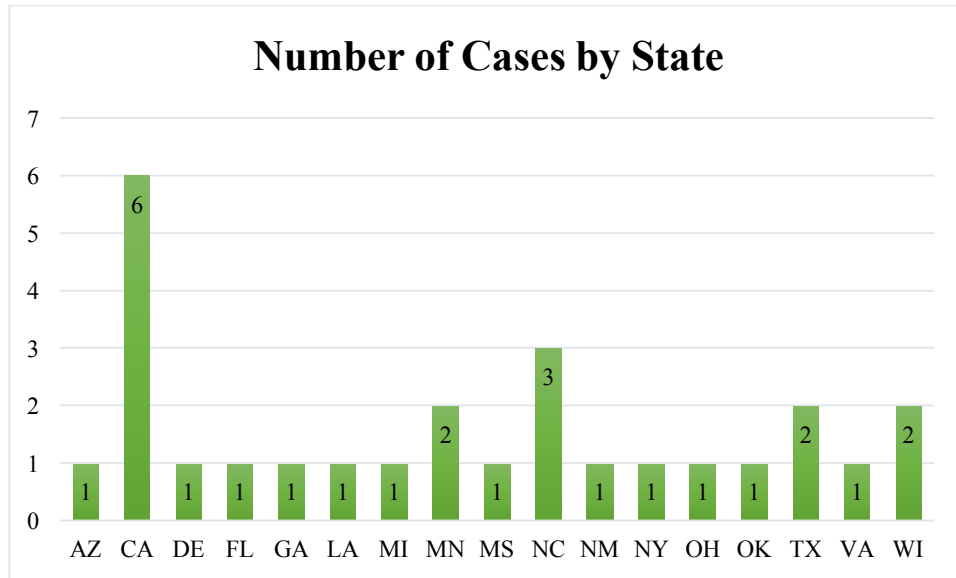
**5) Nearly half of the cases were from urban districts, the other half from rural districts leaving only one from a suburban district.** I was also interested in determining if

there were any significant differences between urban, rural and suburban school districts. To locate this information, I entered the district name into the website for the National Center for Educational Statistics ([www.nces.ed.gov](http://www.nces.ed.gov)). This identified a list of all of the schools within the district. I then selected the individual school named by OCR and recorded that information in my codebook, next to the “state” information. Alternatively, if the OCR complaint was made against the entire district, I recorded the district’s designation. Overall, there was an even distribution between rural and urban cases. Of the 27 cases, 13 were from rural regions (48%) and 13 (48%) came from urban areas. Only one of the cases came from a suburban area (3%).

**6) 33% of cases arose in South; 30% of cases arose in West (most from California).**

Given my literature review about geographic differences, I recorded information on the location of each case to examine any geographic differences in the frequency of cases reaching the OCR. Each case provided information on the location of the school district including street address, city and state. After reviewing all of the geographic information of the cases, I grouped cases together by state and created a graph to study the number of cases for each state. Table 19 shows the location of each case. While other variables within my research question included redacted information, I was able to gather data on location for all 27 cases since the files are public record and listed by district name (See Table 19).

**Table 19: OCR Cases by State**



Outside of California, there was not any significance in regard to the location of the cases. With regards to California having the highest number of OCR cases, it is important to note that California is the largest state by population within the U.S; therefore, it would be expected that there would be more cases in California than in Arizona as it would be proportional to the size of the state. Additionally, Worthington (2017) argued that cases were most likely to be brought to the OCR from larger cities and California has a concentration of larger cities with San Francisco and Los Angeles.

Within the findings on the location of the cases, I was surprised to see the lack of cases from southern states. Southern states only represented 6 of the 27 cases (22%). While this represents nearly one fifth of the total cases, I would expect for southern states to have a higher representation of cases because past research found that OCR data from the southern states has shown consistent disproportionality in school. For example, Fedders (2017) cited significant evidence that post-*Brown*, African American students in southern states were at a higher risk for expulsion. Additionally, Losen et al. (2012) found that the highest rates of suspension in the country were found in Florida, Alabama, South Carolina, and Mississippi. Given this

information, it would seem that the OCR would have a special interest conducting compliance reviews within these states; however, only one case was resolved from Florida and there have been no resolutions from January 2011 to June 2019 in Alabama, South Carolina or Mississippi, or other southern states.

7) **Physical aggression was the most common misbehavior noted.** Compliance reviews did not provide details about a specific discipline incident that prompted the investigation; therefore, to identify this trend, I removed the 7 compliance reviews from the data set. In the 20 cases that did not include compliance reviews, physical aggression was addressed in 8 cases (40%). However, it is also worth noting that in 5 of the 20 cases (25%), the specific incident that prompted the investigation was not described.

Table 20: Fact Patterns and Frequencies

| Fact Pattern                      | Frequency | Percentage |
|-----------------------------------|-----------|------------|
| Physical Aggression               | 8         | 30%        |
| Drugs                             | 1         | 3%         |
| General misbehavior               | 1         | 3%         |
| Weapon (knife)                    | 1         | 3%         |
| Harassment by administration      | 1         | 3%         |
| Disrespect                        | 1         | 3%         |
| Sexual harassment                 | 1         | 3%         |
| Involvement of law enforcement    | 1         | 3%         |
| Compliance review                 | 7         | 26%        |
| Discipline incident not described | 5         | 19%        |

**8) Most school districts volunteered to resolve complaints before the investigation was completed.** Losen and Welner (2001) outlined the philosophy of the OCR as a “partner” of school districts (p. 445). They described how the OCR sees itself not as punitive but as supportive. They articulated examples of how the OCR allows districts to resolve concerns prior to a determination of discrimination.

One of the key trends that emerged from my research confirmed Losen and Welner’s (2001) characterization of the OCR as an organization that would help districts comply as opposed to one that would punish noncompliance. Specifically, the OCR permitted school districts to agree to a Resolution Agreement prior to the conclusion of an investigation.

Of the 27 cases that I reviewed, in just three cases (11%), the district did not agree to a resolution and the OCR cited discrimination within their findings. The remaining 24 cases (89%) were resolved prior to a determination from the OCR. Therefore, in these instances, the Resolution Letter would not necessarily indicate that the district had violated Title VI; instead, the wording would allow for open interpretation of the district’s actions and include language such as,

Prior to the completion of OCR’s investigation, the District expressed an interest in engaging in a voluntary resolution agreement pursuant to Section 302 of OCR’s Case Processing Manual (CPM), which states: [a]llegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. (Ash Grove R-IV School District, 2018, p. 2)



This finding is significant in that districts may receive different sanctions based on the establishment of discrimination. If a district engages in discrimination, but is then allowed to enter into a resolution without admitting fault, it is possible that the full gravity of the situation is not going to be addressed within the school community. Additionally, an OCR resolution does not remove the rights of an individual student or family to file a formal lawsuit within the courts. If the OCR cites discrimination in their report, this documentation could be used within the court proceedings.

**9) Resolutions usually included five types of sanctions.** In examining the sanctions issued by the OCR, I listed each requirement separately within my codebook. Each requirement was identified by heading type and included a timeline for implementation. I then grouped my data into themes based on the different consequences that were administered. From the data, I identified five primary themes: 1) human resource requirements, 2) professional development, 3) community engagement, 4) policy changes and 5) data monitoring.

***Human resource requirements.*** The human resource requirements outlined in the 27 agreements were largely focused on the formation of a new role within the district whose sole purpose would be to address discriminatory discipline. In 15 of the 27 cases (56%), this role was explicitly listed in the Agreement, along with a timeline for the implementation of this new role. The role was defined in several of the Agreements as a “discipline supervisor.” Examples of the job description included language such as “YPSA will designate an employee to serve as the its Discipline Supervisor, who will be responsible for ensuring that the implementation of YPSA’s policies concerning discipline is fair and equitable, and for addressing complaints from parents, guardians, students, and others regarding the implementation of YPSA’s disciplinary policies” (Yav Pem, 2015, p. 1). This role would also serve as the primary keeper of data for the school

district to ensure compliance with the requirements of the OCR agreement. Ten of the 15 Agreements (67%) discussed the use of an expert consultant to support this role in the district. While the Agreements did not specify who could assume this role, the Agreements did require the district to seek support from experts outside of the district.

Additional human resource requirements included shifting the responsibilities of the administrators within the district and adding new requirements to their roles. For example, Fort Bend Independent School District (2018), the resolution required that the district create a team of building administrators to examine discipline data throughout the district and draft recommendations to improve policies and practices. Another example of a human resource requirement was the requirement for district to provide compensatory services as outlined in the Cartwright School District #83 (2013). The use of staff to provide these services could require additional financial costs to include hourly pay for teachers.

***Professional development.*** In 26 of the 27 Agreements (96%), the OCR required the school district to implement a mandatory training for staff. These training requirements did vary some between the individual cases; however, there were several commonalities between all of the cases. First, the district would be required to review the requirements of Title VI and have staff sign off that they understood the requirements of the law. In most of the cases, the school district would have one year to implement this training; however, the OCR varied on the requirements for this training. In the case of Cartwright School District #83, the OCR had specific language within the requirement that addressed the expectations for training:

The District will schedule and conduct an in-service training. Attendees at this training will include all staff and administrators at Marc T. Atkinson Middle School (School), the bus drivers who service the School, and any other District employees and administrators

who, during the 2012-13 school year, were responsible for responding to the Complainant's disability discrimination claims, imposing discipline on the Student, and withdrawing the Student from school in Spring 2013. (Cartwright School District #83, 2013, p. 5)

By providing this training to the entire staff, as well as specifically naming the individuals listed in the allegation, the OCR provided remediation for the individual allegation as well as systemic concerns. Additionally, several of the cases discussed a need for ongoing training to ensure that staff understood alternative approaches to discipline beyond exclusionary consequences. In Pitt County Schools (n.d), the district was required to implement specific professional development:

The training will provide evidence-based techniques on classroom management and de-escalation approaches, including restorative justice and positive behavior interventions, information on how to administer discipline fairly and equitably, the concept of implicit bias and corresponding techniques to ameliorate implicit bias, resources that are available to staff who are having difficulty with classroom management, resources that are available to students to assist them in developing self management skills, the value of recognizing and reinforcing positive student behavior, and the importance of ensuring to the maximum extent possible that misbehavior is addressed in a manner that does not require removal from the educational program. (Pitt County Schools, n.d., p. 6)

The idea of integrating professional learning based on implicit bias aligns with the work of Morris and Perry (2017) and Anyon et al (2017). Anyon et al. (2017) cited evidence that professional development on classroom management does not typically address the role of educator bias.

**Community engagement.** Within the requirements of the Agreements, 15 of the 27 cases (19%) addressed the need for increased stakeholder engagement. This included the implementation of school climate surveys and an expectation to review that information with the greater school community. Multiple descriptions of this type of engagement were described in the cases including the use of stakeholder committees, community forums, and community publications. Typically, these requirements were vague and required that districts develop “a district-wide plan to engage with school community stakeholders, including students, parents, District instructional staff, and community members.” (Pitt County Schools, n.d., p. 1). However, in other cases, the OCR provided more specificity on the expectations of schools. In Loleta Union Elementary School, the OCR specifically outlined the requirements to include members of the Native community on the stakeholder committee.

**Policy changes.** One of the largest themes that emerged from the sanctions issued by the OCR was the need for discipline policy revisions. Policy changes were required in 26 of the 27 cases (96%). To identify these recommendations, the OCR used a heading that included the words: “discipline” “policies” and “procedures.” The headings changed slightly in the different cases but the policy expectations were easy to identify given the key words listed above. These requirements ranged from slight modifications of the district or school’s disciplinary code to significant overhauls within the system. These policy requirements included increasing the clarity of expectations for students, ensuring consistent language across the district, providing alternatives to exclusionary practices, and stricter guidelines for data collection.

**Data collection.** During the course of an investigation, the OCR is responsible for reviewing discipline data to determine if discrimination has occurred. Throughout that process, the OCR identified concerns with the data collection process in 13 of 27 cases (48%).

Specifically, the OCR outlined the required data categories for districts when collecting data on student behavior. Most notably, these expectations included an identification of the students' demographic information including age, gender and race, as this information was required in all 13 cases.

Both the Christina School District (2012) and the Cleveland Heights-University Heights City School District (2017) were subjected to compliance reviews due to concerns noted in the OCR data collection process. Both investigations considered the same three questions: "Did the school treat a student differently? Did the school have a legitimate, non-discriminatory reason? Was the reason given as a pretext for discrimination?" (Christina School District, 2012, p. 3). While the first few requirements of the Agreement were similar, the Christina School District Agreement made specific mention to the need to improve data collection and monitoring—an expectation not outlined in the Cleveland Heights Resolution.

Additionally, in the review of the Christina School District, the OCR cited concerns with the use of SROs and a need to make improvements to the connection between SROs and the schools. Within the Case Resolution Letter from Cleveland Heights, the OCR did not make specific mention of SROs, or whether or not there was a concern with SRO interactions. Since the Cleveland Heights investigation did not address SROs, it is not possible to determine why SROs were included in the Christina School District Agreement but not in other compliance reviews.

Additionally, in another compliance review, the OCR required a complete overhaul to the data collection process. In the case of the Minneapolis Public Schools, the OCR listed an expectation to add an additional 22 categories to their discipline data collection:

- The name/identification number, race, ethnicity, sex, age, disability and/or English Language Learner (ELL) status, and grade level of each student referred for discipline;
- For each referral, the name/identification number, race, ethnicity, sex, age, grade level, disability and/or ELL status, as applicable, and grade level of all other students involved in the incident, whether or not they were referred for discipline themselves
- A detailed description of the misconduct;
- A description of all approaches that were attempted in order to address the behavior at issue prior to referral for discipline,
- The date of the referral;
- The specific Code violation for which the referral was made;
- The referring staff member (by staff identification/employee number);
- The school and type of class from which the referral was made or other specific settings (e.g. bus referral, hallway referral);
- Whether there were any student and/or adult witness(es) of the incident; names of witness(es); number of witnesses;
- The prior disciplinary history of the student;
- The specific Code violation for which the student was punished and the penalty/sanction imposed or, if no violation was charged or penalty/sanction imposed, the reason why;
- The outcome of the manifestation hearing determination, if applicable;
- The date the penalty/sanction was imposed;
- The length of the penalty/sanction (in number of days);
- The staff member who assigned the penalty/sanction (by staff identification/employee number);
- Whether the student was transferred to the alternative school or to a different school site;
- If the student was administratively transferred, documentation that the transfer was completed in accordance with the revised administrative transfer policy referenced at item 13 and the name of the District official who approved the administrative transfer;
- Whether school-based or local law enforcement were involved (e.g. law enforcement was notified of the offense);
- Whether the referral to law enforcement was mandatory and, if so, the statute or ordinance governing the referral
- Whether the student was arrested or otherwise sanctioned by law enforcement as a result of school-based or law enforcement involvement;
- Any other non-punitive outcomes arising out of each referral incident, including, but not limited to, skill building, peer mentoring, etc.
- Whether the student was given access to appropriate due process procedures in connection with the penalty/sanction, including but not limited to being given the opportunity to present his or her version of events and/or an explanation for their conduct prior to the imposition of sanctions, and whether, when, and how their parents were contacted in connection with each referral incident. (Minneapolis Public Schools, 2014, p 14)

**Summary of RQ #2.** The data presented to answer my second research question was focused on the general trends that emerged within the data. The first two trends examined inconsistencies in the OCR process within the documents that I reviewed and the lack of transparency within the cases. There were significant differences in the amount of information that was provided publically in each allegation and resolution. These inconsistencies were evident in Resolution Letters and Resolution Agreements with little explanation from the OCR about why the case was handled in a specific way. Additionally, there was a lack of consistency with how the OCR investigated complaints.

My data then confirmed previous literature on the prevalence of high rates of disproportionality for African American students, specifically male students. Additionally, OCR involvement was more likely in urban and rural communities, and most common in California. Special education status was not included, or highlighted, in the majority of documents, despite literature on the intersectionality between special education and school discipline. The allegations within the complaints included multiple types of student misconduct, but physical aggression was most common. Additionally, most districts chose to enter into a voluntary resolution agreement to avoid a possible finding of discrimination by the OCR. Finally, the sanctions issued by the OCR included human resource requirements, policy changes, professional development, community engagement and data collection.

In the following chapter, I address the implications of these findings, and those from RQ #1, as well as present recommendations for school and district leaders, to avoid OCR involvement.

## CHAPTER 5: DISCUSSION

The purpose of this study was to look at rarely analyzed OCR Case Resolution Agreements in order to make recommendations for school principals on how to approach exclusionary discipline. Most notably, I was interested in answering the following research questions:

- 1) What types of allegations and legal claims were present in the OCR Case Resolution Letters and Agreements from January 2011 to June 2019 resulting from allegations of Title VI disciplinary violations in K-12 public schools?
- 2) What general trends emerged from the Case Resolution Letters and Agreements?

This chapter is organized into three sub-sections: implications of my study, recommendations for building level leaders, and recommendations for district level leaders. My goal in providing these recommendations is to bring a sense of applicability and relevancy to my work. As a practitioner, I understand the gap that can exist between research and practice, and as such, I want to use this chapter to speak directly with school leaders. Further, in Appendix II, I present a one-page overview of my recommendations to help guide conversations with school and district leaders about the work that can be done to reduce discrimination in school discipline practices.

### **Study Implications**

When I first started my doctoral coursework, I was a young elementary principal serving a school of more than 600 students with diverse backgrounds. As a white female, I was continually confronted with situations in which I was responsible for making disciplinary decisions for African American and Latino students. In the beginning of my career, I saw school safety as the primary motivation for the use of exclusionary discipline. However, as I continued



my own professional learning, I started to wonder about the approaches that I had taken and what the true outcomes were of my decisions. I realized that with each suspension, I was prohibiting students from accessing their most needed resource—instruction. Therefore, I became interested in better understanding why administrators haven't been pressured to consider the racial implications of their discipline models, specifically for general education students who did not receive additional protections under IDEA.

In examining OCR cases, I wanted to explore an avenue for students to hold schools and districts accountability for exclusionary discipline, and specifically the impact of discriminatory discipline practices on students of color. As presented in Chapter 4, there were several themes that emerged from my data about the function of the OCR. In this section, I explore the implications of these general trends; both as an opportunity for reflection as a practitioner and also to help inform future studies on this topic.

One of the most interesting findings of my study was the lack of transparency by the OCR. Prior to my research, there had not been a comprehensive review of Title VI allegations within the OCR; therefore, it was difficult to understand how to best access OCR information. I was not aware of the significant barriers that would exist in accessing this information, despite the apparent structure and organization of the OCR website. According to the OCR, cases are a matter of public record and accessible via the search engine. However, in exploring this claim, it was very apparent that the website did not provide transparent access to information. Even once I was able to find specific cases that met the criteria for my study, much of the information provided was redacted, leaving large gaps.

While I addressed this concern in Chapter 4, as I consider the implications of these gaps in information, I want to draw attention to the key differences between court cases and OCR

complaints since both are avenues for students who face discrimination. Of the 27 cases that I reviewed, there was not clear evidence of precedent from case to case. The lack of information within each case would make it difficult for a student or family to evaluate their concerns to determine if they met the standard for discrimination. This is considerably different than the structure of the court system. Court cases build upon one another to establish precedent which can be incredibly useful for stakeholders to determine if a specific allegation has merit. Additionally, on the side of the schools, precedent can be helpful in considering what action the school can take to address any concern brought forth by a student or parent.

Another key implication of my study is the inclusion of individual remedies for students who filed complaints with the OCR. While none of the cases included financial compensation for students who faced discrimination, the OCR did provide specific mandates for schools and districts to address the individual students who were involved in the allegations. These remedies included expunging student records, funding private counseling, and providing transfers to other schools. Since the OCR process does not require an attorney or any specific fees, the inclusion of individual remedies was a promising option for students or families who are seeking to have a specific issue addressed by their school or district. That said, an OCR investigation is not completed quickly. While I was not able to identify the specific length of each investigation due to redacted information and an overall lack of transparency about the date of the initial complaint, it was evident in several of the cases that the Case Resolution Letter was issued years before the Case Resolution Agreement. This timeline would make it extremely difficult for an individual remedy to be impactful since the individual student may have graduated or moved into another classroom.

In the following section, I move beyond an explanation of the implications of my study and shift my focus onto practical recommendations for building and district leaders.

### **Recommendations for Building Level Leaders**

As a principal, I understand the careful balance between school safety and student discipline. In conducting this research, I wanted to utilize the content of OCR Case Resolution Agreements and Case Resolution Letters to build an understanding of how the OCR interprets discrimination and what principals can do to address discriminatory discipline prior to an OCR complaint. The impact of exclusionary discipline is well documented in the research, but through an analysis of OCR documents, I was able to develop a list of recommendations for school leaders to avoid discrimination.

However, prior to presenting my recommendations, it is important to note that these recommendations cannot, and should not, simply be implemented as a laundry list of “quick fixes” to address disproportionality; instead each of these recommendations should be considered within the greater framework of the school. All recommendations should include an examination of how the school culture recognizes race and provides meaningful opportunities for students and staff to engage in culturally sustaining practices. In order to truly shift the culture of discrimination within our schools, leaders must seek to understand the culture of their students and make school a relevant experience for students (Paris, 2012).

**Recommendation 1: Restructure human capital resources to increase student supports and decrease exclusionary practices.** In 26 out of 27 cases (96%), the OCR required that the school district utilize human capital to support the discipline process. In the example of the Oakland Public School District, the OCR charged the district with finding consultants who are experts “...in data analysis and research-based strategies to prevent the discrimination against

African American students with respect to the use of school discipline” (Oakland Unified School District, 2012, p. 2). Additional cases required the use of expert consultants with similar levels of experience. In these cases, the consultant was charged with helping the district analyze their approaches to discipline and consider alternative measures.

Other cases required the use of a “discipline supervisor.” This person would be responsible for the daily implementation of data monitoring, including specifically examining questions around disproportionality. Depending on the size of the school and the district, a school leader may or may not have additional staff that can fulfill this need; therefore, principals should be creative in thinking about how this role fits into preexisting roles within the building. At the building level, this role could fall to the principal or the assistant principal, but the responsibilities of this role should be explicitly outlined to include the following: prior experience with school discipline, and an understanding of Title VI, an ability to utilize data to make important changes to policy and practice. Regardless of who would fulfill this role within the school, the discipline supervisor should be viewed as the expert on alternative practices within the building. Revisiting my literature review, I would recommend that the discipline supervisor considers the work of Gregory, Skiba and Mediratta (2017) who authored the framework for school administrators to increase equity for students of color. Their work specifically addressed the need for principals to advance equity through a carefully examination of building level practices. For the discipline supervisor to be effective, this individual should have a deep awareness of culturally sustaining practices and the role of school staff in creating equitable learning spaces for students. Paris (2012) advocates for school leaders to think critically about the role of schools and argues that diversity should be enriched and strengthened within our schools, not negated. As a principal, I can seek a direct link between this ideology and

disciplinary practice, for example, when considering dress code violations. There have been examples of perceived misconduct in regard to student dress (e.g. a hijab being considered a hat) in a way that violates students' rights. For a school leader to mitigate these types of concerns, discipline policies should be collaboratively developed and include diverse participation from the greater school community.

Additionally, school leaders can be proactive in addressing this issue by developing local policies for teachers that outline who is responsible for discipline within the building. Teachers should have training and guidance on the difference between classroom managed issues and office referrals so discipline can be appropriately administered. During the course of an OCR investigation, teachers may be required to participate in surveys or interviews; therefore, building leaders should ensure that teachers are well educated on students' Title VI rights. School leaders can increase the legal literacy of their staffs by spending time reviewing civil rights protections for students. Additionally, Smolkowski et al. (2017) advocated for school staff members to have explicit training on racial bias as part of trainings on discipline systems and classroom management. This training could fall to the role of the discipline supervisor, but should be formally documented at least annually. Additionally, school leaders should consider the staff mobility rate and provide ongoing professional development on these topics. In order to create culturally sustaining schools, building level leaders should conduct an evaluation of their own individual needs within the school and design a professional development plan that aligns to these needs.

Finally, the discipline supervisor should meet regularly with mental health providers, teachers and stakeholders to gather information on the needs of the students and develop support plans for students who are struggling. Given the research on states statutes that require the

reduction of suspensions and expulsions, it would be advantageous for the discipline supervisor to create a list of alternative consequences and provide guidance to staff who may be implementing these options.

**Recommendation 2: Analyze data to deliver meaningful change to student discipline systems and processes.** As a principal, I understand how inundated some school leaders feel with student data and how analyzing discipline data can feel like one more box to check. While recognizing this difficulty, I would argue that data on student behavior is a key indicator of student success. School leaders should create systems to prioritize behavior data analysis; however, in order to be responsive to student misconduct, school leaders and school level teams must have a complete understanding of the incident (McIntosh et al., 2018). In 26 out of 27 cases (96%), the OCR required school districts to improve their management of data to include more categories. By capturing more data about student behavior, school teams can examine data for trends by time of day, day of the week, race, ethnicity, grade level, and referring adult to fully consider appropriate interventions to reduce misconduct. Principals should work with teachers to ensure that discipline data is being appropriately captured. Based on the literature regarding the subjectivity of certain referral types (e.g. disrespect), principals should ensure that their discipline data systems offer as much information about a specific incident as possible.

Recommendations from OCR Resolution Agreements included language such as:

- 1) the name or staff identification/employee number of the person making the referral; the name or staff identification/employee number of the person determining the sanction; detailed information to explain the circumstances that led to the disciplinary referral, including the conduct and the setting (e.g., classroom, bus, cafeteria, hallway);

- 2) any student and/or adult witness(es) to the incident;
- 3) any other students involved in the incident;
- 4) a description of all approaches that were attempted in order to address the behavior at issue prior to referral for discipline;
- 5) instructions to the referring staff member to describe the incident in terms of conduct and not in terms of the Code violation;
- 6) the disciplinary sanction imposed or, if no sanction was imposed, the reason for that decision;
- 7) the Code violation(s) for which the sanction was imposed; the e-School violation(s) for which the sanction was imposed;
- 8) the factual basis for the sanction imposed and the justification for the selection of the particular penalty imposed from within the range of possible penalties that could have been imposed, including the student's prior disciplinary history; or, if no sanction was imposed, the reason for that decision; the date the referral was made or the sanction was imposed; and
- 9) the name/identification number, race, ethnicity, sex, age, disability, ELL status, and grade level of the student(s) being referred and all other students involved in the incident. (Christina School District, 2013, p. 13)

Since data must be submitted during the OCR data collection process, and also in the event of an investigation, it is important that this information is kept electronically. Additionally, school leaders should work with staff to provide appropriate training on what information needs to be entered and how to enter specific information. Without an electronic system for capturing this information, it is difficult for a school leadership team to utilize this information to make

decisions about how to best support students. For example, the research on PBIS supports the formation of a data team within the school that specifically meets to examine discipline data and determine if further school-wide interventions are needed (McIntosh et al., 2018). If this data is not well organized, it would be nearly impossible for these practices to be implemented.

I would also add that principals should immediately cease the use of any disciplinary practices that send students home from school without a formal notice of disciplinary action. This was mentioned in the case of Loleta Union School District (2017). The OCR addressed this action in the Case Resolution Agreement, citing concerns that this practice was not allowable. As a school leader, I can imagine how this occurs, specifically with younger students who may benefit from an opportunity to go home for the remainder of the day, but these removals must be documented and coded as a suspension to provide an accurate description of the discipline process. Furthermore, if schools are using a paper based referral system, it must be the responsibility of the administrative assistant (or designee) to enter each referral into the electronic database.

**Recommendation 3: Increase authentic engagement with the greater school community.** In every case included within my study, the OCR required school districts to conduct formal outreach to students, families and the broader community regarding the requirements of Title VI. While I think many school leaders have opportunities for families who wish to engage with the school, school leaders must be proactive about community engagement and seek to educate everyone on the discipline processes that are in place within the school. Evidence of this could include handbooks, open house meetings, and community forums. In thinking about the work of building culturally sustaining school environments (Paris, 2012), I would advise all school leadership teams to critically evaluate how they receive input from their



communities and how this input is considered when policies are being reviewed or revised. I would recommend that principals carefully consider the audience for all communication and ensure that these materials are produced in the languages understood by the community, as this was a concern cited by the OCR.

Additionally, the OCR made mention of the need to ensure that community engagement is representative of the student population within the school (Loleta Union School District, 2017). With this finding, I would encourage principals to consider the demographics of school improvement teams, PTAs, school accountability committees, or any committee that is charged with the overall improvement efforts of the building. While community engagement is often extremely difficult, and committees may only have a few members, principals should carefully document their efforts to engage with representatives from all demographic groups within the school. The use of social media could assist school leaders in creating more inclusive environments for engagement, including an option for stakeholders to “live stream” meetings and create spaces for public comment.

Within this recommendation, I specifically used the term “authentic” because I wanted to emphasize the need for true community engagement. The OCR did not make mention of community engagement solely as another compliance requirement. Community engagement allows school leaders to be responsive to the individual needs of their schools. There is not a “one size fits all” solution for decreasing discriminatory discipline practices and rather than simply implementing a checklist of reforms, by seeking community engagement, school leaders can gain insights on the goals of their community and generate genuine relationships with the greater community.

**Recommendations for District Leaders.** When I first began this research, I wanted to focus my recommendations for building level leaders; however, in reviewing the OCR documents, I saw a strong need to make district level recommendations as well. Given the subjectivity of OCR investigations, it is important for district leaders to understand their role, if an investigation occurs and how to reduce discipline discrimination.

**Recommendation 1: Partner with OCR during an investigation and agree to a resolution.** Based on the findings of my study, as well as the work of Losen and Welner (2001) and Worthington (2017), there are significant inconsistencies in how OCR interprets cases and issues corrective action. With this information, it is important that districts work closely with the OCR. The differences in the handling of these investigations has a few possible explanations according to Losen and Welner (2001). While an investigation of discrimination can feel accusatory, the OCR allows districts to resolve cases without a public reprimand for discrimination. This allows districts and schools to minimize concern with publicity or the general school community: “without admitting to any violation of law, the District voluntarily agrees to the terms of this Agreement and agrees to comply fully with its provisions. In consideration for the commitments made herein by the District, OCR agrees to refrain from further pursuing the investigation of this compliance review.” (Oakland Unified School District, 2012, p. 1). Again, this language allows a school district not to be at fault for a specific violation of federal law. Since these documents are public record, this is an important consideration for school districts given the political pressures of a given community.

Given the political climates that surround public schools, and the high numbers of cases that were settled prior to a finding of discrimination, my research would suggest that districts should agree to a resolution prior to the OCR issuing a determination. This allows district leaders

to “save face” politically within their communities since voluntary resolutions do not include a finding of discrimination. Eighty-five percent of the cases that I reviewed for my study settled prior to a finding of discrimination. Additionally, by agreeing to a resolution prior to a determination of discrimination, districts can reduce the likelihood of costly litigation. The complainant is able to file a lawsuit if the OCR found discriminatory practices.

**Recommendation 2: Support community engagement through authentic leadership opportunities for students, parents and the community at large.** Given that OCR complaints are largely initiated by individual complainants, it is important that school districts are actively engaging with their school communities. This recommendation is similar to the recommendation I made for principals because community engagement must occur at every level of an organization.

In order to meaningfully impact school disciplinary practices, district leaders should create an advisory team to analyze district discipline data. This team should include staff, parents, community members and students. District leaders should also be mindful of the diversity of leadership teams and other stakeholder teams throughout the district. It was an important finding within my research that the OCR can mandate community involvement for corrective action and this involvement can be specifically tied to certain racial groups. For example, in the Loleta Union Case, the district was tasked with specifically engaging with Native American families, and increasing the presence of Native American stakeholders on district leadership teams:

The District will make a good faith effort, by writing, emailing, and, as needed, calling stakeholders to establish a Stakeholder Equity Committee of community representatives and will provide OCR with documentation that it has done so within 90 days of execution

of this Agreement. Such stakeholders should include Loleta Elementary School (School) site representatives, teachers, administrators, County Office of Education administrators, counselors, and special education staff, Native American tribal council members from local tribes, other local tribal leaders and members, community organizations, and parents/guardians. (Loleta Union School District, 2017, p. 4)

While principals can focus specifically on the demographics within their schools, district leaders should consider the demographics for the district. Specifically, these leaders should consider creating intentional roles for members of marginalized communities and ensure that everyone has equal access to involvement. This may take the form of community meetings that take place in multiple locations or the use of social media/internet to help build opportunities for families who cannot attend meetings in person. Additionally, the district should designate a specific person who is responsible for supporting non-English speaking families. It was noted by OCR that due process must be made available to families in a language that they can understand; therefore, it is the role of the district to develop procedures for how to support this requirement.

**Recommendation 3: Provide meaningful training and guidance for SROs.** Within the literature, SROs were found to have significantly varying roles throughout the country and SRO involvement in school discipline matters changed from district to district. However, the act of criminalizing student misconduct correlated with the rise of the school to prison pipeline (e.g. Blad & Harwin, 2017; King, 2016; Owens, 2017). District leaders have the responsibility of developing local policies that support safe schools, including the use of SROs; yet, SROs must be trained to understand their role in the school discipline process.

However, again, with this recommendation, I want to advise districts to be mindful of how SRO training is only one components of a larger shift in the culture of the school/district.

District leaders should incorporate culturally sustaining practices and bias training as part of their professional development for SROs. Specific professional development time should seek to draw upon the culture of the students within the school and learning should be geared towards understanding and awareness. This was consistent with the recommendations from the National Center for Safe Supportive Learning Environments (King, 2016). King (2016) advocated for school districts to consider rethinking the traditional role of SROs in the discipline process and instead suggested that school discipline should be considered differently than criminal activity. Given the research on the impact of SRO's in criminalizing student behavior at disproportionate rates for students of color, I recommend that district leaders work closely with SROs, and incorporate these individuals into professional development on managing student behavior.

For example, in the case of Christina School District, the OCR outlined specific requirements regarding the use of SROs, requiring the following:

A review of every instance during the school year in which an SRO became involved in a student discipline matter to determine whether it was appropriate for the SRO to become involved in the matter and whether, once involved, the SRO acted in a manner that was consistent with state law and the District's expectations and its discipline policies. This review also examines every instance where a District student was referred to law enforcement and carefully consider whether the referral to law enforcement was appropriate under state law and the circumstances present at the time and consistent with the treatment of other similarly situated students. If the District determines that the referral was inappropriate, it will promptly take steps to remedy any adverse effects, which may include efforts to correct District records and, where warranted, to discontinue law enforcement involvement in the incident. (Christina School District, 2013, p. 11)

In the example above, it is evident that the OCR supports the work of King (2016) and requires that districts consider when the use of an SRO is appropriate. Additionally, there was specific language regarding if an SRO would have been utilized for similar incidents, indicating that schools should consider the role of race in the involvement of SROs. District leaders should closely monitor the use of SROs and use data to determine if SRO involvement was appropriate.

### **Limitations and Suggestions for Future Research**

Throughout my study, I highlighted concerns with OCR investigations and the lack of transparency on the OCR website. Despite specific claims regarding the information that is available online, it was clear throughout my study that the OCR does not provide the information stated on the website. One specific limitation was the accessibility of cases to review and the discrepancies that existed between the date range provided (2013-2019) and the range of cases that was available (2011-2019). I would add that these inconsistencies were also present in the differences in how cases were handled and the required corrective actions for districts.

Based on these findings, I would recommend that future research seeks to build upon my study by looking at earlier cases, perhaps through a public records request, or examine cases beyond Title VI to determine if the OCR is more consistent in the enforcement of other laws. I would also advise future researchers to collect data on the length of time needed to complete each investigation in order to study specific trends on the investigation process. I had intended to examine this information within my study, but due to the significant amount of redaction, and the lack of transparency on when a complaint was first opened, this was not possible from my data set, but could perhaps be available on older cases that are not posted on the OCR website.

Additionally, I would add that my study does not investigate how the OCR determines if the district is compliant with the requirements of a specific agreement. Future studies could

explore the role of monitoring and work to understand how districts implement the requirements of a Case Resolution Agreement. Since implementation is an essential component of these reforms, it would be significant to determine how districts respond once an OCR investigation has concluded. This concern was also noted in the research of Losen and Welner (2001) who felt that little research had been done to see how monitoring of OCR requirements occurred. It would be helpful for future studies to triangulate OCR data with qualitative methods like interviews to see how districts or schools implement adhere to OCR requirements. This could also examine key differences in the types of sanctions issued by OCR and how districts seek to comply with these directives.

One final area of future study would be an examination of OCR cases by state, specifically in the states where state statutes have limited the role of exclusionary discipline. I was not able to have a large enough sample size for states with these statutes, but coupled with an open records request, perhaps there would be enough cases to consider how data compares across states.

## **Summary**

Throughout my research, I was committed to investigating how the OCR resolves complaints of discrimination. This type of research had not been done, and as a school leader, I felt compelled to explore the OCR's role in reducing disproportionate discipline practices. Additionally, I wanted to translate this information into practical recommendations to address discriminatory disciplinary practices for principals and district leaders. This study was needed given the significant shortage of information available on the OCR complaint process and the widespread evidence of disproportionate disciplinary practices.

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# Appendix I: Excerpt from Codebook

| School District                       | Complaint Number | Resolution Year | State      | Region Type (Urban, Rural, Suburban) | Settled prior to findings | Settled prior to findings? | Age of Student | Sex of Student | Race of Student | SPED Status? | School Type | Allegations  | Legal Claims                              | Fact Pattern  |
|---------------------------------------|------------------|-----------------|------------|--------------------------------------|---------------------------|----------------------------|----------------|----------------|-----------------|--------------|-------------|--|---|---|
| Independent School District #761      | 05-10-1148       | 2011            | MN         | Rural                                | Yes                       | Yes                        | NA             | M              | Somali          | No           | Public      | Students at the Owatonna High School harassed Somali students. District failed to stop harassment. DOJ was investigating the complaint. Allegation involved one specific incident. | Title VI only                             | Harassment alleged in the OCR complaint and DOJ investigation involved offensive and derogatory comments made by white students about Somalis and Somali students. More severe disciplinary sanctions on the Somali students who were involved in the fight than to the white students involved in the fight. |
| Christiana School District (PDF)      | 311001           | 2012            | Delaware   | Urban                                | No                        | No                         | NA             | Na             | NA              | NA           | Public      | Compliance review based on OCR data collection   | Title VI only                             | Did the school treat a student differently?<br>Did the school have a legitimate, non-discriminatory reason?<br>Did the school have a policy or practice that had a disparate impact on students?<br>Different treatment and disparate impact. District in Oakland, CO. 36811                                  |
| Oakland Unified School District (PDF) | 09-12-5001       | 2012            | California | Urban                                | Yes                       | Yes                        | NA             | NA             | AA              | No           | District    | District discriminates against black students by discipline them more frequently and more harshly  |   | Since 1998, risk ratio has increased. Data showed high rates of expulsion and disproportionately high PBIS and RTI have been started but not required in bound policy. Data is inaccurate.  |
| Lincoln Unified School District (PDF) | 09-13-1182       | 2013            | California | Urban                                | Yes                       | Yes                        | NA             | M              | AA              | Yes          | Yes         | Denial of FAPE. Retaliation for advocating. AA students are disciplined more harshly.  | Title VI; Section 504; Title II           | 11% of student body was AA; 31% of suspensions.   |
| North Colton Central Schools (PDF)    | 02-12-1184       | 2013            | NY         | Rural                                | Yes                       | Yes                        | Elementary     | M              | NA              | No           | District    | Somali students are treated differently throughout the discipline process. Also individual allegation of discrimination for the students involved.                                 |   | Multiple allegations of discrimination. Harassment allegation regarding the students' treatment by administrators. Failure to handle situation appropriately. Student was segregated from the other students.   |
| Platteville Public Schools (PDF)      | 05-13-1098       | 2013            | WI         | Rural                                | No                        | No                         | NA             | M              | AA              | No           | Public      | 3 allegations; only 1 applies. #3 district's subjected student A to discrimination based on race in the XXX school year in that the district disciplined him repeatedly.           | Title VI only                             | Student A engaged in 6 incidents of misconduct. Evidence that the principal treated A differently, than white students when imposing discipline.  |
| Centennial School District #83 (PDF)  | 08-13-1172       | 2013            | AZ         | Urban                                | Yes                       | Yes                        | NA             | F              | Hispanic        | Yes          | Public      | (4) discriminated against the Student on the basis of disability and race by disciplining her more harshly than other disabled students involved in the same infractions.          | Title VI; Section 504; Title II; Title IX | Resolved prior to investigation. No information included about the facts of the investigation.  |

|   |            |      |            |       |     |     |             |    |             |          |  |   |  |  |
|---|------------|------|------------|-------|-----|-----|-------------|----|-------------|----------|--|---|--|--|
| Hamlin Independent School District (PDF)                        | 06-11-1383 | 2014 | TX         | Rural | No  | No  | NA          | NA | NA          | NA       | Traditional  | alleges discrimination on the basis of race. Student was disciplined for ripping up his classmates' word poem. Conclusion that there was a violation of Title VI that student B was treated differently on the basis of race. | Title VI only  | Student B was treated differently on the basis of race with regard to discipline. Both students (Student B and Student C) were similarly situated as they both had prior discipline history during the 2010-11 school year, and they both had an argument on September 14, 2010.<br><br>"HISD in its written response to the OCR data request, as well as the Principal during an interview with OCR, stated that Student B was given ISS because she attempted to be physically aggressive with Student C. However, OCR's review of Student C's referral form reveals information contrary to HISD's assertion. Specifically, his referral form stated that not only did Student C refuse to leave the room four times in the "Xc Teacher" intervention, but also that Student C asked [Student B] what she said," and stated "up 'as if to confront Student B." Moreover, the referral form provided that Student B said she was going to "use [Student C] smooth out," and Student C responded, and the teacher had received corporal punishment in addition to ISS, which was not mentioned in the District's response or during the interviews with the Principal." |
| Minneapolis Public Schools (PDF)                                | 05-13-1202 | 2014 | MN         | Urban | Yes | Yes | NA          | AA | AA          | District | OCR's review investigated the District's disciplinary policies and practices and, specifically, whether the District discriminates against black students on the basis of race by disciplining them more frequently and more harshly on the basis of race, in violation of Title VI and its implementing regulations.1 | Title VI only   | Minneapolis, Minnesota<br><br>Serves students in pre-kindergarten through twelfth grade. 80 education sites in operation in the District during 2010-2011<br><br>37 elementary or K-8 schools, 8 middle schools, and 7 high schools, as well as alternate schools and schools serving only special education students.   |  |
| Tupelo Public School District (PDF)                             | 06-11-5002 | 2014 | MS         | Rural | Yes | Yes | NA          | AA | AA          | Public   | Compliance review  | Title VI only   | Different treatment and disparate impact. PreK-12 district in MS. 14 schools. OCR focused on 3 schools. Examined 2011-12, 2012-13  |  |
| Amherst County Public Schools (PDF)                             | 11-14-1224 | 2015 | Virginia   | Rural | Yes | Yes | High school | M  | AA          | Public   | Student was treated differently because he was AA<br>AA students treated more harshly  | Title VI, Title IX  | Student choked another student to unconsciousness. Student was suspended for 364 days. Parent requested SPED eval. Student was placed on homebound. Student met criteria for 504, manifest was held and found not to be related. Student was released from compulsory attendance.  |  |
| Yav Pasa Academy (PDF)  | 09-14-1170 | 2015 | CA         | Urban | Yes | Yes | Elementary  | M  | AA          | Charter  | Disciplined A differently than B, overall discrimination of AA students compared to others   | Title VI only   | Student was suspended for 364 days. Parent requested SPED eval. Student was placed on homebound. Student met criteria for 504, manifest was held and found not to be related. Student was released from compulsory attendance.   |  |
| Lodi Unified School District (PDF)                              | 09-13-1314 | 2016 | California | Urban | Yes | Yes | NA          | M  | AA          | Yes      | 4 different allegations but only two applies to this research<br>Discriminated against Student 1 and Student 2 on the basis of race by disciplining them differently than white students.<br>Discriminates against Hispanic and AA students by disciplining them more harshly  | Title VI only   | Significant disparities between the rate of suspension for African-American students.<br>The Academy provided OCR with incomplete information about the race/ethnicity of students, alleged discipline infractions, and disciplinary actions taken on its referral slips. The Academy expressed an interest in resolving the complaint, and so OCR did not engage in further investigation to determine whether students who were referred for similar incidents, but not suspended, were treated differently by race.<br>AA student said he was disciplined more harshly than white student B had called A the N word and at home, they discussed fighting by text. Student A hit B. Both offenses were Level B, but fighting had additional consequences such as a loss of privileges. OCR was concerned but allowed the district to settle. |  |
| Oklahoma City Public Schools (PDF)                              | 07-14-1189 | 2016 | OK         | Urban | Yes | Yes | High school | M  | Hispanic/AA | District | Discriminates against Hispanic and AA students by disciplining them more harshly   | Title VI only   | #2- S1 was suspended for truancy but was on the property. AP thought he was smoking weed. Both students denied. Both were suspended for 45 days. No evidence of a violation.   |  |
| Cleveland Heights-University Heights City School District (PDF) | 15-14-5001 | 2017 | Ohio       | Urban | Yes | Yes | NA          | NA | NA          | Public   | Note: compliance review based on CRCD that show disproportionality   | Title VI only   | #4- reviewed information from the 2011 CRDC. Data was examined by race to determine any disproportionality. OCR documented inconsistencies with the data collection.   |  |



|   |            |          |                |          |     |                      |               |    |            |     |                              |  |                                 |  |
|---|------------|----------|----------------|----------|-----|----------------------|---------------|----|------------|-----|------------------------------|--|---------------------------------|--|
| District School Board of Pasco County (PDF)   | 04-15-1024 | 2017     | Florida        | Suburban | No  | No                   | Elementary    | M  | AA         | NA  | Charter School               | Different treatment on the basis of gender and race when the school only investigated against her son.   | Title VI, Title IX              | Student was found to have sexually harassed another student on the bus. Parents said the other child was the aggressor. Submitted appeal. Parents said this is discrimination. Referral wording was changed by parents were concerned because the revision still made it sound like child was in the wrong.                                |
| East Side Union High School District (PDF)    | 09-14-1242 | 2017     | California     | Urban    | Yes | Yes                  | High school   | M  | Latino     | Yes | Yes, traditional high school | District discriminated against Latino students by more harsh treatment, one specific student who received harsher treatment, retaliation, LEP programming  | Title VI only                   | Student was searched by police officer and found with a knife. Said it was for work. Student was suspended. Notice sent in English. Student was later transferred to another school. All Latino students. Student was prohibited from returning to home school. Reflected harsher discipline because he was Latino.                        |
| Lolita Union Elementary School District (PDF) | 09-14-1111 | 2017     | California     | Rural    | Yes | Yes                  | Elementary    | NA | Native     | NA  | Elementary                   | Whether the District subjected Native American students at the school to more frequent or more severe disciplinary actions than non-Native American students who engaged in similar or more serious misconduct                                 | Title VI, Section 504, Title II | K-8 public school, OCR investigation from 2011-2015<br>Low student enrollment, around 120 with 10-25 Native students over the 4.5 years.   |
| Onslow County Schools (PDF)                   | 11-14-1218 | 2017     | NC             | Urban    | Yes | Yes for allegation 4 | NA            | M  | AA         | Yes | District                     | 4 complaints: individual discrimination and systemic discrimination, F   | Title VI only                   | School had 557 students, 22.3% AA, or the individual claim, the OCR investigated 7 different incidents and found that the school was appropriate with the discipline that was provided. For students who have received a referral, data looked similar for white and AA, but using a Chi-squared test, disproportionality was significant. |
| Tangipahoa Parish School Board (PDF)          | 06-17-1462 | 2017     | LA             | Rural    | Yes | Yes                  | NA            | M  | NA         | Yes | Public                       | 3 allegations: 1. Student was disciplined more harshly than other students on the basis of race for being disrespectful.   | Title VI, Section 504, Title II | No investigative determination was made.   |
| Ash Grove R-IV School District (PDF)          | 07-15-1010 | 2018     | Missouri       | Rural    | Yes | Yes                  | NA            | M  | NA         | NA  | Public                       | Discrimination on the basis of race by imposing harsher discipline on him than imposed on the white student. Different treatment throughout the discipline process.  | Title VI, Title IX              | Not a lot of details<br>Harsher discipline.  |
| Denning Public Schools (PDF)                  | 08-16-1219 | 2018     | New Mexico     | Rural    | Yes | Yes                  | NA            | NA | Somali     | NA  | Public                       | Discriminated in its discipline of the student and its referral of the student to law enforcement<br>District discriminates against black students by discipline them more frequently and more harshly<br>Compliance review based on CRCD data | Title VI only                   | Concerns about some I students facing discrimination including discipline  |
| Milwaukee Public Schools (PDF)                | 05-14-5003 | 2018     | WI             | Urban    | Yes | Yes                  | NA            | NA | AA         | No  | District                     | Allegation was for individual student, but OCR wanted to include a broader investigation.  | Title VI only                   | Largest district in WI, 150 schools. 2011-12 data showed overrepresentation. AA students were 83.5% of suspended students.   |
| Worth County Schools (PDF)                    | 04-11-1496 | 2018     | GA             | Rural    | Yes | Yes                  | Middle School | F  | NA         | NA  |                              | Compliance review, AA represented 50% of discipline even through they were 30%   | Title VI only                   | Due to the early resolution with the district, more information was not provided   |
| Fort Bend Independent School District (PDF)   | 06-12-5001 | 2018     | TX             | Rural    | Yes | Yes                  | NA            | NA | AA         | NA  | District                     | Compliance review, AA represented 50% of discipline even through they were 30%   | Title VI only                   | 3 years of data beginning in 2011 CRDC.  |
| Durham Public Schools (PDF)                   | 11-13-1175 | 2018     | North Carolina | Urban    | Yes | Yes                  | NA            | NA | AA         | NA  | Yes                          | District's discipline policies and practices regarding out of school suspension unilaterally discriminated against AA students and AA students with disabilities   | Title VI, Section 504, Title II | Compliance review to examine the discipline data from the OCR data collection.   |
| Pit County Schools (PDF)                      | 11-14-1119 | Redacted | NC             | Rural    | Yes | Yes for allegation 2 | NA            | M  | Hispanic/A | NO  | Public                       | 2 allegations: individual and systemic   | Title VI only                   | Compliance review in 37 schools. On allegation 1, there was insignificant evidence of discrimination. Allegation 2: examined discipline in the entire system including PreK. Found several disparities   |

| Evidence Reviewed  | Requirements of Agreement: #1   | Requirements of Agreement: #2                                 | Requirements of Agreement: #3  | Requirements of Agreement: #4                                       | Requirements of Agreement: #5  | Requirements of Agreement: #6   | Requirements of Agreement: #7   | Requirements of Agreement: #8  | Requirements of Agreement: #9                   | Requirements of Agreement: #10                      |
|--|---|---|--|---|--|---|---|--|---|---|
| Data from the district, OCR data collection, Council on American-Islamic Relations. DOJ also conducted interviews<br>Discipline system: written policies, vague language was noted; disciplinary referral practice and record keeping; data analysis, 1600 referrals from 2009-10, 2010-11, compared data for first offenders. Disparities noted showing AA disciplined more.<br>6. Individual examples were cited | Anti harassment statement   | Hire a consultant   | Harassment related policies and procedures   | Staff training  | Ongoing improvement of the anti harassment program   | Student focused remedies  | Class assignments   | NA   | NA  | NA  |
| Reviewed strategic plan, discipline study and discipline rates.  | Collaboration with a consultant. MAEC or similar  | Develop strategies for student support outside of discipline  | Revise discipline policies   | Assign a Discipline Supervisor                                      | Outreach: school climate surveys, student forums.  | Staff training: annual requirement on discipline practices and classroom management | Student training: explain disciplinary code, guidance on appropriate behavior | Informational program for parents, distribute policies. Notice to parents. | Review of SROs. Data to be tracked and reported | Data Collection (20 categories) and Self-Monitoring |
| CRCD data  | Expert consultant   | Early ID for At Risk Students                                 | Revision of discipline policies  | Board policy changes: 11 required to be reviewed                    | Outreach: school climate surveys, student forums.  | Staff training.   | Informational programming for parents   | Notice for parents and students  | Discipline review committee                     | Data collector (21 categories) and Self-Monitoring  |
| OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant, Parent 1, and District staff. OCR made the following determinations  | Hire a consultant   | Provide training for staff                                    | School climate surveys   | Determine needs assessment within 90 days of hire of consultant     | Develop strategies for reducing discipline including the implementation of a system such as PBIS | NA  | NA  | NA   | NA  | NA  |
| Interviews, discipline records, discipline policies  | Provide counseling  | Send notice to all staff that discrimination is not tolerated | Revise procedure for café discipline.  | Provide training on Title VI and the new policies for the café.     | NA   | NA  | NA  | NA   | NA  | NA  |
| Comprehensive Review Of Policies, Practices, And Procedures  | The District will submit for OCR review and approval: a) District policies and procedures regarding how the District will respond to complaints of disability discrimination, including the District's internal grievance procedures; b) District policies and procedures regarding how the District must respond to complaints of sex discrimination, including the District's internal grievance procedures; c) District policies and procedures regarding how the District must respond to complaints of race discrimination, including the District's internal grievance procedures.  | Collaboration with Consultant.                                | Appointment of Discipline Supervisor.  | Policy revision: 11 requirements that pertain to antidiscrimination | Revised discipline code: 6 required changes.   | Training  | Climate survey  | Student forums/student committee   | Development of working group                    | Individual relief for the student involved.         |
| Resolved prior to investigation  | The District will draft for OCR's approval in-service training materials and identify one or more persons knowledgeable about Section 504, Title II, Title IX, Title VI, and retaliation who will provide the training, on an annual basis. The training will include, at minimum: a) A review of the District's responsibility to comply with Section 504, Title II, Title IX, and Title VI, which state that educational institutions under OCR's jurisdiction may not discriminate against any person on the basis of disability, sex, or race, respectively; b) The prohibition against disability, sex, and race discrimination, including retaliation, by Section 504, Title II, Title IX, and Title VI, respectively; and an examination of what constitutes |   | Within thirty (30) school days of OCR's approval of the training materials, the District will schedule and conduct an in-service training. A | NA  | NA   | NA  | NA  | NA   | NA  | NA  |



|  |  |  |  |  |   |   |  |   |   |    |    |    |   |
|--|--|--|--|--|---|---|--|---|---|----|----|----|---|
| Policies and practices for discipline. Issue 1: Sexual Harassment.   | Adopt an anti harassment procedure and publish document                            | Additional training for all staff on investigations  | Training for school staff on how to address harassment         | Student remedies: remove evidence from file  | Exchange record and recalculate attendance  | Counseling for student sessions                       | NA   | NA  | NA  | NA | NA | NA | NA  |
| Issue 2: Race Student did not have a support person. Other student did. One was reported to CPs, other complaint was not. Investigation did not follow the policies. Black student was treated differently.                | Hire a consultant  | Create equity committee  | Corrective action plan; identify root cause for discrimination | Revision of student discipline policies, practices and procedures.<br>"Elimination of vague language." | Early intervention for at risk students   | Student and parent information sessions               | Discipline training for staff                              | Publicly post discipline data                                     | Discipline collection with 20 categories                              | NA | NA | NA | Data analysis meetings and site team meetings monthly           |
| District discipline data from 3 years; district policies and practices, data by race to compare Latino to white. Latino had more severe consequences. 3 examples were provided   | Expert consultant provided qualifications needed for the hiring of this individual | Creation of school climate director and equity committee. EC must include NA community members | Identify root cause and action plan                            | Policy and procedures review; discipline policies to include 9 new provisions                          | Early intervention for at risk students and student support system. This information will be provided to families.          | Staff training  | Discipline data collection system with 11 criteria.        | Data analysis to answer 9 primary questions about discipline data | Collaboration with law enforcement to explain policies and procedures | NA | NA | NA | Other requirements but did not apply to this specific complaint |
| 4 years of discipline data, handwritten referrals, interviews of staff and principal, NA parents, PBIS consultant  | Data collection with 11 categories   | Evaluation and self monitoring   | Supports for staggling students                                | Employee support and training.   | Staff and student training  | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| Data, interviews   | Training and professional development  | Individual student relief; school harassment claim.  | NA   | NA   | NA  | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| NA   | Race Discrimination Training Specific on Title VI                                  | Sexual Harassment Training   | Notice of Nondiscrimination                                    | Individual remedy: expunge the student of misbehavior and discipline from this incident.               | NA  | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| NA   | Nondiscrimination guidance shared with community                                   | LEP services for Somali students   | Interpreter and translation services.                          | Formation of Student and Parent Plans  | If student re-enrolls, district staff will contact parents to discuss needs and provide all information in native language. | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| Discipline policies, administrative policy, Code of Conduct; Application of policies through interviews, training provided, student input, district and site level data  | Designation of "Discipline Supervisor"   | Early ID for At Risk Students  | Outreach to Students, staff and community members              | Creation of discipline working group   | Creation of programming for parents and the community to explain policies   | Changes in policies, procedures, 10 requirements      | Staff training   | Data collection and self monitoring                               | If disproportionality exists, working group will make adjustments     | NA | NA | NA | NA  |
| District policies, handbook, data from two years of discipline   | Staff training   | Annual student orientation   | Revising the Student's Permanent Discipline Record             | NA   | NA  | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| Handbook, Texas law, discipline policies, code of law enforcement, record keeping, interviews.   | Review if discipline policies and procedures                                       | Training   | Record keeping requirements; 20 categories                     | Review of disciplinary data; 6 categories  | NA  | NA  | NA   | NA  | NA  | NA | NA | NA | NA  |
| Onsite visit with staff interviews, review of CRCD data, district practices for data collection, policies, Code of Conduct; SRO's. Alternative programs, information from community meeting, District's proactive measures | Appoint a discipline supervisor  | Develop discipline plan  | Revise discipline policies                                     | Data Collection (9 categories) and Self-Monitoring   | District Staff Training   | SRO training and law enforcement action documentation | Community involvement in the formation of discipline plan. | Review data from alternative school placements                    | NA  | NA | NA | NA | NA  |
| 2 years of the Code of Conduct.  | Development of district action plan.   | Discipline policies, practices and procedures. 9 requirements                                  | Alternative school placement guidelines                        | SRO involvement  | Data collection (8 categories) and self monitoring  | District staff training                               | NA   | NA  | NA  | NA | NA | NA | NA  |

| Requirements of Agreement #11        | Requirements of Agreement #12 | Requirements of Agreement #13 | Requirements of Agreement #14 | Requirements of Agreement #15 | Requirements of Agreement #16 | Individual remedies  | Other outcomes                         | Lessons learned Notes   |
|--------------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|--|--|---|
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | NA   | NA                                     | Included a focus on individual remedies for the individual kid involved.  |
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | NA   | NA                                     | Seemed extremely lengthy. Perhaps because they didn't settle? More consequences if you don't settle? More because it was a compliance review?   |
| SSO (School security officer) review | NA                            | NA                            | NA                            | NA                            | NA                            | NA   | NA                                     | OCR specifically noted that the district had been an active partner in the investigation and highlighted positives. Still listed significant requirements for change.   |
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | \  | NA                                     | Specific mention of PBIS and the need to implement research based strategies  |
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | On or about September 10, 2013, the District extended a written offer of counseling to the Student through his parent to address any effects that moving the Student's seat in the cafeteria at the School during school year 2011-2012 might have had on him. | Most of the complaints were unfounded. | Even despite the unfounded complaints, the district was responsible for individual role for the student involved in the incident.   |
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | NA   | NA                                     | Included both school wide and individual remedies.  |
| NA                                   | NA                            | NA                            | NA                            | NA                            | NA                            | NA   | NA                                     | Very limited information provided about the specifics of the case. Agreement listed specific requirements for the individuals named in the investigation: i.e. "attendees at this training will include all staff and administrators at Marc T. Atkinson Middle School (School), the bus drivers who service the School, and any other District employees and administrators who, during the 2012-13 school year, were responsible for responding to the Complainant's disability discrimination claims. Imposing discipline on the Student, and withdrawing the Student from school in Spring 2013." |

|  |                        |   |   |                        |  |                   |    |    |    |   |
|--|------------------------|---|---|------------------------|--|-------------------|----|----|----|---|
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Individual counseling for the student involved in the incident. District can be required to pay for individual remedies if there is damage to the student/family.   |
| Data collection and self monitoring. 24 requirements | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Focus on alternative schools and the use of these schools for exclusion. Concerns with the racial patterns of students moving to these schools.   |
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Significant changes required. Increased focus on prevention and additional supports for students in need  |
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Lots of requirements around reporting on each indicator. Would require significant investment of time.  |
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Such circumstances would be considered an "early release day" for the student. Although these early dismissals resulted in lost instructional time, they were not documented or considered as a form of suspension or disciplinary act. Further, this type of removal of a student from the school was not referenced in the Academy's discipline policies and procedures. The Academy told OCR in October 2015 that students are no longer sent home on an informal basis. |
| Publicly post school discipline data.                | School climate surveys | School Resource Officers: revise policies, training, data reporting, MOU. | Data collection of 22 different categories. Data analysis of discipline and regular meetings. | Guidance on harassment | Individual student remedy: expunge record, 75 hours of compensatory time | Compensatory time | NA | NA | NA | LOTS of data was collected to determine if there were issues of disproportionality. Most comprehensive agreement to date. Significant consequences for the district.  |
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | District undertook efforts to solve problem while investigation was ongoing, including audits of each schools.  |
| NA   | NA                     | NA  | NA  | NA                     | NA   | NA                | NA | NA | NA | Not as in depth as other compliance review? Because they settled?   |



## Appendix II: Reducing Disproportionate Discipline Session Handout

The following document was developed after an analysis of OCR Case Resolutions Letters and Agreements from 2011-2019 that alleged a violation of Title VI, a federal law that prohibits discrimination on the basis of race. It is important to note that each of these recommendations should not be implemented in isolation. School and district leaders are responsible for considering the overall needs of their building and developing individualized improvement plans.

### **School Leader Recommendations:**

- *Recommendation 1:* Restructure human capital resources to increase student supports and decrease exclusionary practices
  - Appoint a discipline supervisor who is responsible for discipline initiatives, data analysis, and professional development
- *Recommendation 2:* Analyze data to deliver meaningful changes to student discipline systems and processes
  - Form a discipline leadership team to analyze student data and include administrators, teachers, support staff, as well as parents and students, as appropriate.
  - Collect all discipline data electronically and ensure that data captures narrative information about the incident as well as the student's age, gender, race, special education status
  - Ensure discipline data is accurate and inclusive of all exclusionary disciplinary actions (in school suspensions, detentions, out of school suspensions and expulsions).
- *Recommendation 3:* Increase authentic engagement with the greater school community
  - Ensure communication is in the native language of students and families.
  - Committee representation should match district/school diversity whenever possible. If representation is not possible, leaders should document the efforts that were taken to engage the community.

### **District Leader Recommendations**

- *Recommendation 1:* Partner with OCR during an investigation and agree to a resolution
  - If district voluntarily resolves the complaint with OCR, then OCR will not publish a finding of discrimination.
  - Voluntary resolution will reduce risk of future litigation.
- *Recommendation 2:* Support community engagement through authentic leadership opportunities for students, parents, and the community at large
  - Ensure representation from diverse school stakeholders.
  - Communicate in native language of students and families.
- *Recommendation 3:* Provide meaningful guidance and training to SROs
  - Provide clear guidance on role of SROs.
  - Provide professional development on implicit bias and culturally sustaining practices.



# Carole Wilson Frye

## **EDUCATION**    **INDIANA UNIVERSITY-BLOOMINGTON, IN**

Ed.D in Educational Leadership, May 2020

*Concentration in school disciplinary practices*

## **COLUMBIA UNIVERSITY-NEW YORK, NY**

MA in Educational Administration, Teachers College, July 2013

## **WHITMAN COLLEGE - Walla Walla, WA**

Honors B.A. in Sociology, Minor in Race and Ethnic Studies, May 2009

*Cum Laude, Order of Waiilatpu Scholar, Distinguished Sociology*

*Student of 2009, Adam Dublin Scholar Award*

## **LANGUAGES**

Proficient in Spanish

## **SCHOOL EXPERIENCE**

### **2017-Present**

#### **JAMES MONROE ELEMENTARY SCHOOL-Colorado Springs, CO**

- Supervised high quality instruction for 430 students in traditional, neighborhood public elementary school
- Achieved high growth in ELA and Math on State Performance Framework
- Achieved “Performance rating,” highest rating for schools in Colorado
- Decreased out of school suspensions and expulsions by over 60%
- Received nomination for Capturing Kids Hearts Showcase school in 2019

### **2012- 2017**

#### **CLARENCE FARRINGTON ELEMENTARY SCHOOL-Indianapolis, IN**

- Supervised high quality instruction for 670 students in traditional, neighborhood public elementary school
- Achieved high growth in ELA and Math on Indiana School Report Card in 2015 and 2014
- Recognized by IDOE for “Promising Practices” in teacher development and professional learning
- Established PBIS system and decreased out of school suspensions by over 90% in 3 years.

## **LEADERSHIP EXPERIENCE**

### **2019-20 Colorado Springs School District 11**

- Served as a mentor principal

**2016-17 Indianapolis Public Schools**

- Lead professional development for district leadership on community engagement and fundraising