School Discipline in Kentucky

An examination of school discipline in the Jefferson County Public School district

Kentucky Advisory Committee to the United States Commission on Civil Rights

June 2011

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Letter of Transmittal

Kentucky Advisory Committee to the
U.S. Commission on Civil Rights

Kimberly Tolhurst, *Delegated the Authority of the Staff Director*

The Kentucky Advisory Committee submits this report, *School Discipline in Kentucky—An examination of school discipline in the Jefferson County Public School district,* as part of its responsibility to study and report on civil rights issues in Kentucky. This report was adopted by a vote of 11 yes and 0 no.

An analysis of the disciplinary data and policies by the Kentucky Advisory Committee of the Jefferson County Public School System supports a conclusion that African American students are adversely impacted by school discipline. Although this finding by itself does not imply overt discriminatory action on the part of the Jefferson County Schools, it nevertheless highlights the need for vigilance on the part of the school district to help these students succeed. Clearly something is terribly amiss in the nation's societal structure for this tragedy to so severely and disproportionately affect African American students throughout the country.

Multiple factors outside the control of school districts, such as poverty, segregated schools, neighborhood environment, and family structure, play a role on a student's ability to function and succeed within the school system. These types of disadvantages disproportionately affect African American children in Jefferson County, thereby making their prospects for academic success far less likely than that for other children. Nevertheless, although there are many factors outside the control of the school system that contribute to problems faced by disadvantaged African American students in large urban areas, the public schools of our nation are still ultimately responsible for educating all students who walk through their doors.

The Kentucky Advisory Committee believes that with concerted efforts, schools have the opportunity to do better intervening and preventing many children who come from difficult, disadvantaged circumstances from dropping out of school and too often following an inevitable path to prison. It is not the job of the school district alone to do this, however. It is up to the general community to support the public school system in providing the necessary support services to allow children from disadvantaged circumstances to succeed in school.

Also as pointed out in this report, other similarly sized school districts face a similar challenge, such as the school districts serving the cities of Chattanooga, TN, Charlotte, NC, and Jacksonville, FL. The Kentucky Advisory Committee recommends that the Jefferson County Public Schools, as part of this process, consult with these and other urban school districts in a collaborative manner to learn of effective discipline policies that maintain safe and orderly schools while reducing the number of children removed from their normal school setting and suspended.

Respectfully,

J. Blaine Hudson, *Chairman*
Kentucky State Advisory Committee

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Introduction—
The U.S. Commission on Civil Rights and equal educational opportunity

The United States Commission on Civil Rights (Commission) has for its mission the study of issues relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin. Such directives include an examination of equal education opportunities.

In 1977 the Commission released its first report on equal education opportunity, a study of school desegregation efforts nationwide.[1] In the 1990s the Commission followed with a seminal 5-series report on the status of equal education opportunity in the country.[2] Following these initiatives, the Commission announced plans to examine school discipline practices during the 2011 fiscal year.

As part of the Commission, state advisory committees are constituted in each of the 50 states and the District of Columbia. These state advisory committees are charged with the responsibility to examine and report on civil rights issues in their states that are within the Commission's jurisdiction and report publicly on their findings and recommendations.

At a briefing before the chairs of the state advisory committees in the Commission's Southern Region, it was reported that African American and other minority children receive disproportionate discipline in the public schools. Stemming from these practices, African American children and other minority children are disproportionately placed into alternative education programs. The social isolation and placement of minority children into these programs in turn is correlated with a greater likelihood of dropping out of school, which in turn often leads to eventual future incarceration. It was also reported to the state advisory committee chairs that differences in discipline rates between African American and Latino children and white children are striking. African American and Latino students are three times more likely to be affected by exclusionary disciplinary practices compared to white students.[3]

As a result of the briefing, there was an expressed concern among the attending chairs that for too many minority school-age children—particularly those attending school in large urban areas, school discipline practices may have the unintended consequence to retard academic success and instead push too many children out of school and into the criminal justice system. This is an expensive alternative, as the annual average cost to house an inmate in prison in Kentucky approaches $30,000, not to mention the potential production loss to society by students who leave school early.

In concert with collaborating state advisory committees in Florida, Georgia, North Carolina, South Carolina, and Tennessee, the Kentucky Advisory Committee decided to examine the issue of school discipline in the state.[4] Similar to the studies by the state advisory committees in Florida, North Carolina, and Tennessee, the examination by the Kentucky Advisory Committee concentrated on one large urban school district in the state, the Jefferson County Public School district (JCPS). This report is a summary of the findings of the Kentucky Advisory Committee on school discipline and equal educational opportunity.

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[1] *Reviewing A Decade of School Desegregation: 1966-1975*, U.S. Commission on Civil Rights, 1977.

[2] The first report in the series, *Equal Educational Opportunity Project Series (1995),* discussed national trends in education generally and evaluated the history, performance, and activities of the U.S. Department of Education. The second report in the series, *Equal Educational Opportunities and Nondiscrimination for Students with Disabilities (1997)*, discussed educational opportunities for students classified as having learning disabilities. The third report, *Equal Education Opportunity and Nondiscrimination for Students with Limited English Proficiency (1997)*, examined educational opportunities afforded students with limited English proficiency and the development and implementation of educational programs appropriate for such students. The fourth volume in the series, *Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices (1999)*, analyzed the educational opportunities offered to minority students as they relate to mainstreaming, tracking, and instructional grouping practices. The last report, *Equal Educational Opportunity and Nondiscrimination for Native American Children (1999),* reported on educational opportunities for children attending schools on Indian reservations.

[3] Constance Curry, briefing before the Chairs of the Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee Advisory Committees, Atlanta, GA, Sept. 9, 2009.

[4] This report by the Kentucky Advisory Committee to the United States Commission on Civil Rights is a second study on equal educational opportunity. Its previous study examined the achievement gap between African American children and white children. See, report of Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Equal Education Opportunity: An Analysis of the Racial Achievement Gap in Kentucky Urban Schools,* January 2007, available at www. usccr.gov.

Background—
Poverty, racial segregation, and family environment are factors outside the control of school districts that can impact academic success

1. Family poverty is related to poor academic achievement

The correlation between poverty and low academic achievement is well-documented. Families experiencing financial hardship lack the resources necessary to meet basic needs such as food and shelter, and this has been shown to have a deleterious effect on academic success. Children who come from families with long-term financial difficulties are more likely to fail a grade, and poverty continues to play a role in educational outcomes into adolescence.[5]

In addition to difficult economic circumstances affecting the immediate family, impoverished communities can also impede academic success. Neighborhoods plagued with transient populations, high crime, and low rates of community investment, often lack the social supports and structures conducive to academic success. Urban centers often struggle with providing adequate funding to support after-school activities, effective mentoring programs, and community centers that are found in more affluent areas. This lack of adequate community support leaves many youth with idle time and insufficient supervision in which they create networks to compensate. These networks involve deviant grouping, e.g., gang involvement, which increases their probability of failing in school and becoming involved in the juvenile justice system.

A study by the Rand Corporation found neighborhood poverty to be a very strong predictor not only of basic skills acquisition but also of behavior problems among young children — problems that impede school readiness. Children in poor neighborhoods are significantly more likely to exhibit both anxious and aggressive behavior, even regardless of parenting behavior. Authors of the study concluded that living in a poor neighborhood may be particularly stressful for young children.[6]

Further research suggests that the impact of low-income on academic success is more pronounced in large urban areas, with higher concentrations of poor children in urban schools magnifying the risk of academic failure. These children are more likely to drop out of school, be arrested, and become unmarried parents. These negative consequences not only harm the individual but also society through higher crime and unemployment rates and a lower quality of life.[7]

Sadly, in the United States, poverty disproportionately affects minority children. For Hispanic and African American children, 1 out of every 4 children lives in poverty, compared to just 1 in 10 white children.[8] Responses from Congress have attempted to mitigate this disadvantage of poverty through the funding of programs such as Title I educational grants under the Elementary and Secondary Education Act (ESEA)[9] as amended by the No Child Left Behind Act (NCLB).[10] Title I grants under NCLB provide additional funds to schools with high levels of poverty. Such funding is used to hire additional teachers, expand school tutoring programs, and parental involvement programs. In 2008-09 school year JCPS received nearly $10 million in Title I funding, and used this additional federal funding to augment educational programs in more than three dozen of the district's schools. In the 2008-09 school year, two-thirds of JCPS schools received some level of Title I support.[11]

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[5] The U.S. General Accountability Office has published a number of reports citing the connection between poverty and academic performance. *See inter alia*, General Accountability Office, GAO-05-211, *Title I Funding*, 2004.

[6] Sandraluz Lara-Cinisomo, Anne R. Pebley, Mary E. Vaiana, Elizabeth Maggio, Mark Berends, and Samuel R. Lucas, "A Matter of Class," the Rand Corporation, Fall 2004, at <http://www.rand.org/publications/ randreview/issues/fall2004/class.html #src= mobile (last accessed Jan. 25, 2011).

[7] Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Equal Education Opportunity: An Analysis of the Racial Achievement Gap in Kentucky Urban Schools,* January 2007, p. 8.

[8] U.S. Department of Commerce, Bureau of Census, *Census of Population and Housing-Population Estimates*, last revised Apr. 22, 2010 (hereafter cited as Census).

[9] U.S.C. Pub.L. No. 89-10.

[10] No Child Left Behind Act of 2001, 20 U.S.C. § 6319 (2008).

[11] U.S. Department of Education, Common Core of Data, 2008-09 school year.

The Nation's Tragic Educational Dilemma

Discipline ⇨ Isolated Alternative School Placement ⇨ School Dropout ⇨ Incarceration

One in 14 teens ages 16 to 19 is a school dropout. Dropping out increases the risk of unemployment, arrest, and incarceration

Source: Children's Defense Fund.

2. Racial segregation can impede school success for many minority children

Well before the *Brown* decision in 1954, education, sociology, and psychology researchers had been studying the impact of racial segregation on successful school performance. Relying upon such research, it was the argument of the NAACP to the Supreme Court in the Brown case that minority children in highly segregated schools perform at a substantially lower level than minority children in integrated schools. There is evidence that minority students, particularly African American students, achieve higher levels of education, experience more successful employment, and have higher levels of self-employment when exposed to racially balanced schooling.

As reported by the Kentucky Advisory Committee in its earlier study on academic achievement, research shows that minority children in highly segregated schools perform at a substantially lower level then minority children in more integrated schools.[12] In recent years, a number of studies using more sophisticated statistical techniques have demonstrated that both racial and socioeconomic level have a joint negative impact on academic success.[13]

Notwithstanding the benefits of integration, racial integration in Kentucky schools is a relatively recent phenomenon. The first state constitution permitted slavery, and slavery remained legal in Kentucky until passage of the Thirteenth Amendment in 1865.[14] Following the Civil War, Kentucky enacted a series of laws to enforce racial segregation throughout the state and in the public schools.[15] On May 17, 1954, the U.S. Supreme Court in Brown v. Board of Education overturned the *Plessy* decision, and with it a 60-year legacy of racial segregation in the Nation's schools.[16]

The Louisville Public Schools officially desegregated in September 1956, but by using a "freedom of choice" plan only a few students were affected and the schools remained essentially segregated. The Louisville school district would first become involved in a court action to desegregate schools in 1971, when several civil rights organizations filed a lawsuit in court asking that the Louisville,

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[12] Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Equal Education Opportunity, An Analysis of the Racial Achievement Gap in Kentucky Urban Schools*, January 2007.

[13] Russell W. Rumberger and Gregory J. Palardy, *Does Resegregation Matter? School Resegregation: Must the South Turn Back* (Chapel Hill: University of North Carolina Press, 2005).

[14] The Emancipation Proclamation of 1863 only freed slaves in the states that seceded from the Union.

[15] In 1873 a new state statute made it unlawful for a black schools and white schools to be close in proximity. In 1891 a state statute made it unlawful for black and white children to attend the same school. In 1915 a state statute mandated that no white children may attend any graded common school for 'colored' children. In 1928, a state statute prescribed separate textbooks for white and 'colored' children, and in 1934 a state statute expressly ordered all schools, public and private, to be racially segregated.

[16] *Brown v. Board of Education*, 347 U.S. 483 (1954).

Jefferson County and Anchorage school systems be merged. At the time of the suit there large concentrations of African Americans in the city school district and extremely low concentrations in the other two districts, and the petitioners felt that this created conditions similar to that of segregation. In 1974, the district court ordered the merger of the Louisville and Jefferson County school districts.[17]

In the late 1960s and 1970s court decisions in desegregation cases helped end long-established practices of segregation and inequality in the nation's schools. Since that time, however, there has been a growing resistance to eliminate the remaining vestiges of segregation with conscious race-based remedies. In 1974, the Supreme Court began to set limits on integration plans to address the remaining problems of segregation and inequality in the nation's schools. More recent court decisions have further curtailed the ability of school officials to proactively engage deliberate policies to end racial segregation within school districts.[18] In reviewing school desegregation cases in the 1950s and 1960s, Justice Clarence Thomas had noted in an earlier case, "Resistance to *Brown I* produced little desegregation. By the time [the Court] decided *Green*...our impatience with the pace of desegregation and with the lack of a good-faith effort on the part of school boards led [the Court] to approve such extraordinary measures."[19]

3. Family structure plays a role in academic success

In the past three decades, family life has undergone dramatic transformation. One of these factors is the rise in single-parent households. Before they reach the age of 18, a majority of all U.S. children are likely to spend at least a significant portion of their childhood in a one-parent home. Some research posits that a child's ability to adapt to classroom routines appears to be influenced by his or her parents' marital status. For example, it has been reported that three- and four-year-old children growing up with their own married parents (or in an "intact" family) are three times less likely than those in any other family structure to experience emotional or behavioral problems such as attention deficit disorder. In addition, according to some research, the ability of children to perform in basic subject areas and at their grade level is weaker for those children not living with their own married parents.[20]

In addition to poverty, family environment is advanced by some researchers as another critical factor outside the control of the school system that plays a role in the educational success of children. Some research suggests that children living with their own married parents have fewer behavioral problems. In addition, according to some research, the ability of children to perform in basic subject areas and at their grade level is weaker for those children not living with their own married parents. This research suggests that a lack of income only explains some of the academic outcomes experienced by underachieving children.[21]

Apart from the affect on academic performance, recent studies also show that when parents increase their involvement in their child's school activities, such as with increased visits to the school and by encouraging educational progress at home, problem behaviors at school decrease. Moreover, parental involvement has also been shown to be related to an increase in so-called pro-social skills such as cooperation and self-control.[22] Some education research suggests that contemporary education programs fail because they assume a model of intellectual development that does not seem to be viable. Traditional compensatory education programs may fail .not because intellectual capacity is inherited but rather

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[17] Haycraft v. Board of Education of Jefferson County, 585 F2d 803.

[18] John Charles Bolger and Gary Orfield, *School Resegregation—Must the South Turn Back*, (Chapel Hill: The University of North Carolina Press, 2005.) The Jefferson County-Louisville school system has been part of this activity. In 2007 the Supreme Court overturned the legality of the school district's attendance program that was partly based upon race. *Meredith v. Jefferson County Board of Education*, 127 S. Ct. 2738 (2007).

[19] *Missouri v. Jenkins*, 515 U.S. 70, 125 (1995)(Thomas, J., concurring).

[20] Center for Marriage and Families, "Family Structure and Childrens' Educational Outcomes," Research Brief No. 1, November 2005.

[21] Ibid.

[22] Nermeen E. El Nokali, Heather J. Bachman, and Elizabeth Votruba-Drzal, "Parent Involvement and Children's Academic and Social Development in Elementary School, Child Development, May/June 2010, pp. 988-1005.

because intellectual capacity is influenced by family factors that exert their greatest influence during early childhood and it is very difficult to change a child's intelligence aptitude once he reaches school age.[23]

The effectiveness of some charter schools in maintaining orderly schools in difficult urban environments attests to the positive influence of parents on school discipline. As parents necessarily make a proactive effort to enroll their children in charter schools, all children attending charter schools have parents actively engaged in their education—a situation that does not apply to regular, traditional schools. That involvement can pay dividends regarding orderly schools and school discipline.[24]

4. Optimal discipline polices exist that allow for both orderly schools and academic success even under difficult circumstances

Regardless of the problems and challenges that children bring to school, public schools are expected to educate the children who come to their schools and to operate schools in an orderly environment. In recent years there appears to have been a greater reliance on reactive approaches to discipline. However, empirical research on discipline methodology has not demonstrated the effectiveness of reactive discipline to decreasing future behavior problems or effective in motivating students toward academic success, particularly children from difficult home environments. Moreover, there is an emerging concern that certain specific, inflexible reactive school discipline policies may contribute to pushing a large percentage of youth out of school.

It seems well established that there is a relationship between the age or grade at onset of school discipline problems and increased likelihood of academic failure and involvement with juvenile justice in adolescence. Early behavioral problems are predictive of future disengagement and failure; therefore it is important for engaged intervention discipline policies to first focus on early identification and intervention. Education research seems to be coalescing around support for a specific set of effective school discipline policies that minimize academic failure, school dropout, and involvement in the juvenile justice system that oftentimes vary from the generally practiced reactive discipline. It is now thought that effective discipline policies need widespread engagement. Typically, engaged intervention discipline encompasses: (1) universal screening, (2) data-based decision making, (3) the provision of support services for at-risk students, and (4) the teaching replacement behaviors.

Universal screening is a process that takes place at least once a year where all students are rated on their level of problem behavior in order for schools to identify students who are at-risk and in need of additional supports. Data-based decision making involves matching students with necessary and appropriate supports according to the data which highlights problem areas. Schools must have varying support systems available for students who are identified as at-risk. Finally, engaged intervention discipline includes replacement behavior instruction for students with problem behavior.

One proactive model of effective discipline is positive behavior intervention and supports (PBIS). PBIS is a three tiered model that at the school-wide level teaches and recognizes positively stated expectations to all students. At the school level teachers and administrators agree upon discipline problems that will be handled in the classroom and those that are severe enough to be referred to the office to promote consistency and keep students in the classroom as much as possible. Students who do not respond to school-wide PBIS according to universal screening and examination of office discipline referral data receive other supports such as mentoring, conflict resolution groups, and counseling.

While the engaged intervention approach such as PBIS are preventative models, it is typically necessary for schools to also have a reactive discipline plan which outlines consequences for violations of school discipline policies. Varying violations and varying possible consequences oftentimes complicate this process, but exclusionary practices such as zero tolerance, suspension, expulsion, and transfer to disciplinary alternative education programs as often implemented do not teach replacement behaviors or prevent future violations.

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[23] See inter alia, David Armor, *Family Policy and Academic Achievement*, Chapter 6, *One Percent for the Kids, New Policies, Brighter Futures for America's Children,* by Isabel V. Sawhill, The Brookings Institution, 2003.

[24] Marcus A. Winters, "The Life-changing Lottery," City Journal, Summer 2010, at http://www.city-journal.org/2010/20_3_ democracy- prep.html (last accessed January 25, 2011).

The Jefferson County Public School District faces many educational challenges

1. The Jefferson County Public School District is the largest school district in the state and 60 percent of children in the district come from low-income families

JCPS is the largest school district in the State of Kentucky, with an enrollment of about 99,000 students. The district operates 155 schools; this includes 89 elementary schools, 23 middle schools, 18 high schools, 9 special education schools, and 16 other schools. JCPS also has a number of special schools, which include technical centers and residential day schools. The district also operates discipline referral alternative schools, and three of the sixteen special schools in the district are discipline referral alternative schools.[25]

Though JCPS is a district where the majority of students are white, it has the state's largest number of minority students. The district also has the largest proportion of non-white students. Throughout the state, the median percentage of minority students in school districts is about 4 percent. In contrast, minority students are 46 percent of total enrollment in JCPS.[26] Among non-white students in JCPS, African Americans are the predominant minority group with an enrollment of about 33,000 students, which is about 36 percent of the total student body. Hispanic students are the only other significant non-white group of students, and this group is less than 5 percent of the total enrollment. (See Table 1.)

Approximately 20 percent of all JCPS students, or 1 of every 5 children attending school in the district, lives in poverty.[27] The high percentage of poor students attending public schools in JCPS is not substantially different from other similarly sized urban school districts in the South. For example, the poverty rate for students in the Jacksonville, FL, school district is 34 percent; and it is 25 percent for the students in the Chattanooga, TN, school district. In contrast to these three districts, the poverty rate in the Charlotte-Mecklenburg County (NC) schools is notably lower, at 10 percent.[28]

The absolute poverty measure, however, is only one indicator of financial resources available to families with school-age children. A majority of students in JCPS come from low-income families as classified by eligibility for free and reduced lunch. Free lunch services are provided to families with incomes at or below 130 percent of the poverty level; while reduced-price lunches are provided to families whose income is between 130 and 185 percent of the poverty level. Almost 60 percent of JCPS students receive free or reduced lunch services.[29]

2. Though no longer under a Court School-Desegregation Order, schools in JCPS are highly segregated along racial lines

Despite segregation being formally eliminated in Louisville schools in 1956, racial isolation of students in the Louisville public schools reached a 10-year in the 1971-72 school year.[30] Reacting to this persistent segregation, several organizations filed a lawsuit asking that the Louisville, Jefferson County and Anchorage school systems be merged. At the time of the suit there was a large concentration of African Americans in the city school district, while the other two districts were almost exclusively white.

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[25] Jefferson County Public School District, at http://www.jefferson.k12.ky.us/schools/index.html (last accessed Mar. 6, 2010).
[26] KY Department of Education, School District Profiles, at http://www.education.ky.gov (last accessed June 3, 2010) (hereafter KY Department of Education).
[27] Ibid., children ages 5-17.
[28] Data received upon request from Duval County Public Schools/Jacksonville (DCPS), Hamilton County Schools/Chattanooga (H-CS), and Charlotte-Mecklenburg County Schools (C-MCS) for the 2008-2009 school year, and reported in: Florida Advisory Committee to the U.S. Commission on Civil Rights, *School Discipline in Florida: Discipline practices leave many children behind*, November 2010; *School Discipline in North Carolina: School discipline in Charlotte-Mecklenburg County schools falls disproportionately on African American students*, forthcoming; and, *School Discipline in Tennessee: Are School Discipline Practices Pushing Too Many African American Children out of School?*, forthcoming.
[29] Kentucky Department of Education.
[30] Kentucky Commission on Human Rights, *Louisville School System Retreats to Segregation*, March 1972.

Table 1: Student enrollment in the Jefferson County Public School District by race and ethnicity for the 2007-08 school year

	Number	Percent
White—non-Hispanic	49,787	54.0
African Amer--non-Hispanic	32,751	36.0
Hispanic	4,218	5.0
Other	5,300	6.0
Total	92,056	100.0

Source: Kentucky Advisory Committee from Kentucky Department of Education data.

A merger and desegregation plan was ordered, and the plan included mandatory busing as well as racial guidelines for school assignments. Mandatory busing fell most heavily on African American students, with the initial plan ordering African American students be bused 10 of their 12 years in school while white students were to be bused 2 of their 12 years. The racial guidelines for school assignment saw several revisions in the ensuing years, and a mandatory 15-50 percent African-American population in all schools was established in 1996.[31]

Although the segregation order was lifted in 2000, JCPS continued to maintain the 15-50 percent guideline for most schools. In 2002, a white parent filed a lawsuit on behalf of her son, who she claimed was denied enrollment in a school because of race. In June 2007, the Supreme Court handed down a verdict in favor of the plaintiff, saying that the school district isolated constitutional guarantees of equal protection by using race as a factor in the assignment of students to schools.[32]

In the aftermath of the Supreme Court's decision and despite efforts of JCPS to maintain some degree of racial integration, the district remains highly segregated at the elementary school level. The most commonly used measure of segregation is the Dissimilarity Index (Index). An Index higher than 60 is generally considered to be an indicator of a very high level of segregation. Currently, the Index for the elementary schools in JCPS is 59.[33]

The high level of racial segregation in JCPS is not unlike that of other urban school districts in the South of similar size and racial composition. For example, the Charlotte-Mecklenburg County (NC) school district has a segregation Index of 78, higher than JCPS. The segregation Index of elementary schools in the Chattanooga-Hamilton County (TN) school district, at 65, is also very high. The elementary public schools in Jacksonville-Duval County (FL) are slightly less segregated than JCPS with a segregation index of 50, a level that nevertheless still indicates a high level of racial segregation in the school district.[34] (See Figure 1.)

Complicating racial integration in modern times is the changing demographic landscape since the Brown decision. At the time of Brown, the United States had two major racial groups. Whites were numerically dominant, representing some 88 percent of the total population. African Americans made up about 10 percent. In 2007, more than 40 percent of public school students are considered to be part of a racial or ethnic minority group.[35]

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[31] Newburg Area Council v. Board of Education of Jefferson County, Case No. 7045 and 7291. In 2000 the Jefferson Public County School district was decreed to have attained "unitary status" with respect to school integration, and federal court jurisdiction over the school district was ended.

[32] *Meredith v. Jefferson County Board of Education,* 127 S. Ct. 2738 (2007).

[33] The formula for the Index of Dissimilarity is $\frac{1}{2} * \Sigma \left| b_i/B_i - w_i/W_i \right|$.

[34] Dissimilarity Indices computed by the Southern Regional Office, U.S. Commission on Civil Rights, from data received upon request from Duval County Public Schools/Jacksonville, Hamilton County Schools/Chattanooga, and Charlotte-Mecklenburg County Schools for the 2008-2009 school year. See, Florida Advisory Committee to the U.S. Commission on Civil Rights, *School Discipline in Florida: Discipline practices leave many children behind*, November 2010 (hereafter Florida School Discipline report); *School Discipline in North Carolina: School discipline in Charlotte-Mecklenburg County schools falls disproportionately on African American students*, forthcoming (hereafter North Carolina School Discipline report); and *School Discipline in Tennessee: Are School Discipline Practices Pushing Too Many African American Children out of School?*, forthcoming (hereafter Tennessee School Discipline report.

[35] U.S. Commission on Civil Rights, *Becoming Less Separate: School Desegregation, Justice Department Enforcement, and the Pursuit of Unitary Status*, September 2007, p. 9.

Figure 1: Dissimilarity Indices comparing school integration rates of JCPS with Charlotte-Mecklenburg County Schools (C-MCS), Chattanooga Hamilton County Schools (C-HCS), and Jacksonville-Duval County Public Schools (J-DCS)

Source: Kentucky Advisory Committee from JCPS, C-MCS, C-HCS, and J-DCS data.

3. Educational resources in JCPS are high compared to other school districts in the state

Among school districts in the state, JCPS has a favorable student-to-teacher ratio. In the 2008-09 school year, JCPS employed 6,048 teachers. That allowed for a student-to-teacher ratio of 15.2:1. That rate is slightly higher than the average for all of the school districts in the state, which is 14.8:1.[36]

In addition, in general teacher salaries in JCPS are higher than the state average. The average teacher salary in JCPS is about $53,800, while the average salary for all teachers in Kentucky is about $47,000.[37] Regarding classroom experience, the average years of teaching experience is similar for teachers in JCPS compared to teachers in the state. Additionally, approximately 70 percent of all JCPS teachers have their Master's degree or higher, which is similar to the state average of 73 percent.[38]

The average annual per-child expenditure by JCPS is substantially higher than the state average. On average, JCPS spends $12,107 per student. That is almost $3,000 higher than the national average of $9,666 and about $2,000 more per student than the state average.[39] The difference between JCPS and the state average is likely attributable in large measure to higher teacher salaries as well as higher transportation costs. JCPS has a district-wide school choice option and operates an extensive bus service to allow for student choice. High per-student spending is also affected by re-investment in the school district's infrastructure. The district is an older school district and many of its buildings are more than 100 years old. As a result, the district is in the midst of upgrading and replacing its older obsolete facilities and buildings.

4. Students in Jefferson County perform poorly relative to other school districts in Kentucky

NCLB mandates that all school districts and schools be held accountable for ensuring that every child performs at a proficient level.[40] NCLB requires that all students reach a "proficient" level of achievement, as measured by performance on state tests, by the spring of 2014. School districts and schools are also required to make Annual Yearly Progress (AYP) toward meeting this goal. Title I of NCLB requires that states hold schools and districts accountable for making AYP with all students

[36] KY Department of Education.
[37] Ibid.
[38] Ibid.
[39] Jefferson County Public Schools, District Report Card, 2007.
[40] No Child Left Behind Act of 2001, 20 U.S.C. § 6319 (2008).

reaching proficiency. If a school or district fails to make AYP for two consecutive years, it must be identified for improvement. The law specifies consequences for schools receiving Title I funds that fail to make AYP, and additional sanctions can be added if schools or districts identified for improvement continue to fail to make AYP for several consecutive years.

More so than in most other school districts in the state, schools in JCPS are struggling to meet their AYP goals. Students in JCPS scored substantially lower than students statewide on the Kentucky Core Content Test (KCCT). In reading, 65 percent of JCPS elementary students tested at the proficient level compared to 74 percent statewide. At the middle school level, 58 percent of JCPS students tested at the proficient level, compared to 67 percent statewide. In mathematics, 62 percent of elementary students and 50 percent of middle school students in JCPS scored at the proficient level, compared to 70 percent of elementary students and 61 percent of middle school students statewide.[41]

Apart from classroom academic success, JCPS also struggles with school completion success. Compared to the Kentucky state average, JCPS has a significantly lower graduation rate. In 2008 the JCPS graduation rate was 75 percent compared to the Kentucky state median of 88 percent.[42] This graduation rate is defined by the number of 12th grade students who completed high school within 4 years divided by the number of completers plus the number of dropouts from each grade of high school for that 12th grade class. The JCPS dropout rate is also significantly higher than the state average. In 2008 the JCPS dropout rate was 6.2 percent.[43] The same year the Kentucky median dropout rate was 1.7 percent. The JCPS dropout rate is over 3 times higher than the Kentucky median dropout rate.[44]

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[41] Kentucky Department of Education, School Report Card, at < http://applications.kde.state.ky.us/schoolReportCardArchive> (last accessed Jan. 19, 2011).
[42] Ibid.
[43] Ibid.
[44] Dropout numbers are calculated by dividing the number of students identified as dropouts by the Fall membership growth from the Growth Factor Report.

School discipline in the Jefferson County School District is disproportionately meted out to African American students

1. JCPS discipline policies employ a "zero-tolerance" standard, but allow for individual schools to develop local rules

The stated purpose of the discipline policy of JCPS is to insure student safety and promote independence toward school and community citizenship. The student code of conduct is a district-wide policy, which is distributed to students and parents. In addition to the district-wide policy, schools are encouraged to develop local school rules which complement the district-wide policy. Under the student code of conduct, serious or chronic student behavior offenses can be disciplined by: (1) in-school suspension, (2) out-of-school suspension, (3) alternative education placement, or (4) expulsion.[45]

Under the JCPS student code of conduct certain offenses are designated as "zero-tolerance" offenses; these offenses automatically result in a suspension or a removal of the student from the school. Zero tolerance offenses include the use or possession of tobacco, drugs, or alcohol, and acts of violence, aggression or assault.

In lieu of suspending or expelling a student from school, JCPS policy allows for students that commit serious discipline offenses to be assigned to an alternative school setting. Alternative placements to the alternative schools are made and monitored by the assistant director of student relations. These alternative education settings are outside of the student's regular school and are highly structured environments. Out-of-school discipline placements may also be made for students arrested for a felony offense in the community.

In JCPS, there are three discipline referral alternative placements commonly known as alternative schools. Two of the schools are high schools, and one is a middle school. Students who are assigned to an alternative school for discipline reasons are given explicit criteria for re-entry into the mainstream school. These criteria can be in the form of duration of placement or improved behavioral benchmarks. According to the district, these alternative education programs adhere to all district educational standards and provide students with lower student-teacher ratios. In addition to the academic curriculum there is instruction in behavioral and social skills, and social services are provided to students.[46]

2. African American Students in JCPS are disciplined and placed into alternative education settings at a significantly higher rate than white students

a. African American student students receive a significantly disproportionate number of disciplinary referrals

Similar to the discipline practices of most school districts, Jefferson County School District's discipline policy appears to be more reactive than positive-based. As noted previously, education research regarding effective discipline cautions against the use of reactive discipline policies because they often result in school disengagement and negative student outcomes for those caught in the discipline track. The sheer numbers of discipline suggest a high level of discipline activity by the district.

Aside from the high level of discipline in JCPS, African American students are adversely affected. Not only do African American students receive, on average, twice the number of office discipline referrals as white students, the collective number of discipline referrals suggest that on average each African American student in JCPS is being referred for disciplinary reasons two times each school year.

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[45] School Code of Conduct, Jefferson County Public School District.

[46] Not all alternative education placements are for discipline reasons. JCPS alternative programs fall into three categories: state agency schools, special education schools, and discipline referral alternative education schools. The state agency alternative schools in JCPS serve students from Jefferson County and other districts in Kentucky. Other alternative placement schools are for non-traditional students who require specialized programming, such as students with severe disabilities.

Table 2—Comparison of white and African American student discipline rates in JCPS, 2008-09 school year

	Percent of all students	Percent of all discipline referrals	Percent of all out-of-school suspensions	Pct of all alternative education disciplinary placements
Whites	54	32	31	21
African Americans	36	61	63	74

Source: Kentucky Advisory Committee from Jefferson County Public School district data.

In JCPS during the 2008-09 school year, there were 111,270 teacher referrals of students for disciplinary reasons. Of these, African American students received 67,874 discipline referrals, while white students received 35,606 discipline referrals.[47] These numbers reflect a significant and disproportionate level of discipline referrals being meted by to African American students in JCPS. Whereas African American students are just 36 percent of the total student body, they received 61 percent of all district discipline referrals. This is a discipline rate that is almost twice that of their proportion of the total student population.

In contrast, white students, who are 54 percent of all students, received only 32 percent of all discipline referrals. Statistically, the likelihood of this racial imbalance in discipline rates occurring by chance is less than 1 in 1,000.[48]

b. African American student students receive a significantly disproportionate number of suspensions

Similar to the disproportionate numbers of office discipline referrals, African American students in JCPS also receive a disproportionate number of out-of-school suspensions. During the 2008-09 school year there were a total of 16,096 out-of-school suspensions meted out by the district. White students received 5,240 suspensions, while African American students received 8,692. This is a rate that is 50 percent higher for African American students than that for white students.

These numbers translate into just 31 percent of all out-of-school suspensions being given to white students, though they are 54 percent of the student body. In contrast, African American students received two-thirds of all out-of-school suspensions, though they comprise only about one-third of the student population. Similar to the above noted racial disparity in overall disciplinary actions, the observed difference along racial lines for out-of-school suspensions is statistically significant, with the likelihood of this difference between the two groups of students occurring randomly less than 1 in 1,000.[49]

c. African American students in JCPS are disproportionately placed into alternative school programs for disciplinary reasons

Referral to an alternative education schools is initiated by the student's regular, mainstream school. In order to be placed into an alternative education school, the student goes through an assessment process. As part of this process teachers, school administrators, and the assistant director of alternative education meet with the student and his/her family to discuss the decision to place the student in an alternative school setting.

During the 2008-09 school year, there were 902 students placed in an alternative school discipline setting. Of these, just 189 were white students, 21 percent of the total. In contrast, 667 African American students were sent to an alternative education school for discipline reasons, which was 74 percent of all alternative school placements.

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[47] Jefferson County Public Schools, data provided to the Kentucky Advisory Committee to the U.S. Commission on Civil Rights, Feb., 18, 2010, (hereafter JCPS data).

[48] JCPS data; $X^2 = 12{,}413$, $p = 0.0001$.

[49] JCPS data; $X^2 = 2{,}507$, $p = 0.0001$.

Figure 2—Comparison of Discipline Alternative Education Placements in JCPS for African American students and white students

Source: Kentucky Advisory Committee from Jefferson County Public School district data.

These numbers display an extreme disparity along racial lines when examined in the context of district enrollment. While only 3 of every 1,000 white students are placed into an alternative education setting for discipline reasons, 20 of every 1,000 African American students are placed into this type of a program. This means that African American students are nearly 7 times more likely to be referred to an alternative school than white students. This difference is statistically significant as the likelihood of this type of racial imbalance occurring at random is less than 1 in 1,000.[50]

3. Discipline practices in JCPS are similar to those practiced by school districts with similar challenges

To further understand discipline policy and practices in Louisville area schools, the discipline practices of JCPS were contrasted with three other county-wide urban school districts in the South with similar enrollments and racial demographics: Charlotte-Mecklenburg County School District (C-CMS), Chattanooga-Hamilton County School District (C-HCS); and Jacksonville-Duval County School District (J-DCS).[51]

a. In all four school districts African American students received discipline referrals at a rate far disproportionate to their proportion of the student population

In JCPS, on average, there is one discipline referral for every student enrolled in the school district. Among two of the three comparison districts, both the Jacksonville-Duval County school district and the Chattanooga-Hamilton County school district had a similar 1:1 discipline referral ratio. However, overall discipline referral rates in the Charlotte-Mecklenburg County school district were one-half the rate, averaging one discipline for every two students.[52]

Regardless of the rate of discipline, however, in all four school districts African American students receive discipline referrals at a rate far disproportionate to their proportion of the student population. For example, as previously noted in this report African American students in JCPS are just 36 percent of the total student body yet they receive 61 percent of all district discipline referrals.

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[50] JCPS data; $X^2 = 514$, $p = 0.0001$.

[51] The Charlotte-Mecklenburg County School District has an enrollment of about 135,000 students; African Americans are about 33 percent of total enrollment. The Chattanooga-Hamilton County School District has an enrollment of about 45,000 students; African Americans are about 34 percent of total enrollment. The Jacksonville-Duval County School District has an enrollment of about 123,000 students; African Americans are about 43 percent of total enrollment.

[52] For discipline referral numbers in Jacksonville-Duval County School District, see Florida School Discipline report. For discipline referral numbers in Chattanooga-Hamilton County School District, see Tennessee School Discipline report. For discipline referral numbers in Charlotte-Mecklenburg County School District, see North Carolina School Discipline report.

Figure 3: African American student population percent and their percent of out-of-school suspensions for Charlotte area schools, Chattanooga area schools, Louisville area schools, and Jacksonville are schools

Source: Kentucky Advisory Committee from C-CMS, C-HCS, JCPS, and J-DCS data.

Similarly in C-CMS, African American students are 34 percent of the total student body yet they receive 68 percent of all district discipline referrals. In C-HCS African American students are 33 percent of the total student body yet they receive 57 percent of all district discipline referrals.[53] Throughout the South, African American students receive an inordinately disproportionate amount of the discipline that is being administered by the school districts.

b. In all four school districts African American students receive out-of-school suspensions at a rate far disproportionate to their proportion of the student population

The four comparison county school districts administer out-of-school suspensions at a generally similar rate, but regardless of the district African American students are adversely affected. In JCPS, the rate of out-of-school suspensions is 16 for every 100 students. That rate is similar to the Chattanooga area and Jacksonville area schools, where the out-of-school suspension rates are 14 per 100 students and 10 per 100 students respectively. The Charlotte area schools have the highest suspension rate among the four school districts, 26 out-of-school suspensions for every 100 students.[54]

It should be noted, however, that the mere presence of disproportionate discipline against on particular group of students in and of itself does not necessarily imply discriminatory behavior. Schools have an obligation to provide a school environment that is safe and orderly and in which students can effectively learn and develop social skills that will benefit society. Nevertheless, the observed discipline practices in all comparison school districts have a disparate impact on African American students.

In the Charlotte area schools (C-CMS), African American students are 34 percent of the student population and receive 76 percent of all out-of-school suspensions.[55] In the Chattanooga area schools (C-HCS), African Americans 33 percent of the total enrollment, yet receive 61 percent of all out-of-school suspensions.[56] Finally, in the Jacksonville area schools (J-DCS), African American students are only 43 percent of the total enrollment, yet they receive 73 percent of all out-of-school suspensions.[57]

This pattern of racial disparities continues to be observed in discipline placements into alternative education settings. As previously reported, 74 percent of all students in JCPS placed into an off-site alternative education setting are African American students. In the Charlotte area schools, Chattanooga area schools, and Jacksonville area schools, the rates are 76 percent, 83 percent, and 83 percent respectively.

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[53] Tennessee School Discipline report, p. 15; North Carolina School Discipline report, p. 13.
[54] Tennessee School Discipline report, p. 16; North Carolina School Discipline report, p. 14; and Florida School Discipline report, p. 18.
[55] North Carolina School Discipline report, p. 15.
[56] Tennessee School Discipline report, p. 17.
[57] Florida School Discipline report, p. 19.

Solicited opinions of persons outside the district suggest that school discipline practices may be pushing many children out of school; JCPS officials disagree

1. Solicited opinions of persons outside the school system assert that school discipline policies and practices put too many children at risk to leave school

The Kentucky Advisory Committee solicited opinions of persons outside the school district from a variety of perspectives about school discipline practices. Most persons interviewed asserted that school disciplinary practices in JCPS served to push too many disadvantaged children out of school and toward eventual involvement with the criminal justice system. Criticism of JCPS included poor discipline policies and the ineffectiveness of alternative education programs.[58]

For example, Kathryn Wallace, education director of the Kentucky NAACP, said many African American students in the district are sent to alternative education programs for minor offenses. "A significant percentage of children in alternative settings are African American boys. A high percentage of suspensions in Jefferson County schools are also African American boys, and many are placed in alternative education programs for…cursing and absences."[59]

Pastor Jerry Stephenson, with the School Choice Scholarship, concurred with Kathryn Wallace. "These (students) are being suspended and put into alternative schools that is nothing more than a direct line into the prisons… The disproportionality of African American children failing in the public schools is the civil rights issue of the 21st Century. The hurdle is institutional racism that correlates to education which leads many African American students to drop out and end up in the juvenile justice system, jails and prisons."[60] Phil Moffett, also with the School Choice Scholarship, said: "In Jefferson County, African Americans have just a 10 percent chance of graduating high school and performing on grade level when they graduate. Chances for success are low for these students. I cannot help but think that ultimately these students will end up in jail or prison at some point in their lives."[61]

Rodger Noe, Director of Audubon Youth Detention Center, was critical of JCPS' discipline referral alternative education schools. He said that most all of the youth sent to the Youth Detention Center come from alternative discipline referral programs. "African American youth are seen as high risk… Most of these youth come from alternative education schools. Overall the recidivism rate is much higher for African American youth than white youths."[62]

Wallace expressed a similar comment, and lamented poor staffing at the district's alternative education program schools. "Students are not expelled in Jefferson County Public Schools. Instead, they are sent to alternative settings. They are housed there. The teachers are not teaching them there…. They need to be in a place where teachers are able to teach them."[63]

In addition to blame being placed on the Jefferson County Public School district, persons interviewed also attributed part of the problem to factors outside the control of the school system. These identified factors included the community and family environment from which the students come, racial segregation of the schools, and the teacher seniority system.

Dr. Terry Holliday, Commissioner of the Kentucky Department of Education commented about problems in school often begin before the child enters school. Dr. Holliday said, "low socio-economic status in the community is an important factor for student success. The problem of low achievement often

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[58] Interviews were conducted with a selection of individuals to obtain a balanced perspective on the issue from a spectrum of political and social viewpoints.

[59] Kathryn Wallace, Education Director, Kentucky NAACP, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, Apr. 19, 2010 (hereafter cited as Wallace interview).

[60] Jerry Stephenson, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, Apr. 19, 2010 (hereafter cited as Stephenson interview).

[61] Phill Moffett, Director, School Choice Scholarship, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, Apr. 19, 2010.

[62] Rodger Noe, Director, Audubon Youth Detention Center, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, Apr. 12, 2010.

[63] Wallace interview.

begins before the student enters the school system, and involves the educational level of the mother and single parenthood."[64]

Pastor Stephenson added, "Most African American students come from failing communities and for many families that is multi-generational experience. In many of these communities you have three to four generations of mothers who have dropped out of school, and this problem affects in an unbelievable fashion the school learning environment for the child."[65]

Wallace stated that while it is clearly true that *de jure* segregation has ended, many schools and classrooms remain in fact segregated, and educational opportunity is still not equal for all races. "The school board says that school segregation is no longer an issue, but there are several schools in Jefferson County that are ranked and selective in their admissions. In those schools that are integrated, and while it may be true that the schools are desegregated the classrooms remain segregated. There is a very small percentage of minority students in advanced placement and honors programs. Minority students are being overlooked unless they are exceptionally bright. There are a few here and there, but they are not typically included in selective programs."[66]

Some of the persons interviewed also complained that teacher seniority rules contribute to the problem by removing more experienced teachers from inner city schools. Wallace said, "JCPS has a strong teacher association. The good teachers get to choose where they teach, and they don't teach in the district's difficult urban areas."[67]

Persons outside Kentucky expressed the view that similar problems existed not just in Kentucky but in most other parts of the country. For example, Benetta Standly with the American Civil Liberties Union, spoke to the existence of a virtual school-to-prison pipeline in a briefing before the Georgia Advisory Committee on the issue. "I feel our public school systems are failing our most vulnerable children, and the situation in the schools has worsened. Our children are being criminalized. As a nation, we are creating a permanent underclass. Public schools are becoming more and more punitive environments, and less and less educational. Sixty percent of people in prison are of a racial or ethnic minority. One in 20 black males in their 20s is in prison on any given day. Two-thirds of incarcerated women are the mother of at least one child. When you put that all in context, a child with a parent incarcerated is much more likely to be incarcerated. Children from these circumstances need additional services and support services, not isolation and punishment. Often, children are misdiagnosed in the public school system with behavioral issues, and then funneled out. In the past, discipline problems were resolved through parents, teachers, and school administrators working together in the best interest of the child. Now it is being addressed through suspensions, expulsions and arrests."[68]

Malcom Ratchford, vice president for a Southeastern Head Start program, commented on urban school districts inheriting difficult student problems. "There are two factors that contribute to increasing challenging behaviors. One is environmental, and one is biological. From the environmental aspect, you would assume that children from difficult environments will exhibit increasingly challenging behaviors because of these factors. What happens is that at some point in time somewhere along the line, teachers give up in regards to these children when these kinds of behaviors come out. We are all human. When you have a challenging child, whether it is your own or if it is a child in the classroom, we do what comes naturally and that is to shy away from that child."[69]

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[64] Terry Holliday, Commissioner, Kentucky Department of Education, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, Apr. 6, 2010.
[65] Stephenson interview.
[66] Wallace interview.
[67] Ibid.
[68] Benetta Standly, briefing before the Georgia Advisory Committee to the U.S. Commission on Civil Rights on race and discipline in the public schools, Atlanta, GA, Jan. 22, 2010, Transcript, pp. 88-9 (hereafter cited as School Discipline Briefing).
[69] Malcom Ratchford, vice president for the Georgia Head Start Association and interim director of Head Start for DeKalb and Rockdale Counties, GA, School Discipline Briefing, pp. 58-60.

2. Officials with the Jefferson County Public Schools challenge the notion that district discipline practices are prompting academic failure for many children

Persons employed by Jefferson County Public Schools were asked their opinion of discipline practices in JCPS. Maurice Risner, director of Alternative Programs in Jefferson County, spoke well of the district's alternative education programs. "Our alternative schools are not holding tanks. We take pride in what we do, and want to be the best. We have an assessment center with four counselors who do 2-hour assessments. The results are given to the Assistant Director in Student Relations, who hears the case and determines the placement. The parents then have the right to appeal the decision. This is an involved and expensive process. We have a district-wide code of conduct. The disproportionate rate is here; it always has been. But we are not brushing it under the table. We are proactive and protective. We do everything to save these kids. It starts with early intervention. We try not to pull students out of class in elementary school because there will be a higher chance later on of institutionalization."[70]

Ann Ferriell, with the Safe and Drug Free Schools office in JCPS, described the assessment and decision process for students displaying problematic behavior who are referred to her office. "We determine when students are placed in alternative education. We see students that have been suspended by the board and students with behavioral concerns. We have in place a very rigorous procedure to go through to place students, and not all students recommended for alternative schools are placed. Not having expulsions plays a part of what we do. Students who are suspended by the board for whatever reason may be recommended to alternative placement."[71]

Feriell continued, "Students referred to us go through the assessment center where certified counselors determine behavioral histories and give behavioral assessments. They also communicate with family members about available resources, and then relay all of the information to the assistant director who meets with the family to discuss alternative placement. There is an appeal process, and the family is informed about it. The most common reasons for students being sent to alternative placements are intimidation, harassment of students and staff, and assaults on students and staff."[72]

Don Reid, principal at Kennedy Middle School (the only discipline referral alternative school in JCPS for middle school students), described the supports and interventions at his school. "We are highly successful here, we are not a holding tank. We are aligned with state standards, and our school's vision is to address emotional, social, and intellectual development. We have a district-wide CARE for kids initiative. Our students are involved with community services and leadership programs. We are about building relationships, and our successes have been reported in the papers and on television.

"We have a curriculum with full option science, history alive, connect math, NOVA Net, Read 180, and the cutting edge program called Ripple Effects for social skills. Our instruction is rigorous and relevant. Our school has a lot of technology. We have three computer labs. Sometimes we are ahead of other middle schools academically, and there are times when parents want their kids to stay here because the environment is so structured. We are really front loaded with a lot of interventions, and we take the safety of our children seriously. We have metal detectors at the door, our kids are searched, and we have two assistant principals and six security personnel. We were recently assessed as one of the safest schools in the county. We have a prison tour mentoring program, and our students go on field trips to the capital and other places. We do not have in-school-suspension, instead we have a student support room. We have a positive program and it is perceived well in the community, and it is one of my goals to be a national model for alternative education."[73]

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[70] Maurice Risner, Director of Alternative Schools, JCPS, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights May 7, 2010.

[71] Ann Ferriell, Safe and Drug Free Schools, JCPS, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights, May 7, 2010.

[72] Ibid.

[73] Don Reid, Principal, Kennedy Middle School, JCPS, Interview, Sara McDaniel, Southern Regional Office, U.S. Commission on Civil Rights May 7, 2010.

Findings

1. An analysis of the disciplinary data and policies by the Kentucky Advisory Committee of the Jefferson County Public School System supports a conclusion that African American students are adversely impacted by school discipline. Although this finding by itself does not imply overt discriminatory action on the part of the Jefferson County Schools, it nevertheless highlights the need for vigilance on the part of the school district to help these students succeed.

2. Multiple factors outside the control of school districts, such as poverty, segregated schools, neighborhood environment, and family structure, affect a student's ability to function and succeed within the school system. These types of disadvantages disproportionately affect African American children in Jefferson County, and make their prospects for academic success far less likely than that for other children.

3. Although there are many factors outside the control of the school system that contribute to problems faced by disadvantaged African American students in large urban areas, the schools are still ultimately responsible for educating all students who walk through their doors.

4. Exclusionary disciplinary policies, to include out-of-school suspension, alternative school placement, and expulsion, contribute to higher risks of school dropout; and dropping out of school has been shown to be a high risk-factor for incarceration.

5. The perpetuation of this trend has large, measureable costs for the greater community. In Kentucky, the annual cost to educate a child is about $10,000; the annual cost to house an inmate in prison approaches $30,000. In addition to the direct burden to the taxpayers by this trend, the collective educational loss borne by students who leave school diminishes the productive capacity of society as a whole.

Recommendations

1. The Kentucky Advisory Committee believes that with concerted efforts, schools have the opportunity to do better intervening and preventing many children from difficult, disadvantaged circumstances from dropping out of school and too often following an inevitable path to prison. It is not the job of the school district alone to do this, however. It is up to the general community to support the public school system in providing the necessary support services to allow children from disadvantaged circumstances to succeed in school.

2. The Kentucky Advisory Committee recommends that the School Board of the Jefferson County School District examine the effectiveness of its discipline practices, to include exclusionary and zero-tolerance discipline policies, and ensure such policies provide for a safe school environment while not unnecessarily pushing children from disadvantaged circumstances out of school.

3. The Kentucky Advisory Committee recommends that Jefferson County Public Schools examine other discipline approaches for district-wide implementation. The education research is coalescing around consensus that there exist positive behavior discipline practices that have a greater potential to prompt children with behavior problems to succeed than reactive, punitive policies.

4. As pointed out in this report, other similarly sized school districts face a similar challenge, such as the school districts serving the cities of Chattanooga, TN, Charlotte, NC, and Jacksonville, FL. The Kentucky Advisory Committee recommends that the Jefferson County Public Schools, as part of this process, consult with these and other urban school districts in a collaborative manner to learn of effective discipline policies that maintain safe and orderly schools while reducing the number of children removed from their normal school setting and suspended.

4. The Kentucky Advisory Committee recommends that the U.S. Department of Education, the U.S. Commission on Civil Rights, and the State of Kentucky's Department of Education replicate this study in other areas of the state and country to learn to what extent school discipline policies and practices are disproportionately pushing promising children from disadvantaged circumstances out of school. Clearly something is terribly amiss in the nation's societal structure for this tragedy to so disproportionately affect African American students throughout the country.

Appendix 1 – Response of Jefferson County Public Schools

Jefferson County Public Schools
Administrative Offices
Van-Hoose Education Center
P.O. Box 34020
Louisville, KY 40232-4020
(502) 485-3011

February 14, 2011

Dr. Peter Minarik
Regional Director, Southern Regional
Office U.S. Commission on Civil Rights
P.O. Box 148
Atlanta, GA 30301

Enclosed is a response to the request made in your letter dated January 25, 2011. Our district was asked to respond regarding the portions related to Jefferson County Public Schools (JCPS) in the report regarding discipline issues in Kentucky. The District has a longstanding commitment to diversity as evidenced by our nationally renowned efforts in the area of student assignment. Additionally, you will find we have clearly articulated the District's strategies in the area of discipline. Our efforts in diversity, innovative instructional practices and data monitoring are clearly articulated.

I hope the response provides a clear picture of Jefferson County Public Schools' intensive and extensive efforts regarding discipline and our efforts to address the issues facing most large urban school districts in our country. Please contact me should you require further information.

Sheldon H. Berman, Ed.D.
Superintendent

Jefferson County Public Schools' Response to:
School Discipline in Kentucky: An examination of school discipline in the Jefferson County School District -A Report of the Kentucky Advisory Committee to the United States Commission on Civil Rights (March 2011)

Jefferson County Public Schools (JCPS) is a large, urban school district representing the most socially, racially and economically diverse population in the state of Kentucky. The district faces the same challenges as other large, diverse school districts across the nation. Those challenges include addressing the needs of students who struggle academically and socially which often manifest as discipline issues. The comparisons of JCPS to Chattanooga, Charlotte and Jacksonville schools illustrate these common urban school district needs clearly. Despite these issues, JCPS stands out as a district in a variety of ways: a commitment to diversity, intensive procedural monitoring of data, and innovative practices.

JCPS and the Louisville community have established a longstanding commitment to maintaining diversity in the district's schools. In light of the 2007 Supreme Court ruling, the Jefferson County Board of Education unanimously affirmed the district's commitment to maintaining diversity in school enrollments, and adopted guiding principles and a process to develop new and innovative ways to promote and enhance diversity in the district's public schools. In fact, the commitment to diversity extends well beyond the local board of education to the broader community. The district's current student assignment plan expands JCPS' previous definition of diversity beyond just race, to a geographic-based plan using multiple criteria, including household income, adult educational attainment, and minority status. And while JCPS can no longer subscribe to a race-based plan as a result of the Supreme Court ruling, many of our schools remain diverse in terms of racial composition. Approximately 80 percent of the district's schools remain between 15-50 percent African-American enrollment, illustrating an effective commitment to ensure that JCPS schools are diverse and not racially segregated.

In a review of the literature regarding race and discipline issues, there were several suggestions made by experienced educators and others in the education field to improve the discrepancies which may occur. (See *citation below.)* They include: (1) examining suspension and expulsion data, (2) developing an analysis of the data and a plan to address it, (3) adopting early intervention strategies, (4) encouraging programs that rely on positive behavioral interventions and supports, (5) creating smaller and more personalized learning environments, (6) setting up community-based intervention programs, (7) encouraging involvement of parents, (8) adopting clear referral procedures that are consistent districtwide, and (9) rewriting of discipline policy to reflect proactive content consistent with models of positive behavioral support and a clear description of behaviors. The district is implementing all of these suggestions in its efforts to reduce the number of African-American students being suspended and to improve student achievement. An outline of JCPS efforts in the areas of procedures, data monitoring and innovative instructional practices is provided below.

The district is committed to implementing research-based practices which prevent discipline issues and support struggling students in a positive proactive manner. This is evidenced by the district's efforts in the area of social/emotional skill development. JCPS is in the process of implementing the CARE for Kids character education curriculum in the middle and elementary schools. This program offers community building, social skills instruction and interventions for all students as a Tier 1 core program. The district has placed great financial and personnel capital in the development/implementation of the CARE for Kids program across the district. CARE for Kids provides instructional opportunities for students in social skill development and focuses on building a strong community of learners.

The analysis of data from both elementary and middle schools that are implementing the CARE for Kids practices at a high level have yielded very positive results in the areas of attendance, achievement and discipline. In a comparison of 2008-09 and 2009-10 suspension data from the Care for Kids middle schools, suspensions showed a decrease of 1.47 percent at the higher implementation schools. This trend was also seen in reductions of suspensions involving African-American students as well. CARE for Kids is a key strategy in addressing issues of discipline and disproportionality across the district.

Russell Skiba, "Disproportionality: A complex issue of equity in schools," Leadership Insider, pp. 10-1, November 2006; "NSBA Council of Urban Board of Education Survey Report on Overrepresentation of Minorities in Special Education," p. 21, Minnesota Department of Education, "Disproportionate Minority Representation in Suspension and Expulsion in Minnesota Public Schools, " (2010); "Out of School Suspensions," 2008 Kentucky KIDS COUNT Data Book; Pamela Fenning and Jennifer Rose, "Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy," 42 Urban Educ. 6 (Nov. 2007), Anne Gregory, Russell J. Skiba and Pedro A. Noguera, "The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?" 39 Educational Researcher Vol. 1, pp. 59-68 (2010).

Similar results have been documented in high implementing elementary schools, including increased rates of student achievement. Increases in academic index rates of the Kentucky Core Content Test (KCCT) in Reading and Mathematics were seen at elementary schools with high levels of CARE for Kids implementation rates. Data was gathered at all elementary schools, and for the schools that began CARE for kids in 2009-10, implementation was significantly correlated with growth in their Reading and Math Index from 2009 to 2010, with correlations of.41 and .51, respectively (ps < .05). The Reading index increased 3.09 and Mathematics index increased 1.84 in schools implementing CARE for Kids at high levels. These academic increases illustrate the power of CARE for Kids as a core social/emotional skill curriculum beyond addressing discipline concerns and reducing rates of suspension.

Each year the district conducts a comprehensive survey of all schools that involves an in-depth review of items related to key initiatives and other constructs. The survey is completed at each school with students, parents, teachers and other district staff as respondents. The data from the JCPS Comprehensive Survey documents the effectiveness of CARE for Kids. The charts below outline key scales from the comprehensive survey demonstrating the link between CARE for Kids and improved behavior, as well as increases in academic achievement.

CSS Student Construct	CFK Schools 2008	CFKSchools 2010	CFK Schools Change	Non-CARE for Kids Schools Growth from 2008 to 2010
Overall Satisfaction	3.13	3.19	0.06*	0.00
School Engagement	2.98	3.15	0.17*	0.10*
School Belonging	3.14	3.22	0.08*	0.05
School Discussion	3.06	3.16	0.10*	0.05*
School Support	3.37	3.37	0.00	-0.01
Personal Safety	3.08	3.21	0.13*	0.09*
Political Discussion	2.70	2.79	0.09*	0.06*
Conflict Resolution	3.14	3.22	0.03	0.01
Positive Character	3.28	3.36	0.08*	0.06*
Teaching	2.86	3.32	0.46*	0.46*

* ps < .05

The positive behavioral supports for student social/emotional skill development found within CARE for Kids have resulted in statistically significant changes across both elementary and middle schools in Jefferson County Public Schools. The district is focused on increasing levels of implementation of the CARE for Kids program as the Tier 1 or core foundational curriculum for social/emotional health. While CARE for Kids is the anchor of the district's efforts to reduce rates of suspension, there are students who are in need of more intensive support, such as Tier 2 and Tier 3 interventions. A summary of these innovative efforts are outlined below.

Innovative Practices:

- The district is implementing the Response to Intervention (RtI) process across all levels. Social Development/Behavior interventions are included in the JCPS model for RtI. The district has developed a menu of research-based Tier 2/3 interventions to assist schools in supporting students with moderate and intensive behavioral concerns.
- Ten elementary schools receive assistance implementing a "series of interventions" through a *Teachers and Learners Collaborating for Success (TLC)* coach promoting the effective utilization of interventions, tracking the impact on performance, and maintaining ongoing communication with the families of the most at-risk students.
- Eleven of the district's elementary schools with the highest percentage of minority and at-risk children have been selected as either small class size magnets or redesign schools promoting higher levels of engagement, quality of instruction, and fostering of meaningful relationships through small class size and a lower teacher to student ratio.
- Thirty of the district's most challenged elementary schools have been provided with coaches to focus on behavioral and academic interventions. These staff members provide intensive support to students to reduce suspensions, improve attendance and increase academic achievement.

- There are 13 middle schools providing home/school support focused on increasing student and family connectedness to the school culture. Each school is provided with a staff member to focus on improving attendance rates, increasing academic performance and reducing suspensions.
- JCPS high schools have initiated the concept of Freshman Academies that provide more intentional support and structure to assist students as they transition from middle school to high school. Additionally high schools are implementing an Advisor/Advisee process which provides guidance and mentor services to students on a regular basis. The focus of this work is to reduce suspensions, increase achievement and ensure students exit JCPS successfully ready for entry into the college setting.
- The district provides support to schools, administrators, teachers, students and families via the Student Relations Department. This support includes: professional development, technical assistance/consultation, program development, behavioral coaching, referrals to counseling, individual assessment, one-on-one student case management, linkages to community resources and substance abuse support.
- The district has established two alternative high school programs that focus on providing a safe, structured and achievement-oriented learning culture for students who have not been successful in the regular high school setting. Both provide programming options for students who are involved in serious violent incidents; chronic dangerous/disruptive behavior; weapon/drug violations; and also adjudicated youth assigned by the courts system.
- The district has established a committee to review all current systems in place to address behavioral issues and suspensions across the central office. This committee makes specific recommendations to the superintendent regarding structural changes that are needed to improve support to schools, teachers, students and families.

Cultural competence is also a topic of intense focus for JCPS in order to address disproportionality. The Department of Diversity, Equity and Poverty Programs provides professional development designed to assist staff in acquiring knowledge about culture, equity and diversity. The department also collaborates across the district to provide professional development, technical assistance and resources to all schools in the area of cultural competence. The activities listed below evidence the district's significant commitment in expanding staff understandings of culturally responsive educational practices in order to impact suspension rates and academic achievement for minority students.

Culturally Responsive Practices:

- The Department of Diversity, Equity and Poverty Programs collaborates with the Department of Human Resources to provide professional development sessions in the areas of school climate and culture, diversity, and cultural competence for classified and certified employees. During 2009-10, cultural competence sessions were incorporated into the district's induction training for 510 new teachers. Additionally, more than 10,200 JCPS employees participated in 366 workshops addressing equity and cultural diversity.
- Since 2007, the JCPS Department of Diversity, Equity, and Poverty Programs has offered the Institute for Cultural Competence. The institute is designed for teachers and administrators to learn the theory and practice of cultural competence. The institute takes participants beyond cultural awareness, beyond multicultural content, and beyond mere conversations about differences. The focus is on the deeper work of personal, professional, and systemic transformation for the purpose of achieving social justice and equity in our schools. The institute addressed strategies for cUlturally relevant/responsive pedagogy through activities connecting the Seven Principles for Culturally Responsive Practice and the principles of CARE for Kids. The institute required a four-day commitment by school teams including the principal and focused on "training-the-trainer" and building cultural competence leadership teams in each participating school. On-going evaluation of the Institute for Cultural Competence effectiveness is conducted by the JCPS Department of Accountability, Research and Planning to (a) measure implementation of cohort 1 (train-the-trainer schools from 2009-10) through the use of observations, focus groups, and self-assessment instruments; and (b) Evaluation of cohort 2 (train-the-trainer schools from the 2010-11) using cohort 1 model. There are three components to the ongoing evaluation of the Institute for Cultural Competence: 1) repeated measures from the institute cohort of intensive train the trainer; 2) implementation measurement including observations and school self-assessments); and 3) increased qualitative measures including interviews with school leadership and focus groups with teachers/staff and students.

- The district implemented the 2009-10 Institute for Cultural Competence and Courageous Practice: Working Together for Inclusion, Equity, and Excellence, facilitated by nationally recognized diversity consultant Gary Howard. Cohort 1 included 14 schools, plus the One Community, One Nation team from the district's Cultural Studies office. There were three elementary schools, eight middle schools and three high schools. In addition to leading the Institute, Howard facilitated an all-day workshop on cultural competence for middle school principals in 2010. The workshop engaged principals in exercises of personal self-reflection relating to cultural competence. Principals were exposed to tools for assessing their school's climate and culture and for determining next steps for their schools. The 2010-11 Institute for Cultural Competence and Courageous Practice began with Cohort 2 in October 2010 to March 2011. Cohort 2 includes seven schools.
- A cultural competence workshop was convened for middle school teachers and elementary principals. These staff members participated in an all-day cultural competence workshop. The workshop engaged both teachers and principals in exercises of personal self-reflection relating to cultural competence. Principals were exposed to tools for assessing their school's climate and culture and for determining next steps for their schools.
- The Department of Diversity, Equity and Poverty Programs is part of a collaboration of JCPS district departments who are responsible for providing professional development opportunities for 26 schools as part of a School Improvement Grant (SIG), for struggling schools. The intent of SIG is to build capacity within each school to implement their comprehensive reform efforts, resulting in improved student proficiency in Reading and Math. The SIG's overarching approach is to leverage instructional improvement, enhance professional growth and foster a positive teaching and learning environment.
- The Department of Diversity's responsibility with the SIG's is situated in the approach to Foster a Positive Teaching and Learning Environment, specifically focusing in on Cultural Competence Training and Implementation. The department is responsible for offering schools the opportunity to participate in cultural competence training as part of their professional development. During the first institute, participants will learn about: Personal Culture and Personal Journey, From Social Dominance to Social Justice, Classroom and Job-Related Implications and Applications, and Systemic Transformation and Planning for Change. During year two of the institute, the topics include: Patterns of Knowledge and Ways of Knowing in Cultures, Cognitive styles, Culturally Responsive Pedagogy, Systemic Transformation and Implementation of Change. The third year covers: Transforming Instructional Practices, Using Curriculum, Materials, and Activities that Honor and Incorporate Each Student's Culture and Life Experiences, and Holding Consistent and High Expectations for All Learners.
- The Jefferson County Board of Education and district leaders have set ambitious goals in reshaping the district's culture through the development of systemic building blocks for promoting and practicing cultural competence. These building blocks are JCPS's *Vision and Mission Statement* reflecting the district's *Core Beliefs,* and *Theory* of *Action,* along with the district's *Goals and Strategies,* and the *JCPS LeadershipfTeaching Competencies.*
- The district collaborates with the Jefferson County Teachers Association (JCTA), to implement the National Education Association (NEA) National Diversity Training Seminars. JCTA has made the NEA Diversity Training a center piece of their mission to help teachers recognizes the value of diversity in classrooms, the workplace, and society at large.

Jefferson County Public Schools also implements detailed procedural and data monitoring strategies in the area of discipline. These practices are focused on reducing suspension rates and addressing issues related to disproportionality. The district has extensive systems of support which include providing procedural guidance to schools and monitoring targeted data sets on a routine basis for each school. An outline of these practices is provided below.

Procedural and Data Monitoring Practices:

- JCPS has a no expulsion policy in place and no student is ever required to leave the district regardless of the behavioral concern. This often results in students accumulating higher numbers of suspension days over the year as school/district staff work to ensure appropriate programming options are vailable.
- Goals and action steps regarding suspension are in place within the JCPS Strategic Plan which is updated yearly and monitored by Quality Indicator data points for suspension.
- The district monitors suspension data on a monthly basis. The suspension data is disaggregated by level, school, race, and gender and discipline offense and is shared with the superintendent, assistant superintendents, and a variety of role groups. The district has an established Student Code of Conduct which is revised on an annual basis. This document outlines the procedural requirements regarding disciplinary actions for all students in JCPS to ensure equity and consistency across the district. Ongoing professional development regarding discipline procedures is provided to all administrators.

- Currently, the district provides multiple resources to support schools when addressing intensive behaviors *(i.e. Positive Outreach Program (POPs), Teachers and Learners Collaborating for Success (TLC), Behavior Coaches, Exceptional Child Education, etc.)* requiring ongoing communication with families and an alignment of community/district services.

Jefferson County Public Schools is proud of its work in the areas of diversity, student assignment, and innovative instructional strategies. District data evidences that when these practices are in place, rates of suspension decrease and academic achievement increases. Continued implementation of these efforts will result in systemic change and improved results for the entire school system. Despite the challenges facing large, urban school districts across the nation, JCPS' commitment to providing a quality public education in a diverse setting is historically strong. The district will continue its leadership efforts in the areas of diversity and student achievement and will emerge as a model for other school systems to follow.