

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING

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FRIDAY, FEBRUARY 11, 2011

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Abigail Thernstrom, Vice Chair, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chair
ROBERTA ACHTENBERG, Commissioner
MARTIN R. CASTRO, Commissioner
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DINA TITUS, Commissioner

CHRISTOPHER BYRNES, Delegated the Authority of the Staff Director

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PANEL 1:

ALLEN ZOLLMAN
ANDREA SMITH
JAMIE FRANK
LOUISE SENG
PATRICK WELSH

PANEL 2:

SUZANNE MAXEY
OSVALDO PIEDRA
JOSEPH OLIVERI
EDWARD GONZALEZ

PANEL 3:

RICARDO SOTO
HARDY MURPHY
HERTICA MARTIN
DOUGLAS WRIGHT

STAFF PRESENT:

TERESA BROOKS
IVY DAVIS
DEMETRIA DEAS
LILLIAN DUNLAP
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
PETER MINARIK, Acting Chief, RPCU
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget and Finance
MICHELLE RAMEY-YORKMAN
EILEEN RUDERT
KIMBERLY TOLHURST
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH

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Adjourn

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P-R-O-C-E-E-D-I-N-G-S

9:34 a.m.

VICE CHAIR THERNSTROM: Good morning and welcome to the U.S. Commission on Civil Rights Briefing on Disparate Impact in School Discipline. It is 9:34. I need to move my - sorry folks. Okay. It's 9:35 on February 11, 2011, and this public briefing is taking place at commission headquarters at 624 Ninth St., N.W., in Washington, D.C. and on behalf of the Civil Rights Commission I welcome everyone to this briefing. We've got quite a crowd here. I'm used to an empty - practically empty room.

Recently the U.S. Department of Education announced a new initiative to study the racially disparate impact of discipline policy on students and today's briefing will ask why are African-American and Latino students disciplined at a disproportionately high rate and what is the likely effect of DOE's initiative on the disciplinary policies and practices of schools and school districts. The record of this briefing will remain open until March 11, 2011. Public comments may be mailed to the Commission at 624 Ninth St., N.W., Room 700, Washington, D.C. 20425.

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1 Before we begin I'm sure I speak for the
2 entire commission in welcoming three new
3 commissioners, Dina Titus, Roberta Achtenberg and
4 Marty Castro. Only recently appointed, this is their
5 first appearance at a commission meeting and I will
6 be introducing them at some length at our business
7 meeting which will follow this briefing, but I do not
8 want to take up the panelists' time and will somebody
9 please fix a -

10 (Laughter)

11 PANEL 1 - (TEACHERS)

12 VICE CHAIR THERNSTROM: So thank you very
13 much. So this morning we are pleased to welcome
14 three panels of experts who will address our topic.
15 On Panel 1 we have five teachers, on Panel 2 a mix of
16 teachers and school administrators, and Panel 3
17 consists of an official from the U.S. Department of
18 Education along with three additional school
19 administrators. And I apologize for the shortness
20 and the fact that you - we are asking people to speak
21 very briefly because of the time constraints today,
22 but panelists, please limit your formal presentation
23 to five minutes. The same time constraints
24 unfortunately force us to confine the questions of
25 commissioners to five minutes as well. The question

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1 period will begin promptly after each panel. Again,
2 I very much regret the brevity of your testimony on
3 very important issues.

4 So I will now very briefly - and my
5 assistant is grabbing all sorts of papers for me for
6 reasons I don't know - introduce the educators who
7 comprise Panel 1. Allen Zollman teaches English as a
8 second language to elementary students in
9 Pennsylvania. His teaching load also includes two
10 remedial classes per day, one in math, one in
11 reading, and he had tutored homebound students in a
12 wide variety of subjects. "For me," Mr. Zollman has
13 said, "discipline does not mean punishment, it means
14 teaching young people to make good decisions."
15 Andrea Smith is a sixth grade teacher with 10 years
16 of experience teaching in Washington, D.C. public and
17 charter schools. She previously had worked as a
18 legislative research assistant for the Education
19 Trust, an advocacy organization committed to high
20 academic achievement for all students. Jamie Frank
21 has taught in three prominent school systems in the
22 D.C. metropolitan area, is currently a secondary
23 social studies - secondary school social studies
24 teacher. She serves as a member of several teachers'
25 advisory boards including the Bill of Rights

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1 Institute and the Council for Teaching and Learning.
2 Louise Seng taught eighth grade social studies in an
3 Allentown, Pennsylvania, middle school for 34 years.
4 Ninety percent of the school's students were racial
5 and ethnic minorities. And Patrick Welsh who rounds
6 out the panel has taught English at T.C. Williams
7 High School in Alexandria, Virginia since 1970. He's
8 written extensively about education and youth
9 culture, authored a well-regarded book *Tales Out of*
10 *School*, published by Penguin. And so I welcome these
11 panelists but ask them first to - I ask them first
12 to, before being sworn in to come and seat yourselves
13 and get mic'd up. I will now ask the panelists to
14 swear or affirm that the information you are
15 providing is true and accurate to the best of your
16 knowledge and belief. Say that out loud.

17 (Whereupon, the panel was sworn)

18 VICE CHAIR THERNSTROM: Okay. Well
19 again, thank you for coming and again I welcome you
20 on behalf of the Commission. I will call you in the
21 order in which you are seated and in order to do that
22 - this is going to occur a lot during this briefing -
23 I switch glasses. So we're starting with Mr.
24 Zollman.

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1 MR. ZOLLMAN: Thank you. Good morning.

2 VICE CHAIR THERNSTROM: Good morning and
3 please begin.

4 MR. ZOLLMAN: As I was introduced, I
5 teach English as a second language to students in
6 grades 5 through 8 in an urban Pennsylvania middle
7 school, and I also teach remedial courses in reading
8 and math to students who more closely represent a
9 cross-section of the multiethnic school population.

10 Each school in my district has
11 disciplinary procedures on which the teachers are
12 briefed verbally and in writing. We were told that
13 the primary responsibility for classroom management
14 rests with us which is normal and reasonable. For me
15 discipline does not mean punishment, it means
16 teaching young people to make good decisions. It
17 means creating the conditions where students receive
18 consequences for behavior that they can learn from,
19 good or bad behavior. On a deeper level discipline
20 means providing the conditions necessary for teaching
21 and learning to take place at all. It was not always
22 the case, but I now have relatively few behavior
23 problems in my classes. This is because I often have
24 the freedom to control the pace of instruction and
25 the difficulty level of the tasks, and can select

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1 interesting content. Unavoidably there are times
2 when the pace of instruction is a little too slow, or
3 the tasks a little too easy, or the stories are not
4 engaging enough and students become bored, or the
5 pace is too fast, or the tasks too hard and students
6 become frustrated. Some students tolerate boredom or
7 frustration reasonably well and others do not. These
8 are the times when students can get into trouble and
9 start making bad choices. What does it look like
10 when this happens? I could go on and on, but I
11 won't. Pencil-tapping, humming, side conversations,
12 dancing, singing, exchanging insults in jest or in
13 earnest, talking back to the teacher, using
14 profanity, wandering around the classroom, touching
15 other students, yelling out the window, horse play,
16 and so on. When a student disturbs the decorum and
17 instructional progress of the class and cannot be
18 redirected by the teacher, the teacher may wish for
19 that student to be temporarily removed. This is
20 where the school's disciplinary procedures come into
21 play. Before a student can be removed in my school
22 the teacher must prepare a disciplinary referral
23 which is what many of us used to call a pink slip.
24 This one is a 2-page form with space for three
25 offenses, not one, and a checklist of measures taken

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1 by the teacher before issuing the referral, measures
2 which turned out not to be effective. What is
3 important to note here is that in order to get a
4 disciplinary referral for disruption in my school
5 there must be three infractions and it must be
6 documented in writing before the student can be
7 removed from the classroom. Serious offenses like
8 possession of a weapon or aggravated assault do
9 result in immediate removal of the student from the
10 room, but for mere disruption it is no simple thing
11 to have a student removed at the time of the
12 disruptive behavior. This means that for extended
13 periods of time it can happen that very little
14 teaching and learning will take place in a given
15 classroom.

16 When I need backup support I really do
17 need it, yet for me to be recording infractions of a
18 student over time in anticipation of a referral and
19 then wait for a response means that I am left dealing
20 with the problem for awhile and teaching through
21 chaos. In such an environment students see few
22 meaningful consequences for their actions so they not
23 only continue to misbehave, but the behaviors get
24 more brazen with more and more students joining in
25 the fun until even the quote unquote "good kids" are

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1 acting out. They often become cynical, reminding
2 teachers that nothing will happen to them. Here is
3 an illustrative dialogue between me and an eighth
4 grade girl who would not stop talking over me. Me:
5 "You have two choices, either stop talking or I will
6 have you removed." Girl: "I'm going to torture you.
7 I'm doing this because I can't be removed. I can't
8 be removed." Now that example contradicts any notion
9 that the student didn't know what she was doing or
10 quote unquote "didn't know better." The following
11 interchange likewise shows self-awareness and
12 deliberateness. A boy and girl were involved in an
13 escalating verbal dispute. For profanity I will
14 substitute the word "blank."

15 (Laughter)

16 MR. ZOLLMAN: Me: "Tom, if she threatens
17 you just let me know." Girl: "I just did threaten
18 him. I'm going to smack the blank out of him. I'm
19 going to blank him up." Students know when they're
20 misbehaving and they know when they're preventing
21 others from learning. They make these choices. The
22 less we are willing or able to respond, the more they
23 will control the classroom, the hallways and even the
24 school. The disciplinary framework which exists to
25 provide me backup support strongly encourages me to

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1 deal with problems at my own level. However, I have
2 never been told to discipline with a thought to
3 disparate impact. If I were told that I would find
4 that to be an even greater constraint on effective
5 discipline or on effective classroom management. I
6 could - if that happened I could foresee one of three
7 avenues to pursue: (a) I would disregard the
8 directive and refer students as I saw fit and see
9 what happens, (b) I would do nothing and live with
10 the chaos, understanding that there would be even
11 more times when little teaching and learning would
12 take place, or c) I could end my public school
13 teaching career early and pursue other activities
14 where there is more control over the work situation.

15 Ultimately each instance of misbehavior
16 in the classroom is unique and requires a customized
17 response. It doesn't matter what the ethnicity of
18 the student is. If the child acts out and creates a
19 distraction the other students will not learn. We're
20 talking about disparate impact. For a teacher, what
21 is the greater disparate impact? When one student
22 can say in effect, "indulge me or I will shut you
23 down and there's nothing you can do about it," then
24 29 other children are prevented from learning. That
25 is the greater disparate impact. Thank you.

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1 VICE CHAIR THERNSTROM: Thank you very,
2 very much. So, Ms. Smith.

3 MS. SMITH: Thank you, good morning. I'm
4 a sixth grade mathematics teacher at E.L. Haynes
5 Public Charter School located in Northwest
6 Washington, D.C. E.L. Haynes serves 600 students
7 grades preK-8. Our student body is 54 percent
8 African-American, 25 percent Latino, 18 percent white
9 and 3 percent Asian. In addition, 62 percent of E.L.
10 Haynes students qualify for free or reduced lunch,
11 and 21 percent are English language learners.

12 Early on in the school year the teaching
13 staff at my school was presented with some
14 disaggregated school-wide discipline data. Out-of-
15 school suspension rates for the first quarter of the
16 school year broken down by race were included.
17 Teachers were asked to reflect with their colleagues
18 about what the data revealed. We drew several
19 conclusions from that data in a matter of minutes.
20 First, we were suspending African-American males more
21 than any other subgroup. We were also suspending
22 students with special needs more than other
23 subgroups. This meant as teachers we were referring
24 and sending African-American males and students with
25 special needs out of class more than any other

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1 subgroup which meant we weren't effectively engaging
2 and connecting with all students in a way that
3 resulted in equitable academic outcomes, specifically
4 for African-American males and special needs
5 students. Finally, suspension was not an effective
6 consequence as evidenced by repeated suspensions.

7 Recently we have started using a new
8 discipline inputting and tracking system at my
9 school. This new system does allow us to track and
10 disaggregate discipline referrals and consequences on
11 a weekly basis. Using this data, grade-level teams
12 can address discipline trends and try to get at the
13 root of what is causing and perpetuating these
14 trends. I believe part of what is causing the
15 disproportionality in student discipline referrals
16 and suspensions at our school is what we call at
17 Haynes relational trust. One of the main predictors
18 of if a student will go to college is positive
19 relationships with their teachers in middle school.
20 Discipline and relational trust are inextricably
21 linked. In my experience, the more students trust
22 that I will be fair and hold them to high standards
23 in a firm yet caring way, the less discipline issues
24 arise. Relational trust is not a science. Moreover,
25 it plays out in small ways that few outsiders would

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1 know as significant in a classroom. The room to tell
2 a joke when a student is singing during the lesson
3 instead of confronting them with a more abrasive
4 redirection. Concluding at the door or a question
5 about how Chewie the dog is doing. It's recognizing
6 what a student needs even when they don't know they
7 need it or can't articulate what they need. It's
8 listening to a student when they come to you with a
9 problem or sitting them down to have a conversation
10 to check in with them. One's racial dispositions can
11 influence relational trust. At my school I have been
12 encouraged to examine and question how my own racial
13 dispositions affect my teaching and my students. At
14 E.L. Haynes staff has participated in race and equity
15 in education seminars in which we began a
16 conversation about racial inequities in our school.
17 In order to eliminate the racial achievement gap I
18 believe we must commit ourselves to addressing racial
19 inequities in our teaching and our school structures.
20 We must face our own racial experiences and recognize
21 what we contribute to the racial experiences of our
22 students. As a white teacher this is a recognition
23 that is not always easy to make and it's not always
24 clear-cut specifically when it comes to discipline.
25 I often question if my discipline approach is

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1 perceived by a student as being racially influenced
2 or creates a learning environment in which the
3 student does not feel affirmed. I have questioned if
4 I am the best person to be teaching the students in
5 my classroom. Unfortunately my experience has not
6 led me to answers and solutions, it has led me to
7 conclude that race matters when it comes to student
8 discipline and school culture. I have chosen to not
9 continue working at schools where I believe
10 student/teacher/parent relationships were strained in
11 part by race even though the school was known for
12 having tight discipline policies. I have also been
13 disheartened working in schools with dismal
14 discipline and no vision for student success. My
15 experience has also proven to me that discipline
16 issues in a school are not a result of some students
17 not being able to behave or single-parent families.
18 I do know that all students can learn and succeed if
19 they are provided a positive learning environment in
20 which they are affirmed, challenged, supported and
21 held accountable for their actions. In order to
22 address the discipline challenges and
23 disproportionality of race and discipline referrals,
24 educators must address the issue of race head on. We
25 need educators and community members who are

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1 committed to having ongoing conversations that
2 address our role in the disparities in student
3 discipline and achievement in our schools.

4 VICE CHAIR THERNSTROM: Thank you very,
5 very much. Came in under time.

6 MS. FRANK: I'll hopefully do the same.

7 VICE CHAIR THERNSTROM: Ms. Jamie Frank.

8 MS. FRANK: For the past 11 years I've
9 been a teacher in the suburban D.C. metro area. Over
10 that time I've seen significant changes both in the
11 classroom and in the demands placed on teachers.
12 I've taught in highly diverse schools where over 80
13 percent were minority students. I have also taught
14 in extremely affluent communities with over 80
15 percent of parents having graduated from college.
16 These experiences have showed me that there's great
17 disparity in the way students are treated, the
18 expectations held for them and the measures of
19 success. No longer can teachers focus on individual
20 student success. We must focus on the demographic
21 makeup of students, how they measure on standards-
22 based assessments. We disaggregate state data, we
23 focus on students most in academic need, pay special
24 attention to those subcategories that we need to meet
25 AYP [Adequate Yearly Progress]. District- and

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1 school-wide policies are made to protect those
2 numbers and to be sure of the best possible outcome,
3 score outcome, for each school. Teachers are taken
4 to task when students are failing, misbehaving in
5 their classes and performing below the standards.
6 Expectations are placed on teachers to ensure that
7 the numbers are met, thereby paying special focus on
8 those subgroups, African-Americans, Hispanics, ELL,
9 special ed. This disparity not only impacts the
10 disciplining of these students but the day-to-day
11 classroom expectations we have for those students.
12 In order to pass the course, the test or whatever the
13 measure - standard measure of success may be for an
14 individual class, teachers are under pressure to
15 ensure that students succeed. And while this may
16 sound like the objective of every educator, the
17 problem lies in the focus on the scores, on the tests
18 and on the numbers. Several years ago I worked at a
19 school. I was told by central office superintendents
20 that they had too many suspensions. They must
21 creatively discipline students, specifically the
22 number of minority students being suspended compared
23 to that of their white counterparts. The students
24 continued to behave harshly, bringing knives to
25 school, threatening teachers, and yet because of the

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1 concern over publication of the suspension numbers by
2 the school and by the county the administrators
3 allowed students to go home, calling it a day of
4 exclusion. These students would be back in school,
5 in class the very next day and in this situation the
6 school continues to practice the same policy. And
7 since student graduation rates are high even for
8 minorities, the minority students are given a pass to
9 keep those numbers high regardless of whether they
10 act up. I serve on a number of civic education
11 boards and I have heard similar concerns from
12 teachers around the country.

13 School administrators - school district
14 administrators via school administrators place huge
15 burdens on teachers to ensure the numbers allow for
16 AYP, not only in academic achievement but the
17 attendance, graduation rates and suspensions. Over
18 the past three years several counties in the D.C.
19 metro area have removed their loss-of-credit policy
20 over the last - over these last three years. The
21 reason for that change has been due to inequitable
22 distribution of students losing credit in a course
23 resulting in a failure to graduate on time, with the
24 majority of students being minority. The purpose of
25 the loss-of-credit policy, generally when a student

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1 cuts class usually three to five times within a
2 semester it reinforces [that] students of course need
3 to attend class. Well, the counties have looked at
4 trying to eradicate truancy issues within each county
5 and it became apparent that there was a large
6 percentage of truancy cases being investigated for
7 minority students. Once this was identified, fear of
8 not being racially sensitive arose and the policies
9 were changed, simply removed. Currently, without the
10 loss-of-credit policy there is no penalty for failure
11 to attend classes. It is the policy that students
12 are allowed to make up all their work while re-
13 teaching and re-assessment for the missed days must
14 be done by the teachers. Students can receive
15 discipline action by the administrators if they
16 choose to follow it up. All absences whether excused
17 or unexcused are to be considered the same, and the
18 burden of truant students falls on the teachers.
19 While statistical evidence shows that this policy was
20 put into effect to ensure racial disparity cannot be
21 found for students whom do not attend class, student
22 attendance has been significantly impacted by the
23 removal of this policy, and this policy change was
24 meant to benefit minority students. At the same time
25 there has been a statewide decision to remove all in-

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1 school suspension programs for the State of Maryland.
2 Students cannot be disciplined by being removed from
3 class, denied their education, thus the policies have
4 been replaced by non-documented programs like an in-
5 school inclusion or calling it in-school
6 intervention, all essentially the same but not listed
7 as suspensions and therefore never having to be
8 documented by the school.

9 From my experience of working with
10 students along all the socioeconomic spectrum I
11 believe the real issue lies in the social and
12 economic situation for students. The real issue of
13 student success -- albeit attendance, discipline,
14 achievement -- continues to be socioeconomics.
15 Regardless of the race or ethnicity of a particular
16 student it comes back to the parents, the economic
17 situation they are in and the support they provide.
18 In my experience the focus on which students get the
19 attention, are disciplined the most or have the least
20 chance of success does not reflect a racial divide
21 but an economic one. I can go on and on.

22 VICE CHAIR THERNSTROM: No, I'm going to
23 stop you. Thank you very much, Ms. Frank. Ms.
24 Louise Seng.

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1 MS. SENG: First of all, the lights [you
2 are using to indicate my time remaining] would never
3 be allowed in the classroom. It's kind of insulting.

4 VICE CHAIR THERNSTROM: I'm sorry.

5 MS. SENG: My name is Louise Seng. I
6 taught for 34 years at an inner-city school called
7 Harrison Morton Middle School. It started out as a
8 junior high. I retired in 2006. We had
9 approximately 900 sixth, seventh and eighth grade
10 students, 90 percent of whom are minorities. Fifty
11 percent - well, up to 50 percent are Hispanic, but we
12 took in all kinds of minority students including
13 Oriental students and the majority of the Hispanic
14 students were Puerto Rican but we also had South
15 American, Central American students. Before I
16 retired, the discipline at Harrison Morton, it was a
17 challenge. The year before I retired there were 50
18 students suspended for a total of 200 infractions
19 just during the month before Christmas. Although I
20 do not have the exact data available I believe that
21 the students from racial and ethnic minority groups
22 were disciplined more frequently than those in other
23 backgrounds. However, my observation of racial
24 prejudice or bias on the part of my fellow teachers
25 or administrators was not because of these

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1 disparities in discipline. As far as I was able to
2 tell all of my colleagues were committed to racial
3 equality and to the equality of opportunity for our
4 students. Many of our colleagues chose to teach at
5 Harrison Morton over wealthier schools because they
6 were committed to helping students from poor
7 backgrounds succeed against long - against often long
8 odds. In my opinion, racial and ethnic minority
9 students were disciplined more frequently because
10 more of them came from families which had not learned
11 self-discipline necessary to thrive in school. Some
12 came from families where they observed violence at
13 home and therefore were taught that it was acceptable
14 to use violence to solve problems in school. It was
15 not terribly unusual, for example, for one student to
16 throw a chair at another during the middle of class
17 because the second student made a nasty verbal
18 comment, and teaching was going on at the time.
19 While I was usually able to prevent such scuffles
20 from breaking out in my classes other teachers,
21 whether the lack of experience or from - for other
22 reasons were not quite as successful. I noticed also
23 that some students came from homes where they weren't
24 expected to do homework, more like most students came
25 from homes where they weren't expected to do

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1 homework, or to be home by a certain time or go to
2 bed by a certain hour. Students who had been able to
3 be up late sometimes fall asleep in class or would
4 behave disruptively because they were tired. Some
5 seemed to eat poor diets outside of school and I
6 believe that this might have contributed to
7 hyperactive behavior. Getting students to stay
8 focused and pay attention was a constant challenge.
9 Many students had trouble sitting still and paying
10 attention. Again, I suspect it's because they had
11 not learned these skills at home.

12 For several years I helped run a program
13 called Conflict Resolution that I believed was
14 effective in reducing discipline problems. My
15 colleagues and I trained students to serve as peer
16 mediators. A trained peer mediator helped other
17 students to resolve conflicts. Though the peer
18 mediation program was not always effective at
19 stopping student-to-student fights, it did prevent a
20 number of them from occurring. During my years of
21 teaching I was never approached by - never approached
22 by an administrator or anyone about reducing
23 disparities in discipline. Because I am no longer
24 teaching I don't know exactly how my former school
25 will respond to the new Department of Education

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1 initiative. I do hope that the Obama initiatives
2 don't lead to pressure on teachers at Harrison Morton
3 to use less discipline. As I said above, maintaining
4 discipline in a school like Harrison Morton can be
5 challenging. Lowering discipline standards could
6 make it even harder for students of all racial and
7 ethnic groups to learn which would be an unfortunate
8 outcome indeed. Thank you.

9 VICE CHAIR THERNSTROM: Thank you very
10 much, Mrs. Seng. And last but not least. I'm very
11 familiar with your writing, Mr. Welsh.

12 MR. WELSH: My name is Pat Welsh and I
13 teach at T.C. Williams High School in Alexandria,
14 Virginia, the high school on which the movie
15 "Remember the Titans" is based. Yesterday I was
16 reading an article in the New Yorker by Tina Fey, the
17 Sarah Palin imitator, and it was on working moms.
18 Tina Fey said, "The topic of working moms is a tap
19 dance recital in a minefield. It is less dangerous
20 to draw a cartoon of Allah French-kissing Uncle Sam -
21 which let me make it clear I have not done - than it
22 is to speak honestly about this topic." The topic of
23 the discipline of black students is certainly a
24 minefield, especially for a 60-plus Irishman with
25 gray hair. I told a couple of friends I was coming

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1 here and they said what are you, a masochist? So
2 anyway, I'm going to step into the minefield.

3 What girls fight the most in school? I
4 don't think this is just at T.C. Williams, but at
5 T.C. Williams it's black girls, there's no question
6 about it. It's not the African-American girls on
7 their way to UVA or William & Mary, it's not the
8 black girls from Ghana or Sierra Leone or Ethiopia
9 who come here to live the American dream, but it's
10 black girls who are products of what Colbert King in
11 a great article that everybody should read that was
12 in the [Washington] Post last Saturday [Feb. 5, 2011]
13 about an inter-generational cycle of dysfunction.
14 Girls who have no fathers in their homes, who often
15 are born to teen mothers. They're a small group, but
16 the fact is they cause enormous problems in school
17 and they are black and it's the same with the boys.
18 Black kids - and it's for many reasons. I mean,
19 there's been enormous racism in Virginia, you know,
20 the heart of the Confederacy, the heart of massive
21 resistance to integration, but the fact is that black
22 kids do bring a disparate amount of baggage to
23 schools and because of that they cause a
24 disproportionate amount of trouble. And there's
25 going to be disproportional discipline referrals

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1 until the problems of poverty and teen pregnancy and
2 lack of fathers can be reduced or solved there's
3 going to be a disproportionate number of black kids
4 who are going to be up for disciplinary action.

5 I think the ultimate answer is not in
6 civil rights or civil rights lawsuits, it's in
7 intervention. It's in having principals and teachers
8 who can handle kids. And that's why I asked my
9 principal Suzanne Maxey to come here. I'm not trying
10 to kiss up to her, but she is taking me out to lunch.

11 (Laughter)

12 MR. WELSH: I hope this is a tenure, but
13 anyway. I probably shouldn't say this, but for the
14 last four years at our school we had two separate
15 principals. They're retirees from Fairfax. They sat
16 in their office all day and delegated like they were
17 CEOs. I don't know if this is the Fairfax way or
18 what. We had fight after fight after fight in the
19 hall. One of these guys studiously avoided the
20 cafeteria where if there's going to be a fight it
21 could break out there. In comes Suzanne. The number
22 of fights has been cut down, it's two-thirds less.
23 I've witnessed her twice. A kid in the morning doing
24 the "Ali" shuffle ready to go after another kid. She
25 walked straight in his face and smiled and said,

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1 "Sweetheart, you don't want to do that." He was so
2 shocked to be called sweetheart he just shuffled off
3 to class. Another kid, two male teachers could not
4 get him off an elevator, you're not supposed to be on
5 the elevator, an enormous guy. She walks up to him,
6 whispered something in his ear, the two of them are
7 walking down the hall laughing, arm in arm. If you
8 have principals and teachers who can handle kids
9 you're going to have fewer discipline referrals,
10 you're going to have fewer kids kicked out of school.
11 I still honestly think, minefield or no, that you're
12 still going to have a disproportionate number of
13 African-American kids because there's a
14 disproportionate number of those kids who come from
15 enormous poverty.

16 I also want to say that this thing about
17 - talking about disproportionate - the education
18 department emphasizing disproportionate discipline
19 when it comes to blacks, this is a slippery slope.
20 If you're a white administrator, and a lot of white
21 administrators, all they want to do, you know, they
22 want to move up the ranks, you're going to play it
23 safe. You're not going after the kids. We had a
24 terrific guy, Bob Yager, who is in George Washington
25 Middle School which is the real flash point in our

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1 school system where if we're going to lose white
2 parents we lose them. He had a disciplined school,
3 kids liked him and black members of the school board
4 and a couple of their white colleagues dumped him
5 because the word was he was too tough on black kids
6 and Yager was a fair, decent guy. So I think the
7 more you make this a civil rights issue the more
8 you're going to have white administrators playing it
9 safe and really there's going to be less discipline.
10 And these kids I'm talking about, they don't screw up
11 things for white kids, they screw up things for other
12 black kids. Thank you.

13 VICE CHAIR THERNSTROM: And thank you
14 also very much for a very nice panel and so we have
15 questions for the panelists starting with
16 Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: Thank you, Madam
18 Chair. Thanks to staff for a great panel. This was
19 very informative. I have a lot of questions but I
20 only have a couple of minutes so I'm going to have to
21 pick and choose. Back when I went to middle school
22 and high school in the Mesozoic Era, even in the
23 quote unquote "bad schools" we didn't see the level
24 of disruption that we see in average schools today,
25 whether that was in majority black school, majority

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1 Hispanic schools, whatever. To what extent have you
2 observed an increase, if you have, an increase in
3 disciplinary problems - and this, I guess it probably
4 goes more toward you, during the course of your 25-30
5 year career. In your experience, to what extent have
6 you seen an increase and to what do you attribute
7 that if you have seen an increase?

8 MR. WELSH: In my experience it's ebbed
9 and flowed depending on the principal. We had one
10 principal for 20 years who had an incredible team,
11 black and white administrators behind him. And there
12 weren't that many discipline problems. We built a
13 new hundred million school, brought in two retired
14 guys that didn't come from - one of them came from
15 Langley, an all-white school in Fairfax and who
16 backed off of the black kids, who didn't want to get
17 their hands dirty with discipline and discipline just
18 really went down. This year Suzanne has come in and
19 there's nobody in the halls, things are very quiet
20 and the number of fights is cut by two-thirds. I do
21 think - I don't know if it's discipline, but these
22 kids are incredibly distracted with the cell phones
23 and the things they put - those earphones. But I
24 don't know if - discipline or me, what I've seen is

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1 it depends on the principal and the team that they've
2 got behind them.

3 COMMISSIONER KIRSANOW: Okay. This will
4 go to anyone who wants to answer this. We've been
5 talking to a large extent about disparate impact. To
6 what extent if any is the disparity in discipline
7 meted out to black and/or Hispanic students a result
8 of racial discrimination as opposed to merited
9 discipline for a given offense? And a subsidiary
10 question is if you have Asian students in your
11 schools, to what extent do they pose disciplinary
12 problems relative to other minority students? Yes.

13 MS. FRANK: I taught in a school that had
14 a very large Guatemalan population many of which were
15 members of the gang MS-13. They - a lot of it in
16 terms of discipline -

17 VICE CHAIR THERNSTROM: Wait a minute,
18 Guatemalan students? But they're not Asian.

19 MS. FRANK: And there was also a large
20 Vietnamese population as well. And there was a
21 conflict between communities where the Vietnamese
22 region, it was in Falls Church, had a conflict with
23 the Guatemalan MS-13 students. That became, you
24 know, it was a matter of whether or not they showed
25 up for school, it was a matter of whether or not they

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1 decided to bring their outside activities into the
2 school building. I saw over time, you know,
3 absolutely if you have a strong administrator that's
4 willing to stand tough with students and doesn't mind
5 that those numbers, those suspension numbers will be
6 published, those - I've had administrators who will
7 stand tough and those schools will be - the halls
8 will be cleared. Those students won't come and bring
9 their actions into the school. They'll be in the
10 community already, but they won't bring them into
11 school, and I've had administrators who are so
12 fearful they want to get to the next level
13 administratively that they won't suspend anyone
14 because those numbers are published and those scores
15 come down and they're published in the Washington
16 Post and the schools look bad.

17 COMMISSIONER KIRSANOW: Anyone else?
18 Yes.

19 MS. SENG: It's been my experience that
20 the - where I taught that the - when kids were
21 disciplined they deserved it, okay? The - I forget
22 your second question.

23 COMMISSIONER KIRSANOW: It had to do with
24 Asian students, but you know - I'm sorry, go ahead.

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1 MS. SENG: All right. It's not only the
2 Asian. My experience has been that immigrant
3 children whether they are - somebody said whether
4 from Ghana or whatever, immigrant children were
5 typical immigrants. Their parents say to them I
6 didn't come here for you to get, you know, screwed
7 up, I came here for opportunity, I came here for you
8 to get an education, I came here for you to work hard
9 and to be successful. And you could always tell, you
10 know, whether they were Vietnamese or from Africa or
11 from Central America, you could always tell kids that
12 came from those homes because they worked hard, their
13 color had nothing to do with it, their language had
14 nothing to do with it, they worked hard and they did
15 well. And that's been my experience.

16 COMMISSIONER KIRSANOW: I've just got one
17 other question in my allotted time. If there's
18 pressure to relax disciplinary standards so that
19 there isn't a manifestation of disparate impact, what
20 do you think the consequences will be for education
21 in your respective schools?

22 MS. SENG: Negative.

23 MR. WELSH: Because we have a gutsy
24 principal it's not going to make any difference
25 because she's not going to care. But I think around

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1 the country it's definitely going to be negative. I
2 think what Jamie said, the administrator - and you
3 can't blame them - that want to move up in the ranks,
4 they don't want to - this is the third rail for them
5 when it gets to be race. They're not going to touch
6 it and that could be bad for schools.

7 COMMISSIONER KIRSANOW: Thank you, Madam
8 Chair.

9 VICE CHAIR THERNSTROM: Who else? I've
10 never had a silent commission in my life.

11 COMMISSIONER GAZIANO: I yield to the
12 others if someone else wants to go first. You go
13 ahead.

14 COMMISSIONER CASTRO: No, that's okay.

15 COMMISSIONER GAZIANO: Thank you all. It
16 really is a -

17 VICE CHAIR THERNSTROM: And this is for
18 the record Commissioner Gaziano.

19 COMMISSIONER GAZIANO: It's a wonderful
20 presentation, thank you for your effort and a rather
21 difficult and insoluble issue this seems overall, but
22 we'll try to focus on the few things that we can as
23 the commission goes forward. Maybe I'll just ask a
24 show of hands first on one question. I heard, you
25 know, I want to get a sense between boys and girls,

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1 maybe boys are more serious, but let me ask you a
2 question about just sort of frequency of disruption
3 and behavioral problems. In your all's personal
4 experience who all thinks it's the boys who are more
5 disruptive? Show of hands. Who all thinks it's the
6 girls that are more disruptive? If you could and
7 then explain. I mean, let the record reflect I think
8 I saw three of the five witnesses indicate the girls
9 are more disruptive and now I've just opened it up to
10 you all to describe seriousness versus - to elaborate
11 on that.

12 VICE CHAIR THERNSTROM: Or are they
13 different kinds of disruption?

14 COMMISSIONER GAZIANO: Yes, I'm sure
15 there are, but please elaborate. And then I don't
16 think I saw a show of hands for the - Ms. Smith and
17 Zollman.

18 MR. WELSH: It could be. I mean, it's a
19 subtle thing. I'm not sure what the answer is. It
20 could be a male/female thing whether the teacher is
21 male or female. And I find that - I seldom have
22 trouble with - let's say with hardcore, and I don't
23 mean to be - this sounds racist, but I mean let's say
24 with some hardcore black guys. I never had trouble
25 with those guys. But I've had trouble in the sense

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1 of class being disrupted by - especially by African-
2 American girls where there's no fathers in the home
3 and come from dire poverty. There's an anger in
4 those girls that is almost unbelievable and I've seen
5 fights between them and I've gotten in between three
6 of them, as I got older I'm not going to get in
7 between them, but it's like some of those girls will
8 almost fight to the death. We've had staff members
9 injured separating them. So I see that anger in a
10 lot of poor, African-American girls. I've never had
11 problems, hardly ever with a guy, but maybe that's
12 just me.

13 COMMISSIONER GAZIANO: But what about
14 someone else.

15 MS. SENG: Go ahead.

16 MS. FRANK: I find that girls are more
17 disruptive, can disrupt class because they tend to be
18 louder, that it actually causes disruption to the
19 activity of whatever the lesson is. Boys are much
20 more apathetic and their disruptions, or their
21 discipline issues are out of more apathy and lack of
22 interest in school where they'll kind of pull other
23 kids away from the learning. They'll be pulling them
24 into class trying to cut class, trying to get out of
25 learning, where the girls are in there but they're in

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1 each other's faces, they're very vocal. You'll have
2 one girl shouting across the room at another girl
3 because she didn't like the comment, you know, that
4 was made or what she saw happening, you know, who's
5 dating who. Very loud, very vocal. The guys would
6 prefer just not to be in the classroom at all.

7 MR. ZOLLMAN: If I had to choose I would
8 say that boys are slightly harder, slightly more
9 restless and antsy, but it's pretty evenly matched I
10 think overall.

11 COMMISSIONER GAZIANO: I suppose it also
12 depends on the age. I remember girls of a certain
13 age and boys of a certain age may be more difficult.
14 Ms. Seng?

15 MS. SENG: I find that the girls are
16 tougher because usually it centers around another -
17 like a guy, okay? They're fighting over a guy. But
18 my experience with the minority male, and this is
19 Hispanic as well as black, they always treated me
20 with respect. I don't know if it's because I
21 demanded it, or if that's the way they were raised.
22 The idea of fathers not being in the home, the mother
23 is the dominant figure. I rarely have discipline
24 problems with black males or Hispanic males. They
25 always treat - and I used to joke about being the

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1 white lady from the suburbs and they loved that, you
2 know. The females though, oh nasty, mean.

3 COMMISSIONER GAZIANO: Let me be clear
4 and that my time has expired with this. I'm not sure
5 even if there is a difference between boys and girls
6 of different ages, but it's not also a factor of the
7 culture of the boys and girls of different age, but
8 your answers have helped flesh that out a little bit
9 so thank you.

10 VICE CHAIR THERNSTROM: Thank you for
11 keeping to the time. Commissioner Castro, you had a
12 question.

13 COMMISSIONER CASTRO: A couple of
14 questions. I read your statements and I appreciate
15 what you said today and a lot of what you told us is
16 based on your personal experience, anecdotal. Do any
17 of you have any information on the specific treatment
18 or disparate treatment or harsher treatment or
19 punishment of a minority student as compared to a
20 white student for the same or similar offense?

21 MS. FRANK: I mean, I can speak on behalf
22 of the research that was done, and actually Suzanne
23 Maxey was responsible for doing some of the research,
24 looking at the various school systems in the region
25 as they were reducing their loss of credit, all

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1 right? So they actually were changing and creating
2 discipline. They were looking at race, those
3 students that cut class, those students that were not
4 coming to class because the truancy was primarily
5 with minority students. And they found that they
6 were losing credit at a higher rate, where white
7 students were somehow able to appeal, there's an
8 appeal process where you go to the teacher and you
9 work something out about, you know, making up the
10 time and you sometimes do, you know, detentions and
11 things like that, but you'll get your credit back
12 where minority students weren't doing that. They
13 weren't going to through the process. Whether it was
14 because they didn't understand the process or whether
15 or not they didn't care about - they would just, you
16 know, take the failure or not. And so the loss is
17 really showing us the difference between how we would
18 discipline, you know, what do we do when they still
19 cut? Because now we're seeing that we actually have
20 to look at those numbers. And I'll tell you that
21 when it's an African-American student, that
22 administrator will look at them differently and say
23 I'll give you a pass because those are the numbers
24 that are being documented for the state, those are
25 the numbers that come back.

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1 COMMISSIONER CASTRO: In those instances
2 do you know of any information or any instance where
3 - you surmised two instances where the students might
4 not be asking for or making that appeal, either they
5 didn't know the process or they didn't care. Do you
6 have any instances where those students were
7 consulted or counseled about did you know you could
8 appeal or why aren't you appealing?

9 MS. FRANK: Every time letters go out to
10 parents indicating warnings both in Fairfax and in
11 Montgomery County. Parents are contacted by the
12 teacher prior to the midway point, well before their
13 second or third absence alluding to the loss of
14 credit, and it's up to the parent to contact.
15 Counselors call students in and have conferences, do
16 you understand that you need to be at class and yet
17 they still will cut until they get to that loss of
18 credit. So there were steps along the way from the
19 moment that they cut the first class to the moment
20 they cut that fifth or in Fairfax County's case third
21 class to lose the credit that parents were contacted,
22 students were contacted and yet some chose to take
23 advantage of the appeals process and some did not.
24 What it showed us was that minorities were much more
25 likely not to and that looked poorly upon the system

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1 and so they got rid of the policy altogether. And
2 it, you know, so that those numbers wouldn't be in
3 place.

4 COMMISSIONER CASTRO: And this is a
5 question for each of the panelists or whoever of the
6 panel would like to answer this. Do any of you have
7 the ability to determine with certainty whether a
8 particular teacher or administrator is acting based
9 on racial discrimination?

10 MR. WELSH: I mean, I can see teachers
11 who - I wouldn't think it's out and out
12 discrimination although who's to say, but -

13 COMMISSIONER CASTRO: My question is not
14 whether it is or isn't, but can you personally
15 determine that based on -

16 MR. WELSH: No, but I know some teachers
17 who do not know how to handle these hyper-masculine
18 black guys. In other words, they push a button in
19 them without knowing they're doing it and I think
20 teachers have got to get to a point where you don't
21 push those buttons. That doesn't mean you let kids
22 do whatever they want, but there are some teachers
23 who do push buttons and I don't think they push them
24 on purpose, but then things will explode.

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1 COMMISSIONER CASTRO: Let me get to the
2 relational trust issue that Ms. Smith spoke about
3 earlier then. Is there anyone else can answer the
4 question I asked earlier?

5 MS. SMITH: I think another kind of
6 tangent question to add on to it is can I identify
7 teachers that are successful with students of
8 different races, and yes I can. And I think that's
9 what we do need more of as teachers, we need to be
10 able to go in and observe and see like what is that
11 teacher doing to be successful in both instruction
12 and relation with those students. Can I personally
13 say that a teacher was discriminating against a
14 student? No, but I do think that data does tell a
15 story and I think that at our school we do data by
16 grade level, that different grade levels have
17 different data trends and I think that each team has
18 to take responsibility for looking at what that data
19 says about themselves.

20 MR. ZOLLMAN: I could not measure
21 somebody's level of prejudice, but it is very clear
22 to see who has more effective interactional styles
23 with students.

24 COMMISSIONER CASTRO: I conclude my
25 questions, Madam Chair, thank you.

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1 VICE CHAIR THERNSTROM: Yes, Commissioner
2 Titus.

3 COMMISSIONER TITUS: Thank you. Thank
4 you, Madam Chair. Thank you for being here.
5 Teachers are saints in my book and I know you're
6 doing more with less every day, and obviously you are
7 very committed to your students or you wouldn't be
8 here. I appreciate you sharing with us your personal
9 experiences. I enjoy your anecdotes, I note your
10 stereotypes, but our task here is really not to just
11 look at one classroom, one personal experience, but
12 more to deal with social patterns, systemic change,
13 persistent problems and so I didn't hear a lot of
14 that. We all I think can agree that there are
15 disparities. I think we may disagree on how
16 important that is and also on the cause of those
17 disparities. I heard from the whole panel that
18 causes were family background, economic situation,
19 attitude in the classroom ranging from boredom to
20 frustration, diet and even special needs. I'm
21 curious about the special needs children, but we'll
22 get back to that. And then I heard from you how to
23 deal with it. We need to be able to suspend them
24 quicker without going through this long process.
25 There's some concern with the Obama administration.

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1 There's the notion it's the black kids so we just
2 need tougher principals. We need to be able to trust
3 and some of these kids just deserve it. Anyway. So
4 I'm wondering - oh, one other one was that it's
5 blamed on the credit system of No Child Left Behind.
6 So I'm wondering, do you have any broader substantive
7 policy suggestions for us at how we get at this
8 problem that we all admit does exist?

9 MS. SENG: My thoughts are that what you
10 need to do is - because the only way you're going to
11 find out what really the problem is is send people in
12 as substitute teachers, let them spend the week and
13 find out for themselves what's really going on
14 because that to me is the only way that you're going
15 to - I mean, we could sit here and talk and you know,
16 give our opinions, you know, but until somebody's
17 actually in the trenches that is there to examine,
18 you know, and actually experiences the experiences,
19 you know, things aren't going to change.

20 COMMISSIONER TITUS: So we need better
21 teacher training, is that what you're suggesting?

22 MS. SENG: I don't know if that's it.
23 Maybe like people have said, you know, learning how
24 to deal with, you know, some people are just less
25 abrasive. You know, some people - what I got from

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1 your question was what can we do, what are some of
2 the things we can do to solve and what I'm saying is
3 send people in to experience what's going on so that
4 they can come back and say, okay, this is what's
5 going on and this is what we need to do.

6 COMMISSIONER TITUS: But that's the
7 purpose of this hearing. We know it's going on and
8 we hear you telling us it's going on and all the
9 statistical studies show that it's going on so now we
10 need to figure out how to keep it from going on and
11 fix the problem. That's why I'm asking you for your
12 suggestions.

13 MR. WELSH: That's a complicated subject.

14 COMMISSIONER TITUS: Indeed it is and
15 that's the purpose of -

16 MR. WELSH: - bureaucratic memo, right?
17 I mean, that involves all kinds of human interaction
18 and you know, you can't have some government
19 bureaucrat write a little page that we're going to
20 solve this problem.

21 COMMISSIONER TITUS: So do we just lose
22 these students and let them go and continue with the
23 problem?

24 MR. WELSH: No -

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1 COMMISSIONER TITUS: Do we have better
2 teacher training? Do we invest more in mentorships?
3 Give me some suggestions of some of the complicated
4 things we could do to begin to work on this problem
5 rather than just to let it continue.

6 MR. WELSH: People are doing their best
7 at not letting it continue, they're trying to get the
8 best principals, they're removing principals that are
9 ineffective, they're trying to get better teachers
10 and it's a constant kind of process that we have to
11 go through, but it's imperfect. Come out here and
12 substitute for a couple of weeks.

13 COMMISSIONER TITUS: I'm a teacher. I am
14 a teacher so I appreciate that and I'd be glad to
15 come to the classroom. I know you're doing a good
16 job, but we are talking about a systemic problem.
17 We're not talking about your five classrooms and how
18 do we get at that. Do we need more teacher training?
19 Do we need mentorships? Do we need some kind of
20 better way to let the students find out about what
21 you said, maybe they don't know the process so that
22 they can do something besides being suspended, or
23 maybe they don't care? Maybe we should find out if
24 they know about it or if they don't care and work on
25 that side of it. We can't just say well, we're

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1 trying in our own classrooms and let it go or how do
2 you make progress?

3 MS. SMITH: I would say teacher training
4 would be a part of it. As I entered the teacher
5 profession through an untraditional route, I was a
6 Teach for America -

7 COMMISSIONER TITUS: A great program, by
8 the way.

9 MS. SMITH: I received no preparation to
10 prepare me for what I was going to experience in
11 terms of discipline and race, and so I do think that
12 having some staff development, not just like
13 training. I think that's part of it, but I also
14 think that it needs to be some ongoing conversations
15 that happen at a local school level amongst staff
16 members. And I think that's important because it's
17 something that we don't take the time.

18 MS. SENG: Maybe too it should be put
19 more in the hands of the local school district
20 because each school district has its own problems to
21 solve and get, you know, get the federal government
22 out of the - because you can't make a blanket
23 national, you know, each area, each school district,
24 each, you know, whether they're inner-city or
25 whatever, you know, they're different and so they're

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1 the ones that should be - suggestions can be made,
2 you know, but it's the school district itself that
3 needs to solve the problem because everybody's
4 problems aren't to, you know -

5 COMMISSIONER TITUS: Greater local
6 autonomy.

7 MS. SENG: Yes.

8 VICE CHAIR THERNSTROM: I need to cut -

9 COMMISSIONER TITUS: Thank you. I'm
10 sorry, Madam Chair.

11 VICE CHAIR THERNSTROM: - questions off.
12 Anybody else have questions? Commissioner Heriot.

13 COMMISSIONER HERIOT: Thank you all for
14 coming. This has been very, very interesting. Like
15 Commissioner Titus I'm a teacher, but I teach law
16 students so I'm lucky. I've been teaching for 21
17 years and I've never had a student act up in class.
18 Actually, now I think about it I had one, my first
19 year teaching, so I haven't really noticed what I
20 think a lot of people that are teaching at the
21 elementary and junior high and high school level look
22 at. I just don't have that. What I have had instead
23 is that when I first started teaching if a student
24 had an appointment with me they were there 15 minutes
25 early and now they don't show up. It's very odd.

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1 (Laughter)

2 MR. WELSH: They're looking at your notes
3 on the internet.

4 COMMISSIONER HERIOT: Maybe that's it.
5 Anyway, the thing that interested me was the
6 bureaucratic issue. Mr. Zollman I thought was very
7 helpful in telling us about the procedures that he
8 has to go through to discipline a student and I was
9 just wondering if any of the rest of you had comments
10 about the procedures at your school, how you must go
11 about disciplining the student, what forms you have
12 to fill out or what can you do yourself, what you
13 have to kick upstairs to the principal and such.

14 VICE CHAIR THERNSTROM: Can I add just a
15 sentence to that? And to what degree are you
16 confined by a legal framework, both federal and
17 state?

18 COMMISSIONER HERIOT: Yes. Of course you
19 may not know why the procedures are in a particular
20 school district. It may have something to do with a
21 law that teachers are not told about, but anyway, can
22 I get some comments on that?

23 MS. FRANK: Yes. So last year the State
24 of Maryland got rid of - they no longer wanted to
25 include - I mentioned that in my statement - the

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1 suspension, in-school suspension, that you had to
2 make the choice. If you're going to suspend the
3 student you have to send them home and schools were
4 then told by depending on where they were in the
5 state how they wanted - how to reduce those numbers.

6 COMMISSIONER HERIOT: Who's the "you"
7 there? You're talking about you're making that
8 decision or someone else is?

9 MS. FRANK: This is at the superintendent
10 level.

11 COMMISSIONER HERIOT: Okay.

12 MS. FRANK: And it came down that the
13 schools had to reduce their numbers. No longer could
14 they have in-school suspension. So I got an email
15 today that said a student will be an in-school
16 exclusion, or in-school intervention is what they're
17 called now which is essentially the same thing, but
18 then they don't have to report those numbers as
19 suspension. So these are other ways that we can keep
20 them in school. You have to contact - we have a
21 computer form where you have to check off the same
22 thing. Three times you have to contact the parent
23 before you can send them to the administrator, and
24 then once it's at the administrative level you don't
25 know what's going to happen to that child. You refer

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1 the child and it's up to the administration to
2 determine what's going to happen. It's most likely
3 that that child will be back in school if they are a
4 minority student, if they are a minority.

5 COMMISSIONER HERIOT: What if they're
6 not?

7 MS. FRANK: And if they're not then you
8 will probably get follow-up from the parent and
9 you'll probably get - they will probably get a lunch
10 detention or something very - the disciplining at all
11 because it has to be documented has been reduced.
12 That same kid who spray paints on the wall in the
13 hallway will be back in the class with the lunch
14 detention which is the same thing as, you know, being
15 late to class. So there's no -

16 COMMISSIONER KIRSANOW: What's the effect
17 on the learning experience of the non-disruptive
18 student by the fact that the disruptive student is
19 back in class again?

20 MS. FRANK: Oh, it's horrible and then it
21 sends the message that nothing's really going to
22 happen to these students. If I do the same thing
23 I'll be back in the class, I won't miss. Because we
24 don't want them to miss instruction that's why they
25 got rid of the in-school suspension rule.

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1 COMMISSIONER GAZIANO: How horrible is it
2 to have a lunch detention? I don't understand.

3 MS. FRANK: You don't get to go to lunch.
4 You have to sit in your classroom. That's what I'm
5 saying it is the minimal - you know, so you don't get
6 to hang out with your friends for the 30 minutes.

7 VICE CHAIR THERNSTROM: But you get food
8 anyway.

9 MS. FRANK: Absolutely. But it comes
10 back to, you know, if that's the maximum that we're
11 getting what is the real, you know, the real push to
12 have them behave? You know, that obviously
13 punishment/reward system is not working. Those kids
14 don't feel like there is a punishment for them and so
15 they will continue to act out regardless of their
16 race. And I go back and say, you know, it is the
17 parents that are active, that follow their children,
18 that know what their children's doing, that you know,
19 that contact the teachers?, those kids will make the
20 right decisions and regardless of race.

21 MR. ZOLLMAN: The irony is that they like
22 the detentions. They like it. They even tell you.
23 The detentions are a haven of tranquility apart from
24 the mayhem that's going on in the school.

25 MS. SENG: I agree.

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1 MR. ZOLLMAN: I think they're behaving
2 just badly enough to earn the detention.

3 COMMISSIONER HERIOT: Like Otis in the
4 Andy Griffith Show wanting to spend a night in jail.

5 MS. SENG: Exactly.

6 VICE CHAIR THERNSTROM: Do we have other
7 questions? I have a couple of questions, but
8 Commissioner Achtenberg.

9 COMMISSIONER ACHTENBERG: I just want to
10 observe that if it were to be the case that students
11 who come from racial minorities were being
12 disciplined at a higher rate because of racial
13 prejudice on the part of the teachers or the
14 administrators, we would all agree that that is
15 something to be not only avoided but something for
16 which policies do need to be put in place to deal
17 with that eventuality. Is that a fair summary as
18 well of your views? I trust that it is.

19 MS. SMITH: Absolutely, yes.

20 MR. ZOLLMAN: With qualification because
21 how is that measured?

22 COMMISSIONER ACHTENBERG: Well, I mean
23 that's very - I think you ask the salient question
24 and the question that I believe the Department of
25 Education is also trying to grapple with, perhaps

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1 inartfully. Certainly we'll be hearing later from an
2 official of the Department of Education, but that
3 seems to be the issue that everyone is trying to
4 grapple with. You make a good point. Similarly it
5 seems to me and my son's an eighth grade inner-city
6 schoolteacher as well. He teaches social studies and
7 he has all the challenges that you all describe you
8 have faced, and I think my son's a saint and so to
9 concur with Commissioner Titus, thank you very much
10 for your service. There's nothing more important.
11 But I would only observe that I believe there are
12 many people like yourselves who would have the kinds
13 of views that you've expressed and many people like
14 yourselves who may have different explanations or
15 what have you for what they've experienced as
16 teachers. But it seems to me most are people of
17 goodwill trying to get at a problem and I don't know
18 how precise the measurements are that we have. I
19 would be interested to hear from some scholars and
20 experts who might be able to shed additional light on
21 this phenomenon in addition to the helpful albeit
22 anecdotal information that you all have provided. So
23 I just wanted to make that observation. Thank you.

24 VICE CHAIR THERNSTROM: Thank you very
25 much. I think all commissioners except me have had a

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1 chance and I actually do also have a couple of
2 questions. One, just two brief comments. One, it
3 seems to me that nobody answered Commissioner
4 Kirsanow's point which was really - I think his
5 question amounted isn't there a statistical disparity
6 between the disciplinary rate of Asians and that for
7 African-Americans and Latinos, and I think nobody
8 zeroed in on that, and nobody - in addition, nobody
9 answered my addition to Commissioner Heriot's
10 question which was look, isn't there also a legal
11 framework here that is a barrier to taking effective
12 disciplinary action.

13 But I wanted to go on to the larger
14 question that a number of you raised which is that a
15 lot of the disciplinary problems of particular kids
16 are the consequence of coming from very chaotic home
17 environments. I happen to have spent a lot of time
18 in schools, for 11 years I was on the Massachusetts
19 State Board of Education and I used to visit schools
20 a lot not only in Massachusetts. And I remember very
21 clearly having been to a wonderful high school, the
22 Frederick Douglass High School in New York, in Harlem
23 where I asked the principal if you had a wish list
24 what would be your top item and he said to have the
25 building next door where I could have a high

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1 percentage of my students sleep overnight, so have an
2 alternative home as it were so that they were
3 sleeping in the same bed every night, they weren't
4 going home to you know really in multiple ways
5 chaotic households. And my question is given the
6 fact that so many of the disciplinary problems that
7 you're seeing do reflect the circumstances of the
8 children that are out of their control, is it a
9 correct assumption on my part that it is the
10 obligation of schools to educate who comes - who sits
11 in the classroom before the teachers, whatever their
12 background, whatever their socioeconomic background,
13 whatever their race or ethnicity, and so we can't fix
14 these families. I mean, we can try to work with
15 families a bit, but basically you can't fix families,
16 schools can't. I mean, the larger society, that's a
17 different question, but schools can't fix families.
18 So what is the role of - how do you see the role of
19 schools in dealing with the fact that you've got
20 kids, very troubled kids, coming from chaotic
21 households and we can't fix that chaos.

22 MS. FRANK: There are programs out there
23 - I mean, KIPP was a perfect example, you know, where
24 they actually did that, right? They were able to go
25 into the inner cities and create these boarding

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1 schools and they've seen tremendous success. That's
2 - across the board that's not likely to happen
3 anytime soon.

4 VICE CHAIR THERNSTROM: Not likely to
5 scale up. I know the KIPP schools very well.

6 MS. FRANK: But I think that a lot of it
7 has to do with the expectations that we have for
8 students. You know, not all students are going to go
9 to college, that in this country, you know, if we
10 compare our scores to other countries, I mean,
11 academic achievement and discipline I think are so
12 connected. You know, if you look at the Hispanic and
13 African-American graduation rates, African-American
14 and Hispanic GPAs, it will be - it'll mirror that of
15 the discipline. And I think that a lot of it has to
16 do with culture and expectations and perhaps not
17 necessarily finding - not necessarily focusing all
18 these kids on the same path. I think that we have,
19 you know, we have created these schools and these
20 images of what does it take to be successful. You
21 must have a college degree. You know, if more focus
22 was focused on what student success is. You know,
23 and all of these programs that, you know, the
24 research has showed, you know, the chefs programs,
25 these vocational tech programs, you know, that if

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1 they were engaged, if they found it meaningful to
2 them, if you know they saw in D.C. if you paid them
3 for their grades. I mean, they need to see that
4 connection that there's a benefit for being in
5 school, acting the right way and staying there and
6 it's a reward and not just something they
7 automatically get. I think that that would have a
8 huge effect.

9 VICE CHAIR THERNSTROM: The larger
10 question is the big message of the KIPP schools.
11 Yes.

12 MR. ZOLLMAN: When looking at the schools
13 we have and the school districts we have with huge
14 systemic problems which don't yield to simple or easy
15 solutions it may be that we're going to have to re-
16 conceptualize education in many ways, in terms of
17 governance, in terms of curriculum, every dimension
18 you can imagine. I think we may have to rethink and
19 rework because the problems are very complex and
20 diffuse.

21 VICE CHAIR THERNSTROM: Yes. I agree
22 with that. My time is up but let me just add one
23 sentence here. I think there's been a little bit of
24 fuzziness here which would have - and it could use
25 some clarity. What exactly is a discipline problem.

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1 That is, is wandering in and out of a classroom which
2 goes on all the time a discipline problem? Is
3 bringing food into the classroom a discipline
4 problem? Is girls fixing each other's hair a
5 discipline problem?

6 MR. WELSH: None of the above.

7 VICE CHAIR THERNSTROM: None of the
8 above, but they all disrupt learning.

9 MS. FRANK: I would also comment that if
10 those were our only disruptions we'd have so much
11 academic success and you know, our class would be
12 that much richer.

13 VICE CHAIR THERNSTROM: Well, if you go
14 back to the KIPP example just, you know, which is a,
15 you know, this is a minor, tiny corner of the
16 American educational - they don't allow. It is
17 important that they don't allow food in the
18 classroom. Anyway, my time is up.

19 MS. FRANK: In those cases those children
20 are fed by the program to ensure they eat. That
21 might be the only chance they have.

22 VICE CHAIR THERNSTROM: Yes, that's
23 correct. And they can come early in the morning of
24 course, hopefully. Which is true of many public
25 schools as well. I thank you so much and

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1 unfortunately we do have to move on to the next
2 panel. Please remember to remove your microphones if
3 you haven't done so before you stand up.

4 PANEL 2 - (ADMINISTRATORS)

5 VICE CHAIR THERNSTROM: I'm sorry, I
6 should have called - I thought it was obvious, but I
7 should have made it obvious. Please come to the
8 table, our second panel.

9 Okay, once again I'm going to introduce
10 people and once again I apologize for the necessity
11 for brevity. Suzanne Maxey is the principal of T.C.
12 Williams High School in Alexandria. She began her
13 career in education as a high school social studies
14 teacher and for over 30 years she has served with
15 distinction in various school districts as an
16 administrator, vice principal and dean. She has been
17 widely credited with improving test scores, raising
18 staff morale and energizing students at Seneca Valley
19 High School in Montgomery County, Maryland. Dr.
20 Osvaldo Piedra - and please correct me if I'm wrong
21 about your first or last name - is an assistant
22 principal of East Lake High School in Florida and has
23 over 20 years of teaching and administrative
24 experience in elementary, middle and high school.
25 Dr. Piedra has been dedicated to achieving positive

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1 academic outcomes for students who exhibit discipline
2 problems. Mr. Joseph Oliveri is a retired
3 administrator of all alternative schools in the
4 Austin, Texas Independent School District. In his
5 position as principal of Austin's Alternative
6 Learning Center as well as Director of Alternative
7 Education he had responsibility for all students
8 removed from Austin schools for disciplinary reasons.
9 He has considerable experience with troubled youth.
10 Mr. Edward Gonzalez is a 29-year veteran educator
11 with extensive classroom and administrative
12 experience in public schools. He is currently
13 Associate Superintendent in charge of the Department
14 of Prevention and Intervention in Fresno, California
15 Unified School District, the fourth largest district
16 in the state. I will now ask the panelists to swear
17 or affirm the information you are providing is true
18 and accurate to the best of your knowledge and
19 belief.

20 (Whereupon, the panel was sworn)

21 VICE CHAIR THERNSTROM: Thank you for
22 coming. I welcome all of you on behalf of the
23 commission. I'll call you in the order in which you
24 are seated after I switch my glasses. Suzanne Maxey.

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1 MS. MAXEY: Good morning everyone. I
2 have been in education, public education for 36 years
3 in a variety of positions, but 14 of them I've been
4 an educator - I've been a principal in four different
5 schools and two different states and three different
6 jurisdictions. So I have had a chance to see how
7 different school systems handle discipline. One of
8 them was a very strict, very structured discipline
9 code which you followed to the letter. Other
10 jurisdictions have been a little bit more loosey
11 goosey in terms of putting the onus on the school
12 administration. In the 36 years that I have been in
13 education I have seen enormous changes in how we do
14 things and how we perceive students. In those 36
15 years whether I was classroom teaching or whether I
16 was a principal I used the same formula for
17 discipline. It's very simple. We tell students what
18 the rules are, we tell them why they have those rules
19 because kids need to know why you do what you do,
20 tell them what the consequences are for violating
21 those rules and being very consistent in doing
22 exactly that. So in all the schools that I've run
23 this has been the formula that I've used, the tool
24 that I've used to get students to behave properly.
25 I've been teased in many cases for being - not

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1 playing. I don't play at all when it comes to kids'
2 safety and their welfare, and yet I'm also known for
3 being very nurturing, very caring. Patrick teases me
4 that I'm a combination of Attila the Hun and Mother
5 Teresa. I do believe in walking softly and carrying
6 a big stick so that our kids, the kids that I've
7 dealt with whether in my own classroom or in my
8 school have behaved very well. At Seneca, at Laurel
9 High School, at Bowie High School, now at T.C.
10 Williams High School the formula works because most
11 kids, most kids whether they're black, white, pink,
12 doesn't matter, want to do the right thing. And when
13 you're firm and fair and caring and they know that
14 you love them they do what you want them to do. So
15 you don't have to fuss with them and suspend. For
16 most of these kids you can say don't do that, that's
17 not kind, it's not appropriate, it's not whatever,
18 they get it. It's the outliers that cause us all
19 problems. It's the students who don't want it, who
20 don't get it, who don't have the training, whatever
21 it happens to be. So for the most part I find
22 discipline is really not a big issue because you have
23 to just be very consistent and firm in the way you do
24 things.

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1 Some of the - I think there's two things
2 we need to make distinctions between. There are
3 certain violations of school rules that the
4 administration would have no choice about, and those
5 are the ones that we refer to as the big five,
6 whatever that happens to be. It's the drugs, the
7 alcohol, the weapons, the severe fighting, those
8 kinds of things that are really non-negotiable in a
9 schoolhouse. If you allow that to go on in a
10 schoolhouse you will have chaos in the schoolhouse.
11 But there are other kinds of things and I call them
12 discretionary things that usually boil down to the
13 insubordination. A lot of our students, particularly
14 minority students, get themselves involved in
15 situations where they get suspended from school and
16 disciplined because of insubordination or disrespect.
17 This is a huge, huge category of offenses. Those are
18 the ones that I think that teachers and - and both
19 teachers and administrators make the biggest
20 difference here. Let me give you an example. I had
21 an athlete at the school in Seneca, one of our star
22 athletes, we knew he - he was African-American and we
23 knew he came from a terrible home environment. I
24 won't go into details. It was terrible and the
25 school kind of adopted him. One day I see him in my

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1 office and there was a call for me, for the
2 administrator down in his classroom. I was not
3 engaged with parents or whatever so I said I can take
4 it. So I went down to the classroom and I opened the
5 door and there was this student and he was just
6 furious and his hands were balled up and I said,
7 "What are you doing here?" He said, "I'm just
8 angry." The teacher says he won't work, he's just
9 nasty, he needs to go. So I took him down to my
10 office. I sat him down, I had the referral in my
11 hand. I said, "Joe, this isn't like you, what's up?"
12 This six foot two athlete, tears start streaming down
13 his face and he said Ms. Maxey, somebody stole twenty
14 dollars from me. That twenty dollars is the only
15 money I have for food this week. My mother isn't
16 around, I have no money for food. I can't survive
17 without it. I took the referral and I did this, I
18 put it over there and I said okay, let's talk. The
19 first thing I did is I went to my own purse - and
20 teachers do this all the time in my experience - and
21 took twenty dollars out and said here, sweetheart.
22 Here's the money for the week. Now let's talk about
23 your behavior. He felt so bad, he was so apologetic
24 because he had just lost it in the classroom. We
25 went down to the classroom, rather than suspending

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1 him or giving him detention I went down to the
2 classroom teacher. Luckily she was a very reflective
3 and very thoughtful teacher and I said let me tell
4 you what just happened. I said Joe, explain to her
5 and he did, and he apologized and said I'm really
6 sorry. You're a great teacher. I feel so bad. She
7 welcomed him back in the classroom and that was the
8 end of it.

9 These are the kinds of discretionary
10 things that good teachers and good administrators do
11 all the time. It's not a question of suspending or
12 not because there's a whole lot of things you can do
13 to discipline kids that you don't ignore poor
14 behavior, you do hold people to the fire, but you do
15 it in a way that's humane. Sometimes you don't have
16 that luxury. Sometimes teachers don't cooperate with
17 you, they want a kid's head, but sometimes
18 administrators do the quickest thing as opposed to
19 the right thing. There are a lot of variables that
20 go into it. One of the questions that you asked -
21 and I'm on red now so I can't talk anymore.

22 VICE CHAIR THERNSTROM: Yes, I was going
23 to -

24 MS. MAXEY: I'll stop.

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1 VICE CHAIR THERNSTROM: Okay, Mr. Piedra.
2 Dr. Piedra, sorry.

3 DR. PIEDRA: Well, first of all good
4 morning. I'd like to begin by thanking you for the
5 opportunity to provide you with some information. I
6 hope you find my information beneficial for all of
7 our students certainly. I'll tell you a little bit
8 about my school district. It's Pinellas County
9 located in Florida. The statistics that you see
10 nationally whether it's the suspension rate, academic
11 achievement rate, graduation rate among minority
12 African-Americans, Hispanics, or economically
13 deprived students certainly reflect our school
14 district. We are no different locally than we are on
15 our national statistics. Back in 1964 there was a
16 federal lawsuit that went through the Fifth Circuit,
17 it was called the Bradley v. Pinellas County School
18 District where sadly our school district was not
19 integrating and in fact was teaching our minority
20 students differently than the non-minority students.
21 That lawsuit was finally settled in the year 2000
22 when the school district received unitary status.
23 Since that point in time we've been under a rather
24 large lens where we've been looking at our minority
25 population, specifically our African-American

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1 students, looking at systems that we can put in place
2 to be able to make all of our students, especially
3 those students that are - for which there is a
4 tremendous gap in the educational process, whether it
5 is the discipline gap, the achievement gap, the
6 reading gap, the math gap, you name the gap and we're
7 trying to resolve those issues. What I'm going to
8 speak to you on today in my relatively short time is
9 one of the systems that we have in place, and I hope
10 to be able to address some of the questions that were
11 asked earlier.

12 In Pinellas County, through means of the
13 University of South Florida we're working on a
14 problem called - or a system called the Response to
15 Intervention, positive behavior interventions. I'll
16 give you an example. If Johnny doesn't know how to
17 read truly, we teach him to read. If the young man
18 doesn't know how to add, subtract, multiply, divide,
19 we will teach him those things. Sadly, when students
20 do not know the proper decorum, proper behavior,
21 proper language in a school setting the reality is
22 instead of teaching them what is considered
23 appropriate, sadly we tend to discipline them, often
24 suspension, out-of-school suspension, in-school
25 suspension. Those discipline tends to remove the

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1 student from the academic setting, causing them to
2 fall further and further behind. What we're doing is
3 taking a proactive approach and through the means of
4 the Response to Intervention we're able to do public
5 school-wide positive behavior strategies, strategies
6 for students to know ahead of time, not after the
7 fact, what is expected of them. Those behaviors are
8 modeled, they're taught to the students, they're
9 taught in the classroom as well as the school level.
10 This encompasses both academic, whether it's reading,
11 writing, math. It also encompasses behavioral
12 issues, largely behavioral issues. And yes, we do
13 know there's a strong correlation between the school-
14 wide behavior and the behavior in the classroom and
15 how all that ties to academic success.

16 To tell you a little bit of what RTI is
17 and is not. It is not a means of staffing children
18 into exceptional education programs. That's not the
19 purpose of RTI. But the purpose of RTI is to ensure
20 that all students are able to learn and it is a
21 school-wide means. The visual gives you an idea of
22 the layers of Response to Intervention where the
23 lowest layer, that is to say at the bottom of the
24 triangle, represents the entire school discipline
25 policy, academic policies, et cetera. As the student

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1 is determined to be struggling we have computer
2 systems in place to determine attendance, it gives us
3 - tracks referrals for numerous reasons, tardies,
4 academics, grades, et cetera and the students receive
5 more and more intense services, educational services,
6 eventually as it goes to the top of the pyramid where
7 the students receive the most intensive services, and
8 those students tend to be fewer and far apart. So
9 you're able to spread the services that are available
10 to the school within the academic and financial
11 restraints that you have within that school setting.

12 What is RTI? Quite frankly it is a shift
13 in thinking. You're removing from looking at the
14 student who is either a minority, issues with
15 reading, not achieving academically and trying to fix
16 the student which we know we do not have control
17 over. I cannot control the marriage background nor
18 the economic background of the student so what I can
19 control is the school environment. So the purpose of
20 RTI is to look at the school environment and
21 determine what is it within that environment that's
22 simply not meeting the needs of the student and then
23 within a team of teachers, administrators, school
24 professionals, guidance counselors, et cetera, we
25 find ways of meeting those educational needs for the

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1 students. So all students, 100 percent of the
2 students can learn which is indeed our obligation
3 with the No Child Left Behind. And I do thank you
4 for this opportunity.

5 VICE CHAIR THERNSTROM: Thank you for
6 being on time.

7 (Laughter)

8 VICE CHAIR THERNSTROM: We now move on to
9 Mr. Joseph Oliveri.

10 MR. OLIVERI: Great, thank you. With
11 over 30 years of experience I'd like to focus my
12 response to my 11 years of experience with three
13 removal schools. I did have six schools and at
14 various times up to eight and nine schools with
15 different contractual arrangements; I will talk to
16 you about those three removal schools. Austin
17 Independent School District has removed African-
18 American students at a rate greater than their
19 representation in the total school population. This
20 was true all throughout my years of work and
21 continues today, although at lesser rates. Hispanics
22 now represent over 40 percent of the population
23 removed, slightly above their representation in the
24 total population. Whites have always had removal
25 rates below their representation and Asian students

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1 far below their proportion in the public school
2 population. In all offense categories African-
3 Americans and special education students lead in the
4 total number of removals. A Texas Appleseed report -
5 I highly recommend that you take a look at it-
6 entitled, "The Texas School to Prison Pipeline:
7 School Expulsion: The Path From Lockout to Dropout"
8 which was published in April, 2010 states as one of
9 its conclusions: "disproportionate representation of
10 minority students in disciplinary referrals has
11 plagued schools since desegregation." Texas
12 Appleseed's research supports earlier findings that
13 show that African-American students are most often
14 disciplined for low-level subjective offenses like
15 "serious or persistent misbehavior." The impact of
16 disproportionate expulsion is a grave concern given
17 both the achievement gap for minority students and
18 their elevated dropout rates. If Texas is serious
19 about addressing the achievement gap and high dropout
20 rates for minority students it must take a close look
21 at the role that disproportionate disciplinary
22 referrals play- obviously Texas needs to look at that
23 as you are looking at it.

24 This disparity in my experience is quite
25 complex to explain. Is it prejudice? Yes, in some

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1 cases it appears that it is. Is it based on
2 ignorance of cultural differences? Yes, in some
3 cases it may be. Is it based on a strict adherence
4 to zero tolerance regulation? Yes, I think that was
5 more so in the past although it is certainly a factor
6 today. I have experienced cases where a white
7 student and an African-American student committed the
8 same offense at the same school and the African-
9 American was removed and the white student was
10 permitted to remain on the campus. It happened too
11 often to not make one feel that it may be symptomatic
12 of other reasons behind their removal, and it
13 contributes to the continued disparate removals of
14 African-Americans. The information sources of this
15 prejudice were the parents of the African-American
16 students and my discussions with other administrators
17 from that same school after I inquired about removal
18 details.

19 Another removal I have never understood
20 is the removal of students to discipline alternative
21 education programs for cutting classes or skipping
22 school. To me this is symptomatic of other problems
23 best addressed within the home school environment.

24 Disparities in academic abilities often
25 go hand in hand with disparities in discipline. Many

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1 African-American students and Hispanics do come to
2 school without the academic skill-set that would put
3 them on par with their white peers. Sometimes class
4 size and cultural awareness causes some teachers to
5 react to their behaviors differently than they would
6 if they were white. Taking the time to learn about
7 them and their cultural differences is a luxury many
8 teachers feel they cannot afford to take so they do
9 what they feel they are paid to do and maintain
10 discipline by removing disruptive students.

11 The problem is that if we do not take
12 other actions often for the student the cycle repeats
13 itself over and over until the feeling that they have
14 no other choice, they drop out of school.

15 In an earlier report by the same
16 organization entitled "The Texas' School-to-Prison
17 Pipeline, Dropout to Incarceration: The Impact of
18 School Discipline and Zero Tolerance," states as one
19 of its conclusions: "equally troubling are data-
20 driven indicators which indicate that the greater
21 predictor of whether a student will be sent to DAEP
22 [Disciplinary Alternative Education Programs] is
23 whether he or she attends a particular school and not
24 the nature of the offense. Add to this mix some
25 districts' practice of referring very young children

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1 to DAEPs and it becomes all the more imperative that
2 as a state we assess how these policies contribute to
3 the criminalization of student misbehavior that is
4 removing larger numbers of students from the
5 classroom.

6 "For too many juveniles their
7 disciplinary removals from school are an introduction
8 to the school to prison pipeline."

9 Well, if a student does something that
10 calls for their removal, shouldn't they be removed?
11 Should we just ignore their behavior just because
12 they are African-American? Of course the answer is
13 "no," but we do need to take steps to make informed
14 decisions about an incident, be open to intent and
15 self-defense as a plausible action and work quickly
16 to involve parents, even to the point of formalizing
17 agreements on acceptable school behavior including
18 them, their child and the school.

19 We need to expand our potential solution
20 sources to include community links to mental health
21 and social service agencies.

22 We also need to be preemptive in
23 addressing the needs of students who are at risk of
24 developing problematic behaviors that impinge on
25 school safety and learning opportunities for all

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1 students and teachers in the classroom. We need to
2 provide teachers with specialized training they need
3 to work with students such as TESA, Teacher
4 Expectation Student Achievement, and GESA, Gender
5 Ethnic and Student Achievement training. We need to
6 establish school-wide and district-wide practices and
7 programs such as Positive Behavior Supports that was
8 mentioned by my co-panelist, and character education,
9 and we need to establish means and methods to help
10 students to build relationships with peers and adults
11 that will secure their future success.

12 VICE CHAIR THERNSTROM: Thank you very
13 much. And Dr. Gonzalez.

14 MR. GONZALEZ: Let me correct one thing.
15 It's Mr. Gonzalez and not Dr. Gonzalez, although I do
16 appreciate the optimistic prognostication!

17 VICE CHAIR THERNSTROM: I'm looking at
18 your sign there. The Commission got it wrong. Our
19 apologies.

20 MR. GONZALEZ: Well, thank you very much.
21 Okay, a lot of what I have statistically is going to
22 be redundant in some way. I'm going to fly through
23 some of this. I looked at six groups,
24 disproportionate subgroups in the population of
25 Fresno Unified, which by the way Fresno Unified is in

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1 Fresno, California which the Brookings Institute in
2 2006 said that Fresno, California has the highest
3 concentration of poverty in the country so it's
4 really a stunning statistic. African-Americans as
5 you can see were referred for expulsion almost triple
6 their numbers. Special education is right up there
7 too. Students in foster care, male students were
8 three quarters of the expulsion referrals. Middle
9 school students are fully two out of every five, and
10 Native Americans, but that is a very small population
11 in our district were also disparate. This is a
12 midway mark this year. As of 90 days of school you
13 can see the disparity has lessened somewhat for three
14 of those groups, African-Americans, special ed
15 students and male students are all down. The foster
16 care students are up and the middle school students
17 are also up. Middle school students, you know, are
18 high for a number of factors, and this is throughout
19 the country. In the district that I'm in, middle
20 school students are at seventh and eighth grade, and
21 it's really a bus stop in their life. At a time when
22 they need really the most connection with adults they
23 get the least connection, they go from sixth grade
24 where they have, you know, pretty much 300 minutes a
25 day with one person - like them or not they at least

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1 know the expectations of that teacher. They jump
2 into seventh and eighth grade and they have now five
3 or six teachers at 45 to 55 minutes a day and
4 supports are not there typically to help them be
5 successful. And so we find that middle school
6 students now of course are 40 percent of all the
7 expulsion referrals and eighth grade alone is 25
8 percent and has led the district for the last eleven
9 years and seventh grade has been second for the last
10 eight years.

11 We have a class called the Men's Alliance
12 which we want to talk about, things that are working.
13 The Men's Alliance is the high school class where we
14 take high-risk - behaviorally high-risk students,
15 primarily they are African-American and Hispanic
16 students, and they are with a teacher who makes a
17 connection. We also have a facilitator and you can
18 see at the halfway mark of the Men's Alliance student
19 suspensions per day are down 45 percent. The days of
20 suspension are down. Obviously that means unexcused
21 absences are way down. And GPA, even though this is
22 not a curricular intervention, GPA is up 25 percent.
23 So that's been a very successful model and we are
24 piloting that at three schools but we're expanding to
25 five.

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1 This year's expulsion referrals are down
2 20 percent if you look at the lower right-hand
3 corner. I have made it a policy to really follow due
4 process. I am not asking the teachers or the
5 administrators to artificially lower numbers, but I
6 told them that if due process is not there it's going
7 to be kicked back. If you look at the actual
8 expulsions which is this slide right here you can see
9 that the referrals are down 23 percent. I had to
10 adjust that as of Day 81 because there were still
11 some pending in the final nine days of the halfway
12 mark, but canceled and stopped are up quite a bit.
13 The actual expulsions are down 40 percent this year.

14 But this is - the next slide is something
15 that we haven't really talked about, and this is a
16 disparity that exists throughout many districts I
17 would suspect. This is a look at GATE, Gifted and
18 Talent Education. You can see that total enrollment
19 of white students is 9,500 in our district, 12.5
20 percent of them are identified as gifted or talented.
21 Hispanics it's less than 2.5 percent, African-
22 Americans just over 2.5 percent, and you can see the
23 other breakdowns there. And this creates and it
24 underscores basically a stereotype of racial inequity
25 and that is a very, very damaging stereotype to

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1 students and their families both to the perpetrators
2 of the stereotype who then treat those students as
3 less and to the students themselves who drink the
4 Kool-Aid.

5 So those are my statistics. I just
6 wanted to - I've got a little bit of time - to tell
7 you that you know there's a lot of things, I've heard
8 some really good things from some of my panelists and
9 the previous people before me about managing schools
10 and so on. I think developing a relationship with
11 students is absolutely critical. In my position as
12 associate superintendent I make it a point to make
13 home visits. I leave my office, I try to do it once
14 a week and I keep a documentation of students that I
15 sit with knee to knee, I go into the projects, I go
16 into the barrio, I go into wherever these students
17 are. These are typically students that have been
18 referred for expulsion or in some cases they have
19 been expelled and I talk to these students knee to
20 knee, man to young man in the most case but sometimes
21 to young woman and I find that they are stunned when
22 I come back to their school site or their
23 continuation school or their community-based school
24 that I remember their name and I know who they are.
25 And I try to model this for the other administrators

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1 because the kind of disparity that we see is rooted
2 in racial and behavioral inequities to different
3 groups of people. There can be no other way. It is
4 not a level playing field to say otherwise. And
5 until we address that, you know, we can't simply say
6 they come from dysfunctional homes. There's a reason
7 those homes are dysfunctional. When you can't get a
8 job even though you're qualified, when you have crack
9 cocaine and you get 30 years for that, but powder
10 cocaine in the suburbs is a probation, when those
11 kind of inequities are addressed you're going to see
12 those homes be less dysfunctional and you're going to
13 see this problem of disparity lessen. Thank you.

14 VICE CHAIR THERNSTROM: Thank you very
15 much. And the floor is open to commissioner
16 questions. Commissioner Castro?

17 COMMISSIONER CASTRO: Thank you. I've
18 got a lot of questions so I'll try to be quick to get
19 it all within my time. Mr. Gonzalez, your statistics
20 on expulsion referrals don't reference Latino
21 expulsion referrals. What's the statistics with
22 regard to the Latinos?

23 MR. GONZALEZ: Latinos make up about 63
24 percent of our district and about 58 percent of the
25 expulsion referral.

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1 COMMISSIONER CASTRO: So it's rather
2 close to their population.

3 MR. GONZALEZ: It's close, but part of
4 that is African-Americans are so disproportionate -
5 you know, there's a piece of pie, right? And
6 African-Americans are so disproportionate that they
7 have actually squeezed down all the other pieces of
8 the pie. And so if you were to remove all - say,
9 take the African-Americans out of the district and
10 just look at the rest Hispanics would be also far
11 disproportionate.

12 COMMISSIONER CASTRO: Okay. And you
13 know, I'm glad Mr. Oliveri talked about the Appleseed
14 report that shows that pipeline from school to
15 prison.

16 MR. OLIVERI: Yes.

17 COMMISSIONER CASTRO: And I think there's
18 a lot of scholarly work out there that has
19 substantiated that. In fact, there's an even greater
20 connection - I'll take it one step further and ask
21 you to comment on this. The National Council of La
22 Raza last week issued a report on the disparities in
23 incarceration and punishment when incarcerated
24 between Latino and white students, showing that
25 Latino students - or Latino youth who are going into

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1 the prison system are more harshly treated, more
2 harshly punished than white students which mirrors a
3 similar report about a year and a half ago measuring
4 the same issue with regard to African-American
5 students, the Campaign for Youth Justice. So not
6 only does this pipeline appear to say if you are more
7 likely to be disproportionately punished in school
8 that leads to a higher likelihood of a dropout, the
9 higher likelihood of a dropout leads to a higher
10 likelihood of interactions or incarceration with the
11 justice system, and then in that system you get more
12 harshly treated. Could you comment a little bit more
13 on that and any other panelists? I'd like to hear
14 your thoughts on that.

15 MR. OLIVERI: I don't know what I could
16 say to more adequately dramatize that, but I believe
17 that that is very true. All of the reports that I've
18 seen that you refer to - also in the Texas Appleseed
19 report they refer to that too in the prison system as
20 to how they're treated. So a response is basically
21 in my opinion one of an old and traditional response
22 in this country in terms of superiority against
23 inferiority, against haves and have-nots, in a
24 situation where we are - we respond and act based on
25 what little we know rather than on what knowledge we

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1 need to gain and what interaction we need to foster
2 in order to have a better understanding of other
3 cultures and how other cultures behave and what our
4 expectations and their expectations are.

5 MS. MAXEY: I think there's also a
6 structural issue. I've always teased that American
7 high schools are made for girls. Sit down, put your
8 feet flat on the floor, fold your hands and pay
9 attention. So for people who don't fit into that
10 mold, behaving, polite, respectful, that kind of
11 mold, kids who are feisty or kids who are more
12 kinetic, more active, they have a hard time in
13 education. I know when I first started out a long
14 time ago back in 1973 we were advised not to treat
15 kids differently because of their race. In fact, we
16 never would have showed statistics that we just
17 showed this morning because you would have showed
18 differences between kids. That's all changed and now
19 we do look at kids and their race and their culture
20 as being important in terms of how to teach them.
21 Now I look at a lot of our Latino and African-
22 American kids, they tend to be more kinetic. They
23 tend to think that relationships are much more
24 important than other subgroups of kids. That's why
25 it's really important for teachers and administrators

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1 to build relationships with Latino and African-
2 American kids. And also, there are family - their
3 families are much more complicated than other
4 families. And I don't know whether it's economics,
5 I'm not sure if it's race or culture or whatever it
6 is, but there is a difference and I'm not so sure
7 that the baby boomer teachers have been able to make
8 that transition as well as they can and I'm not sure
9 if the new generation of teachers coming up are any
10 better at it. But that's something that in teacher
11 training we have got to do a better job getting our
12 teachers to understand how to deal with kids of
13 different cultures and different ethnic groups.

14 DR. PIEDRA: One effect we haven't
15 touched upon and that's the cultural differences of
16 our parents.

17 COMMISSIONER GAZIANO: Your microphone.

18 DR. PIEDRA: My apologies. One of the
19 things we haven't discussed is cultural differences
20 of our parents. In our school setting you will find
21 one administrator - you will not find one
22 administrator who will say, "My actions are racist by
23 their own nature." Indeed, when there is an
24 altercation everyone gets the same consequence. The
25 follow-up story is the appeal process. Our minority

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1 students and their parents do not understand the
2 cultural background to be able to appeal the process.
3 In the event of ESL students or our Latino students
4 quite frankly there is simply no one at the school to
5 be able to service their bilingual needs. In our
6 particular school district with over 105,000 students
7 there is not one Hispanic bilingual administrator and
8 indeed, we have 50 ESOL centers. There is not one
9 Hispanic bilingual administrator. So therefore it's
10 very difficult to deliver that information to the
11 parents. It's even more so difficult to make the
12 cultural bridge to be able to go through the appeal
13 process, whether you are an African-American parent
14 alone working two jobs, not having transportation,
15 not being able to make literally the trek during the
16 school day to meet with the school administrator
17 during the banker's hours.

18 COMMISSIONER CASTRO: Do I have time for
19 one more question?

20 VICE CHAIR THERNSTROM: Well, you've got
21 19 seconds left.

22 COMMISSIONER CASTRO: Quickly, can anyone
23 speak to some effective alternative policies that can
24 still accomplish the educational goals without having
25 a racially adverse impact on the school system?

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1 MS. MAXEY: In 19 seconds?

2 MR. GONZALEZ: Very quickly, I think it
3 comes to an understanding of the students that you're
4 dealing with because black kids and brown kids are
5 simply not white kids with darker skin. They have a
6 different lens that they view the world, they have -
7 their families have a different lens, and until you
8 really understand the different cultures that the
9 kids are immersed in you're really going to have a
10 limited success in terms of your ability to make a
11 positive change with them. So I think that teacher
12 training is absolutely essential, teacher recruitment
13 is essential so that we can recruit more students of
14 color into the teaching profession itself, and we
15 need to rethink how we recruit teachers in the first
16 place.

17 MS. MAXEY: Well, there's also an
18 economic issue here that hasn't been mentioned a lot.
19 One of the teachers mentioned the loss-of-credit
20 research that we did in Montgomery County. One thing
21 she didn't mention, it wasn't so much a matter of the
22 white kids appealing that loss of credit, it was the
23 white parents who were either willing or able to
24 write notes to excuse absences and the Latino and the
25 African-American parents either weren't able to,

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1 didn't understand it, or were too busy working three
2 jobs and the fact that their child didn't have a note
3 to excuse absence that day was the least of their
4 problems and the least of their concerns. That's an
5 economic issue I believe.

6 MR. OLIVERI: May I just say something
7 real quickly? I don't think that any of us in this
8 room could come up with a plan that's better than
9 what is already happening in some school districts
10 around the country, mine included, Dr. Piedra's
11 school district and what he mentioned is going on. I
12 would like to say something in general terms. There
13 was a time in my lifetime when I remember that if a
14 black woman came on a bus that no white person would
15 ever offer them a seat, and in my lifetime I've seen
16 that change dramatically as to where I have seen a
17 white man get up and offer a seat to an African-
18 American woman. I think that our country is
19 changing. I think that things will change over time.
20 Will we effect the change in education that we seek
21 now, tomorrow, within my lifetime? I don't know, but
22 I think it will happen, I think it will. I'm
23 positive enough to have seen what I've seen change.
24 Things change, things don't change, but they do
25 really.

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1 VICE CHAIR THERNSTROM: Who else? Yes,
2 Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: I just wanted to
4 give Dr. Maxey an opportunity to -

5 MS. MAXEY: That's - but that's okay, you
6 can be the honorary -

7 (Laughter)

8 COMMISSIONER KIRSANOW: You were about to
9 say something before your time was up. You were
10 going through responses -

11 MS. MAXEY: Yes. I think the question
12 was asked is why do we have a disparity in kids being
13 suspended and whatnot who are African-American and
14 Latino, and I think I kind of mentioned it in my
15 talk. I think kids are more kinetic who are African-
16 American and Latino. They do - they like that kind
17 of education as opposed to sit and get which still a
18 lot of instruction is still sit and get. You know,
19 you sit down, listen to the teacher talk, you spit it
20 back out. You know, I think they're very big on
21 relationships and I don't know if some of our
22 teachers are either comfortable building
23 relationships with kids or back in the good old days
24 you didn't do that. There was this line between
25 teachers and students that you didn't cross, and if

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1 you crossed it you were in trouble. So having that
2 sort of paradigm shift for some of our teachers to
3 think that it is important to build relationships
4 with students. And a third piece I think is the
5 family piece. I think there are more Latino and
6 African-American families that go to my school at
7 least that have more dysfunctional situations. Not
8 just economics, single parents work in our area where
9 some of the parents are undocumented and their kids
10 have no Social Security number. Trying to convince
11 those children that they need to do well in school so
12 that they can go to college when they know without a
13 Social Security number they can't even go to Northern
14 Virginia Community College. And trying to convince
15 those kids of the importance of education and all
16 that goes with it is very difficult. So I think the
17 situation is - all of my colleagues can attest it's
18 very complex. It's not just for -

19 COMMISSIONER KIRSANOW: Let me try to
20 disaggregate that in terms of the complexity. You
21 mentioned some of the potential causes for some of
22 the disruptive behavior and I'll focus on the non-
23 kinetic issues such as families or parents that work
24 a number of jobs, certain economic issues. What
25 about those students, black, Hispanic, Asian, white,

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1 who have those same types of challenges but they
2 don't act up in school? To what do you attribute
3 that?

4 MS. MAXEY: That's a great point.
5 There's gobs of kids who are Latino and African-
6 American who are poor who just are amazing students.
7 I think there's always something in there, sometimes
8 it is in fact a mother, a very strong mother or
9 father in the home who even though they work three
10 jobs, their child is their priority and they do
11 manage to come in at 6:30 in the morning to meet with
12 an administrator or whatever. So I think there's
13 some heroes out there in parents who just overcome
14 all kinds of odds. I also think there are teachers
15 who are just heroes, who adopt kids. I mean not
16 legally, but literally take them under their wing,
17 treat them to lunch, buy them clothes. I can -
18 teachers really are heroes. Thank you for saying
19 that. I call everybody who works in a schoolhouse a
20 teacher, even if it's a support person or the
21 building supervisor who mops the floors, you know.
22 There are some pretty incredible people out there
23 that I think make differences in kids' lives. I
24 think you've talked to a lot of folks who like Ben
25 Carson will talk about his mother. I know people who

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1 will talk about a special teacher or a coach. I
2 mean, my football coach literally, the kids come in
3 in the morning, they have free breakfast, they have
4 free lunch because of the federal program. He
5 coaches them after school, then he feeds them. He
6 cooks for them himself dinner and they have a study
7 hall afterward. He's there till 8 o'clock every
8 night with those kids. And I asked him to do a study
9 of what happened to their GPAs during that time
10 period. In some cases it doubled. The GPAs went up
11 double. Those are heroes. That is extraordinary
12 effort. I mean, what kind - I mean, every teacher
13 can't do that kind of thing. I think those are some
14 of the variables and a lot of times it's people.
15 Programs are great, but it's the people in
16 schoolhouses that make tremendous -

17 COMMISSIONER KIRSANOW: Yes. My coaches
18 never cooked for me.

19 (Laughter)

20 MS. MAXEY: You didn't go to T.C.
21 Williams. Remember the titans.

22 COMMISSIONER KIRSANOW: They did all
23 kinds of other stuff. Let me ask a question that's
24 kind of mundane and boring, but it goes to - I don't
25 know if you have this data, but maybe you're aware of

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1 it. In terms of disparate imposition of discipline,
2 do you see differences - and I don't care what the
3 motivation is. I don't care if it's a cultural
4 motivation or a racist motivation or any other kind
5 of motivation, but I just, in terms of what the
6 statistics show are there differences by race between
7 black teachers, white teachers, Hispanic teachers,
8 Asian teachers and the discipline they mete out to
9 those also respective categories? Do you see any
10 disparities such as black teachers discipline white
11 students more heavily than they discipline black
12 students or Hispanic students, or white teachers
13 disciplining Asian students more heavily and black
14 students more heavily than Hispanic students? Do you
15 see any of that kind of dynamic happening?

16 MR. GONZALEZ: Mine will be brief. You
17 would have to have a very good student information
18 system to disaggregate that information unless you
19 had somebody setting that up, making a project study
20 of that themselves. Anecdotally I have not seen
21 anything specific.

22 COMMISSIONER KIRSANOW: Does anyone -

23 MS. MAXEY: Yes.

24 DR. PIEDRA: And absolutely. Our school
25 system - our system is able to do that. Quite simply

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1 we know the race of the teacher, we know the race of
2 the student so we can judge the frequency. And what
3 I would attribute it to is once again, the lack of
4 cultural awareness. For example, the student that
5 comes in and says to his teacher "Yo, Dog" and is -
6 that's a nomenclature that he may be accustomed to.
7 A teacher unfamiliar with that nomenclature may refer
8 the student for inappropriate language, profanity or
9 disrespect for a teacher.

10 COMMISSIONER KIRSANOW: How frequently
11 does it happen? I mean, do you think that white
12 teachers are more prone to discipline Latino or black
13 students than black teachers are white and Hispanic
14 students?

15 DR. PIEDRA: Quite frankly, I don't need
16 to tell you what I think. Our data shows that our
17 majority educators are referring disproportionately
18 our minority students. Whether they are Hispanic or
19 African American, the reality is in our school
20 district, it's mostly African American males more so
21 than other minorities.

22 And for our Asian population, they are
23 not even on the radar. It's relatively small in
24 numbers, number one. Number two, because of the
25 language and the differences in language and the

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1 culture, they don't even make the discipline radar
2 screen.

3 COMMISSIONER KIRSANOW: Do white teachers
4 discipline more generally than black teachers do? Do
5 you have any such kind of data, regardless of who
6 they're disciplining.

7 DR. PIEDRA: I don't know that "more" is
8 the appropriate term inasmuch as "differently." For
9 example --

10 COMMISSIONER KIRSANOW: Let's say
11 similarly situated. The white teachers, are they
12 more prone to discipline students, regardless of
13 their race, for similarly situated reasons or
14 offenses than, say, black teachers or Hispanic
15 teachers or Asian teachers or anyone else?

16 DR. PIEDRA: And, again, I don't believe
17 it is "more." It is "differently."

18 COMMISSIONER KIRSANOW: Different. And
19 how?

20 DR. PIEDRA: As an example, our African
21 American teachers might take on minority students or
22 non-minority students under their wing and show them
23 a different way; whereas, a non-minority, someone who
24 is not as well-versed in the culture of the students,
25 in the classroom might say, "This is inappropriate.

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1 Our discipline policy stipulates. Therefore, follow
2 the policy," check, check, check. "Here is your
3 referral. And away you go." And that will become
4 someone else's problem.

5 MS. MAXEY: I don't think it is that
6 simple as white and black. I think it is more
7 complex. Sometimes it's the age of the teachers.
8 Sometimes it's the way they have been trained. I
9 have found people trained in European schools are
10 much more rigid than they are trained --

11 COMMISSIONER KIRSANOW: Is that between
12 male and female teachers?

13 MS. MAXEY: Male and female. I think it
14 depends on the person. I mean, some folks get --

15 MR. GONZALEZ: I was just going to say
16 those are great questions, but you really have to
17 have a tool to disaggregate that. And so I am really
18 interesting in talking with my colleague about it.
19 It sounds like they are further along in that
20 process. I can give anecdotal things, but as far as
21 the data, that would be a fantastic thing to look at.

22 COMMISSIONER KIRSANOW: Is there any
23 national data that you are aware of?

24 MR. OLIVERI: Not that that I have seen.

25 MS. MAXEY: I don't think so.

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1 MR. OLIVERI: I have not seen anything
2 like that. Part of our problem is we have so few
3 minority teachers to really --

4 MR. GONZALEZ: One of our problems is we
5 have so few minority teachers to really --

6 VICE CHAIR THERNSTROM: There are a lot
7 of statistics with a lot of minority teachers. D.C.
8 is one of them, Atlanta, Detroit.

9 MR. GONZALEZ: You know, I think that
10 these were talking a lot about causal factors. But
11 there are some ultimate factors here that we don't
12 talk about.

13 A gentleman that sat in this chair
14 earlier said, "I'm Irish American." People can say,
15 "I'm German American," "Italian American," "Mexican
16 American," "Korean American," "Japanese American."

17 African American people cannot say that
18 because we have completely wiped their history. So
19 they cannot say, "I come from Yoruba." "I'm an Ibo
20 from the Ibo tribe in Nigeria" or even if they do
21 know what part of West Africa, they generally do not
22 know anything about it because those countries were
23 artificially carved out.

24 And so there are lots of ultimate factors
25 that lead to some of the dysfunction that we see.

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1 And, of course, the whole history of slavery and
2 discrimination and on and on would be weeks just
3 talking about that.

4 So I think it is important for us to
5 understand that when we talk about the misbehavior
6 that we're seeing -- and everyone is seeing them --
7 that there are some ultimate factors that are very,
8 very important to recognize.

9 COMMISSIONER KIRSANOW: As a Klingon
10 American, I think we are more adversely treated than
11 almost anybody.

12 VICE CHAIR THERNSTROM: I missed the
13 beginning of that. I'm sorry.

14 COMMISSIONER KIRSANOW: Klingon.

15 VICE CHAIR THERNSTROM: Klingon.

16 COMMISSIONER KIRSANOW: Star Trek
17 reference.

18 VICE CHAIR THERNSTROM: Star Trek. Okay.
19 Somebody else.

20 COMMISSIONER HERIOT: Someone on the last
21 panel. And I forgot who it was -- and I should have
22 asked the question then, but I only had five minutes
23 -- was talking about how they will fill out a
24 discipline referral form. And then it's out of their
25 hands. They don't really hear back.

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1 And I wasn't sure whether that person was
2 saying they weren't consulted after that or whether
3 it was just they are not consulted, but they're not
4 in on making the decision.

5 I assume some of you have been on the
6 other side of that and you have received some sort of
7 request for further discipline. Do you routinely
8 talk to the teacher and sort of flesh out the facts
9 before you make a decision on such a matter or is it
10 more common to simply act on the form or have you, in
11 fact, been in this position at all?

12 I assume, Ms. Maxey, as a principal, you
13 have probably been on the other side of this.

14 MS. MAXEY: Yes.

15 COMMISSIONER HERIOT: Tell me what you
16 do.

17 MS. MAXEY: You know, again, I think it
18 depends upon what the offense is, who the
19 administrator is, and who the teacher is. In the
20 best scenario, absolutely all of those things happen.
21 You do go talk to the teacher. And you find out the
22 particulars. And sometimes you go back and forth
23 lots of times. Sometimes you have a conference with
24 the parent, the teacher, and the student. So it's a
25 variety of things.

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1 That is the ideal situation, but
2 understand the administrators are incredibly busy.
3 And they deal with a lot of things, just like
4 teachers are. So that is the perfect situation and
5 happens over and over and over again, but sometimes
6 it doesn't. Very often you find out when it doesn't
7 happen, sometimes it blows up in your face because
8 you didn't have all the facts when you made a
9 decision.

10 So I believe, yes, it does happen that
11 way. And it should happen that way except when there
12 are time constraints.

13 COMMISSIONER HERIOT: Mr. Oliveri
14 mentioned -- I believe it was you, Mr. Oliveri --
15 self-defense being an issue sometimes in these cases,
16 like a fight could break out. And one could assist
17 in defending themselves. And the other one, you
18 know, is an aggressor.

19 My heart goes out to the poor kid that is
20 fighting back because he's being picked on. And
21 those are very fact-specific situations I assume.

22 MR. OLIVERI: Yes.

23 COMMISSIONER HERIOT: You really need to
24 get down.

25 MR. OLIVERI: Absolutely.

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1 COMMISSIONER HERIOT: And they do. I
2 mean --

3 MR. OLIVERI: Absolutely.

4 MS. MAXEY: Absolutely.

5 MR. OLIVERI: All too often usually a
6 child who is acting in self-defense is the child who
7 gets the severest discipline referral. And the
8 reason for that is because they're the ones that are
9 seen. The initial action was not seen. And all that
10 we're seeing was the response. And so the response
11 gets it.

12 MS. MAXEY: That depends on whether there
13 are cameras in the school and --

14 MR. OLIVERI: There are other factors,
15 correct.

16 COMMISSIONER HERIOT: Mr. Oliveri, what
17 would you do if you had received a report that a
18 particular school teacher was not meting out
19 discipline appropriately, the notion that someone
20 complains to you, you know, "Mr." so and so "is
21 harder on African American students than he is on
22 white students." What do you do under those
23 circumstances?

24 MR. OLIVERI: Well, you know, you try to
25 do as many -- and I have had that specific experience

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1 where you try to counsel the teacher. You talk to
2 the teacher. You get their side. You listen to what
3 they have to say and why this kind of experience.

4 You show them the data. You discuss the
5 data and what has transpired. And then you say,
6 "Would you be interested in attending some training?
7 There is training that is going to be in the District
8 that's about ethnic diversity. It's looking at"
9 whatever, whatever it happens to be.

10 The schools -- and our school then
11 adopted the behavior program, behavior support
12 program. Once we adopted that program, then there
13 was a systematic way in which to provide assistance
14 to the teacher to help them to work with diverse
15 populations and to make decisions that are based more
16 on their ability to not only maintain discipline in
17 the classroom but establish some kind of relationship
18 with the child.

19 COMMISSIONER HERIOT: How long has this
20 been going on?

21 MR. OLIVERI: Now it is in its fifth
22 year.

23 COMMISSIONER HERIOT: Hypothetically if
24 we were to subpoena the data that Ms. Maxey and Dr.
25 Piedra talked about, where would we go to find that

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1 data? This is the data on individual teacher by race
2 and section and how they mete out.

3 DR. PIEDRA: Our information is achieved
4 and carved-in our schools network.

5 COMMISSIONER HERIOT: Individual schools?

6 DR. PIEDRA: The district houses that
7 information. So the information is accessible
8 through a central database, for example.

9 MS. MAXEY: I don't believe ours is.

10 DR. PIEDRA: Ours is.

11 COMMISSIONER HERIOT: You think it is in
12 individual schools?

13 MS. MAXEY: You would have to go to the
14 deans in our school, and they would have to tell you
15 which teachers for the most -- they could tell you
16 that, but I don't know that is a racial issue because
17 you find that the same hard-nosed teacher treats
18 white kids just the way they treat black kids and are
19 just as tough about it.

20 In fact, I think "Mrs." so and so is so
21 unfair. "Just because I'm black I got" -- no,
22 sweetheart. You know, their teachers are just as
23 hard on anybody. And it's not a racial issue. Some
24 kids maybe are more sensitive to it.

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1 MR. GONZALEZ: I'm not sure it's
2 addressed this quickly, actually, the red light. To
3 address your question, there are two programs that
4 are out there that you might be able to get
5 information from.

6 I think it's Dr. Robert Horner at the
7 University of Oregon has developed or co-developed
8 something called the School-Wide Information System,
9 SWIS. And that disaggregates that kind of
10 information by teacher.

11 And also Randy Sprick is the name. And
12 I'm not sure exactly. He has developed safe and
13 civil schools training, which we are implementing in
14 our district. And he has something called "Trends,"
15 which he is developing. I believe he used to be
16 associated with SWIS as well.

17 And so it's trying to get that kind of
18 information in terms of what time of the day are
19 infractions occurring, where are they incurring, from
20 whom are they incurring, and that information.

21 COMMISSIONER KIRSANOW: Does anybody know
22 how to spell SPRICK?

23 MR. GONZALEZ: S-P-R-I-C-K.

24 DR. PIEDRA: Safeanddrugfreeschools.org
25 is going to get his site.

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1 MR. GONZALEZ: Yes.

2 DR. PIEDRA: And if I can piggyback on
3 Mr. Gonzalez's comment regarding SWIS, our school
4 districts built our system on top of SWIS. So it is,
5 if you will allow the pun SWIS, but it does archive
6 that kind of data, the location, the time, school
7 incident, the nature of the incident, the gender,
8 race, gang-related, bullying incident, et cetera, et
9 cetera.

10 It allows us to track that kind of data
11 and make predictions and, in turn, be able to develop
12 policies to contradict the trends that we see going
13 on.

14 MR. OLIVERI: The Austin Independent
15 School District also does that.

16 The only response that I had before was I
17 don't know if we could do it at the teacher level.
18 It's more closely associated --

19 COMMISSIONER KIRSANOW: Is there any type
20 of data that shows level of discipline or frequency
21 of disincline based on GPA and whether that is also
22 disaggregated by race.

23 For example, is a 3.0 white student
24 disciplined more readily than a 3.0 black student?

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1 MR. GONZALEZ: Great. That's a great
2 question.

3 MR. OLIVERI: A great question. I have
4 no idea.

5 VICE CHAIR THERNSTROM: I'm afraid -- it
6 is a great question. I'm a data person. And so I am
7 altogether yearning for more data, but we do need to
8 move on. And I believe Commissioner Titus has the
9 floor.

10 COMMISSIONER TITUS: Thank you, Madam
11 Chairman.

12 You mentioned the coach. I heard in the
13 news recently of the coach who gave his kidney to his
14 baseball player, wasn't it?

15 MR. OLIVERI: Yes.

16 COMMISSIONER TITUS: That is certainly
17 dedication.

18 I appreciate this panel. You all are
19 giving us some really good, sensitive suggestions.
20 And although the term hasn't been used, there's been
21 a lot of reference to things that kind of amount to
22 wraparound services that schools are offering now.

23 I believe, Mr. Oliveri, you said
24 something about connection to mental health
25 facilities or services?

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1 MR. OLIVERI: Correct, yes.

2 COMMISSIONER TITUS: That's the sort of
3 thing I think we really need to do. That takes a lot
4 of money and a lot of commitment. But it certainly
5 makes a difference on individual school levels. So I
6 appreciate that.

7 And I think I heard Principal Maxey make
8 an argument for the DREAM Act. And I appreciated
9 hearing that reference as well.

10 You all have talked a lot about the
11 Latino students and African American students, but on
12 all the statistics that you show, you show a much
13 higher rate also of special needs students. And the
14 reasons for that have to be different from the
15 economic and the cultural and some of the things that
16 we have identified as causing some of the problems
17 with these other groups.

18 Could you address that and give us some
19 idea of why that is or what alternatives there are
20 for special needs students?

21 MR. GONZALEZ: Let me just say that
22 special ed students are disproportionately male, so
23 in some districts as high as 90 percent male. So
24 that right there is a huge disproportionality.

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1 In our district, special education
2 students when you disaggregated by ethnicity, it's
3 not a stark disparity in terms of African Americans
4 in special ed, but when you put the two at-risk
5 populations, African American and special ed, and
6 disaggregated by special ed African American
7 students, the numbers really grow because it's
8 exponential then. Probably ten percent of them have
9 been referred for expulsion. I mean, that data is
10 really stunning.

11 So I think that special education itself
12 is not a monolith. There are so many different
13 slices to it. The deaf and hard-of-hearing are very
14 low as a part of the discipline part of that.

15 Our SP students are kind of in the
16 middle; self-contained, special day class students,
17 very high; emotionally disturbed students, same
18 thing, very disproportionate. Students who are from
19 group homes, many of them, I think 37 percent, was
20 the last statistic I saw, 37 percent of those
21 students are in special education. They are very
22 disproportionate in their discipline.

23 So that is actually another one of those
24 things that you could slice and dice with many
25 different lenses.

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1 MS. MAXEY: From the human point of view,
2 imagine -- because all of our special ed kids have
3 learning disabilities or some kind of handicap in
4 some way. I always try to tell teachers this.
5 Imagine what you hate to do and what you're terrible
6 at. Let's say it's bowling. I'm going to make you
7 bowl for six and a half hours a day. And I am going
8 to grade you on it and assess you on it and reward
9 other kids because they can bowl better than you.

10 And you wonder why they misbehave. You
11 wonder why they're not happy in school. There is a
12 real human component there.

13 COMMISSIONER TITUS: And where do they go
14 when they are --

15 MR. GONZALEZ: Well, see, we removed --

16 COMMISSIONER TITUS: Then they lose all
17 those services.

18 MR. GONZALEZ: We have removed the
19 alternate options that used to be in place for those
20 students to have wood shop, metal shop, engines, and
21 those kinds of things.

22 Many of those students in my generation
23 went on to own their own business. And they were
24 productive, tax-paying, contributing members of
25 society. But those programs have been removed in the

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1 interest of accountability and high stakes. And you
2 are finding a hemorrhage of those kids from your
3 student enrollments. And charter schools have sprung
4 up to try to deal with those kinds of things.

5 From 2003 on, the last 8 years, our
6 district has lost 11,000 students, about 8 and a half
7 percent of the total. And it's because these
8 students are not being successful. And we failed
9 them is really what it -- there are very few options
10 left. It's exactly what you said.

11 If you don't do something well because
12 you learn differently, I don't work on cars well.
13 But if I had to do that every day, I would hate
14 school. And that is what we have driven them to.

15 MS. MAXEY: You know, one of the things
16 that I like about No Child Left Behind is it really
17 has forced educators to look at every subgroup of
18 kids. It isn't good enough just that the white rich
19 kids are doing well. I love that about it.

20 What I don't like so much about it is it
21 really has damaged our elective program. It has
22 damaged the vocational program because you're so
23 focused on getting the kids to pass the SOLs or the
24 high school assessment, whatever your state measures.

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1 We don't have time for all the things that really
2 hook kids in.

3 And that is why I feel like this is so
4 wonderful for kids and the arts and ROTC and those
5 kinds of things because they do hook kids in. And
6 for a lot of our kids, that's what they need, to stay
7 in school.

8 MR. OLIVERI: We lump kids all in one
9 basket. I'm sorry. I apologize.

10 COMMISSIONER TITUS: No. Excuse me. I
11 was just agreeing, like magnet schools --

12 MR. OLIVERI: Yes.

13 COMMISSIONER TITUS: -- and special ones
14 like -- go ahead.

15 MR. OLIVERI: I was just going to say we
16 just tend to lump kids all in one basket, and that is
17 a problem because we all want them to succeed,

18 VICE CHAIR THERNSTROM: There are no voc.
19 eds?

20 MS. MAXEY: We still have those.

21 MR. OLIVERI: There are, but there are
22 very few.

23 COMMISSIONER HERIOT: Why happened to the
24 --

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1 MR. OLIVERI: Funding, federal funding
2 stopped.

3 MS. MAXEY: In some cases --

4 MR. OLIVERI: -- a number of years ago.

5 MS. MAXEY: Now, ours is integrated into
6 our school so kids can take voc tech right in school.
7 But some of the districts have gone to one vocational
8 school. So kids have to leave their home school, all
9 their friends they grew up with, and go to a
10 vocational school. And a lot of them are not willing
11 to do that. So the enrollment is really something.

12 MR. OLIVERI: But that's at high school
13 level, isn't it?

14 MS. MAXEY: Yes. I'm high school.

15 MR. OLIVERI: Yes. So we have to be
16 clear because it used to be you could start
17 vocational training at a middle school level, what
18 was junior high in those days.

19 DR. PIEDRA: The other part of that, if a
20 student scores at a given level on a high stakes
21 test, then in some states it may be mandated,
22 remediation, which is, in fact, elective. So that
23 removes any kind of elective.

24 MR. GONZALEZ: And if you look at the
25 statistics on the elective classes, they tend to be

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1 pretty high. So if you're a borderline kid, you take
2 an elective class, you're going to graduate, you are
3 going to get older.

4 But if you have to take the mandated
5 shadow class or the second English class or your
6 second math class, you look at the GPA averages, they
7 are very low. So even if you are right on the
8 border, you are probably going to fall down.

9 And typically who are those kids? Who
10 are the students that are filling those classes?
11 They're minority students.

12 VICE CHAIR THERNSTROM: Questions from
13 other commissioners? Commissioner Gaziano?

14 COMMISSIONER GAZIANO: Thank you all. I
15 am very interested in the data on discipline rates,
16 but I am going to ask you. I am a little worried
17 that we won't measure the flip side of that. And let
18 me explain.

19 The type I error that maybe we're all
20 interested in measuring is what I am going to call
21 too much or wrongful discipline. And we can slice
22 and dice it up 100 different ways.

23 And the wrongful consequence of too much
24 or wrongful discipline I assume mostly impacts the

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1 student who is wrongfully disciplined, but there are
2 other spillover effects.

3 A subset of too much or wrongful
4 discipline is whether there is too much wrongful
5 discipline based on race and whether that is
6 discriminatory or not discriminatory, but, again, the
7 impact of that is going to be on the subsets.

8 The type 2 error is not enough
9 discipline. And the impact of not enough discipline
10 might be on the kid who really needs the discipline
11 and all the other kids in the classroom, as we heard
12 from our first panel, whose education is disrupted.

13 And I will use just the following
14 anecdote. A lot of you all have heard somebody's
15 parents say to the disruptive kids in the back seat,
16 "Don't make me stop this car."

17 I had four brothers. We were always
18 fighting with each other on long car trips. And my
19 dad would not give that warning. He would reach
20 back. And he would pinch whoever's thigh he would
21 reach. And because there were five of us, he would
22 always get one thigh. And that brother would scream
23 out, "Dad, it wasn't me. It was..." --you know.

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1 And dad would say, "Well, you were
2 probably doing something bad some other time. And if
3 I have to stop this car, you're all going to get it."

4 Now, I'm not talking about discipline
5 that is that arbitrary.

6 (Laughter.)

7 COMMISSIONER GAZIANO: But his philosophy
8 was "A little extra pinch isn't going to hurt one of
9 my boys, but not enough pinching might make me swerve
10 off the road and kill them." So, now with that maybe
11 silly true story, how do we measure, how can anyone
12 measure the type 2 error, the impact of not enough
13 discipline? Is anyone measuring that? How do we
14 measure that?

15 MS. MAXEY: Well, do you measure the
16 results of it? If there's not enough discipline in
17 the schoolhouse, you have chaos or you have kids in
18 the hallway. You have fights taking place. I mean,
19 that to me is you measure the results of it.

20 COMMISSIONER GAZIANO: Sure. But how can
21 we measure that by teacher, by school, by different
22 approach? How can we come up with data on whether a
23 given school, a district, a teacher is not doing
24 enough and what its impact is?

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1 MR. GONZALEZ: I think there is some
2 evidence that you can look at that is maybe not as
3 specific as maybe you want, but, for instance,
4 enrollment. If your enrollment is declining and if
5 you look at where it might be declining to, for
6 instance, Fresno City is a large city, 540,000
7 people. But Fresno the unified school district has
8 less students in it now than it had 20 years ago.

9 So that right there is an indicator that
10 there needs to be some improvement, that there is a
11 perception that the schools -- and this is most urban
12 districts -- that the schools are not safe. And I
13 would think that probably of the people sitting in
14 this room, there are probably some urban schools that
15 would say the same thing, "Our school has been losing
16 students." And that's an indication.

17 COMMISSIONER GAZIANO: But there could
18 also be a variety of factor for the loss in
19 enrollment. Someone may say it's not enough funding.
20 Someone may say it's an increase in? How do we
21 measure the impact of not enough appropriate
22 discipline? And how do we measure the impact on the
23 learning of the kids who don't leave, the learning of
24 the kids whose education is just disruptive? I mean,
25 it's a -- but I'm just not sure how.

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1 MR. OLIVERI: I'm not sure it's relevant
2 to look at that. I think it's relevant to look at
3 the other side. And it gives you what you want. And
4 I think it's relevant.

5 COMMISSIONER GAZIANO: You know, you take
6 effect at what you measure or people respond to what
7 you measure. And if we're only measuring the too
8 much discipline, I'm really worried that --

9 MS. MAXEY: I think education is an art.
10 I don't think it's a science. And it's the good
11 teachers and the good administrators who know how to
12 have that balance between strong discipline and a
13 caring and nurturing environment.

14 And so I think there are people who do
15 it. They do it on a regular basis. And those are
16 the ones we have to model. We have sort of set them
17 up as models for how to do things.

18 I also have to say one thing we haven't
19 talked about here is the composition of leadership
20 teams, the administrative teams. One thing I feel
21 very strongly about is that administrative teams are
22 balanced in terms of gender, in terms of race, and in
23 terms of age.

24 When we look at the T. C. Williams one,
25 we have actually 16 administrators. They are half

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1 black, half white, half female, half male, and a few
2 of the old ones, like me, and a couple others, and
3 then some young kids, too.

4 That mixture of people when we sit down
5 and we talk about things, we work things out I think
6 is really an ideal way to do it. I have a wonderful
7 administrative team.

8 COMMISSIONER GAZIANO: It's important.
9 Thank you.

10 VICE CHAIR THERNSTROM: Yes?

11 COMMISSIONER ACHTENBERG: I do want to
12 ask one more question. I just want to postulate the
13 following hypothetical and then ask, just ask, you to
14 comment on it based on your experience, both as
15 teachers, leaders, and researchers to the extent that
16 that is applicable.

17 In a particular school district, if the
18 statistics confirmed that African American students
19 were punished at disproportionately high levels, the
20 statistics suggested, not unlike the statistics we
21 observed in your demonstrations, if the statistics
22 suggested that and after a review of the slips that
23 the teachers filled out to refer those students to
24 disciplinary action, if a review of those slips
25 revealed that for the white students, many more

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1 positive teacher comments were contained in the
2 referral slips than for the African American
3 students, what would be your response to such a
4 finding?

5 What would that finding suggest to you
6 was true about your system? And how might you
7 recommend that student discipline be altered or
8 changed in any way?

9 MS. MAXEY: Well, I think one of the
10 comments you made about how you have been in
11 education for a long time and you have seen the
12 changes in our society that are positive and you have
13 faith that we are going to go in a positive
14 direction, I think the people we are trying to change
15 now in terms of their attitudes are not necessarily
16 receptive to large group kinds of things.

17 I think we are now starting to chip away
18 at the problem person by person so that when you see
19 a teacher who consistently sends referrals that are
20 biased in any direction, that we deal with those
21 people on individual levels in terms of calling them
22 and saying, let's have a reflective conversation
23 about what we see. I don't think teachers even see
24 it.

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1 And so to do it in a large group to
2 chastise I think probably isn't going to get the
3 result you want, which is a change in behavior.

4 COMMISSIONER ACHTENBERG: Sure.

5 MS. MAXEY: So I think it's that
6 one-on-one conversation where you spread things out
7 and say, "Let's take a look at your referrals that
8 you have turned in this year. What do you notice
9 about them?" It's that kind of courageous
10 conversation that is done in a way that you listen to
11 people as well as talk at them that I think is going
12 to make the difference as we move down.

13 The gross things are taken care of by
14 your administrative team. And when we mess up, which
15 we will, the parent gets involved or the central
16 office gets involved,

17 So the gross things are taken care of,
18 the small individual teacher administrative things
19 that we have to go one person by one person.

20 MR. OLIVERI: I will give you an
21 analogous example. Sometimes in observing a teacher
22 and walking in the classroom you notice that they
23 tend to pick on only male students, only males to
24 pick on.

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1 The class may be 50/50 male/female, but
2 in the response to the lesson and what is going on
3 and you keep a tally, you find that they're just
4 calling proportionately higher for the male student
5 to respond, rather than the female.

6 That's a conversation you need to have
7 with the teacher. You need to show them "I was
8 there" or "I spent 45 minutes in your classroom. And
9 this is what I observed. You know, you called on
10 males 57 percent of the time" or "70 percent of the
11 time" or "90," whatever it is. It's a conversation.

12 And many teachers respond like that, "I'm
13 not aware that I'm doing that."

14 "I just want you to be aware. I want you
15 to think about this. I want you to see what you can
16 do to make some changes so that it can be --

17 MS. MAXEY: Just last week I was in a
18 teacher's classroom, one of our wonderful teachers.
19 And there were about 15 kids in the class. And three
20 kids had their heads down on their desks, obviously
21 taking a nap. That makes me as a principal crazy.
22 And so I couldn't help but notice they were three
23 African American males.

24 So I asked the teacher to come down and
25 talk with me. And I told her what I saw. And she

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1 was really embarrassed. She's having a rough time
2 because teachers have things going on in their lives,
3 too.

4 And I said to her very simply "You are a
5 wonderful teacher. You are one of our master
6 teachers. You are better than this." And, of
7 course, she started to cry because most teachers
8 really "I swear to God I wasn't mean" or "Tell them"
9 --

10 (Laughter.)

11 MS. MAXEY: And she is wonderful. And
12 she will be wonderful. It's just a matter of saying,
13 "Did you know?"

14 And they're good people who wanted -- you
15 know, Dale Howard, who does a lot with diversity
16 training, makes a great comment. He said, "We must
17 not blame each other. The parents can't blame. We
18 all can't blame each other. It's all about good
19 people doing hard work." I thought that was a great
20 comment, "good people doing hard work." It's tough.
21 It's just tough nowadays.

22 VICE CHAIR THERNSTROM: Your comment
23 about kids with heads on the desks, I mean, that is
24 part of the picture to which I was referring before
25 in saying, "Look, classroom disruption can take a lot

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1 of forms that are way short of kids punching other
2 kids in the classroom or in the halls or whatever."

3 I think I've gone through the comments,
4 and I just have a couple of comments myself, one to
5 Commissioner Kirsanow. I believe, if I remember
6 correctly -- it's been a year since I've worked on
7 this -- there are good data on black teachers versus
8 white teachers in terms of disciplinary patterns.

9 And, again, if I remember the data
10 correctly, there is no difference or if there is a
11 difference, black teachers are even tougher on black
12 kids than white teacher.

13 A couple of other comments. I actually
14 think we know a lot about what good teachers look
15 like and what good schools look like, but we are
16 short on the combination and for a variety of
17 reasons. And so that knowledge doesn't get
18 implemented in enough schools.

19 And I think a number of you have touched
20 on teacher training. I see great classrooms. I've
21 seen terrible classrooms. And there isn't enough
22 teacher -- there isn't enough intervention, it seems
23 to me, in the way of teacher training once they get
24 to the schools.

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1 And part of that, what I've witnessed, at
2 least, is -- and there is data also -- we've got too
3 many principals who are not like Ms. Maxey here.
4 These are principals who are behind closed doors in
5 their offices and who are not wandering around the
6 schools and not wandering in and out of classrooms
7 and not saying to teachers, "I saw three of your kids
8 with heads on the desks." That is not a classroom in
9 which everyone is learning.

10 And so, you know, it seems to me that is
11 a very important element in creating a school
12 environment that is ordered, that is disciplined.

13 Your point about some kids being more
14 kinetic than others, well, I would say yes. But when
15 they go out into the world, whether it's to employer
16 or higher education, there are expectations about
17 behavior. And it is I think, if I can use the word
18 "delinquent" on the part of schools, if they say it
19 is okay, you come from a group that has certain
20 behavioral patterns. And we do not have expectations
21 that you will meet in school the expectations of the
22 larger world because they will be in trouble later in
23 life.

24 I have seen a lot of teachers who make a
25 huge difference in kids' lives. But if we go back to

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1 the KIPP example -- I happen to have spent a lot of
2 time in KIPP schools -- those teachers make a lot of
3 difference in kids' lives, but -- and this is a huge
4 "but" -- they work 24 hours a day. They have their
5 cell phones on to be available to kids 24 hours a
6 day. They are in general young people who are
7 willing to be saints or to teach kids. And I want to
8 give each one of them a hug.

9 But it's not a model in which we can
10 scale up nationally. We can't build a school system
11 on the expectation we're going to have saints for
12 school kids.

13 So I guess that's the sum of my comments.
14 If anyone wants to respond to any of them -- we do
15 have to close this session now, but --

16 MR. OLIVERI: I just want to respond to
17 one of them because it hit me. The expectations that
18 we have for behavior, many of my conversations with
19 students who misbehave or were sent to the office
20 many times -- I would say most times -- took the form
21 of talking about their behavior in the classroom, as
22 opposed to their behavior on the street, as opposed
23 to their behavior in their homes, as opposed to their
24 behavior at some other event or whatever, the
25 behaviors are contextual, and that we have to learn

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1 to adopt behaviors and adjust our behaviors to the
2 context in which we find ourselves. And in school,
3 there is an expectation for your behavior.

4 And it is a conversation that I would
5 have periodically with teachers as we met and we
6 discussed student behavior and what our expectations
7 were for the school and how we wish to address
8 behavior.

9 VICE CHAIR THERNSTROM: Well, I think
10 school expectations have to be set very, very early.
11 A second student arrives in school. And there should
12 be no excuses, no exceptions.

13 MS. MAXEY: We do a discipline assembly
14 the second day of school. We pull all the kids out
15 in different groups. And we lay the law down from
16 the second day of school.

17 VICE CHAIR THERNSTROM: And every teacher
18 follows it?

19 MS. MAXEY: Yes.

20 VICE CHAIR THERNSTROM: That's unusual.

21 MS. MAXEY: I find that when you take
22 care of the small stuff, a lot of times the bigger
23 things take care of themselves.

24 VICE CHAIR THERNSTROM: Right.

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1 MS. MAXEY: I could really care less if a
2 kid wears a hat in school.

3 VICE CHAIR THERNSTROM: Right.

4 MS. MAXEY: But when you state "No hats,
5 no earphones, no cell phones" kind of thing, --

6 VICE CHAIR THERNSTROM: Right, right.

7 MS. MAXEY: -- you find that the rest of
8 the things are more easily accomplished, the big
9 things, like disrespecting teachers or cutting class
10 or fighting, those kinds of things, --

11 VICE CHAIR THERNSTROM: Right.

12 MS. MAXEY: -- that the kids just get it.
13 And then they discover that "This is really pretty
14 cool."

15 VICE CHAIR THERNSTROM: Right.

16 MS. MAXEY: "You know, we can have a
17 great school. We can have pep rallies. We can do
18 neat things. But we have to act like ladies and
19 gentlemen first."

20 VICE CHAIR THERNSTROM: I have to stop.
21 Thank you so much.

22 COMMISSIONER KIRSANOW: Thank you.

23 VICE CHAIR THERNSTROM: I would like to
24 welcome the third panel. Please come up. Members of
25 the third panel, please come up.

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1 We are very pleased to have this third
2 panel. On this third panel, Ricardo Soto, who is the
3 Principal Deputy Assistant Secretary for the Office
4 for Civil Rights in the U.S. Department of Education.
5 He provides senior leadership concerning enforcement
6 policy and operational activities in Education's
7 Office of Civil Rights.

8 Mr. Soto has also been a private attorney
9 representing school districts involved in education
10 and employment disputes. He was the Assistant
11 Secretary and legal counsel in the Office of the
12 Secretary of Education for the State of California.
13 And for eight years, Mr. Soto served as in-house
14 counsel for the San Diego Unified School District.

15 And I was just looking at this and
16 realizing -- and I have the wrong glasses on. It's
17 not mister but doctor.

18 MR. SOTO: It's not doctor. It's
19 Ricardo. It's just mister.

20 (Laughter.)

21 VICE CHAIR THERNSTROM: Dr. Hardy Murphy
22 is Superintendent of Schools for the Evanston/Skokie,
23 Illinois School District, number 65. Is that
24 correct?

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1 Under his watch, student achievement
2 tests have significantly improved for members of the
3 economically as well as racially disadvantaged
4 groups. The district has earned special recognition
5 for an initiative to improve student behavior and
6 peer relationships.

7 Last year the district implemented an
8 alternative to suspension programs to provide
9 counseling for students and families through reduced
10 student suspensions.

11 Doctor, pronounce your first name for me,
12 would you?

13 DR. MARTIN: Hertica.

14 VICE CHAIR THERNSTROM: Hertica Martin is
15 Executive Director of Elementary and Secondary
16 education for the Rochester, Minnesota Public
17 Schools.

18 An audit conducted by the school system
19 found that black and Hispanic students as well as
20 those with disabilities were subject at a
21 disproportionately high rate to various disciplinary
22 actions. Dr. Martin will discuss strategies the
23 District has undertaken to reduce these disparities.

24 Dr. Douglas Wright is the Superintendent
25 of Schools for the San Juan School District in

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1 Blanding, Utah. Fifty-two percent of the District
2 students are American Indian, 44.5 Caucasian, 3
3 percent Hispanic.

4 The district is engaged in an ongoing
5 effort to develop preventative programs to avoid or
6 minimize the need for disciplinary measures.

7 We will now ask our panelists to swear or
8 affirm that the information they are providing is
9 true and accurate to the best of their knowledge and
10 belief.

11 (Whereupon, there was a chorus of "I
12 do.")

13 VICE CHAIR THERNSTROM: Thank you for
14 coming. I welcome you on behalf of the Commission.
15 And I will call on you in order in which you are
16 seated. Again, unfortunately, I have to limit you to
17 five minutes with the exception of Mr. Soto, who
18 because of his eminent position gets a whole seven
19 minutes.

20 MR. SOTO: Oh, seven? Okay. Okay. Good
21 morning. I'm going to have to truncate my prepared
22 statement, but I think I can do that.

23 VICE CHAIR THERNSTROM: You know, we have
24 your prepared statement.

25 MR. SOTO: Right.

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1 VICE CHAIR THERNSTROM: And it will not
2 get lost.

3 MR. SOTO: I appreciate that.

4 Thank you for inviting the Department of
5 Education's Office for Civil Rights to the U.S.
6 Commission on Civil Rights' briefing on school
7 discipline and disparate impacts.

8 I am Ricardo Soto, as the Chair has
9 stated. And I am the Principal Deputy Assistant
10 Secretary in the Office for Civil Rights.

11 I am pleased to be able to share with you
12 the work that our office under the leadership of the
13 Assistant Secretary Russlynn Ali is doing to enforce
14 the civil rights laws and to support schools in
15 meeting their obligations to create and maintain the
16 safe and orderly educational environments that are
17 necessary for our nation's students to learn and to
18 thrive.

19 I understand the challenges that
20 educators and administrators face when they are
21 administering student discipline because before
22 coming to OCR, I dealt with them also.

23 Prior to my work at OCR, I represented
24 school districts on education issues, which included
25 providing advice regarding discipline policies and

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1 procedures, including the review of recommendations
2 for suspension and expulsion by school
3 administrators.

4 In addition to the other experiences that
5 the Chair had described, you know, all of these had
6 given me a hands-on perspective on the difficulties
7 encountered when administering fair student
8 discipline. And I am excited to be working for OCR
9 as we work toward finding solutions for this
10 complicated issue.

11 Let me first provide an overview of my
12 office and the work that we do. OCR's mission is to
13 ensure equal access to education and to promote
14 educational excellence throughout the nation through
15 vigorous enforcement of civil rights.

16 OCR enforces civil rights laws that
17 prohibit discrimination on the basis of race, color,
18 national origin, sex, age, and disability. Most
19 relevant to today's briefing is OCR's enforcement of
20 Title VI of the Civil Rights Act of 1964, which
21 prohibits discrimination on the basis of race, color,
22 or national origin.

23 Title VI protections extend to all state
24 education agencies, elementary and secondary school
25 system, colleges and universities, vocational

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1 schools, proprietary schools, state vocational
2 rehabilitation agencies, libraries, and museums that
3 receive federal funding from the U.S. Department of
4 Education.

5 As you know, a critical part of OCR's job
6 is to investigate and resolve discrimination
7 complaints. These complaints may be filed by anyone
8 on behalf of an individual or group that may have
9 faced discrimination in education.

10 Additionally, agency-initiated
11 investigations, typically called compliance reviews,
12 permit OCR to concentrate our efforts and resources
13 on problems that are particularly acute or
14 widespread.

15 OCR also issues policy guidance and
16 provides technical assistance to help schools,
17 universities, parents, and community members
18 understand their rights and responsibilities and to
19 promote voluntary compliance with the civil rights
20 laws that we enforce.

21 OCR has a headquarters office and 12
22 regional offices around the country with more than
23 600 attorneys, investigators, and other staff working
24 on investigating complaints, conducting compliance

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1 reviews, developing policy guidance, and providing
2 technical assistance.

3 As I have learned since joining OCR, our
4 attorneys and investigators have a great deal of
5 experience investigating and resolving Title VI
6 complaints and compliance reviews involving
7 allegations of discrimination in the administration
8 of student discipline.

9 In March of 2010, Secretary Duncan
10 delivered remarks commemorating the 45th anniversary
11 of Bloody Sunday -- a pivotal moment in civil rights
12 history -- while highlighting key civil rights issues
13 facing the nation today. In that speech, he announced
14 a reinvigorated OCR that will "strive to make Dr.
15 King's dream of a colorblind society a reality."

16 Let me turn now to our work on issues
17 related to discipline. From data gathered through
18 the Department's civil rights data collection, OCR
19 estimates that in 2005 through the 2006 school year,
20 almost 250,000 more students nationwide received out
21 of school suspension than just 4 years earlier and
22 that the number of students who were expelled
23 increased by 15 percent. OCR is concerned by the
24 rising discipline rates and by the deep disparities
25 in discipline in our nation's schools.

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1 Both have been linked to increased
2 likelihood of dropping out of school, decreased
3 academic achievement, increased involvement with the
4 juvenile justice system, and impairment of future
5 college and employment opportunities. And those are
6 just a few of the harms to students.

7 OCR is also concerned that significant
8 disparities in the application of discipline
9 policies, practices, and procedures nationwide may
10 suggest that discrimination is occurring. That
11 violates the federal anti-discrimination laws
12 enforced by OCR.

13 As Secretary Duncan said, "civil rights
14 laws require vigorous enforcement, not just because
15 they are the law of the land but because the data
16 paint a stark picture of educational inequality."

17 To maintain the integrity of our
18 enforcement activities, OCR has a longstanding policy
19 against releasing information about pending
20 investigations. So today I will not be discussing
21 open cases, but I will explain the legal theories
22 that govern our enforcement efforts based on
23 statutes, regulations, and case law that OCR would
24 employ when the facts and circumstances suggest that

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1 they would be appropriate to determine whether a
2 school has violated Title VI.

3 Although my remarks will focus on
4 discrimination based on race in the administration of
5 student discipline, when the facts and circumstance
6 suggest that they would be appropriate, OCR would
7 apply the same legal theories in our investigations
8 of possible race, color, or national origin
9 discrimination in the educational context.

10 Title VI requires that school
11 disciplinary policies, practices, and procedures must
12 be applied consistently to similarly situated
13 students, regardless of their race. The Department's
14 Title VI regulations prohibit discrimination, both
15 when it is the product of different treatment --
16 intentional discrimination based on race, color, or
17 national origin and when it results from facially
18 race-neutral policies, practices, or procedures that
19 have a disparate impact on the basis of race, color,
20 or national origin.

21 OCR's Title VI regulations can be found
22 at 34 CFR section 100.

23 Unlike cases involving different
24 treatment, cases involving disparate impact theory do
25 not require that a school have the intent to

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1 discriminate. Rather, under the disparate impact
2 theory, the pertinent inquiry is whether the evidence
3 establishes that a facially neutral discipline
4 policy, practice, or procedure causes a significant
5 disproportionate racial impact and lacks a
6 substantial legitimate educational justification.

7 Even if there is a substantial legitimate
8 educational justification, a violation may still be
9 established under disparate impact if the evidence
10 establishes that there are equally effective
11 alternative policies, practices, or procedures that
12 would achieve the school's educational goals while
13 having a less significant adverse impact.

14 I'm going to just sum up right now.

15 VICE CHAIR THERNSTROM: Thank you.

16 MR. SOTO: The answer to an equal,
17 unfair, or ineffective student discipline, of course,
18 is not to abandon discipline policies, practices, and
19 procedures. For many parents and teachers,
20 disruptive and disorderly schools are serious
21 problems because children cannot learn in classrooms
22 that are not well-managed.

23 And the Department of Education
24 recognizes that disciplinary policies, practices, and
25 procedures differ from school to school. There is no

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1 universal one size fits all approach to discipline
2 that will be right for every school or all students.
3 However, each school has a responsibility not only to
4 create a safe and orderly learning environment but
5 also to ensure that its disciplinary policies,
6 practices, and procedures are administered in a
7 non-discriminatory manner.

8 To help support schools in meeting the
9 challenge to adopt effective and appropriate
10 disciplinary policies, practices, and procedures that
11 do not violate a student's civil rights, OCR is using
12 all the tools at our disposal to do that.

13 Thank you again for the opportunity to
14 share OCR's work in this important area with the
15 Commission. Secretary Duncan has repeatedly stated
16 that education is the civil rights issue of our time.
17 OCR is deeply committed to ensuring that every child
18 receive the best education possible.

19 Increasingly, the number of students
20 losing educational instructional time due to
21 disciplinary sanctions, such as out-of-school
22 suspension, expulsions, or referral to law
23 enforcement authorities, and alternative educational
24 placements has dramatically increased. All too
25 often, such consequences for student misconduct,

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1 especially for more subjective disciplinary offensive
2 where judgments are inherently more discretionary,
3 are not imposed in a fair and equitable manner.

4 Moving forward, OCR is committed to
5 ensuring all the tools at our disposal are used to
6 address this critical issue. And I will be happy to
7 answer any questions from the Commission.

8 VICE CHAIR THERNSTROM: Thank you so
9 much.

10 And we move quickly on to Dr. Hardy
11 Murphy.

12 DR. MURPHY: All right. Thank you very
13 much. I appreciate being invited to be a part of
14 this panel. And I would like to say that the work
15 that you are doing is very important. I don't think
16 there's any more important work going on in the
17 country right now as far as education is concerned.

18 We are a very diverse district that is
19 being overworked now. We are about 40 percent white,
20 almost 30 percent African American. Hispanic: we're
21 at 15 percent and the rest made up of Asian and
22 other.

23 Our African American students, roughly 75
24 percent of them are on free and reduced lunch. Our
25 Latino students, about 80 percent are on free and

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1 reduced lunch. And our white students, we have
2 virtually no students on free and reduced lunch in
3 our district that are white.

4 Like other districts across the country,
5 we grapple with this issue of disparity in
6 educational outcomes. Evanston, District 65, has
7 prided itself for many years as being an
8 award-winning district that is aggressive,
9 forward-thinking, and always trying to come up with
10 innovative programs to address our educational
11 challenges.

12 However, I do think that the idea of what
13 to do with discipline policies and the development of
14 programs to address the disparity is just one-half of
15 the equation. I think the first half of the equation
16 is really the causal side of it. And that is when
17 you look at student achievement.

18 To that end, we have done some innovative
19 things in the last few years. We are one of a
20 handful of districts in the country that has actually
21 been able to develop and implement now for the second
22 year a teacher appraisal system that actually
23 incorporates student achievement and to the appraisal
24 of our teachers.

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1 The other thing we have done is we have
2 been able to win the extension of our school day
3 through our teacher negotiating process.

4 When you look at some of the other things
5 that we are doing in the district, we have a
6 district-wide behavior management system and a
7 program to help keep students in school. We have got
8 parent engagement and education programs and
9 sensitivity training for faculty and staff that
10 represents part of a comprehensive system to address
11 the in-school experiences of our students.

12 I want to talk a little bit about the
13 teacher appraisal system. This new system in its
14 design builds upon student success from year to year.
15 It's based upon a simple compact, the expectation
16 that parents have for their children when they are in
17 the school district.

18 And going through teacher negotiations to
19 develop this system, we asked ourselves a couple of,
20 two or three questions. And one is that, is it
21 reasonable for a parent to expect that if a student
22 is in a teacher's classroom for a year, is it reason
23 to expect a year's worth of growth? And around the
24 table, when we looked at everyone who began to

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1 reflect on that question, everyone had to nod and
2 say, "Yes. You know, that's reasonable."

3 If a child exceeds a year's growth, then
4 a teacher ought to be recognized for it. And if a
5 child grows less than a year, it at least should
6 require some kind of a discussion.

7 One of the components of it is a clinical
8 discussion throughout the year. And through that
9 discussion, principals and teachers are to review the
10 growth and the classroom experiences of all students.

11 If there is something aberrant that has
12 occurred, a teacher is able to have that jotted in as
13 an extenuating circumstance. But the idea is that
14 being on free and reduced lunch is not an extenuating
15 circumstance. Having problems at home is not an
16 extenuating circumstance.

17 What that means, then, is that all of us
18 involved with education of that student have to do
19 something to ensure that they succeed academically or
20 it has an impact upon the evaluation of teachers,
21 principals, central office administrators, and
22 ultimately the superintendent.

23 The goal for all of this is to have
24 educational professionals develop an understanding
25 about our students' out-of-school experiences. This

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1 helps them to appreciate the child's culture and the
2 background.

3 A considerable body of research
4 highlights expectations as essential for student
5 success. There is centrally a belief in the
6 unlimited potential for every student. When teachers
7 know the rich cultural history that students bring to
8 school, they more easily can see that within each
9 student is the potential to replicate the
10 achievements that children find in their heritage
11 when they look backwards into how their individual
12 cultures contributed to the world that we live in.

13 When this happens, the teachers'
14 perspective changes from changing limitations to
15 embracing capabilities. Students, on the other hand,
16 seeing their teaching and learning experience and
17 affirmation of who they are, where they come from,
18 and an acknowledgement of their potential.

19 As a result, children are more inclined
20 to see their classroom experiences as supportive,
21 meaningful, and caring. This helps them to buy into
22 the larger system of values that public education
23 represents.

24 Without this value, students often resort
25 to a nihilistic posture for a school and the society

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1 that it represents. That is how we get gangs. This
2 rejection leads to a set of values that contradicts
3 the rules, the regulations, and laws that define the
4 social contract of America.

5 The goal for our students is for them to
6 understand and internalize the behavioral
7 expectations that make a more successful school and
8 life experiences; therefore, our teachers to see
9 their students as having unlimited potential for
10 academic success and productive citizenship.

11 When this happens, students can buy into
12 our social contract. Aberrant behavior becomes a
13 less practical choice. And constructive
14 participation in community is seen as an option that
15 fulfills aspirations shared by all, regardless of
16 race and ethnic background.

17 The goal for the parents of these
18 students is to see our schools as institutions that
19 embrace them and their concerns in a more responsive
20 environment. We know that, even in this post-racial
21 century, the life experiences of people from
22 different racial and ethnic backgrounds differs
23 significantly. These differences often create an
24 apprehension about the institutions and services in
25 our society. And this has a chilling effect on the

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1 relationship between these institutions and those
2 most in need.

3 Nowhere is this effect more devastating
4 that in the parental relationship in schools with
5 high percentages of African American and Hispanic
6 students and, in particular, where there is a high
7 rate of poverty.

8 VICE CHAIR THERNSTROM: You need to --
9 I'm sorry, but you need to wrap up.

10 DR. MURPHY: Have I been talking longer
11 than --

12 VICE CHAIR THERNSTROM: More than a
13 minute. No. About a minute over.

14 DR. MURPHY: Oh, okay. I am sorry, but I
15 will wrap up.

16 In closing --

17 VICE CHAIR THERNSTROM: And I apologize.

18 (Laughter.)

19 DR. MURPHY: It's quite all right. I
20 didn't realize. I've been told that I can run long.
21 That is what superintendents do sometimes.

22 (Laughter.)

23 DR. MURPHY: Of course, I think that it
24 is important to say what --

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1 VICE CHAIR THERNSTROM: We,
2 unfortunately, have a very long day in front of us.

3 DR. MURPHY: Yes. You know, well, maybe
4 I'll just stop now.

5 VICE CHAIR THERNSTROM: Wrap up. Of
6 course, you can. If you've got a few sentences more,
7 of course.

8 DR. MURPHY: Finish my closing? Why
9 don't I just finish and say that one of the things
10 that we decided is that it's more important for
11 students to be in school than out of school. So, in
12 addition to our teacher appraisal system, what we
13 have tried to do is create a program where, rather
14 than being suspended from school, students and their
15 parents are invited in to use on a kind of a basis
16 where if they come in and get a day of counseling and
17 engaging with the school and the teachers, they are
18 able to reduce the suspensions and the time frames
19 for being out of school.

20 What has happened with this is that we
21 are able to keep students in school and create a more
22 engaging relationship with the parents involved. And
23 ultimately I think that really is the heart of the
24 matter, is the relationship between the schools and
25 the communities that they serve.

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1 VICE CHAIR THERNSTROM: Thank you very
2 much. And I'm glad you did add those final remarks.

3 DR. MARTIN: Good afternoon. Thank you
4 for giving me this opportunity to share Rochester
5 public schools' attempt at decreasing the disparities
6 in discipline. And we are one of those five school
7 districts that is under compliance.

8 So Rochester public schools have been
9 under reform for the last four years, when the
10 superintendent commissioned the work of the education
11 development center to conduct an educational audit in
12 the district.

13 This report indicated that there is a
14 need for the district to ensure that all students
15 experience a sense of belonging in their school
16 community, assure that all students benefit from high
17 expectations and fair treatment, and create an open
18 and welcoming culture for all families.

19 This report further revealed that there
20 is an over-representation of African American males
21 who are expelled from school. The report also showed
22 this is disproportionate to the overall student
23 population, both by race and by disability status.
24 And you have all of the statistics that I provided
25 you. So I am not going to go through that.

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1 But also suspension data from 2007-08
2 showed that through November, 82 of the 288
3 out-of-school suspensions had been students with
4 disabilities, (29 percent). And of those, 44 are
5 emotional/behavioral disorder, which is 15 percent of
6 all suspensions. And 22 are students with
7 disabilities. And most of those students are African
8 American, primarily males.

9 From that educational audit, outlined in
10 the EDC report, a five-year strategic plan was
11 developed and implemented to close the opportunity
12 gap and to bring all students to proficiency and to
13 address the disparities in discipline.

14 This five-year plan led to the
15 identification of our district's five focused
16 initiatives, which are efficacy, equity,
17 strengthening the core, interventions, and positive
18 behavior/intervention supports.

19 And some of the trainings that we have
20 offered our staff include the role of whiteness;
21 impact of race on student learning; courageous
22 conversations about race, the topic that we all try
23 to avoid, culturally relevant classroom; job-embedded
24 coaching; life space crisis intervention; efficacy

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1 for both parents, students, and staff; and mentorship
2 for students.

3 The program that we implemented is called
4 Positive Behavior Intervention Supports. And the
5 previous panel made mention of the SWIS, which is the
6 data-tracking system but is a systemic approach to
7 preventing and responding to school discipline
8 problems.

9 PBIS developed school-wide systems that
10 support staff to teach and promote positive
11 appropriate behavior in all students. Schools are
12 using this systems approach to improve student
13 behavior and decrease behavior incidence, including
14 suspensions and expulsions, while eliminating the
15 disproportional number and racial predictability of
16 the student groups that occupied the highest and
17 lowest achievement categories.

18 As a result of analyzing all discipline
19 data and the disproportionalities which exist, all
20 schools have implemented a number of strategies in
21 the Site Integrated Improvement Plans and the Sites
22 in Need of Improvement Plans to decrease the number
23 of referrals for all black and brown students.

24 The implementation of these strategies
25 has resulted in a decrease of 363 suspensions and

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1 expulsions from 2007-08 to 2009-10 school year. Even
2 though our data indicate that with the implementation
3 of PBIS system, discipline referrals have been
4 decreased. When the suspension data was
5 disaggregated, the black and brown students were
6 disciplined disproportionately.

7 Since the inception of PBIS, each
8 building has developed an intentional plan to address
9 these disparities in discipline and to decrease the
10 number of referrals to the office.

11 At the administrative level, both at the
12 central office and school sites, the lack of
13 diversity clearly impedes the development of new ways
14 of thinking and limits the district's ability to make
15 use of fresh viewpoints to challenge existing beliefs
16 and practices.

17 When discipline is not applied fairly and
18 consistently, the cultural diversity is undermined.

19 Singling out misbehaving students for
20 humiliation or excluding them from classroom
21 sometimes starts with a referral to the principal's
22 office and sometimes escalates to the removal from
23 school through suspension. These strategies
24 effectively deny these students access to instruction
25 and an opportunity to learn, and do little to enable

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1 students to learn from their mistakes and to develop
2 a sense of responsibility for their behavior.

3 I firmly believe that all students must
4 be turned on to learning and must have equal access
5 to educational opportunities, including a college
6 preparatory curriculum and advanced courses, such as
7 the STEM classes so that they are prepared to compete
8 internationally. Turning students onto learning can
9 help to reduce the likelihood that they will be
10 targeted for repeated punishments. And I'll stop
11 there.

12 Thank you.

13 VICE CHAIR THERNSTROM: Thank you very
14 much, came in exactly on time.

15 Dr. Wright?

16 DR. WRIGHT: Thank you very much.

17 San Juan School District is a little bit
18 different than many of the districts and schools that
19 have been talked about here today. Many of the
20 schools are it sounds like very urban. San Juan is
21 rural, but I'm not sure it really can be defined as
22 rural. It is probably way beyond rural.

23 We are over in the southeast corner of
24 Utah. And the district encompasses approximately
25 8,000 square miles, roughly the size of Connecticut

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1 and Rhode Island combined. Within that setting, we
2 have 2,900 students in 12 schools. And so we are
3 serving a very large geographical area.

4 As was mentioned in the introduction, 52
5 percent of the student body in my district is
6 American Indian, mostly Navajo. We do have a portion
7 of the Ute Mountain Reservation as well. This
8 creates a situation where the district responds to
9 three separate sovereign nations under the terms of
10 the treaties of these Indian tribes.

11 In addressing discipline issues within
12 our schools, San Juan School District has attempted
13 to put into effect policies and practices that serve
14 to address the behavior in the least oppressive
15 manner possible to assure the students are protected
16 and able to experience an effective learning
17 environment.

18 Our experience shows that suspending and
19 expelling students leads to their failure to obtain
20 an education and to prepare for the lives that they
21 will face. With this fact in mind, we have attempted
22 to implement preventative programs to avoid the need
23 for disciplinary measures.

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1 Our district utilizes the PBIS program
2 that has been mentioned repeatedly here. And so I am
3 going to skip over that section of my remarks.

4 We are also in the process this year of
5 implementing the OLWEUS Bullying Prevention Program
6 within our schools. It is a school-wide program
7 designed to prevent or reduce bullying throughout the
8 school setting.

9 The multi-component approach involves
10 individuals, classrooms, entire schools, as well as
11 parents and communities to successfully address
12 bullying in schools.

13 Research has shown that the program can
14 lead to significant reductions of student reports of
15 general antisocial behavior, such as bullying,
16 vandalism, violence, fighting, theft, truancy. And
17 if we can reduce those incidents, certainly we will
18 reduce the problems of discipline and disparate
19 impact.

20 Another approach that we have been using
21 effectively for the last number of years is through
22 our guidance counseling program. Guidance counselors
23 play a key role in helping to assure that PBIS and
24 similar programs are implemented properly and are
25 successful.

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1 Recognizing that early training and
2 support are essential, the district wrote and
3 received a grant from the Department of Education
4 allowing us to hire elementary counselors for our
5 elementary schools.

6 That program is ending this year. And in
7 the past, the Department has allowed districts to
8 rewrite that grant. However, changes in the rules
9 this year will prevent us from doing that. We
10 certainly would like to see more money funneled into
11 that program and less into investigations that don't
12 do the work that may provide direct services to
13 students.

14 Within our secondary schools, we have
15 attempted to restructure the job duties of counselors
16 to come in line with a comprehensive guidance model,
17 which is also designed to be productive and proactive
18 in meeting students' various needs and addressing
19 concerns before students make negative choices.

20 Counselors play a key role in
21 establishing and reinforcing proper behavior and
22 preventing behavior which would require disciplinary
23 action. The counselors also assist with outreach and
24 communication, ensuring that the school and parents
25 work together investing in the child.

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1 In general, there is much evidence to
2 suggest that building a system of support may provide
3 and assist students to succeed, rather than moving
4 into the realm of discipline.

5 As I listened to previous panels, again,
6 much of what I heard the principal from the last
7 panel talking about as chief functions is functioning
8 much in the role of the counselor, rather than as a
9 disciplinarian principal. And we need more of that
10 level of support, instead of more administrative
11 disciplinary action to take place.

12 One of the questions the panel was
13 looking at is how districts were changing their
14 disciplinary policies in order to conform to the
15 changes in the Department of Ed. We acknowledge
16 that, despite our best efforts of prevention, there
17 are times when discipline is required and SJSD has
18 practice of reviewing its policies and procedures on
19 a regular basis to make sure that we stay current
20 with best practice and in compliance with changing
21 laws and regulations.

22 Recent safe schools policy revision in
23 our district led to the creation of a procedure that
24 establishes a hierarchy of expectations for proper
25 disciplinary actions depending on the nature of the

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1 incident requiring discipline. Policy outlines the
2 serious offenses which require a recommendation for
3 expulsion or suspension based on existing laws but
4 also notes other types of negative behavior for which
5 less severe disciplinary action is warranted.

6 We strive to be in compliance with the
7 Safe and Drug-Free Schools and Communities Act of
8 1994, which has led to many zero tolerance policies.
9 But, again, we recognize that we want to function at
10 the lowest level of discipline necessary in order to
11 mold behavior and provide a safe learning environment
12 for all students.

13 We have implemented some agreements with
14 the Navajo Nation to provide school resource
15 officers. We have found that at times creates more
16 problems than it solves as sometimes it raises the
17 level of discipline to a higher level than is
18 prudent.

19 We have provided a number of trainings to
20 help our teachers be more culturally sensitive,
21 developing Navajo language curriculum and helping
22 students to recognize the value of their culture and
23 their experience and fitting into the nation that
24 they currently are living as well.

25 I notice my time is up.

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1 VICE CHAIR THERNSTROM: And I thank you
2 very much for adhering to it.

3 And I open the floor to commissioner
4 questions. Commissioner Gaziano?

5 COMMISSIONER GAZIANO: I think I am going
6 to try to address Mr. Soto's statement first.
7 Reading your prepared statement, I have some serious
8 constitutional concerns, which I'll just state and
9 then put aside, with the OCR's interpretation of its
10 disparate impact theory.

11 You note in your prepared statement that
12 in Alexander v. Sandoval, the Supreme Court did not
13 address the constitutionality of Title VI
14 regulations. Of course, the court wouldn't because
15 that is not -- the holding was just about a private
16 right of action. Therefore, several justices did
17 properly note it is unconstitutional.

18 But, putting aside whether your approach
19 is constitutional, even if it were, you wouldn't have
20 to enforce it in that way. And what bothers me about
21 your approach is whenever the disparities showed the
22 burden -- and it seems to me in practice an extremely
23 heavy burden on the school to justify any disparity
24 -- and I think it is great to look at the
25 disparities. They can be powerful evidence of

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1 unintended or subconscious actual discrimination, but
2 they might not.

3 So you heard my question in the previous
4 panel about type I and type II error. Let's take
5 Pete's stated race. You've got a teacher, and the
6 Klingons need three times the discipline that the
7 other kids do. But if he's been schooled, if he's
8 been schooled, in how you interpret this, the heavy
9 burden that's placed on his school or he will -- he
10 intentionally does not discipline the Klingons. He
11 disciplines a third as much as they need.

12 Now, it seems to me he is engaging in
13 intentional discrimination. That is intentional
14 discrimination. How will that be picked up?

15 And, by the way, the Romulans and others
16 are all going to be affected.

17 (Laughter.)

18 COMMISSIONER GAZIANO: These two are the
19 Star Wars --

20 COMMISSIONER HERIOT: Star Trek.

21 COMMISSIONER GAZIANO: -- Star Trek
22 people. I'm not. So I'm just doing it for them.

23 COMMISSIONER KIRSANOW: You're doing a
24 pretty good job of it, though.

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1 COMMISSIONER GAZIANO: How will that be
2 picked up in your approach? You've got a teacher who
3 intentionally disciplines a certain subgroup a third
4 as much as they should. How will anyone ever notice
5 that? How will the impact on the other students ever
6 be measured?

7 MR. SOTO: Well, I need to just clarify
8 that, you know, we are going in there and conducting
9 investigations and compliance reviews, where we are
10 looking at issues generally around disparities, you
11 know, based on kind of racial impacts.

12 But we are actually conducting both kinds
13 of investigations. We are looking for, you know,
14 different treatment and also for disparate impact.

15 Many of our investigations progress from
16 looking at gathering just initial information about
17 the policies, the procedures, and the practices at
18 the school district and at the schools, and then
19 looking at whether or not based on race, students are
20 being treated differently as a result of the
21 discipline that is handed out based on the offenses.

22 And, as the prepared statements
23 indicated, often we find that there -- well, not
24 often but, you know, on occasion we will find that
25 there are actually differences. There is actually

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1 different treatment around the discretionary offenses
2 that school districts and school administrators and
3 teachers can make determinations about. And that is
4 typically where we find --

5 COMMISSIONER GAZIANO: I understand. Let
6 me just go back to my -- my specific is, are teachers
7 not disciplining enough? It is possible that if you
8 had a million people watching a million teachers, you
9 could see that, but I am suggesting that that is
10 something that is likely not going to be easily --
11 how would that be easily picked up? How would that
12 particular --

13 MR. SOTO: The fact that a teacher is not
14 disciplining the student?

15 COMMISSIONER GAZIANO: Is not
16 disciplining a particular subset as much as they
17 really should be and he's not, he or she is not,
18 doing so because he wants to get the numbers right?

19 MR. SOTO: I would say, you know, we
20 don't have minimum thresholds of discipline based on
21 race for teachers. I mean, we want to make sure that
22 to the extent that they are going to be disciplining
23 students, that they are doing it fairly, you know,
24 irrespective of race, national origin, or color.

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1 COMMISSIONER GAZIANO: Any disparate
2 impact is going to trigger the burden, the heavy
3 burden, that I see from your interpretation.

4 MR. SOTO: No one is suggesting that
5 discipline should be based on disparate impact
6 theory. In other words, the imposition of discipline
7 is not going to be based on disparate impact theory.
8 It's about making sure that the school district and
9 school administrators and teachers are fairly
10 implementing the policies, practices, and procedures.

11 COMMISSIONER GAZIANO: Except if there's
12 any disparity, according to your written statement as
13 I understand it, the school then has to come up with
14 this burden to justify it, rather than anyone else
15 have to prove that that is not right.

16 Why shouldn't the Department of Education
17 assume that disparities is just a reason to look
18 further but that they don't have to meet this
19 alternative -- as you said in your written statement,
20 even if substantial legitimate education
21 justifications support the disparity, you can still
22 find them in violation unless the school can again --
23 this is the double burden of proof the school has --
24 meet, show the equally effective alternative
25 policies, practices, and procedures would achieve the

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1 school's educational goals? And you're going to
2 stand in judgment.

3 MR. SOTO: Again, you know, you didn't --
4 I said at the beginning when I was responding to your
5 comments that we go through a progression on our
6 investigation.

7 Certainly the data raises an issue that
8 we believe that we need to look at under our civil
9 rights laws. But then we go through an evaluation
10 from different treatment. And typically that is
11 where we find an issue if we find an issue. And then
12 to the extent that there is or there isn't an issue,
13 then we may also look at disparate impact.

14 The point is that under the Assistant
15 Secretary, we will use all the enforcement tools
16 under the law that we are authorized to use,
17 including disparate impact. But typically in this
18 area, a lot of the issues around the implementation
19 of policies, practices, and procedures is around
20 different treatment.

21 VICE CHAIR THERNSTROM: I'm afraid I have
22 to stop you. Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Actually, I think
24 Commissioner Castro --

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1 VICE CHAIR THERNSTROM: Oh, I'm terribly
2 sorry. I'm looking in this direction simply because
3 I was stopping Commissioner Gaziano.

4 COMMISSIONER CASTRO: Sure. Thank you.

5 VICE CHAIR THERNSTROM: Commissioner
6 Castro?

7 COMMISSIONER CASTRO: I am sure that
8 Commissioner Gaziano in reference to the Sandoval
9 case didn't mean to indicate that dissents would now
10 be the law. Otherwise I think that could lead to a
11 little bit of a breakdown in the rule of law.

12 COMMISSIONER GAZIANO: It was just dicta.
13 It wasn't --

14 COMMISSIONER CASTRO: Okay. Dicta.
15 Well, either one would probably lead to the same
16 result, then, I'm sure. But I won't get into the
17 details of the Sandoval case, but I do want to ask
18 you a question, Mr. Deputy Assistant Secretary.

19 One of our prior speakers, Allen Zollman,
20 in his written remarks, which he did not have an
21 opportunity to complete but which are part of our
22 record, indicated in his closing additional comment,
23 "Suppose we did discipline proportionally by
24 ethnicity. We have reached the maximum allowable

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1 number of referrals with group X for disruptive
2 behaviors. We will have to stop issuing referrals.

3 "Shall we likewise stop when we reach the
4 maximum number of referrals for serious offenses,
5 like weapons possession, sexual assault, or physical
6 assault? If we say no for these offenses, there can
7 be no withholding of discipline.

8 "Then we have two disciplinary standards:
9 One for minor disruptive offenses and another for
10 serious criminal ones. This would seem to be an
11 incoherent policy."

12 Is this what you are advocating at the
13 Department of Education? If no, could you please
14 elaborate for me?

15 MR. SOTO: No, of course not. I mean,
16 we're not advocating that school districts or that
17 teachers or administrators not take disciplinary
18 action for serious offenses that occur in classrooms
19 or at schools.

20 You know, in particular, I know that one
21 of the previous panelists indicated that there are
22 some really serious offenses for which they have no
23 discretion. And typically they will involve weapons
24 or drugs or very serious assaults, including on
25 school personnel.

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1 And for the most part, those are imposed,
2 irrespective of race, color, or national origin.
3 It's typically around the discretionary issues,
4 where, as, again, in the example that we cited, where
5 teachers had some discretion about whether or not to
6 implement an informal process before they made a
7 formal recommendation for discipline, where we find
8 the issues in some cases.

9 And so what we try to do is to ensure
10 that all the procedures that are available to some
11 students are available to all students and that they
12 are consistently available for all students, not just
13 occasionally available for all students.

14 And often that requires that we work --
15 you know, many of the resolutions that we enter into
16 are resolutions where school districts develop
17 policies and procedures and practices that they feel
18 will address these concerns that we have identified
19 through the investigation. And often they address
20 the concern.

21 I mean, I applaud the work that the
22 additional panelists on this panel are doing. And I
23 think it's a effect that people are sensitive around
24 these issues because of the harms that result to the

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1 students. And they're looking at these issues
2 because they believe that they also have a concern.

3 COMMISSIONER CASTRO: And also I guess
4 part of this -- since I am new here, it will be a
5 general question. In preparation for our hearing, I
6 looked at the SAC report summaries. And I noticed
7 that there was some great work being done in our
8 Southern region.

9 Our SACs are State Advisory Committees.
10 We have 51 of them, or theoretically, in the United
11 States that are volunteers that are doing some of our
12 work to what we are doing here in terms of conducting
13 hearings and briefings. And Southern region in
14 Florida, Georgia, Kentucky, South Carolina, and
15 Tennessee have all done or are in the process of
16 completing school discipline practices hearings.

17 I thought, "Wow. That's great." So when
18 I saw this, I asked our Staff Director yesterday if
19 he could provide me with whatever reports we had.
20 And he provided me last night with a report from our
21 Florida State Advisory Committee, which I read last
22 night, on school discipline in Florida.

23 And I guess just as a comment to the
24 staff, whoever prepares these books, it would be
25 great to have work of our SACs included in the

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1 wonderful scholarly works that we get in preparation
2 for these hearings in the future.

3 I want to just talk to you a little about
4 some of the findings and some of the conclusions and
5 get your thoughts again. These will be issued
6 publicly later. And there are a couple still in the
7 pipeline being finalized. I won't talk about those.

8 The Florida SAC found that public school
9 system in Duval County, the research they did
10 supported a conclusion that there is a pathway to
11 prison for many African American students that go to
12 school in Duval County. In particular, they found
13 that their exclusions, disciplinary policies,
14 including out-of-school suspension, alternative
15 school placement, and expulsion, contribute to higher
16 rates, high risk of school dropout, that dropping out
17 of school is a risk factor for incarceration, that
18 African American students in Duval County public
19 schools receive a disproportionate amount of
20 discipline.

21 As for severity, the discipline action
22 increases the over-representation of African American
23 students receiving the harsher discipline increases.
24 And the student code, which outlines the various
25 violations and consequences of student behavior, is

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1 written at a college graduate level beyond the
2 reading ability of most of the students.

3 They make several recommendations. And
4 this is where I would like to get your thoughts on
5 these recommendations, any other recommendations you
6 have for us, "The State Advisory Committee recommends
7 that the school board in Duval County examine the
8 effectiveness of exclusionary and zero tolerance
9 discipline policies," that they implement school-wide
10 initiatives, such as positive behavior supports and
11 placement of current punitive policies, including
12 programs that are comprehensive, positive behavioral
13 approaches, in addition to integrated school-wide
14 training for teachers, such as CHANCE. And I don't
15 know if you're familiar with that program, which
16 should be implemented throughout the district.

17 And they also recommend the rewriting of
18 the student code to bring the reading level more in
19 accord with the guidelines set forth for public
20 documents -- sixth or seventh grade level -- and
21 reducing the legalistic terminology and have it
22 placed in plain language.

23 So I would like to have some comments
24 from you all on these recommendations and, again, any
25 other recommendations that you have.

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1 DR. MARTIN: I think those
2 recommendations are fine, but I think you also need
3 to address the elephant in the room of why the kids
4 are misbehaving a certain period of the day, a
5 certain teacher's classroom, or what.

6 So if I am bored, if I am not being
7 challenged, if I am being picked on, I am not going
8 to go to this teacher's classroom. And so if I am
9 not attending class, I am going to be missing
10 inspection. It means that I am not going to
11 graduate. It means we have another drop out.

12 So I really do think that the big piece
13 here is, how do we prepare our teachers to deal with
14 the diverse population that each of our school
15 districts has to face on a day-to-day basis? And how
16 do they tolerate or how do we help them understand
17 the kids that they have in their classroom so they
18 can best meet their needs.

19 If teachers today don't have that
20 relationship, as Ms. Maxey mentioned this morning,
21 you are not going to get much. So it is really
22 important that we as educators understand the
23 students that we have in front of us on a day-to-day
24 basis and understand the issues.

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1 And it's not one size fits all, but you
2 deal with the kid when you get that kid into your
3 office as a principal. How do I deal with this
4 student? You need to delve into the cause of the
5 behavior and the misbehavior and what is going on,
6 whether it be in the classroom or in the home.

7 And we have no control about the kids'
8 homes. We can only deal with the students when you
9 get them in the school. So that's six and a half,
10 seven hours a day. So that's what?

11 So we have to try to make that positive
12 impact on those students and let them know that we do
13 care about them, that we want them to succeed and not
14 just giving lip service. It has to be real because
15 those kids can read us like a book.

16 COMMISSIONER CASTRO: Any comments?

17 DR. WRIGHT: My position is that the
18 things that you mentioned are many of the things that
19 we also mentioned. It sounds like we're on the right
20 track based on the things that we're making now.

21 The CHANCE training I'm not familiar
22 with. It may be exactly what she is referring to.
23 But I really believe that that layer of providing
24 some social support to students, as opposed to just

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1 focusing on the discipline, is really the key to much
2 of this.

3 And I'm not sure the schools are the only
4 thing that can do that. We need to look at social
5 services. We need to look at other community
6 resources and partner with those to the extent that
7 we can [in order] to help with some of the social
8 issues that are associated.

9 COMMISSIONER CASTRO: Yes?

10 DR. MURPHY: I agree with that. The
11 pathways to incarceration have been established in
12 this country for many years, actually ever since
13 Brown v. Board of Education. And I know it becomes
14 trite after a while just to keep reaching back to
15 that.

16 I think if you look at the response to
17 integration in the country, I think you'll see a
18 spike up in special education and identification of
19 students' needs with disabilities in the country.

20 IDEA actually came along after 1954. I
21 think there is considerable research that shows that
22 people incarcerated also are disproportionately
23 represented amongst those folks who have been
24 identified as having a disability.

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1 I think that represents the fact that
2 there is a disconnect between the culture of the
3 students and the culture of the institutions that
4 schools represent.

5 I think when you see things like the
6 Harlem Children's Zone, even though there's some data
7 out there that contradicts its success, I think that
8 the impetus for the Harlem Children's Zone is what
9 needs to happen in public education throughout the
10 country. And that is, in fact, integrating the
11 existence of school systems and the life and
12 expectations of school systems with the data
13 experiences that students have between school and
14 home and with the values that are espoused in home
15 for school outcomes and especially as that relates to
16 the authority of teachers and principals as leaders
17 in their school.

18 COMMISSIONER CASTRO: Okay.

19 VICE CHAIR THERNSTROM: Just let me
20 announce that I have let this spill over because
21 Commissioner Titus has yielded her time to
22 Commissioner Castro.

23 COMMISSIONER CASTRO: Thank you.

24 I would just ask that this report by the
25 Florida SAC be part of the record for this hearing

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1 and any of the other SAC reports that are completed
2 because there are other findings here that I didn't
3 go into just because of time that are relevant.

4 VICE CHAIR THERNSTROM: Good.

5 COMMISSIONER CASTRO: Thank you.

6 VICE CHAIR THERNSTROM: You know, as I
7 say, Commissioner Titus has yielded some of her --
8 she has yielded her time to you. So if there are a
9 couple of more things you would want to say?

10 COMMISSIONER CASTRO: Well, I was going
11 to say that with regard to the comments of Dr. Martin
12 and Dr. Wright about other factors.

13 In fact, there are findings here that
14 there are multiple factors that affect the school
15 districts, including poverty, neighborhood
16 environment, family structure. And these affect the
17 students' ability to function within the school
18 system. And especially poverty has a tremendous
19 negative impact on the students' ability.

20 So I know you touched a little bit on
21 those other factors, but if you could speak to that
22 as well as it impacts your school districts?

23 DR. WRIGHT: Well, you know, one of the
24 issues also in my district is not only the poverty
25 found on the Navajo Reservation but also the

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1 distances associated with getting students to and
2 from school, many times parents are absent because
3 they have to leave the reservation to go to work.

4 The student ends up living with
5 grandmother, who is not familiar with the school
6 system. You have the issues associated with many of
7 the parents who were educated or educated in BIA
8 boarding schools, taken away from their families and
9 other places. And so they're not as good at
10 parenting. They're not used to parenting. They
11 weren't parented in a sense. And so much of that
12 impacts student performance as well, just a larger
13 variety of issues that we are attempting to deal
14 with.

15 And we have about 25 percent of our
16 teaching staff is Navajo, which we're very fortunate
17 that's very -- it's great compared to what most
18 Indian districts see. But still the role models
19 aren't there for those students that we really need,
20 which is another impact.

21 DR. MARTIN: And because the kids are
22 poor doesn't mean that, as indicated, we don't teach
23 them. We as a system need to stop allowing the kids'
24 zip code, their demographics, to dictate what they
25 can become.

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1 I'm one of those. I'm from a single
2 family home. But I didn't allow that to stop me from
3 achieving my goals. And, you know, God bless those
4 mentors, those people whose shoulders I stand on.
5 But we have to stop using some of these excuses for
6 what we are doing, some injustices that are happening
7 to kids across this country. There are cases where
8 there is 90 something percent poverty and yet they
9 are achieving.

10 So what are those schools doing? And
11 what can we do as a system to replicate some of those
12 strategies that are working?

13 COMMISSIONER CASTRO: I want to go down
14 -- I'm sorry.

15 VICE CHAIR THERNSTROM: I'm afraid I'm
16 going to have to stop there.

17 COMMISSIONER CASTRO: Okay. Thank you.

18 VICE CHAIR THERNSTROM: I've just been
19 told by my wonderful assistant that, even now, even
20 with that added time, we are --

21 COMMISSIONER CASTRO: Okay. Thank you.

22 VICE CHAIR THERNSTROM: Yes, Commissioner
23 Kirsanow?

24 COMMISSIONER KIRSANOW: Thank you.

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1 I guess this question would probably be
2 directed to Mr. Soto, but anyone can chime in.
3 Commissioner Gaziano talked a little bit about Title
4 VI. And I'm not going to get into the
5 constitutionality, only to observe that Title VI is
6 different from Title VII.

7 There is disparate impact theory that
8 applies to both. Employment is different from being
9 in school. And one of the reasons why we had
10 disparate impact theory in Title VII is that it was
11 at least originally thought of as a vehicle to kind
12 of ferret out unseen or disguised intentional
13 discrimination because the civil plaintiff would not
14 have the resources to develop the type of record
15 through discovery necessary to make out a prima facie
16 case of discrimination.

17 Schools are a little bit different.
18 Education is a little bit different. I don't want to
19 get into the legality of it, but I am wondering in
20 terms of methods, in terms of inputs and outputs. We
21 have a lot of information in terms of inputs that the
22 OCR has and what it measures.

23 But in terms of outputs, once you have
24 identified a district that has a disparate impact in
25 the imposition of discipline on the basis of race, is

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1 there data? Are there statistics? Is there any
2 evidence that shows that the remedies that they
3 undertake because if they have equally effective
4 alternatives to discipline, they're supposed to
5 utilize those. Is there anything that shows that
6 those districts, who have been identified pursuant to
7 a disparate impact, balance?

8 Once the Department of Education goes in
9 and says, "Look, you guys are in violation," that if
10 they impose these remedies, that those remedies had
11 yielded some positive results in terms of increased
12 GPA, lower dropout rates or increased graduation
13 rates or any other kind of objective metrics.

14 And I say that because I hear from
15 several people, maybe not on this panel but on the
16 previous panel, maybe the first one and the second
17 one, I know Dr. Maxey -- it was Mrs. Maxey. I'm
18 sorry. Colonel Maxey, as I refer to her, and Mrs.
19 Seng and others said that a one size fits all model
20 doesn't work.

21 I think Dr. Martin indicated -- you are a
22 doctor. Okay. General Martin had indicated that,
23 you know, you have got a lot of different reasons.
24 There's economics.

25

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1 DR. MARTIN: There's a lot of reasons why
2 people may be acting out that have nothing to do with
3 race.

4
5 COMMISSIONER KIRSANOW: Do we have any kind of
6 data that shows that using a disparate impact model
7 is effective in terms of addressing problems related
8 to discipline?

9 MR. SOTO: Let me respond a couple of
10 ways. First, I also said in my remarks that we don't
11 have one size fits all resolutions for the individual
12 school districts, where we might find issues around
13 Title VI and this area of discipline.

14 You know, I don't think we have a
15 database where we keep the data about what happens as
16 a result of a finding that there is an issue around
17 different treatment or disparate impact.

18 We do monitor the district after we enter
19 into a resolution agreement. And through those
20 resolution agreements, we are continuously looking at
21 the data to see whether or not the changes that were
22 agreed to are addressing the issue that was
23 identified during the investigation.

24 Again, what I would say is, as I tried to
25 respond earlier, you know, most of these cases, we're

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1 looking at both theories of discrimination for
2 purposes of trying to make a determination of if
3 there's a violation under Title VI.

4 And most of these cases actually stop
5 after having inquired around whether or not there's a
6 different treatment issue because that's where we
7 identify the issue. That's where typically it is.
8 And that's where we address the disparity in
9 application of the policies, practices, and
10 procedures that a school district has in this area.

11 So we don't have any data that we are
12 looking at, but I can tell you that the Assistant
13 Secretary, who came from Ed Trust West in California,
14 which was a heavily data-driven organization looking
15 at everything from achievement to graduation, she is
16 all about the data.

17 And, again, my comments state that one of
18 the first things that she did when she became the
19 Assistant Secretary was to look at the civil rights
20 data collection for purposes of it providing more
21 information about the areas of concern so that we can
22 track this information and not only have it be useful
23 for OCR in looking at the issues we are trying to
24 address but also so that we can have others,

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1 researchers, school districts, administrators look at
2 the data that is generated.

3 COMMISSIONER KIRSANOW: And who makes the
4 determination as to the nature of the remedy in terms
5 of one size fits all? Is it OCR? Is it OCR in
6 partnership with the local school district, with the
7 principal? How is that done?

8 MR. SOTO: It's the middle. It's the one
9 where we typically identify the issue for the school
10 district and say, "Here is what we are finding. You
11 know, here is what we have seen other districts use
12 for purposes of addressing the issue." And then they
13 make a determination based on what works, how they're
14 set up, what their structure looks like, how they --
15 you know, what, if any, state mandates they have to
16 look at whether or not they can address the issue in
17 a way that they can propose.

18 VICE CHAIR THERNSTROM: Can I just ask
19 whether there are other commissioners because your
20 time is over, but if either commissioners want to
21 yield to you, then --

22 COMMISSIONER KIRSANOW: Oh, no. That's
23 fine.

24 VICE CHAIR THERNSTROM: Fine? Okay. Who
25 else wants to speak? Commissioner Achtenberg?

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1 COMMISSIONER ACHTENBERG: I have a lot of
2 sympathy for you because I ran a Title VI compliance
3 operation myself, only in the fair housing area. We
4 did use as a third tier analysis, disproportionate
5 impact theory. To the best of my recollection, it
6 was legal in 1993. And it remains legal today, but I
7 will yield to Mr. Soto to correct my understanding of
8 the current legalities of it.

9 But in my experience, Title VI compliance
10 in most cases was helpful, not designed to find fault
11 or to exact punishment but in most cases was helpful
12 to the entity being examined in large part because
13 once you reach the third tier analysis, you have the
14 ability to offer the district in this case a set of
15 best practices.

16 The kinds of things that have been used
17 well and work successfully in other districts can be
18 brought to their attention. An agreement can be
19 reached, far from it being a one size fits all.

20 At least in my experience, we tailored it
21 very narrowly to the specific constraints that the
22 particular entity operated under. And it was
23 different depending on the state, depending on the
24 region, depending on the local law, and that kind of
25 thing.

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1 I'm wondering if you could discuss with
2 us just briefly how specifically tailored to the
3 local circumstances the resolutions that you enter
4 into with these districts -- you know, what level of
5 specificity is involved in these resolutions.

6 MR. SOTO: Well, an extreme level of
7 specificity -- and I have this knowledge base both on
8 the fact that I represented school districts where I
9 represented them in OCR investigations. And now I
10 work for OCR with the agency that is trying to
11 develop the resolution, the school district. And it
12 is very specific.

13 You know, it gets down to permitting the
14 school district to offer alternatives to -- if OCR
15 comes up with a proposed remedy that they believe
16 will address the concern of the school district, I
17 have had plenty of experience working with OCR on the
18 other side and working with investigators to tell
19 them why it does work or doesn't work or may not
20 address the issue that they are interested in
21 addressing and have been able to work with OCR when I
22 was representing school districts to make sure that
23 it specifically addressed the issue and that it
24 actually would have an impact on the issue that they
25 were trying to address.

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1 And I would say again in this case given
2 the example that I cited, I know that when we went
3 through the policies and the practices that the
4 school district had, you know, we took specific care
5 to look at the area that we were interested in, which
6 was these discretionary determinations about whether
7 or not to use an informal process before invoking a
8 formal disciplinary process. And that's where we
9 focused on what kind of supervision, monitoring, and
10 review needed to be done to ensure that that was
11 being done in a fair manner.

12 One last thing. I think that, as
13 Commissioner Achtenberg said, some school districts
14 that we work with around these issues really
15 appreciate the fact that we come in and kind of
16 essentially shine a light on an area that they were
17 unaware of.

18 And we have had, in fact, in this area
19 school districts, school board members who have
20 commended the work of our investigators and our
21 attorneys because they have addressed the concern
22 that they also knew that existed and they have done
23 it in a way that is effective in addressing it much
24 more proactively.

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1 COMMISSIONER ACHTENBERG: Let me point
2 out, though, I thought Commissioner Kirsanow's
3 question was a very valid one. Certainly you then
4 have to go on and measure the extent to which these
5 new procedures actually do achieve or don't achieve,
6 you know, what it is you're trying to achieve here.
7 And to the extent that you can be transparent about
8 that, it seems to me would allay a lot of fears about
9 the people imagining somehow that this is an extreme
10 attempt to enforce, you know, some kind of political
11 correctness on the people who were just out there
12 every day trying to teach our kids.

13 I mean, at least in my experience,
14 nothing could be further from the motivation of civil
15 rights enforcement in the federal government. But I
16 will admit that that is anecdotal and nearly my
17 personal experience.

18 VICE CHAIR THERNSTROM: And I'm afraid
19 our time is up, I'm sorry to say, now. Time is up on
20 that question. I didn't mean that you couldn't ask a
21 question.

22 COMMISSIONER HERIOT: Okay. I only have
23 a few questions, I think.

24 Mr. Soto, I just want to make sure I have
25 a handle on some basic stuff here. You know, maybe

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1 you addressed this and I missed it but just the
2 procedures that are involved here.

3 My understanding is that you will get
4 some individual complaints and that those will be
5 investigated by OCR personnel. And those were
6 investigated by themselves. And then you have
7 compliance reviews. Are the compliance reviews only
8 for the disciplinary issue? Are you combining lots
9 of issues?

10 MR. SOTO: Yes. No. That's a good
11 distinction. No. Our compliance reviews are not
12 just focused on the area of discipline.

13 COMMISSIONER HERIOT: Okay. Well, give
14 me some examples of how these things are grouped
15 together.

16 MR. SOTO: The compliance reviews?

17 COMMISSIONER HERIOT: How do you pick out
18 a school district that is going to have a compliance
19 review? And what will be the ordinary things that
20 will be investigated in it in a typical case?

21 MR. SOTO: Well, there's no typical case.

22 COMMISSIONER HERIOT: Okay.

23 MR. SOTO: There are very different
24 cases. We do compliance reviews under the three
25 primary civil rights statutes that we enforce, which

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1 are Title VI, Title IX, and section 504 of the
2 Rehabilitation Act or Title II of the Americans With
3 Disabilities Act.

4 And typically what our regional offices
5 do because they are the ones that actually are out in
6 the field and kind of know what is going on in their
7 states will look at data that is publicly available
8 typically, either from the civil rights data
9 collection at --

10 COMMISSIONER HERIOT: Well, put it this
11 way. Have they selected a particular --

12 MR. SOTO: No.

13 COMMISSIONER HERIOT: -- target at this
14 point?

15 MR. SOTO: No one has selected anyone.

16 COMMISSIONER HERIOT: Okay. Fine.

17 MR. SOTO: We have a civil rights data
18 collection that we try to do every two years.
19 Unfortunately, the civil rights data collection was
20 not done during 2008. So we just initiated a civil
21 rights data collection last year and worked to
22 gathering that information and are going to be
23 releasing it publicly soon. They look at state
24 websites that may have information student -- like

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1 many state websites are very robust now around
2 education and data collection.

3 And then we even look at county-wide or
4 school district databases for purposes of looking at
5 information and then making determinations about
6 whether or not, you know, the data raises a concern
7 that we may want to just inquire about or pursue to
8 see if there is an issue around the civil rights
9 implementation of the civil rights laws or the
10 programs and policies of that school.

11 COMMISSIONER HERIOT: So does that mean
12 at some point they find something they consider to be
13 something worthy of investigation and at that point a
14 decision is made to open a compliance review?

15 MR. SOTO: Correct.

16 COMMISSIONER HERIOT: What are the
17 procedures for determining what you are going to do?
18 Who has to approve these things? How does that work?

19 MR. SOTO: Typically they are reviewed in
20 the office, in the headquarters here in Washington,
21 D.C. You know, we look at the proposals that the
22 regional offices make. And then typically we are
23 asking for more information. You know, what
24 information do you have that this is a real issue in
25 that community or in that school district?

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1 You know, what additional information can
2 we get from the state websites or the school district
3 websites around the issue that you have raised? And
4 then once we have reviewed that and then once we make
5 a decision, then the regional office is in charge of
6 doing the investigation.

7 COMMISSIONER HERIOT: So I take it from
8 your description that some of these proposals will
9 say we looked at disciplinary information that was
10 available on our website.

11 MR. SOTO: Right.

12 COMMISSIONER HERIOT: So it will be
13 flagged often in the proposal. This is one where
14 we're looking particularly at discipline and X and Y
15 and Z.

16 And one that doesn't say that you
17 ordinarily are not anticipating looking at discipline
18 or you would always look at discipline once these are
19 --

20 MR. SOTO: No, not always. I mean, you
21 know, we launched approximately -- well, last we
22 launched around 40 compliance reviews, which involved
23 about 55 agencies. And there were only very few,
24 about a handful of compliance reviews that were
25 around the issue of discipline.

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1 COMMISSIONER HERIOT: Are any of those
2 closed investigations at this point?

3 MR. SOTO: No. They're all open and --

4 COMMISSIONER HERIOT: They're all open.
5 How long do these investigations ordinarily take?

6 MR. SOTO: They can take from several
7 months to years. When we came and when the Assistant
8 Secretary took office in May of '09, there were many
9 that were still -- not many, but there were several
10 that were still outstanding from 2007-2008.

11 COMMISSIONER HERIOT: You mentioned
12 during your comments that you can't comment on open
13 investigations. Have you furnished the Commission
14 with the identities of the particular school district
15 where the school discipline issue is? Is that all
16 ready?

17 MR. SOTO: The ones that we initiated,
18 yes.

19 COMMISSIONER HERIOT: Okay. Then I yield
20 whatever additional time I have. I know Commissioner
21 Gaziano had an extra question.

22 COMMISSIONER GAZIANO: Just one question
23 that I -- by the way, I do --

24 VICE CHAIR THERNSTROM: The additional
25 time is two seconds.

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1 (Laughter.)

2 COMMISSIONER GAZIANO: In the interest of
3 us moving on, then --

4 VICE CHAIR THERNSTROM: Yes.

5 COMMISSIONER GAZIANO: -- I might try to
6 formulate a letter, then, to OCR. And maybe I'll
7 seek my fellow commissioners' input on that. Thank
8 you.

9 MR. SOTO: Thank you.

10 VICE CHAIR THERNSTROM: I can yield some
11 time if you have anything more you want to say.

12 COMMISSIONER GAZIANO: Oh, just one data
13 question. I can understand how the kind of data you
14 might collect would allow you to look at both
15 disparate treatment and disparate impact in what I
16 call my type one problem, which is I do not
17 understand and I have not heard from anyone how other
18 than classroom observation document or data could
19 show the type two problem, not enough discipline,
20 because if you look at all of the slips and all of
21 the documents, all you would see is they all seem to
22 be justified.

23 How could you ever determine if some
24 teacher is not disciplining those Klingons enough
25 based on just data and documents?

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1 MR. SOTO: I'm going to defer to my
2 colleagues, but I'm willing to answer what I think.
3 I think they have more experience.

4 COMMISSIONER GAZIANO: Sure.

5 DR. MURPHY: I can tell you I have a
6 reaction to it. I'm not sure it's the answer that
7 you are looking for. But in those classrooms where
8 discipline is not being implemented effectively, what
9 you are going to have is a high number of parent
10 complaints. That is the first thing that is going to
11 happen. The second --

12 VICE CHAIR THERNSTROM: In some
13 districts, not all.

14 DR. MURPHY: Okay. All right. I should
15 say you could have a high number of parent
16 complaints.

17 Another thing that may happen is then you
18 could also have high numbers of absenteeism in
19 classrooms where students are afraid to come to
20 school, they feel intimidated, or their parents don't
21 feel like they're safe in classrooms.

22 Now, that is not the kind of first-line
23 data that you are talking about because you would
24 have to develop your own conclusion for why that is
25 happening.

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1 VICE CHAIR THERNSTROM: Commissioner
2 Kirsanow, you have a very brief question. I will
3 yield my time.

4 COMMISSIONER KIRSANOW: I do. Thank you
5 very much. I appreciate it.

6 To Drs. Murphy, Martin, and Wright, how
7 much of your time is spent on disciplinary issues?
8 What percentage?

9 DR. MURPHY: For me, it is a very small
10 amount of time, percentage of time, simply because
11 when you look at the numbers of students, not just in
12 my district but probably in most districts, they
13 represent a small percentage of the students who are
14 actually having problems.

15 Now, you do have this disproportionality
16 that you are talking about, but I think overall when
17 you look at the percentage of students who reach my
18 desk or are at the board level, where we have
19 discussions about decisions for students who are
20 being referred for disciplinary problems, even among
21 African American students, that represents a small
22 percentage of students.

23 I think we have to be careful about
24 generalizing what is happening in schools because, by

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1 and in large and for the most part, most students in
2 my classrooms are behaving and doing fairly well.

3 COMMISSIONER KIRSANOW: Dr. Martin?

4 DR. MARTIN: It's the same as Dr. Murphy
5 said. And it all depends on the situation by the
6 time they get to me is because they want to go for a
7 board hearing. So it is a small number. The
8 buildings have to deal with more than we do.

9 VICE CHAIR THERNSTROM: I want to take
10 back the remainder of my time. Commissioner Castro
11 has one comment.

12 COMMISSIONER HERIOT: Dr. Wright didn't
13 get a chance to answer that one.

14 VICE CHAIR THERNSTROM: I'm sorry.

15 DR. WRIGHT: I was just going to say
16 because I represent a very small school district,
17 probably five to ten percent of my time, but I would
18 deal with things on a much lower level probably than
19 superintendents in large urban districts. We don't
20 have as many layers to get through.

21 DR. MURPHY: I just want to make one
22 comment to Commissioner Kirsanow. A bigger problem
23 is student failure. If we address student failure,
24 then the issue of disparate disproportionality and
25 discipline is going to be much less.

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1 COMMISSIONER KIRSANOW: Thank you.

2 COMMISSIONER CASTRO: Just a quick
3 question. When I referenced earlier the code of
4 student conduct being written in a higher level
5 language, we never really got into that. But have
6 any of you seen the code of conduct issue? Will
7 there be a barrier on language, rather than just
8 level of language, whether it's Spanish or --

9 DR. WRIGHT: Certainly a concern within
10 my district. Navajo was not a written language until
11 recently. And we do have a number of literacy issues
12 associated with anything that we send home in the
13 native language.

14 So that definitely would have an impact
15 with us, whether it is reading levels or in English
16 or not. It's just a language issue in general.

17 DR. MARTIN: We have some bilingual
18 specialists who help with the translation of those
19 for those parents.

20 DR. MURPHY: We translate materials also
21 across our district in a variety of venues. One of
22 the other things that we have done in the past is if
23 we feel like we have a problem, we will break down
24 some three to five to seven things that will result
25 in a student being suspended for long periods of time

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1 and send them out as special missives throughout the
2 year, "Your student will be suspended if they do" X,
3 Y, or Z.

4 So the parents don't have to plow through
5 the student code of conduct. They actually have a
6 sheet of paper that comes into their attention that
7 "You know what? I need to check with my youngster to
8 make sure they're not in violation of these
9 particular rules of conduct."

10 VICE CHAIR THERNSTROM: Well, I thank all
11 of you so much. I know I speak for the entire
12 Commission in expressing our gratitude to take the
13 time to explore this important topic. So I am
14 grateful for your participation. We know you are
15 experts and have got busy schedules. And we know you
16 are stepping away from those schedules, and we are
17 very appreciative.

18 Again, the record -- I think I said this
19 at the beginning. The record for this briefing will
20 remain open until March 11th, 2011. And public
21 comments can be mailed to the Commission. We are at
22 624 9th Street, room 740, Washington 20425.

23 And, with that -- and, again, my thanks
24 -- this briefing is adjourned. After a short break,

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1 the Commission is going to reconvene in this room to
2 have a meeting. This meeting is open to the public.

3 (Whereupon, the foregoing matter was
4 concluded at 1:30 p.m.)
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