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
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
Panel 1 - Teachers

Mr. Allen Zollman ........................................... 7
Ms. Andrea Smith ............................................. 13
Ms. Jamie Frank .............................................. 17
Mrs. Louise Seng ............................................. 21
Mr. Patrick Welsh ........................................... 25
Questions from the Commission ...................... 30

Panel 2 - Administrators

Ms. Suzanne Maxey, Principal, T.C. Williams HS, Alexandria City Public Schools, VA ............ 61
Dr. Osvaldo Piedra, Assistant Principal, East Lake HS, Pinellas County, FL ......................... 66
Mr. Joseph Oliveri, Retired Director of Alternative Schools, Austin Independent School District, Travis County, TX ........................................ 71
Mr. Edward Gonzalez, Associate Superintendent, Dept. of Prevention and Intervention, Fresno Unified SD, Fresno County, CA ............................. 76
Questions from the Commission ...................... 81

Panel 3 - Department of Education Office for Civil Rights and Administrators

Mr. Ricardo Soto, Deputy Assistant Secretary for Civil Rights, OCR, Department of Education........ 127

Dr. Hardy Murphy, Superintendent, Evanston/Skokie District 65, Cook County, Illinois........... 138

Dr. Hertica Martin, Executive Director for Elementary and Secondary Education, Rochester Public Schools, Olmstead County, Minnesota......................... 145

Dr. Douglas Wright, Superintendent, San Juan School District, Blanding, San Juan County, Utah........ 150

Questions from the Commission ...................... 155

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

(Laughter)

PANEL 1 - (TEACHERS)

VICE CHAIR THERNSTROM: So thank you very much. So this morning we are pleased to welcome three panels of experts who will address our topic. On Panel 1 we have five teachers, on Panel 2 a mix of teachers and school administrators, and Panel 3 consists of an official from the U.S. Department of Education along with three additional school administrators. And I apologize for the shortness and the fact that you - we are asking people to speak very briefly because of the time constraints today, but panelists, please limit your formal presentation to five minutes. The same time constraints unfortunately force us to confine the questions of commissioners to five minutes as well. The question
period will begin promptly after each panel. Again, I very much regret the brevity of your testimony on very important issues.

So I will now very briefly - and my assistant is grabbing all sorts of papers for me for reasons I don't know - introduce the educators who comprise Panel 1. Allen Zollman teaches English as a second language to elementary students in Pennsylvania. His teaching load also includes two remedial classes per day, one in math, one in reading, and he had tutored homebound students in a wide variety of subjects. “For me,” Mr. Zollman has said, “discipline does not mean punishment, it means teaching young people to make good decisions.”

Andrea Smith is a sixth grade teacher with 10 years of experience teaching in Washington, D.C. public and charter schools. She previously had worked as a legislative research assistant for the Education Trust, an advocacy organization committed to high academic achievement for all students. Jamie Frank has taught in three prominent school systems in the D.C. metropolitan area, is currently a secondary social studies - secondary school social studies teacher. She serves as a member of several teachers' advisory boards including the Bill of Rights.
Institute and the Council for Teaching and Learning.
Louise Seng taught eighth grade social studies in an
Allentown, Pennsylvania, middle school for 34 years.
Ninety percent of the school's students were racial
and ethnic minorities. And Patrick Welsh who rounds
out the panel has taught English at T.C. Williams
High School in Alexandria, Virginia since 1970. He's
written extensively about education and youth
culture, authored a well-regarded book Tales Out of
School, published by Penguin. And so I welcome these
panelists but ask them first to - I ask them first
to, before being sworn in to come and seat yourselves
and get mic'd up. I will now ask the panelists to
swear or affirm that the information you are
providing is true and accurate to the best of your
knowledge and belief. Say that out loud.

(Whereupon, the panel was sworn)

VICE CHAIR THERNSTRÖM: Okay. Well
again, thank you for coming and again I welcome you
on behalf of the Commission. I will call you in the
order in which you are seated and in order to do that
- this is going to occur a lot during this briefing -
I switch glasses. So we're starting with Mr.
Zollman.
MR. ZOLLMAN: Thank you. Good morning.

VICE CHAIR THERNSTROM: Good morning and please begin.

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

Each school in my district has disciplinary procedures on which the teachers are briefed verbally and in writing. We were told that the primary responsibility for classroom management rests with us which is normal and reasonable. For me discipline does not mean punishment, it means teaching young people to make good decisions. It means creating the conditions where students receive consequences for behavior that they can learn from, good or bad behavior. On a deeper level discipline means providing the conditions necessary for teaching and learning to take place at all. It was not always the case, but I now have relatively few behavior problems in my classes. This is because I often have the freedom to control the pace of instruction and the difficulty level of the tasks, and can select
interesting content. Unavoidably there are times when the pace of instruction is a little too slow, or the tasks a little too easy, or the stories are not engaging enough and students become bored, or the pace is too fast, or the tasks too hard and students become frustrated. Some students tolerate boredom or frustration reasonably well and others do not. These are the times when students can get into trouble and start making bad choices. What does it look like when this happens? I could go on and on, but I won't. Pencil-tapping, humming, side conversations, dancing, singing, exchanging insults in jest or in earnest, talking back to the teacher, using profanity, wandering around the classroom, touching other students, yelling out the window, horse play, and so on. When a student disturbs the decorum and instructional progress of the class and cannot be redirected by the teacher, the teacher may wish for that student to be temporarily removed. This is where the school's disciplinary procedures come into play. Before a student can be removed in my school the teacher must prepare a disciplinary referral which is what many of us used to call a pink slip. This one is a 2-page form with space for three offenses, not one, and a checklist of measures taken
by the teacher before issuing the referral, measures which turned out not to be effective. What is important to note here is that in order to get a disciplinary referral for disruption in my school there must be three infractions and it must be documented in writing before the student can be removed from the classroom. Serious offenses like possession of a weapon or aggravated assault do result in immediate removal of the student from the room, but for mere disruption it is no simple thing to have a student removed at the time of the disruptive behavior. This means that for extended periods of time it can happen that very little teaching and learning will take place in a given classroom.

When I need backup support I really do need it, yet for me to be recording infractions of a student over time in anticipation of a referral and then wait for a response means that I am left dealing with the problem for awhile and teaching through chaos. In such an environment students see few meaningful consequences for their actions so they not only continue to misbehave, but the behaviors get more brazen with more and more students joining in the fun until even the quote unquote "good kids" are
acting out. They often become cynical, reminding teachers that nothing will happen to them. Here is an illustrative dialogue between me and an eighth grade girl who would not stop talking over me. Me: "You have two choices, either stop talking or I will have you removed." Girl: "I'm going to torture you. I'm doing this because I can't be removed. I can't be removed." Now that example contradicts any notion that the student didn't know what she was doing or quote unquote "didn't know better." The following interchange likewise shows self-awareness and deliberateness. A boy and girl were involved in an escalating verbal dispute. For profanity I will substitute the word "blank."

(Laughter)

MR. ZOLLMAN: Me: "Tom, if she threatens you just let me know." Girl: "I just did threaten him. I'm going to smack the blank out of him. I'm going to blank him up." Students know when they're misbehaving and they know when they're preventing others from learning. They make these choices. The less we are willing or able to respond, the more they will control the classroom, the hallways and even the school. The disciplinary framework which exists to provide me backup support strongly encourages me to
deal with problems at my own level. However, I have
never been told to discipline with a thought to
disparate impact. If I were told that I would find
that to be an even greater constraint on effective
discipline or on effective classroom management. I
could – if that happened I could foresee one of three
avenues to pursue: (a) I would disregard the
directive and refer students as I saw fit and see
what happens, (b) I would do nothing and live with
the chaos, understanding that there would be even
more times when little teaching and learning would
take place, or c) I could end my public school
teaching career early and pursue other activities
where there is more control over the work situation.

Ultimately each instance of misbehavior
in the classroom is unique and requires a customized
response. It doesn't matter what the ethnicity of
the student is. If the child acts out and creates a
distraction the other students will not learn. We're
talking about disparate impact. For a teacher, what
is the greater disparate impact? When one student
can say in effect, “indulge me or I will shut you
down and there's nothing you can do about it,” then
29 other children are prevented from learning. That
is the greater disparate impact. Thank you.
VICE CHAIR THERNSTROM: Thank you very, very much. So, Ms. Smith.

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

Early on in the school year the teaching staff at my school was presented with some disaggregated school-wide discipline data. Out-of-school suspension rates for the first quarter of the school year broken down by race were included. Teachers were asked to reflect with their colleagues about what the data revealed. We drew several conclusions from that data in a matter of minutes. First, we were suspending African-American males more than any other subgroup. We were also suspending students with special needs more than other subgroups. This meant as teachers we were referring and sending African-American males and students with special needs out of class more than any other
subgroup which meant we weren't effectively engaging
and connecting with all students in a way that
resulted in equitable academic outcomes, specifically
for African-American males and special needs
students. Finally, suspension was not an effective
consequence as evidence by repeated suspensions.

Recently we have started using a new
discipline inputting and tracking system at my
school. This new system does allow us to track and
disaggregate discipline referrals and consequences on
a weekly basis. Using this data, grade-level teams
can address discipline trends and try to get at the
root of what is causing and perpetuating these
trends. I believe part of what is causing the
disproportionality in student discipline referrals
and suspensions at our school is what we call at
Haynes relational trust. One of the main predictors
of if a student will go to college is positive
relationships with their teachers in middle school.
Discipline and relational trust are inextricably
linked. In my experience, the more students trust
that I will be fair and hold them to high standards
in a firm yet caring way, the less discipline issues
arise. Relational trust is not a science. Moreover,
it plays out in small ways that few outsiders would
know as significant in a classroom. The room to tell a joke when a student is singing during the lesson instead of confronting them with a more abrasive redirection. Concluding at the door or a question about how Chewie the dog is doing. It's recognizing what a student needs even when they don't know they need it or can't articulate what they need. It's listening to a student when they come to you with a problem or sitting them down to have a conversation to check in with them. One's racial dispositions can influence relational trust. At my school I have been encouraged to examine and question how my own racial dispositions affect my teaching and my students. At E.L. Haynes staff has participated in race and equity in education seminars in which we began a conversation about racial inequities in our school. In order to eliminate the racial achievement gap I believe we must commit ourselves to addressing racial inequities in our teaching and our school structures. We must face our own racial experiences and recognize what we contribute to the racial experiences of our students. As a white teacher this is a recognition that is not always easy to make and it's not always clear-cut specifically when it comes to discipline. I often question if my discipline approach is.
perceived by a student as being racially influenced 
or creates a learning environment in which the 
student does not feel affirmed. I have questioned if 
I am the best person to be teaching the students in 
my classroom. Unfortunately my experience has not 
led me to answers and solutions, it has led me to 
conclude that race matters when it comes to student 
discipline and school culture. I have chosen to not 
continue working at schools where I believe 
student/teacher/parent relationships were strained in 
part by race even though the school was known for 
having tight discipline policies. I have also been 
disheartened working in schools with dismal 
discipline and no vision for student success. My 
experience has also proven to me that discipline 
issues in a school are not a result of some students 
not being able to behave or single-parent families. 
I do know that all students can learn and succeed if 
they are provided a positive learning environment in 
which they are affirmed, challenged, supported and 
held accountable for their actions. In order to 
address the discipline challenges and 
disproportionality of race and discipline referrals, 
educators must address the issue of race head on. We 
need educators and community members who are
committed to having ongoing conversations that
address our role in the disparities in student
discipline and achievement in our schools.

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

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

VICE CHAIR THERNSTROM: Ms. Jamie Frank.

MS. FRANK: For the past 11 years I've
been a teacher in the suburban D.C. metro area. Over
that time I've seen significant changes both in the
classroom and in the demands placed on teachers.
I've taught in highly diverse schools where over 80
percent were minority students. I have also taught
in extremely affluent communities with over 80
percent of parents having graduated from college.
These experiences have showed me that there's great
disparity in the way students are treated, the
expectations held for them and the measures of
success. No longer can teachers focus on individual
student success. We must focus on the demographic
makeup of students, how they measure on standards-
based assessments. We disaggregate state data, we
focus on students most in academic need, pay special
attention to those subcategories that we need to meet
AYP [Adequate Yearly Progress]. District- and
school-wide policies are made to protect those numbers and to be sure of the best possible outcome, score outcome, for each school. Teachers are taken to task when students are failing, misbehaving in their classes and performing below the standards. Expectations are placed on teachers to ensure that the numbers are met, thereby paying special focus on those subgroups, African-Americans, Hispanics, ELL, special ed. This disparity not only impacts the disciplining of these students but the day-to-day classroom expectations we have for those students. In order to pass the course, the test or whatever the measure - standard measure of success may be for an individual class, teachers are under pressure to ensure that students succeed. And while this may sound like the objective of every educator, the problem lies in the focus on the scores, on the tests and on the numbers. Several years ago I worked at a school. I was told by central office superintendents that they had too many suspensions. They must creatively discipline students, specifically the number of minority students being suspended compared to that of their white counterparts. The students continued to behave harshly, bringing knives to school, threatening teachers, and yet because of the
concern over publication of the suspension numbers by the school and by the county the administrators allowed students to go home, calling it a day of exclusion. These students would be back in school, in class the very next day and in this situation the school continues to practice the same policy. And since student graduation rates are high even for minorities, the minority students are given a pass to keep those numbers high regardless of whether they act up. I serve on a number of civic education boards and I have heard similar concerns from teachers around the country.

School administrators - school district administrators via school administrators place huge burdens on teachers to ensure the numbers allow for AYP, not only in academic achievement but the attendance, graduation rates and suspensions. Over the past three years several counties in the D.C. metro area have removed their loss-of-credit policy over the last - over these last three years. The reason for that change has been due to inequitable distribution of students losing credit in a course resulting in a failure to graduate on time, with the majority of students being minority. The purpose of the loss-of-credit policy, generally when a student
cuts class usually three to five times within a semester it reinforces [that] students of course need to attend class. Well, the counties have looked at trying to eradicate truancy issues within each county and it became apparent that there was a large percentage of truancy cases being investigated for minority students. Once this was identified, fear of not being racially sensitive arose and the policies were changed, simply removed. Currently, without the loss-of-credit policy there is no penalty for failure to attend classes. It is the policy that students are allowed to make up all their work while re-teaching and re-assessment for the missed days must be done by the teachers. Students can receive discipline action by the administrators if they choose to follow it up. All absences whether excused or unexcused are to be considered the same, and the burden of truant students falls on the teachers. While statistical evidence shows that this policy was put into effect to ensure racial disparity cannot be found for students whom do not attend class, student attendance has been significantly impacted by the removal of this policy, and this policy change was meant to benefit minority students. At the same time there has been a statewide decision to remove all in-
school suspension programs for the State of Maryland. Students cannot be disciplined by being removed from class, denied their education, thus the policies have been replaced by non-documented programs like an in-school inclusion or calling it in-school intervention, all essentially the same but not listed as suspensions and therefore never having to be documented by the school.

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

VICE CHAIR THERNSTROM: No, I'm going to stop you. Thank you very much, Ms. Frank. Ms. Louise Seng.
MS. SENG: First of all, the lights [you are using to indicate my time remaining] would never be allowed in the classroom. It's kind of insulting.

VICE CHAIR THERNSTROM: I'm sorry.

MS. SENG: My name is Louise Seng. I taught for 34 years at an inner-city school called Harrison Morton Middle School. It started out as a junior high. I retired in 2006. We had approximately 900 sixth, seventh and eighth grade students, 90 percent of whom are minorities. Fifty percent - well, up to 50 percent are Hispanic, but we took in all kinds of minority students including Oriental students and the majority of the Hispanic students were Puerto Rican but we also had South American, Central American students. Before I retired, the discipline at Harrison Morton, it was a challenge. The year before I retired there were 50 students suspended for a total of 200 infractions just during the month before Christmas. Although I do not have the exact data available I believe that the students from racial and ethnic minority groups were disciplined more frequently than those in other backgrounds. However, my observation of racial prejudice or bias on the part of my fellow teachers or administrators was not because of these
disparities in discipline. As far as I was able to
tell all of my colleagues were committed to racial
equality and to the equality of opportunity for our
students. Many of our colleagues chose to teach at
Harrison Morton over wealthier schools because they
were committed to helping students from poor
backgrounds succeed against long - against often long
odds. In my opinion, racial and ethnic minority
students were disciplined more frequently because
more of them came from families which had not learned
self-discipline necessary to thrive in school. Some
came from families where they observed violence at
home and therefore were taught that it was acceptable
to use violence to solve problems in school. It was
not terribly unusual, for example, for one student to
throw a chair at another during the middle of class
because the second student made a nasty verbal
comment, and teaching was going on at the time.
While I was usually able to prevent such scuffles
from breaking out in my classes other teachers,
whether the lack of experience or from - for other
reasons were not quite as successful. I noticed also
that some students came from homes where they weren't
expected to do homework, more like most students came
from homes where they weren't expected to do
homework, or to be home by a certain time or go to
to bed by a certain hour. Students who had been able to
be up late sometimes fall asleep in class or would
behave disruptively because they were tired. Some
seemed to eat poor diets outside of school and I
believe that this might have contributed to
hyperactive behavior. Getting students to stay
focused and pay attention was a constant challenge.
Many students had trouble sitting still and paying
attention. Again, I suspect it's because they had
not learned these skills at home.

For several years I helped run a program
called Conflict Resolution that I believed was
effective in reducing discipline problems. My
colleagues and I trained students to serve as peer
mediators. A trained peer mediator helped other
students to resolve conflicts. Though the peer
mediation program was not always effective at
stopping student-to-student fights, it did prevent a
number of them from occurring. During my years of
teaching I was never approached by - never approached
by an administrator or anyone about reducing
disparities in discipline. Because I am no longer
teaching I don't know exactly how my former school
will respond to the new Department of Education
I do hope that the Obama initiatives don't lead to pressure on teachers at Harrison Morton to use less discipline. As I said above, maintaining discipline in a school like Harrison Morton can be challenging. Lowering discipline standards could make it even harder for students of all racial and ethnic groups to learn which would be an unfortunate outcome indeed. Thank you.

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

MR. WELSH: My name is Pat Welsh and I teach at T.C. Williams High School in Alexandria, Virginia, the high school on which the movie “Remember the Titans” is based. Yesterday I was reading an article in the New Yorker by Tina Fey, the Sarah Palin imitator, and it was on working moms. Tina Fey said, "The topic of working moms is a tap dance recital in a minefield. It is less dangerous to draw a cartoon of Allah French-kissing Uncle Sam - which let me make it clear I have not done - than it is to speak honestly about this topic." The topic of the discipline of black students is certainly a minefield, especially for a 60-plus Irishman with gray hair. I told a couple of friends I was coming
here and they said what are you, a masochist? So anyway, I'm going to step into the minefield.

What girls fight the most in school? I don't think this is just at T.C. Williams, but at T.C. Williams it's black girls, there's no question about it. It's not the African-American girls on their way to UVA or William & Mary, it's not the black girls from Ghana or Sierra Leone or Ethiopia who come here to live the American dream, but it's black girls who are products of what Colbert King in a great article that everybody should read that was in the [Washington] Post last Saturday [Feb. 5, 2011] about an inter-generational cycle of dysfunction. Girls who have no fathers in their homes, who often are born to teen mothers. They're a small group, but the fact is they cause enormous problems in school and they are black and it's the same with the boys. Black kids – and it's for many reasons. I mean, there's been enormous racism in Virginia, you know, the heart of the Confederacy, the heart of massive resistance to integration, but the fact is that black kids do bring a disparate amount of baggage to schools and because of that they cause a disproportionate amount of trouble. And there's going to be disproportional discipline referrals
until the problems of poverty and teen pregnancy and lack of fathers can be reduced or solved there's going to be a disproportionate number of black kids who are going to be up for disciplinary action.

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

(Laughter)

MR. WELSH: I hope this is a tenure, but anyway. I probably shouldn't say this, but for the last four years at our school we had two separate principals. They're retirees from Fairfax. They sat in their office all day and delegated like they were CEOs. I don't know if this is the Fairfax way or what. We had fight after fight after fight in the hall. One of these guys studiously avoided the cafeteria where if there's going to be a fight it could break out there. In comes Suzanne. The number of fights has been cut down, it's two-thirds less. I've witnessed her twice. A kid in the morning doing the "Ali" shuffle ready to go after another kid. She walked straight in his face and smiled and said,
"Sweetheart, you don't want to do that." He was so shocked to be called sweetheart he just shuffled off to class. Another kid, two male teachers could not get him off an elevator, you're not supposed to be on the elevator, an enormous guy. She walks up to him, whispered something in his ear, the two of them are walking down the hall laughing, arm in arm. If you have principals and teachers who can handle kids you're going to have fewer discipline referrals, you're going to have fewer kids kicked out of school. I still honestly think, minefield or no, that you're still going to have a disproportionate number of African-American kids because there's a disproportionate number of those kids who come from enormous poverty.

I also want to say that this thing about - talking about disproportionate - the education department emphasizing disproportionate discipline when it comes to blacks, this is a slippery slope. If you're a white administrator, and a lot of white administrators, all they want to do, you know, they want to move up the ranks, you're going to play it safe. You're not going after the kids. We had a terrific guy, Bob Yager, who is in George Washington Middle School which is the real flash point in our
school system where if we're going to lose white parents we lose them. He had a disciplined school, kids liked him and black members of the school board and a couple of their white colleagues dumped him because the word was he was too tough on black kids and Yager was a fair, decent guy. So I think the more you make this a civil rights issue the more you're going to have white administrators playing it safe and really there's going to be less discipline. And these kids I'm talking about, they don't screw up things for white kids, they screw up things for other black kids. Thank you.

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

COMMISSIONER KIRSANOW: Thank you, Madam Chair. Thanks to staff for a great panel. This was very informative. I have a lot of questions but I only have a couple of minutes so I'm going to have to pick and choose. Back when I went to middle school and high school in the Mesozoic Era, even in the quote unquote "bad schools" we didn't see the level of disruption that we see in average schools today, whether that was in majority black school, majority
Hispanic schools, whatever. To what extent have you observed an increase, if you have, an increase in disciplinary problems – and this, I guess it probably goes more toward you, during the course of your 25-30 year career. In your experience, to what extent have you seen an increase and to what do you attribute that if you have seen an increase?

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

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

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

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

MS. FRANK: And there was also a large
Vietnamese population as well. And there was a
conflict between communities where the Vietnamese
region, it was in Falls Church, had a conflict with
the Guatemalan MS-13 students. That became, you
know, it was a matter of whether or not they showed
up for school, it was a matter of whether or not they
decided to bring their outside activities into the school building. I saw over time, you know, absolutely if you have a strong administrator that's willing to stand tough with students and doesn't mind that those numbers, those suspension numbers will be published, those - I've had administrators who will stand tough and those schools will be - the halls will be cleared. Those students won't come and bring their actions into the school. They'll be in the community already, but they won't bring them into school, and I've had administrators who are so fearful they want to get to the next level administratively that they won't suspend anyone because those numbers are published and those scores come down and they're published in the Washington Post and the schools look bad.

COMMISSIONER KIRSANOW: Anyone else?

Yes.

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

COMMISSIONER KIRSANOW: It had to do with Asian students, but you know - I'm sorry, go ahead.
MS. SENG: All right. It's not only the Asian. My experience has been that immigrant children whether they are - somebody said whether from Ghana or whatever, immigrant children were typical immigrants. Their parents say to them I didn't come here for you to get, you know, screwed up, I came here for opportunity, I came here for you to get an education, I came here for you to work hard and to be successful. And you could always tell, you know, whether they were Vietnamese or from Africa or from Central America, you could always tell kids that came from those homes because they worked hard, their color had nothing to do with it, their language had nothing to do with it, they worked hard and they did well. And that's been my experience.

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

MS. SENG: Negative.

MR. WELSH: Because we have a gutsy principal it's not going to make any difference because she's not going to care. But I think around
the country it's definitely going to be negative. I think what Jamie said, the administrator - and you can't blame them - that want to move up in the ranks, they don't want to - this is the third rail for them when it gets to be race. They're not going to touch it and that could be bad for schools.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

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

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

COMMISSIONER CASTRO: No, that's okay.

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

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

COMMISSIONER GAZIANO: It's a wonderful presentation, thank you for your effort and a rather difficult and insoluble issue this seems overall, but we'll try to focus on the few things that we can as the commission goes forward. Maybe I'll just ask a show of hands first on one question. I heard, you know, I want to get a sense between boys and girls,
maybe boys are more serious, but let me ask you a question about just sort of frequency of disruption and behavioral problems. In your all's personal experience who all thinks it's the boys who are more disruptive? Show of hands. Who all thinks it's the girls that are more disruptive? If you could and then explain. I mean, let the record reflect I think I saw three of the five witnesses indicate the girls are more disruptive and now I've just opened it up to you all to describe seriousness versus - to elaborate on that.

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

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

MR. WELSH: It could be. I mean, it's a subtle thing. I'm not sure what the answer is. It could be a male/female thing whether the teacher is male or female. And I find that - I seldom have trouble with - let's say with hardcore, and I don't mean to be - this sounds racist, but I mean let's say with some hardcore black guys. I never had trouble with those guys. But I've had trouble in the sense
of class being disrupted by - especially by African-American girls where there's no fathers in the home and come from dire poverty. There's an anger in those girls that is almost unbelievable and I've seen fights between them and I've gotten in between three of them, as I got older I'm not going to get in between them, but it's like some of those girls will almost fight to the death. We've had staff members injured separating them. So I see that anger in a lot of poor, African-American girls. I've never had problems, hardly ever with a guy, but maybe that's just me.

COMMISSIONER GAZIANO: But what about someone else.

MS. SENG: Go ahead.

MS. FRANK: I find that girls are more disruptive, can disrupt class because they tend to be louder, that it actually causes disruption to the activity of whatever the lesson is. Boys are much more apathetic and their disruptions, or their discipline issues are out of more apathy and lack of interest in school where they'll kind of pull other kids away from the learning. They'll be pulling them into class trying to cut class, trying to get out of learning, where the girls are in there but they're in
each other's faces, they're very vocal. You'll have
one girl shouting across the room at another girl
because she didn't like the comment, you know, that
was made or what she saw happening, you know, who's
dating who. Very loud, very vocal. The guys would
prefer just not to be in the classroom at all.

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

COMMISSIONER GAZIANO: I suppose it also
depends on the age. I remember girls of a certain
age and boys of a certain age may be more difficult.

Ms. Seng?

MS. SENG: I find that the girls are
tougher because usually it centers around another -
like a guy, okay? They're fighting over a guy. But
my experience with the minority male, and this is
Hispanic as well as black, they always treated me
with respect. I don't know if it's because I
demanded it, or if that's the way they were raised.
The idea of fathers not being in the home, the mother
is the dominant figure. I rarely have discipline
problems with black males or Hispanic males. They
always treat - and I used to joke about being the
white lady from the suburbs and they loved that, you know. The females though, oh nasty, mean.

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

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

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

MS. FRANK: I mean, I can speak on behalf of the research that was done, and actually Suzanne Maxey was responsible for doing some of the research, looking at the various school systems in the region as they were reducing their loss of credit, all
right? So they actually were changing and creating discipline. They were looking at race, those students that cut class, those students that were not coming to class because the truancy was primarily with minority students. And they found that they were losing credit at a higher rate, where white students were somehow able to appeal, there's an appeal process where you go to the teacher and you work something out about, you know, making up the time and you sometimes do, you know, detentions and things like that, but you'll get your credit back where minority students weren't doing that. They weren't going to through the process. Whether it was because they didn't understand the process or whether or not they didn't care about - they would just, you know, take the failure or not. And so the loss is really showing us the difference between how we would discipline, you know, what do we do when they still cut? Because now we're seeing that we actually have to look at those numbers. And I'll tell you that when it's an African-American student, that administrator will look at them differently and say I'll give you a pass because those are the numbers that are being documented for the state, those are the numbers that come back.
COMMISSIONER CASTRO: In those instances do you know of any information or any instance where - you surmised two instances where the students might not be asking for or making that appeal, either they didn't know the process or they didn't care. Do you have any instances where those students were consulted or counseled about did you know you could appeal or why aren't you appealing?

MS. FRANK: Every time letters go out to parents indicating warnings both in Fairfax and in Montgomery County. Parents are contacted by the teacher prior to the midway point, well before their second or third absence alluding to the loss of credit, and it's up to the parent to contact. Counselors call students in and have conferences, do you understand that you need to be at class and yet they still will cut until they get to that loss of credit. So there were steps along the way from the moment that they cut the first class to the moment they cut that fifth or in Fairfax County's case third class to lose the credit that parents were contacted, students were contacted and yet some chose to take advantage of the appeals process and some did not. What it showed us was that minorities were much more likely not to and that looked poorly upon the system
and so they got rid of the policy altogether. And it, you know, so that those numbers wouldn't be in place.

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

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

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

MR. WELSH: No, but I know some teachers who do not know how to handle these hyper-masculine black guys. In other words, they push a button in them without knowing they're doing it and I think teachers have got to get to a point where you don't push those buttons. That doesn't mean you let kids do whatever they want, but there are some teachers who do push buttons and I don't think they push them on purpose, but then things will explode.
COMMISSIONER CASTRO: Let me get to the relational trust issue that Ms. Smith spoke about earlier then. Is there anyone else can answer the question I asked earlier?

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

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

COMMISSIONER CASTRO: I conclude my questions, Madam Chair, thank you.
VICE CHAIR THERNSTROM: Yes, Commissioner Titus.

COMMISSIONER TITUS: Thank you. Thank you, Madam Chair. Thank you for being here. Teachers are saints in my book and I know you're doing more with less every day, and obviously you are very committed to your students or you wouldn't be here. I appreciate you sharing with us your personal experiences. I enjoy your anecdotes, I note your stereotypes, but our task here is really not to just look at one classroom, one personal experience, but more to deal with social patterns, systemic change, persistent problems and so I didn't hear a lot of that. We all I think can agree that there are disparities. I think we may disagree on how important that is and also on the cause of those disparities. I heard from the whole panel that causes were family background, economic situation, attitude in the classroom ranging from boredom to frustration, diet and even special needs. I'm curious about the special needs children, but we'll get back to that. And then I heard from you how to deal with it. We need to be able to suspend them quicker without going through this long process. There's some concern with the Obama administration.
There's the notion it's the black kids so we just need tougher principals. We need to be able to trust and some of these kids just deserve it. Anyway. So I'm wondering - oh, one other one was that it's blamed on the credit system of No Child Left Behind. So I'm wondering, do you have any broader substantive policy suggestions for us at how we get at this problem that we all admit does exist?

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

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

MS. SENG: I don't know if that's it. Maybe like people have said, you know, learning how to deal with, you know, some people are just less abrasive. You know, some people - what I got from
your question was what can we do, what are some of
the things we can do to solve and what I'm saying is
send people in to experience what's going on so that
they can come back and say, okay, this is what's
going on and this is what we need to do.

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

MR. WELSH: That's a complicated subject.

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

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

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

MR. WELSH: No -
COMMISSIONER TITUS: Do we have better teacher training? Do we invest more in mentorships? Give me some suggestions of some of the complicated things we could do to begin to work on this problem rather than just to let it continue.

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

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

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

COMMISSIONER TITUS: A great program, by
the way.

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

MS. SENG: Maybe too it should be put
more in the hands of the local school district
because each school district has its own problems to
solve and get, you know, get the federal government
out of the - because you can't make a blanket
national, you know, each area, each school district,
each, you know, whether they're inner-city or
whatever, you know, they're different and so they're
the ones that should be - suggestions can be made, you know, but it's the school district itself that needs to solve the problem because everybody's problems aren't to, you know -

COMMISSIONER TITUS: Greater local autonomy.

MS. SENG: Yes.

VICE CHAIR THERNSTROM: I need to cut -

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

VICE CHAIR THERNSTROM: - questions off.

Anybody else have questions? Commissioner Heriot.

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

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

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

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

MS. FRANK: Yes. So last year the State of Maryland got rid of - they no longer wanted to include - I mentioned that in my statement - the
suspension, in-school suspension, that you had to make the choice. If you're going to suspend the student you have to send them home and schools were then told by depending on where they were in the state how they wanted - how to reduce those numbers.

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

MS. FRANK: This is at the superintendent level.

COMMISSIONER HERIOT: Okay.

MS. FRANK: And it came down that the schools had to reduce their numbers. No longer could they have in-school suspension. So I got an email today that said a student will be an in-school exclusion, or in-school intervention is what they're called now which is essentially the same thing, but then they don't have to report those numbers as suspension. So these are other ways that we can keep them in school. You have to contact - we have a computer form where you have to check off the same thing. Three times you have to contact the parent before you can send them to the administrator, and then once it's at the administrative level you don't know what's going to happen to that child. You refer
the child and it's up to the administration to
determine what's going to happen. It's most likely
that that child will be back in school if they are a
minority student, if they are a minority.

COMMISSIONER HERIOT: What if they're not?

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

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

MS. FRANK: Oh, it's horrible and then it
sends the message that nothing's really going to
happen to these students. If I do the same thing
I'll be back in the class, I won't miss. Because we
don't want them to miss instruction that's why they
got rid of the in-school suspension rule.
COMMISSIONER GAZIANO: How horrible is it to have a lunch detention? I don't understand.

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

VICE CHAIR THERNSTROM: But you get food anyway.

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

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

MS. SENG: I agree.
MR. ZOLLMAN: I think they're behaving just badly enough to earn the detention.

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

MS. SENG: Exactly.

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

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

MS. SMITH: Absolutely, yes.

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

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

VICE CHAIR THERNSTROM: Thank you very much. I think all commissioners except me have had a
chance and I actually do also have a couple of
questions. One, just two brief comments. One, it
seems to me that nobody answered Commissioner
Kirsanow's point which was really - I think his
question amounted isn't there a statistical disparity
between the disciplinary rate of Asians and that for
African-Americans and Latinos, and I think nobody
zeroed in on that, and nobody - in addition, nobody
answered my addition to Commissioner Heriot's
question which was look, isn't there also a legal
framework here that is a barrier to taking effective
disciplinary action.

But I wanted to go on to the larger
question that a number of you raised which is that a
lot of the disciplinary problems of particular kids
are the consequence of coming from very chaotic home
environments. I happen to have spent a lot of time
in schools, for 11 years I was on the Massachusetts
State Board of Education and I used to visit schools
a lot not only in Massachusetts. And I remember very
clearly having been to a wonderful high school, the
Frederick Douglass High School in New York, in Harlem
where I asked the principal if you had a wish list
what would be your top item and he said to have the
building next door where I could have a high
percentage of my students sleep overnight, so have an alternative home as it were so that they were sleeping in the same bed every night, they weren't going home to you know really in multiple ways chaotic households. And my question is given the fact that so many of the disciplinary problems that you're seeing do reflect the circumstances of the children that are out of their control, is it a correct assumption on my part that it is the obligation of schools to educate who comes - who sits in the classroom before the teachers, whatever their background, whatever their socioeconomic background, whatever their race or ethnicity, and so we can't fix these families. I mean, we can try to work with families a bit, but basically you can't fix families, schools can't. I mean, the larger society, that's a different question, but schools can't fix families. So what is the role of - how do you see the role of schools in dealing with the fact that you've got kids, very troubled kids, coming from chaotic households and we can't fix that chaos.

MS. FRANK: There are programs out there - I mean, KIPP was a perfect example, you know, where they actually did that, right? They were able to go into the inner cities and create these boarding
schools and they've seen tremendous success. That's – across the board that's not likely to happen anytime soon.

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

MS. FRANK: But I think that a lot of it has to do with the expectations that we have for students. You know, not all students are going to go to college, that in this country, you know, if we compare our scores to other countries, I mean, academic achievement and discipline I think are so connected. You know, if you look at the Hispanic and African-American graduation rates, African-American and Hispanic GPAs, it will be – it'll mirror that of the discipline. And I think that a lot of it has to do with culture and expectations and perhaps not necessarily finding - not necessarily focusing all these kids on the same path. I think that we have, you know, we have created these schools and these images of what does it take to be successful. You must have a college degree. You know, if more focus was focused on what student success is. You know, and all of these programs that, you know, the research has showed, you know, the chefs programs, these vocational tech programs, you know, that if
they were engaged, if they found it meaningful to
them, if you know they saw in D.C. if you paid them
for their grades. I mean, they need to see that
connection that there's a benefit for being in
school, acting the right way and staying there and
it's a reward and not just something they
automatically get. I think that that would have a
huge effect.

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

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

VICE CHAIR THERNSTROM: Yes. I agree
with that. My time is up but let me just add one
sentence here. I think there's been a little bit of
fuzziness here which would have - and it could use
some clarity. What exactly is a discipline problem.
That is, is wandering in and out of a classroom which
goes on all the time a discipline problem? Is
bringing food into the classroom a discipline
problem? Is girls fixing each other's hair a
discipline problem?

MR. WELSH: None of the above.

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

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

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

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

VICE CHAIR THERNSTROM: Yes, that's
correct. And they can come early in the morning of
course, hopefully. Which is true of many public
schools as well. I thank you so much and
unfortunately we do have to move on to the next panel. Please remember to remove your microphones if you haven't done so before you stand up.

PANEL 2 - (ADMINISTRATORS)

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

Okay, once again I'm going to introduce people and once again I apologize for the necessity for brevity. Suzanne Maxey is the principal of T.C. Williams High School in Alexandria. She began her career in education as a high school social studies teacher and for over 30 years she has served with distinction in various school districts as an administrator, vice principal and dean. She has been widely credited with improving test scores, raising staff morale and energizing students at Seneca Valley High School in Montgomery County, Maryland. Dr. Osvaldo Piedra - and please correct me if I'm wrong about your first or last name - is an assistant principal of East Lake High School in Florida and has over 20 years of teaching and administrative experience in elementary, middle and high school. Dr. Piedra has been dedicated to achieving positive
academic outcomes for students who exhibit discipline problems. Mr. Joseph Oliveri is a retired administrator of all alternative schools in the Austin, Texas Independent School District. In his position as principal of Austin's Alternative Learning Center as well as Director of Alternative Education he had responsibility for all students removed from Austin schools for disciplinary reasons. He has considerable experience with troubled youth. Mr. Edward Gonzalez is a 29-year veteran educator with extensive classroom and administrative experience in public schools. He is currently Associate Superintendent in charge of the Department of Prevention and Intervention in Fresno, California Unified School District, the fourth largest district in the state. I will now ask the panelists to swear or affirm the information you are providing is true and accurate to the best of your knowledge and belief.

(Whereupon, the panel was sworn)

VICE CHAIR THERNSTROM: Thank you for coming. I welcome all of you on behalf of the commission. I'll call you in the order in which you are seated after I switch my glasses. Suzanne Maxey.
MS. MAXEY: Good morning everyone. I have been in education, public education for 36 years in a variety of positions, but 14 of them I've been an educator - I've been a principal in four different schools and two different states and three different jurisdictions. So I have had a chance to see how different school systems handle discipline. One of them was a very strict, very structured discipline code which you followed to the letter. Other jurisdictions have been a little bit more loosey goosey in terms of putting the onus on the school administration. In the 36 years that I have been in education I have seen enormous changes in how we do things and how we perceive students. In those 36 years whether I was classroom teaching or whether I was a principal I used the same formula for discipline. It's very simple. We tell students what the rules are, we tell them why they have those rules because kids need to know why you do what you do, tell them what the consequences are for violating those rules and being very consistent in doing exactly that. So in all the schools that I've run this has been the formula that I've used, the tool that I've used to get students to behave properly. I've been teased in many cases for being - not
playing. I don't play at all when it comes to kids' safety and their welfare, and yet I'm also known for being very nurturing, very caring. Patrick teases me that I'm a combination of Attila the Hun and Mother Teresa. I do believe in walking softly and carrying a big stick so that our kids, the kids that I've dealt with whether in my own classroom or in my school have behaved very well. At Seneca, at Laurel High School, at Bowie High School, now at T.C. Williams High School the formula works because most kids, most kids whether they're black, white, pink, doesn't matter, want to do the right thing. And when you're firm and fair and caring and they know that you love them they do what you want them to do. So you don't have to fuss with them and suspend. For most of these kids you can say don't do that, that's not kind, it's not appropriate, it's not whatever, they get it. It's the outliers that cause us all problems. It's the students who don't want it, who don't get it, who don't have the training, whatever it happens to be. So for the most part I find discipline is really not a big issue because you have to just be very consistent and firm in the way you do things.
Some of the — I think there's two things we need to make distinctions between. There are certain violations of school rules that the administration would have no choice about, and those are the ones that we refer to as the big five, whatever that happens to be. It's the drugs, the alcohol, the weapons, the severe fighting, those kinds of things that are really non-negotiable in a schoolhouse. If you allow that to go on in a schoolhouse you will have chaos in the schoolhouse. But there are other kinds of things and I call them discretionary things that usually boil down to the insubordination. A lot of our students, particularly minority students, get themselves involved in situations where they get suspended from school and disciplined because of insubordination or disrespect. This is a huge, huge category of offenses. Those are the ones that I think that teachers and — and both teachers and administrators make the biggest difference here. Let me give you an example. I had an athlete at the school in Seneca, one of our star athletes, we knew he — he was African-American and we knew he came from a terrible home environment. I won't go into details. It was terrible and the school kind of adopted him. One day I see him in my
office and there was a call for me, for the administrator down in his classroom. I was not engaged with parents or whatever so I said I can take it. So I went down to the classroom and I opened the door and there was this student and he was just furious and his hands were balled up and I said, "What are you doing here?" He said, "I'm just angry." The teacher says he won't work, he's just nasty, he needs to go. So I took him down to my office. I sat him down, I had the referral in my hand. I said, "Joe, this isn't like you, what's up?"

This six foot two athlete, tears start streaming down his face and he said Ms. Maxey, somebody stole twenty dollars from me. That twenty dollars is the only money I have for food this week. My mother isn't around, I have no money for food. I can't survive without it. I took the referral and I did this, I put it over there and I said okay, let's talk. The first thing I did is I went to my own purse - and teachers do this all the time in my experience - and took twenty dollars out and said here, sweetheart. Here's the money for the week. Now let's talk about your behavior. He felt so bad, he was so apologetic because he had just lost it in the classroom. We went down to the classroom, rather than suspending
him or giving him detention I went down to the classroom teacher. Luckily she was a very reflective and very thoughtful teacher and I said let me tell you what just happened. I said Joe, explain to her and he did, and he apologized and said I'm really sorry. You're a great teacher. I feel so bad. She welcomed him back in the classroom and that was the end of it.

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

VICE CHAIR THERNSTROM: Yes, I was going to -

MS. MAXEY: I'll stop.
VICE CHAIR THERNSTROM: Okay, Mr. Piedra.

Dr. Piedra, sorry.

DR. PIEDRA: Well, first of all good morning. I'd like to begin by thanking you for the opportunity to provide you with some information. I hope you find my information beneficial for all of our students certainly. I'll tell you a little bit about my school district. It's Pinellas County located in Florida. The statistics that you see nationally whether it's the suspension rate, academic achievement rate, graduation rate among minority African-Americans, Hispanics, or economically deprived students certainly reflect our school district. We are no different locally than we are on our national statistics. Back in 1964 there was a federal lawsuit that went through the Fifth Circuit, it was called the Bradley v. Pinellas County School District where sadly our school district was not integrating and in fact was teaching our minority students differently than the non-minority students. That lawsuit was finally settled in the year 2000 when the school district received unitary status. Since that point in time we've been under a rather large lens where we've been looking at our minority population, specifically our African-American
students, looking at systems that we can put in place to be able to make all of our students, especially those students that are - for which there is a tremendous gap in the educational process, whether it is the discipline gap, the achievement gap, the reading gap, the math gap, you name the gap and we're trying to resolve those issues. What I'm going to speak to you on today in my relatively short time is one of the systems that we have in place, and I hope to be able to address some of the questions that were asked earlier.

In Pinellas County, through means of the University of South Florida we're working on a problem called - or a system called the Response to Intervention, positive behavior interventions. I'll give you an example. If Johnny doesn't know how to read truly, we teach him to read. If the young man doesn't know how to add, subtract, multiply, divide, we will teach him those things. Sadly, when students do not know the proper decorum, proper behavior, proper language in a school setting the reality is instead of teaching them what is considered appropriate, sadly we tend to discipline them, often suspension, out-of-school suspension, in-school suspension. Those discipline tends to remove the
student from the academic setting, causing them to fall further and further behind. What we're doing is taking a proactive approach and through the means of the Response to Intervention we're able to do public school-wide positive behavior strategies, strategies for students to know ahead of time, not after the fact, what is expected of them. Those behaviors are modeled, they're taught to the students, they're taught in the classroom as well as the school level. This encompasses both academic, whether it's reading, writing, math. It also encompasses behavioral issues, largely behavioral issues. And yes, we do know there's a strong correlation between the school-wide behavior and the behavior in the classroom and how all that ties to academic success.

To tell you a little bit of what RTI is and is not. It is not a means of staffing children into exceptional education programs. That's not the purpose of RTI. But the purpose of RTI is to ensure that all students are able to learn and it is a school-wide means. The visual gives you an idea of the layers of Response to Intervention where the lowest layer, that is to say at the bottom of the triangle, represents the entire school discipline policy, academic policies, et cetera. As the student
is determined to be struggling we have computer
systems in place to determine attendance, it gives us
- tracks referrals for numerous reasons, tardies,
academics, grades, et cetera and the students receive
more and more intense services, educational services,
eventually as it goes to the top of the pyramid where
the students receive the most intensive services, and
those students tend to be fewer and far apart. So
you're able to spread the services that are available
to the school within the academic and financial
restraints that you have within that school setting.

What is RTI? Quite frankly it is a shift
in thinking. You're removing from looking at the
student who is either a minority, issues with
reading, not achieving academically and trying to fix
the student which we know we do not have control
over. I cannot control the marriage background nor
the economic background of the student so what I can
control is the school environment. So the purpose of
RTI is to look at the school environment and
determine what is it within that environment that's
simply not meeting the needs of the student and then
within a team of teachers, administrators, school
professionals, guidance counselors, et cetera, we
find ways of meeting those educational needs for the
students. So all students, 100 percent of the students can learn which is indeed our obligation with the No Child Left Behind. And I do thank you for this opportunity.

VICE CHAIR THERNSTROM: Thank you for being on time.

(Laughter)

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

MR. OLIVERI: Great, thank you. With over 30 years of experience I'd like to focus my response to my 11 years of experience with three removal schools. I did have six schools and at various times up to eight and nine schools with different contractual arrangements; I will talk to you about those three removal schools. Austin Independent School District has removed African-American students at a rate greater than their representation in the total school population. This was true all throughout my years of work and continues today, although at lesser rates. Hispanics now represent over 40 percent of the population removed, slightly above their representation in the total population. Whites have always had removal rates below their representation and Asian students
far below their proportion in the public school population. In all offense categories African-Americans and special education students lead in the total number of removals. A Texas Appleseed report-
I highly recommend that you take a look at it-
entitled, "The Texas School to Prison Pipeline:
School Expulsion: The Path From Lockout to Dropout"
which was published in April, 2010 states as one of its conclusions: “disproportionate representation of minority students in disciplinary referrals has plagued schools since desegregation.” Texas Appleseed's research supports earlier findings that show that African-American students are most often disciplined for low-level subjective offenses like “serious or persistent misbehavior.” The impact of disproportionate expulsion is a grave concern given both the achievement gap for minority students and their elevated dropout rates. If Texas is serious about addressing the achievement gap and high dropout rates for minority students it must take a close look at the role that disproportionate disciplinary referrals play—obviously Texas needs to look at that as you are looking at it.

This disparity in my experience is quite complex to explain. Is it prejudice? Yes, in some
cases it appears that it is. Is it based on ignorance of cultural differences? Yes, in some cases it may be. Is it based on a strict adherence to zero tolerance regulation? Yes, I think that was more so in the past although it is certainly a factor today. I have experienced cases where a white student and an African-American student committed the same offense at the same school and the African-American was removed and the white student was permitted to remain on the campus. It happened too often to not make one feel that it may be symptomatic of other reasons behind their removal, and it contributes to the continued disparate removals of African-Americans. The information sources of this prejudice were the parents of the African-American students and my discussions with other administrators from that same school after I inquired about removal details.

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

Disparities in academic abilities often go hand in hand with disparities in discipline. Many
African-American students and Hispanics do come to school without the academic skill-set that would put them on par with their white peers. Sometimes class size and cultural awareness causes some teachers to react to their behaviors differently than they would if they were white. Taking the time to learn about them and their cultural differences is a luxury many teachers feel they cannot afford to take so they do what they feel they are paid to do and maintain discipline by removing disruptive students.

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

In an earlier report by the same organization entitled “The Texas’ School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance,” states as one of its conclusions: “equally troubling are data-driven indicators which indicate that the greater predictor of whether a student will be sent to DAEP [Disciplinary Alternative Education Programs] is whether he or she attends a particular school and not the nature of the offense. Add to this mix some districts’ practice of referring very young children
to DAEPs and it becomes all the more imperative that as a state we assess how these policies contribute to the criminalization of student misbehavior that is removing larger numbers of students from the classroom.

“For too many juveniles their disciplinary removals from school are an introduction to the school to prison pipeline.”

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

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

We also need to be preemptive in addressing the needs of students who are at risk of developing problematic behaviors that impinge on school safety and learning opportunities for all
students and teachers in the classroom. We need to provide teachers with specialized training they need to work with students such as TESA, Teacher Expectation Student Achievement, and GESA, Gender Ethnic and Student Achievement training. We need to establish school-wide and district-wide practices and programs such as Positive Behavior Supports that was mentioned by my co-panelist, and character education, and we need to establish means and methods to help students to build relationships with peers and adults that will secure their future success.

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

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

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

MR. GONZALEZ: Well, thank you very much. Okay, a lot of what I have statistically is going to be redundant in some way. I'm going to fly through some of this. I looked at six groups, disproportionate subgroups in the population of Fresno Unified, which by the way Fresno Unified is in
Fresno, California which the Brookings Institute in 2006 said that Fresno, California has the highest concentration of poverty in the country so it's really a stunning statistic. African-Americans as you can see were referred for expulsion almost triple their numbers. Special education is right up there too. Students in foster care, male students were three quarters of the expulsion referrals. Middle school students are fully two out of every five, and Native Americans, but that is a very small population in our district were also disparate. This is a midway mark this year. As of 90 days of school you can see the disparity has lessened somewhat for three of those groups, African-Americans, special ed students and male students are all down. The foster care students are up and the middle school students are also up. Middle school students, you know, are high for a number of factors, and this is throughout the country. In the district that I'm in, middle school students are at seventh and eighth grade, and it's really a bus stop in their life. At a time when they need really the most connection with adults they get the least connection, they go from sixth grade where they have, you know, pretty much 300 minutes a day with one person - like them or not they at least
know the expectations of that teacher. They jump
into seventh and eighth grade and they have now five
or six teachers at 45 to 55 minutes a day and
supports are not there typically to help them be
successful. And so we find that middle school
students now of course are 40 percent of all the
expulsion referrals and eighth grade alone is 25
percent and has led the district for the last eleven
years and seventh grade has been second for the last
eight years.

We have a class called the Men's Alliance
which we want to talk about, things that are working.
The Men's Alliance is the high school class where we
take high-risk - behaviorally high-risk students,
primarily they are African-American and Hispanic
students, and they are with a teacher who makes a
connection. We also have a facilitator and you can
see at the halfway mark of the Men's Alliance student
suspensions per day are down 45 percent. The days of
suspension are down. Obviously that means unexcused
absences are way down. And GPA, even though this is
not a curricular intervention, GPA is up 25 percent.
So that's been a very successful model and we are
piloting that at three schools but we're expanding to
two.
This year’s expulsion referrals are down 20 percent if you look at the lower right-hand corner. I have made it a policy to really follow due process. I am not asking the teachers or the administrators to artificially lower numbers, but I told them that if due process is not there it’s going to be kicked back. If you look at the actual expulsions which is this slide right here you can see that the referrals are down 23 percent. I had to adjust that as of Day 81 because there were still some pending in the final nine days of the halfway mark, but canceled and stopped are up quite a bit. The actual expulsions are down 40 percent this year.

But this is - the next slide is something that we haven’t really talked about, and this is a disparity that exists throughout many districts I would suspect. This is a look at GATE, Gifted and Talent Education. You can see that total enrollment of white students is 9,500 in our district, 12.5 percent of them are identified as gifted or talented. Hispanics it’s less than 2.5 percent, African-Americans just over 2.5 percent, and you can see the other breakdowns there. And this creates and it underscores basically a stereotype of racial inequity and that is a very, very damaging stereotype to
students and their families both to the perpetrators of the stereotype who then treat those students as less and to the students themselves who drink the Kool-Aid.

So those are my statistics. I just wanted to - I've got a little bit of time - to tell you that you know there's a lot of things, I've heard some really good things from some of my panelists and the previous people before me about managing schools and so on. I think developing a relationship with students is absolutely critical. In my position as associate superintendent I make it a point to make home visits. I leave my office, I try to do it once a week and I keep a documentation of students that I sit with knee to knee, I go into the projects, I go into the barrio, I go into wherever these students are. These are typically students that have been referred for expulsion or in some cases they have been expelled and I talk to these students knee to knee, man to young man in the most case but sometimes to young woman and I find that they are stunned when I come back to their school site or their continuation school or their community-based school that I remember their name and I know who they are. And I try to model this for the other administrators
because the kind of disparity that we see is rooted in racial and behavioral inequities to different groups of people. There can be no other way. It is not a level playing field to say otherwise. And until we address that, you know, we can't simply say they come from dysfunctional homes. There's a reason those homes are dysfunctional. When you can't get a job even though you're qualified, when you have crack cocaine and you get 30 years for that, but powder cocaine in the suburbs is a probation, when those kind of inequities are addressed you're going to see those homes be less dysfunctional and you're going to see this problem of disparity lessen. Thank you.

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

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

MR. GONZALEZ: Latinos make up about 63 percent of our district and about 58 percent of the expulsion referral.
COMMISSIONER CASTRO: So it's rather close to their population.

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

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

MR. OLIVERI: Yes.

COMMISSIONER CASTRO: And I think there's a lot of scholarly work out there that has substantiated that. In fact, there's an even greater connection - I'll take it one step further and ask you to comment on this. The National Council of La Raza last week issued a report on the disparities in incarceration and punishment when incarcerated between Latino and white students, showing that Latino students - or Latino youth who are going into
the prison system are more harshly treated, more
harshly punished than white students which mirrors a
similar report about a year and a half ago measuring
the same issue with regard to African-American
students, the Campaign for Youth Justice. So not
only does this pipeline appear to say if you are more
likely to be disproportionately punished in school
that leads to a higher likelihood of a dropout, the
higher likelihood of a dropout leads to a higher
likelihood of interactions or incarceration with the
justice system, and then in that system you get more
harshly treated. Could you comment a little bit more
on that and any other panelists? I'd like to hear
your thoughts on that.

MR. OLIVERI: I don't know what I could
say to more adequately dramatize that, but I believe
that that is very true. All of the reports that I've
seen that you refer to - also in the Texas Appleseed
report they refer to that too in the prison system as
to how they're treated. So a response is basically
in my opinion one of an old and traditional response
in this country in terms of superiority against
inferiority, against haves and have-nots, in a
situation where we are - we respond and act based on
what little we know rather than on what knowledge we
need to gain and what interaction we need to foster in order to have a better understanding of other cultures and how other cultures behave and what our expectations and their expectations are.

MS. MAXEY: I think there's also a structural issue. I've always teased that American high schools are made for girls. Sit down, put your feet flat on the floor, fold your hands and pay attention. So for people who don't fit into that mold, behaving, polite, respectful, that kind of mold, kids who are feisty or kids who are more kinetic, more active, they have a hard time in education. I know when I first started out a long time ago back in 1973 we were advised not to treat kids differently because of their race. In fact, we never would have showed statistics that we just showed this morning because you would have showed differences between kids. That's all changed and now we do look at kids and their race and their culture as being important in terms of how to teach them.

Now I look at a lot of our Latino and African-American kids, they tend to be more kinetic. They tend to think that relationships are much more important than other subgroups of kids. That's why it's really important for teachers and administrators
to build relationships with Latino and African-American kids. And also, there are family - their families are much more complicated than other families. And I don't know whether it's economics, I'm not sure if it's race or culture or whatever it is, but there is a difference and I'm not so sure that the baby boomer teachers have been able to make that transition as well as they can and I'm not sure if the new generation of teachers coming up are any better at it. But that's something that in teacher training we have got to do a better job getting our teachers to understand how to deal with kids of different cultures and different ethnic groups.

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

COMMISSIONER GAZIANO: Your microphone.

DR. PIEDRA: My apologies. One of the things we haven't discussed is cultural differences of our parents. In our school setting you will find one administrator - you will not find one administrator who will say, "My actions are racist by their own nature." Indeed, when there is an altercation everyone gets the same consequence. The follow-up story is the appeal process. Our minority
students and their parents do not understand the
cultural background to be able to appeal the process.
In the event of ESL students or our Latino students
quite frankly there is simply no one at the school to
be able to service their bilingual needs. In our
particular school district with over 105,000 students
there is not one Hispanic bilingual administrator and
indeed, we have 50 ESOL centers. There is not one
Hispanic bilingual administrator. So therefore it's
very difficult to deliver that information to the
parents. It's even more so difficult to make the
cultural bridge to be able to go through the appeal
process, whether you are an African-American parent
alone working two jobs, not having transportation,
not being able to make literally the trek during the
school day to meet with the school administrator
during the banker's hours.

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

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

COMMISSIONER CASTRO: Quickly, can anyone
speak to some effective alternative policies that can
still accomplish the educational goals without having
a racially adverse impact on the school system?
MS. MAXEY: In 19 seconds?

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

MS. MAXEY: Well, there's also an economic issue here that hasn't been mentioned a lot. One of the teachers mentioned the loss-of-credit research that we did in Montgomery County. One thing she didn't mention, it wasn't so much a matter of the white kids appealing that loss of credit, it was the white parents who were either willing or able to write notes to excuse absences and the Latino and the African-American parents either weren't able to,
didn't understand it, or were too busy working three
jobs and the fact that their child didn't have a note
to excuse absence that day was the least of their
problems and the least of their concerns. That's an
economic issue I believe.

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

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

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

(Laughter)

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

MS. MAXEY: Yes. I think the question was asked is why do we have a disparity in kids being suspended and whatnot who are African-American and Latino, and I think I kind of mentioned it in my talk. I think kids are more kinetic who are African-American and Latino. They do - they like that kind of education as opposed to sit and get which still a lot of instruction is still sit and get. You know, you sit down, listen to the teacher talk, you spit it back out. You know, I think they're very big on relationships and I don't know if some of our teachers are either comfortable building relationships with kids or back in the good old days you didn't do that. There was this line between teachers and students that you didn't cross, and if
you crossed it you were in trouble. So having that
sort of paradigm shift for some of our teachers to
think that it is important to build relationships
with students. And a third piece I think is the
family piece. I think there are more Latino and
African-American families that go to my school at
least that have more dysfunctional situations. Not
just economics, single parents work in our area where
some of the parents are undocumented and their kids
have no Social Security number. Trying to convince
those children that they need to do well in school so
that they can go to college when they know without a
Social Security number they can't even go to Northern
Virginia Community College. And trying to convince
those kids of the importance of education and all
that goes with it is very difficult. So I think the
situation is - all of my colleagues can attest it's
very complex. It's not just for -

COMMISSIONER KIRSANOW: Let me try to
disaggregate that in terms of the complexity. You
mentioned some of the potential causes for some of
the disruptive behavior and I'll focus on the non-
kinetic issues such as families or parents that work
a number of jobs, certain economic issues. What
about those students, black, Hispanic, Asian, white,
who have those same types of challenges but they
don't act up in school? To what do you attribute
that?

MS. MAXEY: That's a great point.

There's gobs of kids who are Latino and African-
American who are poor who just are amazing students.
I think there's always something in there, sometimes
it is in fact a mother, a very strong mother or
father in the home who even though they work three
jobs, their child is their priority and they do
manage to come in at 6:30 in the morning to meet with
an administrator or whatever. So I think there's
some heroes out there in parents who just overcome
all kinds of odds. I also think there are teachers
who are just heroes, who adopt kids. I mean not
legally, but literally take them under their wing,
treat them to lunch, buy them clothes. I can -
teachers really are heroes. Thank you for saying
that. I call everybody who works in a schoolhouse a
teacher, even if it's a support person or the
building supervisor who mops the floors, you know.
There are some pretty incredible people out there
that I think make differences in kids' lives. I
think you've talked to a lot of folks who like Ben
Carson will talk about his mother. I know people who
I will talk about a special teacher or a coach. I mean, my football coach literally, the kids come in in the morning, they have free breakfast, they have free lunch because of the federal program. He coaches them after school, then he feeds them. He cooks for them himself dinner and they have a study hall afterward. He's there till 8 o'clock every night with those kids. And I asked him to do a study of what happened to their GPAs during that time period. In some cases it doubled. The GPAs went up double. Those are heroes. That is extraordinary effort. I mean, what kind - I mean, every teacher can't do that kind of thing. I think those are some of the variables and a lot of times it's people. Programs are great, but it's the people in schoolhouses that make tremendous -

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

(Laughter)

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

COMMISSIONER KIRSANOW: They did all kinds of other stuff. Let me ask a question that's kind of mundane and boring, but it goes to - I don't know if you have this data, but maybe you're aware of
it. In terms of disparate imposition of discipline, do you see differences - and I don't care what the motivation is. I don't care if it's a cultural motivation or a racist motivation or any other kind of motivation, but I just, in terms of what the statistics show are there differences by race between black teachers, white teachers, Hispanic teachers, Asian teachers and the discipline they mete out to those also respective categories? Do you see any disparities such as black teachers discipline white students more heavily than they discipline black students or Hispanic students, or white teachers disciplining Asian students more heavily and black students more heavily than Hispanic students? Do you see any of that kind of dynamic happening?

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

COMMISSIONER KIRSANOW: Does anyone -

MS. MAXEY: Yes.

DR. PIEDRA: And absolutely. Our school system - our system is able to do that. Quite simply
we know the race of the teacher, we know the race of the student so we can judge the frequency. And what I would attribute it to is once again, the lack of cultural awareness. For example, the student that comes in and says to his teacher "Yo, Dog" and is — that's a nomenclature that he may be accustomed to. A teacher unfamiliar with that nomenclature may refer the student for inappropriate language, profanity or disrespect for a teacher.

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

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

And for our Asian population, they are not even on the radar. It's relatively small in numbers, number one. Number two, because of the language and the differences in language and the
COMMISSIONER KIRSANOW: Do white teachers discipline more generally than black teachers do? Do you have any such kind of data, regardless of who they’re disciplining.

DR. PIEDRA: I don’t know that “more” is the appropriate term inasmuch as “differently.”

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

DR. PIEDRA: And again, I don’t believe it is “more.” It is “differently.”

COMMISSIONER KIRSANOW: Different. And how?”

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

They probably won’t take on any minority students under their wing and show them a different way. So, it is not necessarily the race of the teacher, but the content of the race of the student, that the teacher sees as inappropriate.
Our discipline policy stipulates. Therefore, follow the policy," check, check, check. "Here is your referral. And away you go." And that will become someone else's problem.

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

COMMISSIONER KIRSANOW: Is that between male and female teachers?

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

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

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

MR. OLIVERI: Not that that I have seen.

MS. MAXEY: I don't think so.
MR. OLIVERI: I have not seen anything like that. Part of our problem is we have so few minority teachers to really --

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

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

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

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

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

And so there are lots of ultimate factors that lead to some of the dysfunction that we see.
And, of course, the whole history of slavery and discrimination and on and on would be weeks just talking about that.

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

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

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

COMMISSIONER KIRSANOW: Klingon.

VICE CHAIR THERNSTROM: Klingon.

COMMISSIONER KIRSANOW: Star Trek reference.

VICE CHAIR THERNSTROM: Star Trek. Okay.

Somebody else.

COMMISSIONER HERIOT: Someone on the last panel. And I forgot who it was -- and I should have asked the question then, but I only had five minutes -- was talking about how they will fill out a discipline referral form. And then it's out of their hands. They don't really hear back.
And I wasn't sure whether that person was saying they weren't consulted after that or whether it was just they are not consulted, but they're not in on making the decision.

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

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

MS. MAXEY: Yes.

COMMISSIONER HERIOT: Tell me what you do.

MS. MAXEY: You know, again, I think it depends upon what the offense is, who the administrator is, and who the teacher is. In the best scenario, absolutely all of those things happen. You do go talk to the teacher. And you find out the particulars. And sometimes you go back and forth lots of times. Sometimes you have a conference with the parent, the teacher, and the student. So it's a variety of things.
That is the ideal situation, but understand the administrators are incredibly busy. And they deal with a lot of things, just like teachers are. So that is the perfect situation and happens over and over and over again, but sometimes it doesn't. Very often you find out when it doesn't happen, sometimes it blows up in your face because you didn't have all the facts when you made a decision.

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

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

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

MR. OLIVERI: Yes.

COMMISSIONER HERIOT: You really need to get down.

MR. OLIVERI: Absolutely.
COMMISSIONER HERIOT: And they do. I mean --

MR. OLIVERI: Absolutely.

MS. MAXEY: Absolutely.

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

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

MR. OLIVERI: There are other factors, correct.

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

MR. OLIVERI: Well, you know, you try to do as many -- and I have had that specific experience
where you try to counsel the teacher. You talk to
the teacher. You get their side. You listen to what
they have to say and why this kind of experience.

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

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

COMMISSIONER HERIOT: How long has this
been going on?

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

COMMISSIONER HERIOT: Hypothetically if
we were to subpoena the data that Ms. Maxey and Dr.
Piedra talked about, where would we go to find that
data? This is the data on individual teacher by race and section and how they mete out.

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

COMMISSIONER HERIOT: Individual schools?

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

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

DR. PIEDRA: Ours is.

COMMISSIONER HERIOT: You think it is in individual schools?

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

In fact, I think "Mrs." so and so is so unfair. "Just because I'm black I got" -- no, sweetheart. You know, their teachers are just as hard on anybody. And it's not a racial issue. Some kids maybe are more sensitive to it.
MR. GONZALEZ: I'm not sure it's addressed this quickly, actually, the red light. To address your question, there are two programs that are out there that you might be able to get information from.

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

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

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

COMMISSIONER KIRSANOW: Does anybody know how to spell SPRICK?

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

DR. PIEDRA: Safeanddrugfreeschools.org is going to get his site.
Mr. Gonzalez: Yes.

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

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

Mr. Oliveri: The Austin Independent School District also does that.

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

Commissioner Kirsanow: Is there any type of data that shows level of discipline or frequency of disincline based on GPA and whether that is also disaggregated by race.

For example, is a 3.0 white student disciplined more readily than a 3.0 black student?
MR. GONZALEZ: Great. That's a great question.

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

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

COMMISSIONER TITUS: Thank you, Madam Chairman.

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

MR. OLIVERI: Yes.

COMMISSIONER TITUS: That is certainly dedication.

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

I believe, Mr. Oliveri, you said something about connection to mental health facilities or services?
MR. OLIVERI: Correct, yes.

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

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

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

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

MR. GONZALEZ: Let me just say that special ed students are disproportionately male, so in some districts as high as 90 percent male. So that right there is a huge disproportionality.
In our district, special education students when you disaggregated by ethnicity, it's not a stark disparity in terms of African Americans in special ed, but when you put the two at-risk populations, African American and special ed, and disaggregated by special ed African American students, the numbers really grow because it's exponential then. Probably ten percent of them have been referred for expulsion. I mean, that data is really stunning.

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

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

So that is actually another one of those things that you could slice and dice with many different lenses.
MS. MAXEY: From the human point of view, imagine -- because all of our special ed kids have learning disabilities or some kind of handicap in some way. I always try to tell teachers this. Imagine what you hate to do and what you're terrible at. Let's say it's bowling. I'm going to make you bowl for six and a half hours a day. And I am going to grade you on it and assess you on it and reward other kids because they can bowl better than you.

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

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

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

COMMISSIONER TITUS: Then they lose all those services.

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

Many of those students in my generation went on to own their own business. And they were productive, tax-paying, contributing members of society. But those programs have been removed in the
interest of accountability and high stakes. And you are finding a hemorrhage of those kids from your student enrollments. And charter schools have sprung up to try to deal with those kinds of things.

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

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

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

What I don't like so much about it is it really has damaged our elective program. It has damaged the vocational program because you're so focused on getting the kids to pass the SOLs or the high school assessment, whatever your state measures.
We don't have time for all the things that really hook kids in.

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

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

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

MR. OLIVERI: Yes.

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

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

VICE CHAIR THERNSTROM: There are no voc. eds?

MS. MAXEY: We still have those.

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

COMMISSIONER HERIOT: Why happened to the --
MR. OLIVERI: Funding, federal funding stopped.

MS. MAXEY: In some cases --

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

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

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

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

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

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

MR. GONZALEZ: And if you look at the statistics on the elective classes, they tend to be
pretty high. So if you're a borderline kid, you take an elective class, you're going to graduate, you are going to get older.

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

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

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

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

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

And the wrongful consequence of too much or wrongful discipline I assume mostly impacts the
student who is wrongfully disciplined, but there are other spillover effects.

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

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

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

I had four brothers. We were always fighting with each other on long car trips. And my dad would not give that warning. He would reach back. And he would pinch whoever's thigh he would reach. And because there were five of us, he would always get one thigh. And that brother would scream out, "Dad, it wasn't me. It was..." --you know.
And dad would say, "Well, you were probably doing something bad some other time. And if I have to stop this car, you're all going to get it."

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

(Laughter.)

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

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

COMMISSIONER GAZIANO: Sure. But how can we measure that by teacher, by school, by different approach? How can we come up with data on whether a given school, a district, a teacher is not doing enough and what its impact is?
MR. GONZALEZ: I think there is some evidence that you can look at that is maybe not as specific as maybe you want, but, for instance, enrollment. If your enrollment is declining and if you look at where it might be declining to, for instance, Fresno City is a large city, 540,000 people. But Fresno the unified school district has less students in it now than it had 20 years ago. So that right there is an indicator that there needs to be some improvement, that there is a perception that the schools -- and this is most urban districts -- that the schools are not safe. And I would think that probably of the people sitting in this room, there are probably some urban schools that would say the same thing, "Our school has been losing students." And that's an indication.

COMMISSIONER GAZIANO: But there could also be a variety of factor for the loss in enrollment. Someone may say it's not enough funding. Someone may say it's an increase in? How do we measure the impact of not enough appropriate discipline? And how do we measure the impact on the learning of the kids who don't leave, the learning of the kids whose education is just disruptive? I mean, it's a -- but I'm just not sure how.
MR. OLIVERI: I'm not sure it's relevant to look at that. I think it's relevant to look at the other side. And it gives you what you want. And I think it's relevant.

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

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

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

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

When we look at the T. C. Williams one, we have actually 16 administrators. They are half
That mixture of people when we sit down and we talk about things, we work things out I think is really an ideal way to do it. I have a wonderful administrative team.

COMMISSIONER GAZIANO: It's important.

Thank you.

VICE CHAIR THERNSTROM: Yes?

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

In a particular school district, if the statistics confirmed that African American students were punished at disproportionately high levels, the statistics suggested, not unlike the statistics we observed in your demonstrations, if the statistics suggested that and after a review of the slips that the teachers filled out to refer those students to disciplinary action, if a review of those slips revealed that for the white students, many more...
positive teacher comments were contained in the referral slips than for the African American students, what would be your response to such a finding?

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

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

I think we are now starting to chip away at the problem person by person so that when you see a teacher who consistently sends referrals that are biased in any direction, that we deal with those people on individual levels in terms of calling them and saying, let's have a reflective conversation about what we see. I don't think teachers even see it.
And so to do it in a large group to chastise I think probably isn't going to get the result you want, which is a change in behavior.

COMMISSIONER ACHTENBERG: Sure.

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

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

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

MR. OLIVERI: I will give you an analogous example. Sometimes in observing a teacher and walking in the classroom you notice that they tend to pick on only male students, only males to pick on.
The class may be 50/50 male/female, but in the response to the lesson and what is going on and you keep a tally, you find that they're just calling proportionately higher for the male student to respond, rather than the female.

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

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

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

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

So I asked the teacher to come down and talk with me. And I told her what I saw. And she
was really embarrassed. She's having a rough time because teachers have things going on in their lives, too.

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

(Laughter.)

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

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

VICE CHAIR THERNSTROM: Your comment about kids with heads on the desks, I mean, that is part of the picture to which I was referring before in saying, "Look, classroom disruption can take a lot
of forms that are way short of kids punching other
kids in the classroom or in the halls or whatever."

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

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

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

And I think a number of you have touched
on teacher training. I see great classrooms. I've
seen terrible classrooms. And there isn't enough
teacher -- there isn't enough intervention, it seems
to me, in the way of teacher training once they get
to the schools.
And part of that, what I've witnessed, at least, is -- and there is data also -- we've got too many principals who are not like Ms. Maxey here. These are principals who are behind closed doors in their offices and who are not wandering around the schools and not wandering in and out of classrooms and not saying to teachers, "I saw three of your kids with heads on the desks." That is not a classroom in which everyone is learning.

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

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

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

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

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

MR. OLIVERI: I just want to respond to
one of them because it hit me. The expectations that
we have for behavior, many of my conversations with
students who misbehave or were sent to the office
many times -- I would say most times -- took the form
of talking about their behavior in the classroom, as
opposed to their behavior on the street, as opposed
to their behavior in their homes, as opposed to their
behavior at some other event or whatever, the
behaviors are contextual, and that we have to learn
to adopt behaviors and adjust our behaviors to the
context in which we find ourselves. And in school,
there is an expectation for your behavior.

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

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

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

VICE CHAIR THERNSTROM: And every teacher
follows it?

MS. MAXEY: Yes.

VICE CHAIR THERNSTROM: That's unusual.

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

VICE CHAIR THERNSTROM: Right.
MS. MAXEY: I could really care less if a kid wears a hat in school.

VICE CHAIR THERNSTROM: Right.

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

VICE CHAIR THERNSTROM: Right, right.

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

VICE CHAIR THERNSTROM: Right.

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

VICE CHAIR THERNSTROM: Right.

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

VICE CHAIR THERNSTROM: I have to stop.

Thank you so much.

COMMISSIONER KIRSANOW: Thank you.

VICE CHAIR THERNSTROM: I would like to welcome the third panel. Please come up. Members of the third panel, please come up.
We are very pleased to have this third panel. On this third panel, Ricardo Soto, who is the Principal Deputy Assistant Secretary for the Office for Civil Rights in the U.S. Department of Education. He provides senior leadership concerning enforcement policy and operational activities in Education's Office of Civil Rights.

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

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


(Laughter.)

VICE CHAIR THERNSTROM: Dr. Hardy Murphy is Superintendent of Schools for the Evanston/Skokie, Illinois School District, number 65. Is that correct?
Under his watch, student achievement tests have significantly improved for members of the economically as well as racially disadvantaged groups. The district has earned special recognition for an initiative to improve student behavior and peer relationships.

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

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

DR. MARTIN: Hertica.

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

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

Dr. Douglas Wright is the Superintendent of Schools for the San Juan School District in
Blanding, Utah. Fifty-two percent of the District students are American Indian, 44.5 Caucasian, 3 percent Hispanic.

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

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

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

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

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

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

MR. SOTO: Right.
VICE CHAIR THERNSTROM: And it will not get lost.

MR. SOTO: I appreciate that.

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

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

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

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

Prior to my work at OCR, I represented school districts on education issues, which included providing advice regarding discipline policies and
procedures, including the review of recommendations for suspension and expulsion by school administrators.

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

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

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

Title VI protections extend to all state education agencies, elementary and secondary school system, colleges and universities, vocational
schools, proprietary schools, state vocational
rehabilitation agencies, libraries, and museums that
receive federal funding from the U.S. Department of
Education.

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

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

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

OCR has a headquarters office and 12
regional offices around the country with more than
600 attorneys, investigators, and other staff working
on investigating complaints, conducting compliance
reviews, developing policy guidance, and providing technical assistance.

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

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

Let me turn now to our work on issues related to discipline. From data gathered through the Department's civil rights data collection, OCR estimates that in 2005 through the 2006 school year, almost 250,000 more students nationwide received out of school suspension than just 4 years earlier and that the number of students who were expelled increased by 15 percent. OCR is concerned by the rising discipline rates and by the deep disparities in discipline in our nation's schools.
Both have been linked to increased likelihood of dropping out of school, decreased academic achievement, increased involvement with the juvenile justice system, and impairment of future college and employment opportunities. And those are just a few of the harms to students.

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

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

To maintain the integrity of our enforcement activities, OCR has a longstanding policy against releasing information about pending investigations. So today I will not be discussing open cases, but I will explain the legal theories that govern our enforcement efforts based on statutes, regulations, and case law that OCR would employ when the facts and circumstances suggest that
they would be appropriate to determine whether a
school has violated Title VI.

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

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

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

Unlike cases involving different
treatment, cases involving disparate impact theory do
not require that a school have the intent to
discriminate. Rather, under the disparate impact theory, the pertinent inquiry is whether the evidence establishes that a facially neutral discipline policy, practice, or procedure causes a significant disproportionate racial impact and lacks a substantial legitimate educational justification.

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

I'm going to just sum up right now.

VICE CHAIR THERNSTROM: Thank you.

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

And the Department of Education recognizes that disciplinary policies, practices, and procedures differ from school to school. There is no
universal one size fits all approach to discipline that will be right for every school or all students. However, each school has a responsibility not only to create a safe and orderly learning environment but also to ensure that its disciplinary policies, practices, and procedures are administered in a non-discriminatory manner.

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

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

Increasingly, the number of students losing educational instructional time due to disciplinary sanctions, such as out-of-school suspension, expulsions, or referral to law enforcement authorities, and alternative educational placements has dramatically increased. All too often, such consequences for student misconduct,
especially for more subjective disciplinary offensive
where judgments are inherently more discretionary,
are not imposed in a fair and equitable manner.

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

VICE CHAIR THERNSTROM: Thank you so
much.

And we move quickly on to Dr. Hardy
Murphy.

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

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

Our African American students, roughly 75
percent of them are on free and reduced lunch. Our
Latino students, about 80 percent are on free and
reduced lunch. And our white students, we have virtually no students on free and reduced lunch in our district that are white.

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

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

To that end, we have done some innovative things in the last few years. We are one of a handful of districts in the country that has actually been able to develop and implement now for the second year a teacher appraisal system that actually incorporates student achievement and to the appraisal of our teachers.
The other thing we have done is we have been able to win the extension of our school day through our teacher negotiating process.

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

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

And going through teacher negotiations to develop this system, we asked ourselves a couple of, two or three questions. And one is that, is it reasonable for a parent to expect that if a student is in a teacher's classroom for a year, is it reason to expect a year's worth of growth? And around the table, when we looked at everyone who began to
reflect on that question, everyone had to nod and say, "Yes. You know, that's reasonable."

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

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

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

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

The goal for all of this is to have educational professionals develop an understanding about our students' out-of-school experiences. This
helps them to appreciate the child's culture and the background.

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

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

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

Without this value, students often resort to a nihilistic posture for a school and the society
that it represents. That is how we get gangs. This rejection leads to a set of values that contradicts the rules, the regulations, and laws that define the social contract of America.

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

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

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

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

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

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

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

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

In closing --

VICE CHAIR THERNSTROM: And I apologize.

(Laughter.)

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

(Laughter.)

DR. MURPHY: Of course, I think that it is important to say what --
VICE CHAIR THERNSTROM: We, unfortunately, have a very long day in front of us.

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

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

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

What has happened with this is that we are able to keep students in school and create a more engaging relationship with the parents involved. And ultimately I think that really is the heart of the matter, is the relationship between the schools and the communities that they serve.
VICE CHAIR THERNSTROM: Thank you very much. And I'm glad you did add those final remarks.

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

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

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

This report further revealed that there is an over-representation of African American males who are expelled from school. The report also showed this is disproportionate to the overall student population, both by race and by disability status. And you have all of the statistics that I provided you. So I am not going to go through that.
But also suspension data from 2007-08 showed that through November, 82 of the 288 out-of-school suspensions had been students with disabilities, (29 percent). And of those, 44 are emotional/behavioral disorder, which is 15 percent of all suspensions. And 22 are students with disabilities. And most of those students are African American, primarily males.

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

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

And some of the trainings that we have offered our staff include the role of whiteness; impact of race on student learning; courageous conversations about race, the topic that we all try to avoid, culturally relevant classroom; job-embedded coaching; life space crisis intervention; efficacy
for both parents, students, and staff; and mentorship for students.

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

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

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

The implementation of these strategies has resulted in a decrease of 363 suspensions and
expulsions from 2007-08 to 2009-10 school year. Even though our data indicate that with the implementation of PBIS system, discipline referrals have been decreased. When the suspension data was disaggregated, the black and brown students were disciplined disproportionately.

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

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

When discipline is not applied fairly and consistently, the cultural diversity is undermined. Singling out misbehaving students for humiliation or excluding them from classroom sometimes starts with a referral to the principal's office and sometimes escalates to the removal from school through suspension. These strategies effectively deny these students access to instruction and an opportunity to learn, and do little to enable
students to learn from their mistakes and to develop a sense of responsibility for their behavior.

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

Thank you.

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

Dr. Wright?

DR. WRIGHT: Thank you very much.

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

We are over in the southeast corner of Utah. And the district encompasses approximately 8,000 square miles, roughly the size of Connecticut
and Rhode Island combined. Within that setting, we have 2,900 students in 12 schools. And so we are serving a very large geographical area.

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

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

Our experience shows that suspending and expelling students leads to their failure to obtain an education and to prepare for the lives that they will face. With this fact in mind, we have attempted to implement preventative programs to avoid the need for disciplinary measures.
Our district utilizes the PBIS program that has been mentioned repeatedly here. And so I am going to skip over that section of my remarks.

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

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

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

Another approach that we have been using effectively for the last number of years is through our guidance counseling program. Guidance counselors play a key role in helping to assure that PBIS and similar programs are implemented properly and are successful.
Recognizing that early training and support are essential, the district wrote and received a grant from the Department of Education allowing us to hire elementary counselors for our elementary schools.

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

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

Counselors play a key role in establishing and reinforcing proper behavior and preventing behavior which would require disciplinary action. The counselors also assist with outreach and communication, ensuring that the school and parents work together investing in the child.
In general, there is much evidence to suggest that building a system of support may provide and assist students to succeed, rather than moving into the realm of discipline.

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

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

Recent safe schools policy revision in our district led to the creation of a procedure that establishes a hierarchy of expectations for proper disciplinary actions depending on the nature of the
incident requiring discipline. Policy outlines the serious offenses which require a recommendation for expulsion or suspension based on existing laws but also notes other types of negative behavior for which less severe disciplinary action is warranted.

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

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

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

I notice my time is up.
VICE CHAIR THERNSTROM: And I thank you very much for adhering to it.

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

COMMISSIONER GAZIANO: I think I am going to try to address Mr. Soto's statement first.

Reading your prepared statement, I have some serious constitutional concerns, which I'll just state and then put aside, with the OCR's interpretation of its disparate impact theory.

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

But, putting aside whether your approach is constitutional, even if it were, you wouldn't have to enforce it in that way. And what bothers me about your approach is whenever the disparities showed the burden -- and it seems to me in practice an extremely heavy burden on the school to justify any disparity -- and I think it is great to look at the disparities. They can be powerful evidence of
unintended or subconscious actual discrimination, but
they might not.

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

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

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

(Laughter.)

COMMISSIONER GAZIANO: These two are the
Star Wars --

COMMISSIONER HERIOT: Star Trek.

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

COMMISSIONER KIRSANOW: You're doing a
pretty good job of it, though.
COMMISSIONER GAZIANO: How will that be picked up in your approach? You've got a teacher who intentionally disciplines a certain subgroup a third as much as they should. How will anyone ever notice that? How will the impact on the other students ever be measured?

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

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

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

And, as the prepared statements indicated, often we find that there -- well, not often but, you know, on occasion we will find that there are actually differences. There is actually
different treatment around the discretionary offenses that school districts and school administrators and teachers can make determinations about. And that is typically where we find --

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

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

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

MR. SOTO: I would say, you know, we don't have minimum thresholds of discipline based on race for teachers. I mean, we want to make sure that to the extent that they are going to be disciplining students, that they are doing it fairly, you know, irrespective of race, national origin, or color.
COMMISSIONER GAZIANO: Any disparate impact is going to trigger the burden, the heavy burden, that I see from your interpretation.

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

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

Why shouldn't the Department of Education assume that disparities is just a reason to look further but that they don't have to meet this alternative -- as you said in your written statement, even if substantial legitimate education justifications support the disparity, you can still find them in violation unless the school can again -- this is the double burden of proof the school has -- meet, show the equally effective alternative policies, practices, and procedures would achieve the
school's educational goals? And you're going to stand in judgment.

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

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

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

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

COMMISSIONER KIRSANOW: Actually, I think Commissioner Castro --
VICE CHAIR THERNSTROM: Oh, I'm terribly sorry. I'm looking in this direction simply because I was stopping Commissioner Gaziano.

COMMISSIONER CASTRO: Sure. Thank you.

VICE CHAIR THERNSTROM: Commissioner Castro?

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

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

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

One of our prior speakers, Allen Zollman, in his written remarks, which he did not have an opportunity to complete but which are part of our record, indicated in his closing additional comment, "Suppose we did discipline proportionally by ethnicity. We have reached the maximum allowable
number of referrals with group X for disruptive behaviors. We will have to stop issuing referrals.

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

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

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

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

You know, in particular, I know that one of the previous panelists indicated that there are some really serious offenses for which they have no discretion. And typically they will involve weapons or drugs or very serious assaults, including on school personnel.
And for the most part, those are imposed, irrespective of race, color, or national origin. It's typically around the discretionary issues, where, as, again, in the example that we cited, where teachers had some discretion about whether or not to implement an informal process before they made a formal recommendation for discipline, where we find the issues in some cases.

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

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

I mean, I applaud the work that the additional panelists on this panel are doing. And I think it's a effect that people are sensitive around these issues because of the harms that result to the
students. And they're looking at these issues because they believe that they also have a concern.

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

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

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

And I guess just as a comment to the staff, whoever prepares these books, it would be great to have work of our SACs included in the
wonderful scholarly works that we get in preparation for these hearings in the future.

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

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

As for severity, the discipline action increases the over-representation of African American students receiving the harsher discipline increases. And the student code, which outlines the various violations and consequences of student behavior, is
written at a college graduate level beyond the reading ability of most of the students.

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

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

So I would like to have some comments from you all on these recommendations and, again, any other recommendations that you have.
DR. MARTIN: I think those recommendations are fine, but I think you also need to address the elephant in the room of why the kids are misbehaving a certain period of the day, a certain teacher's classroom, or what.

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

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

If teachers today don't have that relationship, as Ms. Maxey mentioned this morning, you are not going to get much. So it is really important that we as educators understand the students that we have in front of us on a day-to-day basis and understand the issues.
And it's not one size fits all, but you deal with the kid when you get that kid into your office as a principal. How do I deal with this student? You need to delve into the cause of the behavior and the misbehavior and what is going on, whether it be in the classroom or in the home.

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

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

COMMISSIONER CASTRO: Any comments?

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

The CHANCE training I'm not familiar with. It may be exactly what she is referring to. But I really believe that that layer of providing some social support to students, as opposed to just
focusing on the discipline, is really the key to much of this.

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

COMMISSIONER CASTRO: Yes?

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

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

IDEA actually came along after 1954. I think there is considerable research that shows that people incarcerated also are disproportionately represented amongst those folks who have been identified as having a disability.
I think that represents the fact that there is a disconnect between the culture of the students and the culture of the institutions that schools represent.

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

COMMISSIONER CASTRO: Okay.

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

COMMISSIONER CASTRO: Thank you.

I would just ask that this report by the Florida SAC be part of the record for this hearing
and any of the other SAC reports that are completed because there are other findings here that I didn't go into just because of time that are relevant.

VICE CHAIR THERNSTROM: Good.

COMMISSIONER CASTRO: Thank you.

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

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

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

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

DR. WRIGHT: Well, you know, one of the issues also in my district is not only the poverty found on the Navajo Reservation but also the
distances associated with getting students to and from school, many times parents are absent because they have to leave the reservation to go to work.

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

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

DR. MARTIN: And because the kids are poor doesn't mean that, as indicated, we don't teach them. We as a system need to stop allowing the kids' zip code, their demographics, to dictate what they can become.
I'm one of those. I'm from a single family home. But I didn't allow that to stop me from achieving my goals. And, you know, God bless those mentors, those people whose shoulders I stand on. But we have to stop using some of these excuses for what we are doing, some injustices that are happening to kids across this country. There are cases where there is 90 something percent poverty and yet they are achieving.

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

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

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

COMMISSIONER CASTRO: Okay. Thank you.

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

COMMISSIONER CASTRO: Okay. Thank you.

VICE CHAIR THERNSTROM: Yes, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you.
I guess this question would probably be directed to Mr. Soto, but anyone can chime in. Commissioner Gaziano talked a little bit about Title VI. And I'm not going to get into the constitutionality, only to observe that Title VI is different from Title VII.

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

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

But in terms of outputs, once you have identified a district that has a disparate impact in the imposition of discipline on the basis of race, is
there data? Are there statistics? Is there any
evidence that shows that the remedies that they
undertake because if they have equally effective
alternatives to discipline, they're supposed to
utilize those. Is there anything that shows that
those districts, who have been identified pursuant to
a disparate impact, balance?

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

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

I think Dr. Martin indicated -- you are a
doctor. Okay. General Martin had indicated that,

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

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

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

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

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

Again, what I would say is, as I tried to respond earlier, you know, most of these cases, we're
looking at both theories of discrimination for purposes of trying to make a determination of if there's a violation under Title VI.

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

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

And, again, my comments state that one of the first things that she did when she became the Assistant Secretary was to look at the civil rights data collection for purposes of it providing more information about the areas of concern so that we can track this information and not only have it be useful for OCR in looking at the issues we are trying to address but also so that we can have others,
researchers, school districts, administrators look at
the data that is generated.

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

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

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

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

VICE CHAIR THERNSTROM: Fine? Okay. Who
else wants to speak? Commissioner Achtenberg?
COMMISSIONER ACHTENBERG: I have a lot of sympathy for you because I ran a Title VI compliance operation myself, only in the fair housing area. We did use as a third tier analysis, disproportionate impact theory. To the best of my recollection, it was legal in 1993. And it remains legal today, but I will yield to Mr. Soto to correct my understanding of the current legalities of it.

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

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

At least in my experience, we tailored it very narrowly to the specific constraints that the particular entity operated under. And it was different depending on the state, depending on the region, depending on the local law, and that kind of thing.
I'm wondering if you could discuss with us just briefly how specifically tailored to the local circumstances the resolutions that you enter into with these districts -- you know, what level of specificity is involved in these resolutions.

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

You know, it gets down to permitting the school district to offer alternatives to -- if OCR comes up with a proposed remedy that they believe will address the concern of the school district, I have had plenty of experience working with OCR on the other side and working with investigators to tell them why it does work or doesn't work or may not address the issue that they are interested in addressing and have been able to work with OCR when I was representing school districts to make sure that it specifically addressed the issue and that it actually would have an impact on the issue that they were trying to address.
And I would say again in this case given the example that I cited, I know that when we went through the policies and the practices that the school district had, you know, we took specific care to look at the area that we were interested in, which was these discretionary determinations about whether or not to use an informal process before invoking a formal disciplinary process. And that's where we focused on what kind of supervision, monitoring, and review needed to be done to ensure that that was being done in a fair manner.

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

And we have had, in fact, in this area school districts, school board members who have commended the work of our investigators and our attorneys because they have addressed the concern that they also knew that existed and they have done it in a way that is effective in addressing it much more proactively.
COMMISSIONER ACHTENBERG: Let me point out, though, I thought Commissioner Kirsanow's question was a very valid one. Certainly you then have to go on and measure the extent to which these new procedures actually do achieve or don't achieve, you know, what it is you're trying to achieve here. And to the extent that you can be transparent about that, it seems to me would allay a lot of fears about the people imagining somehow that this is an extreme attempt to enforce, you know, some kind of political correctness on the people who were just out there every day trying to teach our kids.

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

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

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

Mr. Soto, I just want to make sure I have a handle on some basic stuff here. You know, maybe
you addressed this and I missed it but just the procedures that are involved here.

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

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

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

MR. SOTO: The compliance reviews?

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

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

COMMISSIONER HERIOT: Okay.

MR. SOTO: There are very different cases. We do compliance reviews under the three primary civil rights statutes that we enforce, which
are Title VI, Title IX, and section 504 of the Rehabilitation Act or Title II of the Americans With Disabilities Act.

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

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

MR. SOTO: No.

COMMISSIONER HERIOT: -- target at this point?

MR. SOTO: No one has selected anyone.

COMMISSIONER HERIOT: Okay. Fine.

MR. SOTO: We have a civil rights data collection that we try to do every two years. Unfortunately, the civil rights data collection was not done during 2008. So we just initiated a civil rights data collection last year and worked to gathering that information and are going to be releasing it publicly soon. They look at state websites that may have information student -- like
many state websites are very robust now around education and data collection.

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

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

MR. SOTO: Correct.

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

MR. SOTO: Typically they are reviewed in the office, in the headquarters here in Washington, D.C. You know, we look at the proposals that the regional offices make. And then typically we are asking for more information. You know, what information do you have that this is a real issue in that community or in that school district?
You know, what additional information can we get from the state websites or the school district websites around the issue that you have raised? And then once we have reviewed that and then once we make a decision, then the regional office is in charge of doing the investigation.

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

MR. SOTO: Right.

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

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

MR. SOTO: No, not always. I mean, you know, we launched approximately -- well, last we launched around 40 compliance reviews, which involved about 55 agencies. And there were only very few, about a handful of compliance reviews that were around the issue of discipline.
COMMISSIONER HERIOT: Are any of those closed investigations at this point?

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

COMMISSIONER HERIOT: They're all open.

How long do these investigations ordinarily take?

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

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

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

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

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

VICE CHAIR THERNSTROM: The additional time is two seconds.
(Laughter.)

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

VICE CHAIR THERNSTROM: Yes.

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

MR. SOTO: Thank you.

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

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

How could you ever determine if some teacher is not disciplining those Klingons enough based on just data and documents?
MR. SOTO: I'm going to defer to my colleagues, but I'm willing to answer what I think. I think they have more experience.

COMMISSIONER GAZIANO: Sure.

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

VICE CHAIR THERNSTROM: In some districts, not all.

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

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

Now, that is not the kind of first-line data that you are talking about because you would have to develop your own conclusion for why that is happening.
VICE CHAIR THERNSTROM: Commissioner Kirsanow, you have a very brief question. I will yield my time.

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

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

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

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

I think we have to be careful about generalizing what is happening in schools because, by
and in large and for the most part, most students in
my classrooms are behaving and doing fairly well.

COMMISSIONER KIRSANOW: Dr. Martin?

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

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

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

VICE CHAIR THERNSTROM: I'm sorry.

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

DR. MURPHY: I just want to make one comment to Commissioner Kirsanow. A bigger problem is student failure. If we address student failure, then the issue of disparate disproportionality and discipline is going to be much less.
COMMISSIONER KIRSANOW: Thank you.

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

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

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

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

DR. MURPHY: We translate materials also across our district in a variety of venues. One of the other things that we have done in the past is if we feel like we have a problem, we will break down some three to five to seven things that will result in a student being suspended for long periods of time
and send them out as special missives throughout the year, "Your student will be suspended if they do" X, Y, or Z.

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

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

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

And, with that -- and, again, my thanks -- this briefing is adjourned. After a short break,
the Commission is going to reconvene in this room to have a meeting. This meeting is open to the public.

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