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Salt Lake City School Board
District Two

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Office for Civil Rights (OCR) -Region VIII
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582



Re: Discipline Policies & Practices: Disparate Impact

Dear OCR-Region VIII,

Acting under the authority of my elected office, and in my official capacity as a member of the Salt Lake City Board of Education (*Board*),¹ I submit the following **Title VI of the Civil Rights Act of 1964** complaint on behalf of the students of color that I was elected to represent and on behalf of other students similarly situated.

This complaint maintains that the Salt Lake City School District (*District*) has discriminated against African American, American Indian, Hispanic and Pacific Islander students on the basis of race by administering district-wide disciplinary policies and practices which include suspensions, law enforcement referral, criminal citations, arrest and seizures. These policies and practices have a disparate impact on students of color within the *District*.

More specially, this complaint will focus on the *District's* misuse of School Resources Officers (*SROs*) in the classroom and *Board* room alike. The *District* currently has a written financial agreement with the Salt Lake City Police Department (*SLCPD*) to provide the *SROs*.² Six of the *SROs* are assigned to the four High Schools in the *District* and one is assigned to Glendale Middle School and another one is assigned to Northwest Middle School. Current *District* policy³ and written procedures⁴ provide the *SROs* with unfettered access to students under the guise of “*school discipline*”.

¹ Notwithstanding a local school board's status as a body corporate, an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board. See *Utah Code § 53A-3-401(5)*

² Contract 02-3-94-1559 01/21/2000

³ S-7 Board Policy

⁴ S-7 Administrative Procedures

“Local school boards are the bedrock of our society, yet they are invisible to the public”

Señor Florez –Deseret News

As a result of these policies, procedure and practices the *District* has guaranteed that minor violations of school rules will result in law enforcement contact which result in students being introduced to the criminal justice system. This in turn has resulted in a disproportionate number of criminal offenses being assigned to students of color. This problem becomes more acute when one considers that the *District* has assigned fulltime *SROs* to schools with a majority ethnic minority students (on the Middle School level).

This complaint will also reveal that ethnic minority students have been subjected to slurs verbalized by the police during the course of arrest and seizures on school campus, evidencing discriminatory intent on behalf of the officers in the school.

This complaint will further demonstrate that once placed on notice about the disparate impact, the administration and *Board* did not take affirmative steps to rectify the disparity.

This complaint will also substantiate current research on the school-to-prison pipeline theory i.e. Professor Aaron Kupchik finds that having police in schools on a regular basis is on the whole harmful to students. He charts a number of reasons for this, but at the core he is arguing that officers affect the overall school climate:

*Having an officer can escalate disciplinary situations; increase the likelihood that students are arrested at school; redefine situations as criminal justice problems rather than social, psychological, or academic problems; introduce a criminal orientation to how administrators prevent and respond to problems; and socialize students to expect a police presence in their lives.*⁵

I INTRODUCTION

On **April 22, 2014**, U.S. Marshal shot and killed 25 year old defendant Siale Angilau (former *District* student) in the courtroom during the course of his trial.⁶

On **May 1, 2014**, a number of community advocates and I had sought the assistance of Rosa Salamanca of the U.S. Justice Department in helping us address the unmet needs of ethnic minority students within the within the *District*. We compiled a list of the deficiencies, we felt were most pressing. On that list⁷ was the issue of the *SROs* and the need for cultural competency training as well as how to not criminalize regular juvenile behavior.

On **May 7, 2014**, the Salt Lake City Weekly offered the following quote from me:

Salt Lake City School Board member Michael Clara represents the Glendale neighborhood. He had already organized a meeting with the Latino community and the United States Department of Justice about the inequities of the school district when he became alarmed by the fallout from the Angilau shooting and helped schedule an extra meeting so the DOJ could hear concerns from the Pacific Islander community on May 1.⁸

⁵ Homeroom Security: School Discipline in an Age of Fear by Aaron Kupchik

⁶ Salt Lake Tribune: Gang Defendant Shot, Killed at New Salt Lake City Federal Courthouse 04/22/14

⁷ Jennifer Sanchez email to Rosa Salamanca 05/01/14

⁸ Salt Lake City Weekly: Community Searches for Answers in Courtroom Shooting of Siale Angilau 05/07/14

The murder of Siale Angilau at the hands of a federal marshal, sparked conversations in the community among advocates, civic and religious leaders. We examined our actions as parents and policymakers, in an effort to determine our contribution in placing our children on a collision course with law enforcement. We examined the actions (over the years) of the local police, federal agents, Salt Lake County district attorney, Utah attorney general, U.S. Attorney etc...

In the midst of those community conversations, we wondered what influence the *SROs* have had on our children while they were in school. Many stories were surfacing about what parents believed to be mistreatment that their children suffered at the hands of the *SROs* over the past two decades, while attending middle school and high school.

In **August 2014**, the Utah Board of Juvenile Justice released a report⁹ that revealed that the *District* did not have a Memorandum of Understanding with the *SLCPD* for use of *SROs*, nor does the *SLCPD* have in place a job description for the *SROs*. The report also revealed that no *District* or school administrators are involved in the process of selecting *SROs* that work in the schools. The report further discovered that *SROs* are not required to attend specific training nor has the *District* provided the *SROs* with training on discipline policies. The report concludes that there is an *“overuse of SROs to criminalize child and adolescent behavior”*.

On **September 18, 2014**, the minutes of the Utah Board of Juvenile Justice reflect the following:

The DMC Subcommittee completed their Best Practice Assessment in June. The Salt Lake County DMC working group is discussing how to implement the recommendations. The goal is to help reduce arrests and referrals at the school level in Salt Lake City, Granite, and Jordan School Districts. The main recommendations in the report are to develop a combined training for SRO and school administrators, develop a model memorandum of understanding between school districts and law enforcement agencies, clarify the SRO roles in schools, collaborate with school administrators to determine certain characteristics of SRO's to hire, and develop alternative programs (peer court, behavioral treatment program, etc.) for schools and SRO's.

The "Effective Police Interaction with Youth" training of trainers will be on Nov. 12-14, 2014 in the Senate Building. Utah was awarded training and technical Assistance from OJJDP. Officers from Connecticut who developed a curriculum to tackle DMC will conduct a three day training for our local police departments. The training will certify two officers from each department and they will then have a month and a half to conduct one class with their fellow officers. The goal is for those certified officers to train their co-workers within one year. The training is by invitation only and is provided to law enforcement that partner with us on DMC. Participating agencies include WJPD, UPD, Sandy PD, Provo PD, Orem DPS, OPD, SLCPD, and Smithfield PD. We are also seeking participation from WVC PD and POST.

On **October 16, 2014**, the minutes of the Utah Board of Juvenile Justice reflect the following:

Dr. Moises Prospero stated that the ultimate goal is to have statewide training of SRO's. Currently there are no standard policies or practices outlining interactions and expectations between school resource officers and school administrators.

The role of the SRO should be to: Address criminal activity and build relationships with students. They are not to have a role in daily discipline (which is the role of school administration). The goal is to not overuse SRO's to criminalize normal child and adolescent behavior.

⁹ DMC Evidence-Based, Best Practices Intervention Report – June 2014

Recommendations from Moises' report include:

- Written agreement between police departments and school districts
- Create SRO job descriptions
- Include school administration in SRO selection process
- Require training for both SRO's and school administration
- Seek alternatives to the juvenile justice system
- Three Pilot Sites (high School and feeder middle and junior high schools)
- Create two workgroups (policy and SRO training curriculum)

SRO pilot training will begin in January 2015 in three locations with follow up training in March and May of 2015.

On **November 12, 2014**, the "*Effective Police Interaction with Youth*" for SROs was canceled (see September 18, 2015 entry).

In **December of 2014**, parents from Glendale Middle School complained that the SRO was enforcing school rules and they felt that the practice was unfair. One of the mothers reported that she does house cleaning for a family on the eastside of Salt Lake City for a family that has a child attending Clayton Middle school. This mother advised me that Clayton Middle School does not have a fulltime SRO assigned on a fulltime basis although they are both in the same District.

I began to look into the parents assertions and determined that the middle schools with a majority ethnic minority student populations are assigned full SROs while the schools with a majority Caucasian student population are not.

Specifically, the District has assigned full-time SRO to:

- Glendale Middle School (89% Ethnic Minority student population)
- Northwest Middle School (89% Ethnic Minority student population)

The District however, has NOT assigned a full-time SRO to:

- Clayton Middle School (32% Ethnic Minority student population)
- Hillside Middle School (36% Ethnic Minority student population)¹⁰

It just so happens, that during this process of inquiry with *District* officials about the use of SROs in our schools. Board President, Heather Bennett employed one of the SROs in an effort to intimate me while participating in Board of Education meetings. The misuse of the SRO by President Bennett is significant in that it sends the message to District administrators, that it is okay to utilize SROs to criminalize the actions of ethnic minorities in the school system.

¹⁰ Race / Ethnicity Report Fall 2013

On **February 3, 2015**, President Bennett posted an *SRO* at the school board meeting, so I could be “*guarded*” because she felt “*threatened*” by me as a result of a phone conversation.

President Bennett would later concede that I did not threaten her, however, she was offended during our phone conversation.

On **February 19, 2015**, the Utah Board of Juvenile Justice reported¹¹ that the first of its kind training (pilot program) was held for *SROs*. They report that no *SROs* from SLCPD attended the meeting. District administrators would later report to me, on more than one occasion, that they held a “*very successful training meeting with the SROs*”.

On **February 26, 2015**, I sent President Bennett a letter admonishing her: “*Instead of falling back on racial stereotypes, instead of criminalizing public dissent...*”¹² I went on to make the point that ethnic minorities in the school system (students and adults) are often the subject of police scrutiny for behavior that is otherwise accepted by their Caucasian peers. I am the only ethnic minority currently serving on the seven member Board of Education.

On **March 2, 2015**, I sent a letter to Chief Burbank of the Salt Lake City Police Department. In that letter I advised him of the misuse of the *SRO* in an effort to intimate me at the Board of Education meetings.¹³

On **March 3, 2015**, I hand delivered a letter to President Bennett asking her to remove the police officer from his current location of guarding me at the Board of Education meetings.¹⁴

On **March 6, 2015**, I filed a complaint with Salt Lake City’s Human Rights Commission.¹⁵

On **March 23, 2015**, I hand delivered a letter¹⁶ to Deputy Chief Coleman of the *SLCPD*. In that letter I made the following observation:

Please accept this letter as supplemental information to my **Police Retaliation and Intimidation** complaint I filed with Chief Burbank earlier this month.

At the conclusion of our last Board of Education meeting, School Superintendent McKell Withers stated the following:

The last Kudos, I want to thank in general and then specifically the relationship we have had... with the Salt Lake City Police Department...and on the specific thing...to have Gary Trost in this room any time for any reason is a great thing...”

As an employee of the Board of Education, Dr. Withers has the luxury of expressing such a myopic point of view. As an elected official representing Salt Lake City’s westside, I don’t have that luxury and must instead work towards improving the relationship between communities of color and the powers of local government.

¹¹ Disproportionate Minority Contact (DMC) Committee Minutes 02/19/15

¹² Michael Clára letter to Heather Bennett – Re: Frito Bandito Incarnate 02/26/15

¹³ Michael Clára letter to Chief Burbank – Re: Police Retaliation and Intimidation 02/03/15

¹⁴ Michael Clára letter to Heather Bennett – Re: Point of Order 03/03/2015

¹⁵ Michael Clára email to Kilo Zamora and Dr. Teresa Molina 03/06/15

¹⁶ Michael Clára letter to Deputy Chief Coleman – Re: Criminalizing Dissent 03/23/2015

As one who has the responsibility in shaping public policy, I submit that having the police “*in the room any time for any reason*” philosophy, is what has eroded the trust between the police and many communities in the United States of America.

As one writer put it, “...*we are witnessing an inversion of the police-civilian relationship. Rather than compelling the police officers to remain within constitutional bounds as servants of the people, ordinary Americans are being placed at the mercy of law enforcement...*”

The comments made by Superintendent Withers are significant in that he demonstrates his indifference for my objection to having the SRO at the Board meetings in an effort to stigmatize and marginalize my voice. Superintendent Withers’ words also demonstrate his ignorance on current research or the information coming out of the Utah Board of Juvenile Justice about the use of law enforcement in school settings.

On **April 7, 2015**, the Salt Lake Tribune ran a story about my objections to utilizing SROs to stigmatize people of color.¹⁷ The article summarizes my concerns as follows:

Recently, he has questioned the district’s use of school resource officers, claiming there is a disproportionate police presence in the Salt Lake City’s west-side schools which typically have more minority students.

Clara said Bennett's reaction to his phone call was an extension of an attitude in the school district that criminalizes people of color and puts students on a path of interacting with the police.

"Even if I offended her, that doesn't require a person who is authorized to use deadly force to sit and stare at me for the whole meeting," Clara said.

On **April 14, 2015**, President Bennett and I did an online interview¹⁸ with the Salt Lake Tribune. In the course of the interview, the board president was dismissive of my concerns on this issue and further demonstrated her insensitivity and ignorance about issues facing communities of color.

On **April 29, 2015**, Salt Lake City Weekly¹⁹ quoted City Councilman Kyle LaMalfa:

Salt Lake City Councilman Kyle LaMalfa's 2nd District covers much of the west side, including the Glendale and Poplar Grove neighborhoods ...He's also heard very sincere teachers and administrators argue that the full-time police officer at the Glendale Middle School busts kids for the same adolescent problems that happen at the Hillside Middle School on the east side—but, since it's Glendale, the punishments are more severe and push kids into the criminal-justice system.

On **May 3, 2015**, President Bennett had the *Board* agenda²⁰ published, for out 05/05/15, *Board* meeting. The agenda listed the deployment of SROs under the Closed Executive meeting agenda.

On **May 5, 2015**, President Bennett and I exchanged emails²¹ in which I registered my objection to the Board discussing the deployment of the SROs in a closed door session:

¹⁷ Salt Lake Tribune: School Board Member Don ‘Bandito’ Costume to Protest Police Presence 04/09/15

¹⁸ Trib Talk: Bennett, Clara talk issues, discord on the Salt Lake City School Board 04/14/15

¹⁹ Salt Lake City Weekly: To Write A Wrong 04/29/15

²⁰ Salt Lake City School District: Board of Education Meeting Agenda 05/05/15

²¹ Michael Clára email to Heather Bennett – Re: Agenda Clarification 05/05/2015

When you wanted to use the SRO to brand me a "criminal", you had no problem discussing your motives in public. When the school bureaucracy wanted to use SRO's to target students of color, they had no problem doing it in a public manner.

Whether, in the boardroom or in the classroom, the deployment of the School Resource Officers should be discussed and solved in the public square, on the local level, with input from the community.

You and Superintendent Withers are sorely mistaken if you think that cloaking this issue in a closed door session makes it go away. Invoking the "closed door session" tactic, only serves to suppress the issue on the local level.

Under Utah law, *Board* members are under obligation to not disclose the contents of discussions that occur in the closed door meetings.²² The *District* uses this tactic in order to shut down the conversation on issues they deem “embarrassing” to their reputation.

It was my intent to work closely with fellow *Board* members and administrators to examine the root cause of the racial disparity in the discipline of our students and then take appropriate corrective actions necessary to address the root causes. I am of the belief that ensuring that discipline is appropriately and equitably applied to all students is within the purview of the *Board* and local community. Sadly, the board president thinks otherwise and wants to end all conversation on this matter.

I advised the President Bennett that I will not attend the Closed Door meeting and that I will seek a remedy to this issue outside of the confines of the local *Board*. It is for that reason that I now compelled to turn to OCR for relief, as I have exhausted all local means.

II BACKGROUND

In **1969** the *District* entered into an agreement with the SLCPD. The City provided the District with four officers, one assigned to each of the high schools (i.e. South High, East High, West High and Highland High).²³ These *SLCPD* Officers are designated as *SROs*.

In **1993** the *District* renewed their agreement with the *SLCPD* for five *SROs*. One officer was assigned fulltime to Glendale Middle and another fulltime officer was assigned to Northwest Middle. The three remaining, each went to a High School in the *District*.²⁴

In **2000** the *District* renewed their agreement with the *SLCPD* for six *SROs*. One officer was assigned fulltime to Glendale Middle School and another fulltime officer was assigned to Northwest Middle School. The four remaining, each went to a High School in the District.²⁵ This contract is in place to the present day.

²² § 52-4-205 Utah Code

²³ Janet Roberts email to Michael Clára - 04/08/15

²⁴ Contract 02-3-94-1669 08/03/1993

²⁵ Contract 02-3-94-1559 01/21/2000

On **May 2, 2006**, the Board revised its policy on law enforcement interactions on school campus. *“Language was added to clarify the function of the School Resource Officers (SROs) in local schools”*.²⁶ The added language stated the following:

The district welcomes school resource officers (SROs) in its schools. SROs have many functions including school safety, student discipline, and law enforcement.²⁷

On **January 5, 2010**, the Board reviewed Policy S-7, leaving in the language that the SRO will met out *“student discipline”*.²⁸

On **December 16, 2010**, a Task Force of police officers in conjunction with the SRO descended on West High School and detained and interrogated students and then escorted them to a room designated for police interviews. All of the students that were detained on that day were Hispanic, Pacific Islanders or African American.

During the course of police interrogations the students were accused of being in a gang. The police also informed one of the parents that they were there to *“take care of the Mexican problem”*.

The actions of the SRO and other police officers on that day, is now the subject of a federal class action lawsuit by the Americans Civil Liberties Union (ACLU) of Utah.²⁹

On **September 20, 2012**, the Utah Board of Juvenile Justice advisory Committee on Disproportionate Minority Contact held its regularly scheduled meeting³⁰ and issued a

DISPROPORTIONATE MINORITY CONTACT (DMC) ARREST/REFERRAL ASSESSMENT –FINAL REPORT –September 2012.

Table 6 –Offenses by Salt Lake City School District’s Middle and High School³¹

The 2011 data showed that: *“minority youth were overrepresented in all juvenile arrests in general”*.

The researches concluded: *“In general, there are higher rates of offending in the schools with the largest Minority and low income student population.”*

The researchers go on to speculate: *“One possible explanation for the disproportionate arrest rate of Minority youth is that the White kids are committing crimes in private places where they are less likely to be observed/caught and that Minority kids are committing offenses out in the public that are more likely to be detected.”*

This report will be discussed in greater detail, later in this complaint.

On **November 6, 2012**, the Board reviewed Policy S-7, leaving in the language that the SRO will met out *“student discipline”*.³²

²⁶ Memorandum to the Board of Education 04/25/06

²⁷ Board of Education Meeting Agenda 05/02/06

²⁸ Board of Education Meeting Agenda 01/05/10

²⁹ United States District Court Case No. 2:12-cv-01134-PMW

³⁰ Utah Board of Juvenile Justice Advisory Committee on Disproportionate Minority Contact Agenda 09/20/12

³¹ DISPROPORTIONATE MINORITY CONTACT (DMC) ARREST/REFERRAL ASSESSMENT –FINAL REPORT –September 2012 -pg. 23-24

³² Board of Education Meeting Agenda 11/06/12

On **November 20, 2012**, *District* administration revised S-7 Administrative Procedures³³ and exempted the *SRO* from restrictions placed on law enforcement officers. The procedure further gives the *SRO* authority and responsibility for student discipline:

Excluding *SRO* actions for the purposes of maintaining ordinary school safety and student discipline or for other educational purposes... On **December 2, 2014**, the Board reviewed Policy S-7, removing the language that the *SRO* will mete out “*student discipline*”.³⁴ The *District* administration still gave the *SRO* authority over “*student discipline*” in the administrative procedures.

III JURISDICTION

Because the *District* receives federal funding, the U.S. Department of Education’s Office for Civil Rights has jurisdiction over complainants’ allegations that the *District’s* policies or practices violate Title VI through their discriminatory effect on students of color. Specifically, *OCR* has jurisdiction over a claim involving the discriminatory impact of the *District’s* historical and ongoing criminalization of student misbehavior through its use of *SROs* as disciplinarians.

It has long been understood that, for Title VI purposes, a funded entity cannot avoid its obligations under Title VI by hiring a contractor or agent. 34 C.F.R. § 100.3(b)(2); U.S. Dep’t of Justice, Title VI Legal Manual 25-26 (2001). That is the case where, as here, law enforcement officers function as the agents of a school district.

As set forth in the contract and policies previously referenced. With respect to what qualifies as a “*program or activity*” where a school district is involved, Title VI extends to “*all the operations of... a local educational agency.*” 42 U.S.C. § 2000d-4a(2)(B); 34 C.F.R. § 100.13(g)(2)(ii) (emphasis added). This includes security and discipline operations, whether the school district opts to handle these matters internally or through contracts with an outside entity, as does the *District*.

The activities of school-based police officers, whose presence on campus is the result of a district-initiated contract, and whose school-based work is partially funded with district funds, fall well within the ambit of “*operations of a local education agency*”.

IV TITLE VI VIOLATION: DISPARATE IMPACT STANDARD³⁵

I submit that the practice of deploying full time *SROs* to the two middle schools with the majority-ethnic minority student population, violates Title VI of the Civil Rights Act of 1964 as both “*different treatment*” and “*disparate impact*”.

Title VI of the Civil Rights Act of 1964, provides that recipients of federal financial assistance may not discriminate on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a recipient of federal funds from “*utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.*” 34 C.F.R. § 100.3(b)(2).

³³ S-7 Administrative Procedures rev 11/20/12 & revisions

³⁴ Board of Education Meeting Agenda 12/02/14 with policy revisions

³⁵ See *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971)

Thus, I submit, that OCR may bring enforcement actions against recipients of federal funds that implement disciplinary policies or practices that result in a disparate impact, regardless of whether the policy or practice in question was motivated by discriminatory intent.

Consider the following data ³⁶ (previously cited) which was gathered by researchers from Utah Commission on Criminal and Juvenile Justice. The report states:

“SLCPD data also allowed for a brief analysis of juvenile offending by the nine junior high and high schools in the Salt Lake City School District.”

Table 6 Offenses by Salt Lake City School District’s Middle and High Schools

	High Schools				Middle Schools				
	East	Highland	Horizonte	West	Bryant	Clayton ¹	Glendale	Hillside	Northwest
Council District (Location)	4	7	5	3	4	6	2	6	1
SLC School District Data									
Fall 2011 Minority Enrollment (%)	53	34	65	53	62	29	83	32	86
Fall 2011 Low Income Students (%)	56	41	84	58	76	33	94	38	89
2011-2012 Enrollment	2109	1546	577	2559	540	610	786	519	787
SLCPD Data									
2011 SLCPD Offenses	126	174	49	221	38	<10	82	40	82
Offense per Pupil Ratio (enrollment/offenses)	1/17	1/9	1/12	1/12	1/14	1/153	1/10	1/13	1/10
2011 SLCPD Offenders	88	109	40	169	25	<10	60	28	55
Offender to Pupil Ratio (enrollment/offenders)	1/24	1/14	1/14	1/15	1/22	1/203	1/13	1/19	1/14
Offenses by Minorities (%)	40	29	71	76	47	0	84	30	35
Arrest Episodes by Minorities (%)	38	29	69	75	43	0	85	31	33
Offenders by Minorities (%)	35	26	67	75	44	0	82	29	33
Female Offenders (%)	27	17	30	27	20	33	17	64	22
Average Age of Offenders (Mn)	15.9	16.1	16.0	15.6	13.5	13.7	13.4	13.7	13.6
Same Area as Home ZIP (%)	86	31	49	79	50	0	93	10	92
¹ Clayton Middle School had under 10 offenses reported; therefore, conclusions about trends are limited									

Based on the data above, the authors of this report made the following observations:

“Gang activity is not driving law enforcement contact with Minority youth in Salt Lake City.”

“In 2010, only 10% of all juvenile offenses committed in Salt Lake City were gang offenses and/or were committed by gang-affiliated youth.”

If gang activity is not driving SLCPD contact with Minority youth, what are some other factors that could be explored?

- Could be higher detection, patrolling, or calls for service in Minority communities of SLC. For example, Districts 1 and 2 have higher Minority populations (66% and 68% of total District populations, respectively).

- o District 1 also has a disproportionately higher percent of juvenile offenses (19% of juvenile offenses) than the size of its population (approximately 12% of SLC’s

³⁶ DISPROPORTIONATE MINORITY CONTACT (DMC) ARREST/REFERRAL ASSESSMENT –FINAL REPORT –September 2012

population); however, it should be noted that Districts 1 (33%) and 2 (34%) have the highest percent of under age 18 residents.

o District 2 also has a disproportionately higher percent of Minority offenses (78% of offenses in District 2 are committed by Minorities vs. 68% of District 2 population is Minority).

o Minorities also are more likely to offend in their own community. 62% of Minority youth offenses were committed in same area as the youth's residence vs. 51% for White youth. 80% of youth offenses committed in District 1 are by youth who live in that area, while 64% of juvenile offenses in District 2 are committed by youth who live in that area.

□ Could be higher detection for type, time, and place of Minority offenses

o Minority youth had a higher percentage of the property offenses (36% of Minority offenses were property vs. 32% for White) and White kids had a higher proportion of drug offenses (18% vs. 12% for Minorities). One possible explanation for the disproportionate arrest rate of Minority youth is that the White kids are committing crimes (e.g., drugs) in private places where they are less likely to be observed/caught and that Minority kids are committing offenses (e.g., shoplifting and trespassing) "out in the public" that are more likely to be detected.

o Minority youth are more likely to offend late at night/overnight when detection could be greater (18% of Minority offenses happen between 11 pm and 7 am vs. 13% for White youth).

□ In general, there are higher rates of offending in the schools with the largest Minority and low income student populations.

o However, at most of the schools, the percent of Minority offenses is either in line with or less than the percent of Minority students. One exception is West High where

What other factors are likely *not* related to DMC?

□ Minority youth are not committing more severe offenses than White youth (87% of both Minority and White offenses were Misdemeanors). Very few offenses committed by youth, including gang-affiliated youth, were felonies (5% non-gang offenses, 13% gang offenses/offenders).

Based on these findings, some potential areas for further exploration and intervention include:

- Culturally competent interventions in the high Minority areas of SLC (Districts 1 and 2) and in the high Minority/low income schools to reduce juvenile offending in general
- Interventions and public service campaigns to reduce the number of unsupervised youth in the late night/overnight hours

"In general, there are higher rates of offending in the schools with the largest Minority and low income student populations."³⁷

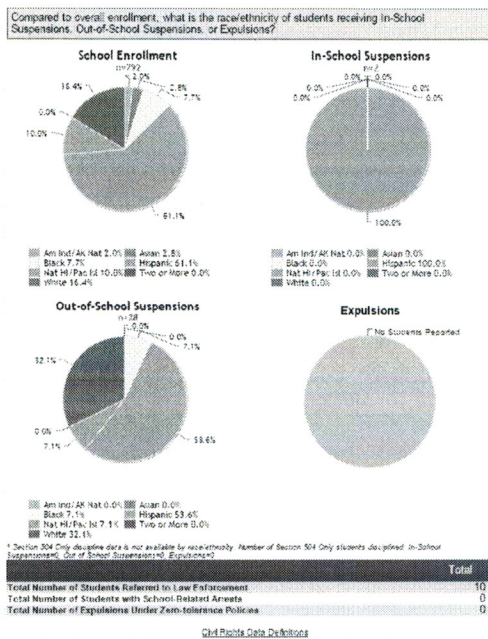
At the time, the researches failed to recognize that Northwest Middle School (*is in City Council District 1*) has a fulltime SRO stationed at the school. Glendale Middles School (*is in City Council District 2*) has a fulltime SRO stationed at its school. The other Middle Schools do not have SROs at their school.

³⁷ *Ibid*

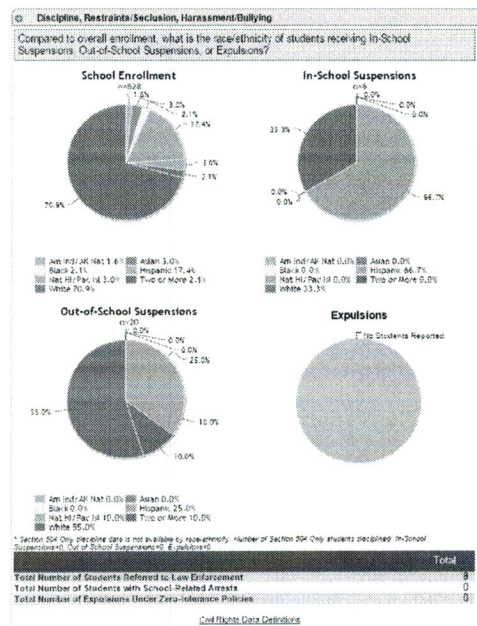
One could easily conclude that this factor alone would account for disproportionate minority contact at Northwest Middle School and Glendale Middle School as well as in their respective City Council districts.

I should also note that this data is from 2011. The same year that the District submitted data to OCR under its Civil Rights Data Collection project. In comparing the data, it is clear to me that Glendale Middle school under reported what was actually occurring in their school. It also appears that for a couple of the categories they simply did not submit the data.

Even with their attempt to under report the amount of suspensions in the school, the *District* clearly has a problem with disproportionately suspending students of color, as evidenced by the data that was submitted to OCR:



Glendale Middle School 2011



Clayton Middle School 2011

In 2011, Glendale Middle School reported to OCR that they only referred 10 students to law enforcement. According to the *SLCPD* data³⁸ they dealt with 60 offenders that year.

Clayton Middle school is reporting 8 students were referred to law enforcement and the *SLCPD* data shows that they dealt with less than 10 that year.

I submit that the *District's* practice of utilizing a full-time *SRO* at Middle Schools with a majority ethnic minority student population is a blatant example of **Disparate Treatment** creating a situation of **Disparate Impact**.

³⁸ See footnote 35

The *District's* actions in my opinion meet the three-pronged test used to analyze **Disparate Impact** claims which violates Title VI. Consider the following:

First, a prima facie case of a Title VI **disparate impact** violation is established if a recipient of federal funds institutes a policy or practice that disproportionately affects students of a particular racial or ethnic group.

As already noted the *District's* practice of using criminal sanctions to discipline students for misbehavior clearly has a disproportionately negative effect on students of color. The current deployment of *SROs* disproportionately affects students of color; their chances of receiving a citation or arrest from the *SRO* are much greater than their peers who attend a majority Caucasian Middle School.

As detailed below, the *SROs* have been used improperly to sanction typical student misbehavior by issuing citations /arrest, particularly to students of color. The *SROs* essentially function as the disciplinary arm for the *District*, addressing misconduct that should be handled by parents, teachers and school leaders—not the criminal justice system.

The practice of criminalizing misbehavior also exposes students to a host of other consequences. In addition to having a racially adverse impact, the *District's* *SRO* enforcement practice is inconsistent with sound pedagogical practices. Research demonstrates that imposing punitive sanctions, especially those that remove students from the classroom, do more to undermine academic achievement than to support it.³⁹ The misuse of *SROs* for school misbehavior may also impede educational progress for the school as a whole, including those students who are not processed by the *SRO*.

The practice of imposing criminal sanctions for misbehavior and relying on exclusionary discipline methods do not make schools safer, more orderly or more academically successful, especially when the behavior being criminalized does not pose a danger to other students in the first place.

In fact, relying on police to address student misbehavior can foster a highly restrictive, distrustful environment that makes it more difficult to maintain school order and safety. Moreover, as set forth below, there are equally effective, less discriminatory alternatives available to respond to disruptive classroom behavior. Moreover, the *District* Administration has failed to take corrective action once they were placed on noticed that procedures are detrimental to students of color.

Prior to my service on the Board of Education, I served as the PTA president and School Community Council Chair in 2000-2001 School year at Glendale Middle School.

During my tenure as PTA president, I attempted to address the disproportionate amount of ethnic minority student, school suspensions.⁴⁰ Here we are, almost two decades later, talking about the same problem.

³⁹ M. Karega Rausch & Russell J. Skiba, *The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement* 6 (2006)

⁴⁰ *City Weekly: Suspensions of Disbelief* 11/22/2001

Second, once a prima facie case is established, the burden shifts to the District to demonstrate that the policy or practice is “*required by educational necessity*.” To meet this burden, the recipient of federal funds must show that the challenged practice bears a manifest relationship to an objective that is “*legitimate, important, and integral to its educational mission*”.

Therefore, justifications that do not further or run counter to the *District’s* educational mission, or that are superficial or nominal, are entirely insufficient to satisfy this standard. Because the *District* cannot show that criminalizing the misbehavior of students of color has a manifest relationship to a legitimate educational goal, it cannot justify its practice through educational necessity. The *District* cannot demonstrate that its practice of using criminal sanctions to discipline ethnic minority students constitutes an educational necessity.

Third, even when a recipient of federal funds can justify a policy or practice through educational necessity, the recipient may still be held accountable under Title VI if there are alternative practices available that would be equally effective in serving the recipient’s educational mission while having less of a racially disparate impact. Even if the *District* could show an educational necessity for its current discipline practices, there are clearly, less discriminatory alternatives that are at least equally effective, if not more effective, in achieving its educational purpose. The *District’s* current practice disproportionately harms students of color. The *District’s* students of color are significantly overrepresented as recipients of suspensions and police action.

Another indicator of **disparate impact** due to the application of the discipline policy, can be seen in the student population of Horizonte High School. This alternative school, currently has an 80% ethnic minority student population. Students are referred to Horizonte due to behavior issues. The district’s ethnic minority population currently stands at 57%.

VI ADVERSE IMPACT ON STUDENTS OF COLOR

Data already cited in this complaint overwhelmingly supports a finding that the *District’s* disciplinary policies and practices has a **disparate impact** on students of color.

In effect, the *District* has relinquished its authority to handle school discipline matters, choosing instead to rely on the *SROs* as de facto disciplinarians, more so, for students of color.

Clearly, the *Board* and *District* administrators have failed to provide clear guidance for school officials and *SROs* on campus, leading to arbitrary and subjective decisions about school arrests that vary at each school campus. Absent clear guidelines, there may be confusion or disagreement as to whether a food fight in the cafeteria amounts to criminal ‘*disorderly conduct*’, whether talking back to a teacher constitutes a criminal ‘*disturbance of school or public assembly*’, or whether a shoving match should be classified as a ‘*criminal assault*’ or safe school violation. As a result, the *District’s* current disciplinary policies and practices have a discriminatory effect on students of color.

It is well documented that schools with fulltime *SROs* are more likely to have arrests for minor offenses. Current research has demonstrated that the decision to arrest a child often has very long term adverse effects for the trajectory of that child’s life.⁴¹

⁴¹ The New Jim Crow by Michelle Alexander

Moreover, the *District's* current policies and practices have significantly, disproportionately impacted students of color. There is no question that youth involved in the juvenile justice system have an increased chance of incarceration as adults.⁴²

Ethnic minority students suffer ongoing harm as a result of their disproportionate and early exposure to the juvenile justice system. These students fall behind in their studies as a result of missed instructional time and suffer social alienation and stigmatization from their peers.⁴³

A shift away from a punitive law enforcement model and toward the implementation of graduated responses to student misbehavior would reduce the number of arrests made in schools and prevent the resulting harm to a student's and their futures.⁴⁴

VII CONCLUSION

The *District's* current disciplinary policies, practice and procedures results in the ongoing, improper and harmful criminalization of ethnic minority students within the *District*. As set forth in this complaint, this practice disproportionately affects students of color, is not required by educational necessity and is in fact antithetical to the *District's* goal of providing a safe learning environment in which all students can receive an equitable education. For the foregoing reasons, there is a pressing need for *OCR* to review the *District's* disciplinary practices as they relate to suspensions and law enforcement referrals and to remedy the *District's* violation of Title VI and its implementing regulations.

Shalom,

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⁴² Education Under Arrest: The Case Against Police in Schools (Justice Policy Institute, Washington, D.C.),

⁴³ *Ibid*

⁴⁴ Bad Boys: Public School in the making of black masculinity by Ann Ferguson