



March 25, 2019

Via Email and U.S. Mail

Dr. Monica Goldson
Interim CEO, Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772
Monica.Goldson@pgcps.org

Dr. Alvin Thornton
Chair, Prince George's County Board of Education
14201 School Lane
Upper Marlboro, MD 20772
Alvin.Thornton@pgcps.org

Re: Concerns Regarding PGCPS' School Discipline Policies and Practices

Dear Dr. Goldson and Dr. Thornton:

We write on behalf of several statewide and national organizations dedicated to protecting young people's right to education. As you may be aware, some of our organizations have represented Prince George's County Public Schools ("PGCPS") students in school discipline proceedings, including appeals to the local and state board, and related special education matters. Our individual case representation, community outreach, and review of relevant policy documents and discipline data have generated significant concerns about PGCPS' approach to school discipline, which is characterized by heavy use of harmful and ineffective exclusionary disciplinary practices, often in violation of governing law.

Current school discipline data paints a stark picture. PGCPS consistently removes more students from school through suspension and expulsion than any other district in Maryland. For the 2017-2018 school year, 8,024 of the 38,540 Maryland students experiencing out-of-school suspension and expulsion were from Prince George's County.¹ While PGCPS is one of our state's largest school districts, Montgomery County Public Schools – the largest school district in Maryland – only removed 2,507 students by suspension and expulsion, less than a third of the number of students removed in your district.²

¹ "Suspensions, Expulsions, and Health Related Exclusions 2017-2018," Table 3A, p. 6, <http://marylandpublicschools.org/about/Documents/DCAA/SSP/20172018Student/2018SuspExpulHRExc.pdf>, last accessed Mar. 18, 2019.

² *Id.*

PGCPS not only removes the highest number of students from school every year, its disciplinary practices also disproportionately impact students of color and students with disabilities. Although Black students do not misbehave more often than white students, Black students are more often disciplined and bear the brunt of harsh, exclusionary punishment.³ Maryland enrollment and discipline data for the 2017-2018 school year shows that while Black students accounted for only 58% of student enrollment in the county, 78% of students experiencing out-of-school removal were Black students.⁴ Similarly, students with Individualized Education Plans (“IEPs”) accounted for only 11% of enrollment, but 24% of students removed. In fact, the Maryland State Department of Education has repeatedly flagged PGCPS for the significant disproportionate use of discipline against students of color under the Individuals with Disabilities Education Act (“IDEA”) regulations, requiring the diversion of federal funding to Coordinated Early Intervention Services to correct and prevent such disparate treatment.

National research has made clear that school removal has a severely negative impact on students’ short- and long-term success, as the Maryland State Board of Education acknowledged when it revised school discipline regulations in 2014.⁵ Moreover, such removals do not improve student behavior or overall school climate or safety; frequently, they have the opposite effect.⁶ Our representation and advocacy efforts have revealed PGCPS’ high and highly disproportionate rates of suspension and expulsion arise from the school system’s failure to comply with state and federal laws governing school discipline and the provision of services and accommodations to students with disabilities, especially students of color with disabilities.

Below is a non-exhaustive list of the persistent, systemic violations we have observed.

I. PGCPS Routinely Fails to Comply with Maryland State Discipline Law and Regulations.

In 2014, the Maryland State Board of Education passed sweeping changes to student discipline regulations governing all local school systems and limiting the period of exclusion based on Maryland statutory requirements. COMAR 13A.08.01.11. However, five years later, these changes are still not reflected in PGCPS’ Policies, Administrative Procedures or practices. Specifically, we have seen the following issues:

1. PGCPS staff continue to suspend students in prekindergarten through second grade in violation of the Md. Code Ann. Educ. 7-305.1(b). The 2017-2018 school discipline data

³ See Russell Skiba, Ph. D. & Natasha T. Williams, Are Black Kids Worse? Myths and Facts about Racial Differences in Behavior—A Summary of the Literature, Equity Project at Ind. Univ. (Mar. 2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf; pdf.

⁴ Unless otherwise indicated, statistical data is based on information provided by the Maryland State Department of Education in response to a Maryland Public Information Act request.

⁵ See Am. Psychol. Ass’n., Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations 48 (2006), <http://www.apa.org/releases/ZTTFReportBODRevisions5-15.pdf>.

⁶ See Catherine Winter, Spare the Rod: Amid Evidence Zero Tolerance Doesn’t Work, Schools Reverse Themselves, APM Rep. (Aug. 25, 2016), <https://www.apmreports.org/story/2016/08/25/reforming-school-discipline>.

show that PGCPs removed 355 of the 1,252 prekindergarten through second grade suspended and/or expelled in the state, or 28% of the state's total removals.⁷ Our clients and community contacts report instances in which PGCPs has excluded a student without a consultation with a mental health professional to determine the student presents an imminent threat of serious harm or an explanation of alternative supports and interventions utilized prior to the suspension.

2. PGCPs Policy and Administrative Procedures do not align with Sections 7-305, 7-305.1 and 7-310 of the Education Article of the Maryland Code or COMAR 13A.08.01.11. This includes failing to state the substantive standards governing extended suspensions and expulsions, as well as failing to define in-school, short-term, long-term and extended suspension or expulsion in line with regulatory definitions.
3. PGCPs routinely suspends students for attendance-related offenses. Some school disciplinary cases have revealed that several schools issue three-day suspensions to all students found cutting class in "hall sweeps" by school staff, police, and security, in direct violation of Md. Code Ann. Educ. 7-305(b).
4. PGCPs fails to consistently provide students in disciplinary proceedings with the procedural safeguards and due process protections required under state law. This includes failing to hold superintendent designee conferences and making determinations on proposed extended suspensions and expulsions within the 10-day timeline established by COMAR 13A.08.01.11(C)(4)(d).⁸ Students who face suspensions of under 10 days are often denied a meaningful opportunity to be heard prior to or even during the period of removal as required by COMAR and *Goss v. Lopez*, 419 U.S. 565 (1975), and are instead told to report to readmission conferences when the suspension is over.
5. PGCPs routinely fails to limit extended suspensions and expulsions to the shortest period practicable, as required by COMAR 13A.08.01.11(B). For example, a review of discipline data from school year 2016-2017 shows that the average length of expulsion in PGCPs is 97 school days when an expulsion is defined as only 45 days or more.
6. PGCPs has failed to consistently provide students with comparable educational services during long-term and extended suspensions or expulsion as required by COMAR 13A.08.01.11(F). Students have been denied these services through failures to admit them to alternative educational settings, failures to provide transportation to alternative schools, and delays in enrollment of students in alternative placements.⁹

⁷ "Suspensions, Expulsions, and Health Related Exclusions 2017-2018," at Table 4A, p. 9.

⁸ See, e.g., *M.S. v. Prince George's County Board of Education.*, MSBE Op. 18-09 (2018) (superintendent's designee conference held 54 days after student's suspension); *A.M. v. Prince George's County Board of Education*, MSBE Op. 17-05 (2017) (student was out of school for 26 school days in the absence of any designee conference or finding that a removal of more than 10 school days was necessary).

⁹ See e.g. *M.S.*, *supra* (bureaucratic failures prevented suspended student from enrolling in alternative school at all); *T.G. v. Prince George's County Bd. of Educ.*, MSBE Op. 18-10 (2018) (suspended student was denied transportation to alternative school and was unable to attend for at least five months); *J.M. v.*

7. Administrators rely on school police officers and security assistance employed by PGPCS and various law enforcement agencies to enforce discipline, increasing students' risk of arrest and contact with the juvenile justice system. Currently, no Board Policies, Administrative Procedures, and publicly available general orders exist that define the legal limits of school police's role.

II. PGPCS Fails to Meet its Obligations to Students with Disabilities Under the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act (“ADA”), and Section 504 of the Rehabilitation Act (“Section 504”).

Together the IDEA, ADA, and Section 504 create a legal framework for identifying, evaluating, and accommodating students with disabilities. IDEA and Section 504 also provide additional protections for students with disabilities facing exclusionary school discipline over 10 school days. Failure to comply with these federal laws and protections contribute to an overreliance on exclusionary discipline practices. We have serious concerns about PGPCS' treatment of students with disabilities, which include, but are not limited to:

1. Under the IDEA, PGPCS has an obligation to identify, locate and evaluate students with disabilities in need of special education and related services. 34 CFR 300.111 (a)(1)(i). Similarly, Section 504 requires evaluation of students with disabilities in need of special education and related services. 34 CFR 104.35. Our representation has highlighted PGPCS' repeated failure to identify and evaluate students for IDEA and Section 504 eligibility despite chronic school removals and academic failure.
2. PGPCS frequently fails to provide students with disabilities the special services and/or accommodations necessary to access their legally entitled free and appropriate public education (“FAPE”). The IDEA specifically requires IEP teams to “consider the use of positive behavioral interventions and supports, and other strategies” to address challenging behavior. 34 CFR 300.324(2)(a)(i). We are concerned that IEP teams are either unwilling or unable to meaningfully develop and implement appropriate educational planning for students with disabilities engaging in challenging behaviors. The failure to develop appropriate behavioral accommodations and supports often results in IEP teams removing a child to a more restrictive setting.
3. Similarly, PGPCS' failure to provide appropriate accommodations and services to students with disabilities, and overreliance on out-of-school discipline, represents exclusionary conduct resulting in a denial of access to educational programming, in direction violation of Section 504. 34 CFR 104.4(a).
4. For students who have or who are suspected to have disabilities, PGPCS routinely fails to hold manifestation determination reviews within 10 days of removal as required by law to determine if the alleged behavior infraction resulted from the disability or the school

Prince George's County Bd. of Educ., MSBE Op. 17-22 (2017) (student was not enrolled in an alternative school until nearly a month after his suspension, and received no education or assignments during the interim period).

system's failure to implement the student's IEP or 504 plan. Furthermore, IEP and Section 504 teams routinely use the wrong standards in making manifestation determinations, resulting in the unnecessary and illegal removal of students with disabilities.

III. PGGPS' Policies and Practices Disproportionately Impact Students of Color, Resulting in Discrimination under Title VI of the Civil Rights Act of 1964.

PGGPS's failure to implement clear policies and to train staff on standards for suspension and expulsion have resulted in punitive and unwarranted disciplinary action for all students, but especially for Black students. 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. By disciplining students in a manner that disproportionately impacts students of color, PGGPS may be in violation of Title VI.

As described at the beginning of this letter, students of color bear the brunt of exclusionary discipline within PGGPS. Black students are grossly overrepresented in the share of students suspended and expelled—beyond their percentage of the student population. This racial disparity in discipline exists for both short-term and long-term suspensions. Compared to all other students in PGGPS, Black students were 2.8 times more likely to receive short-term suspensions, 3.23 times more likely to receive long-term suspensions, 2.61 times more likely to receive extended suspensions, and 2.62 times more likely to receive expulsions in the 2016-2017 school year. In other words, the likelihood that a Black student will receive a suspension or expulsion is between 2 to 3 times greater than the likelihood that other students will receive a suspension or expulsion. These numbers exceed standards for statistical significance. Also, during the 2015-2016 school year, Black students were 5.60 times more likely to receive long-term suspensions than white students, 9.87 times more likely to receive extended suspensions than white students, and 1.8 times more likely to receive an expulsion than white students.

Black students are also particularly at risk of suspension for discretionary and subjective offenses, such as “disrespect” and “disruption.” In the 2016-2017 school year, for example, 847 Black students in PGGPS were subjected to short-term suspensions for disrespect and 131 Black students were subjected to long-term suspensions for disrespect. A total of 3,760 Black students were given short-term suspensions for disruption, and 874 were given long-term suspensions for disruption. National data shows that these disparities in administration of discipline for subjective offenses result from – and perpetuate – false stereotypes that Black students are inherently aggressive, threatening, and dangerous.¹⁰ The data on subjective offenses in PGGPS suggests that the district is not meeting its obligations under Title VI to treat students equally and avoid policies that have a disparate impact based on race.

¹⁰ See LDF, *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline* at 4 (2017), http://www.naacpldf.org/files/aboutus/Bias_Reportv2017_30_11_FINAL.pdf; LDF, *Our Girls, Our Future: Investing in Opportunity and Reducing Reliance on the Criminal Justice System in Baltimore* at 5 (2018), https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf.

Solutions and Remedies

Despite these problems, we know that it is possible for the district to move forward in a positive and meaningful direction. We read Dr. Goldson's editorial in the *Washington Post* this past January, and we share the same sense of urgency in addressing these serious, systemic issues. We understand that PGCPs is rethinking its approach to school discipline, and we want to ensure that the district's reform efforts effectively address the issues that continue to arise in our cases and in conversations with the community. PGCPs has an opportunity to leverage momentum spurred by the COMAR disproportionality regulations, as well as revised IDEA-related significant disproportionality regulations, to create change for all students, and reduce disparities that impact students of color and students with disabilities.

We would like to discuss the concerns outlined in this letter, as well as the comprehensive changes needed in order for PGCPs to address these violations of federal and state law and to avoid future liability. To resolve the violations we have described, we believe that PGCPs must take immediate action to:

1. Revise its policies and procedures to align with Maryland and federal law;
2. Provide comprehensive training to a wide range of staff on law governing student discipline, the use of school police and security referrals, the PGCPs student code of conduct, use of force, and the effective implementation of alternatives to exclusionary discipline, and hold staff accountable for adhering to the approaches learned in training;
3. Analyze and make public relevant data on suspension, expulsion, alternative school enrollment, and racial and disability-based disparities in discipline to inform further improvements to policy and practice and to reduce disparities;
4. Significantly expand programming and staffing in the area of restorative approaches, and other alternatives to exclusionary discipline;
5. Strengthen practices and resources for identifying students with suspected disabilities, particularly those who are exhibiting behavioral challenges and repeatedly subjected to exclusionary discipline;
6. Develop and implement effective special education and related supports for students with disabilities to avoid exclusionary discipline;
7. Meaningfully engage key stakeholders, including affected students, parents, and their representatives and advocates, in this process of discipline reform; and
8. Develop an accountability body responsible for tracking reform efforts, with input from the community and access to independent experts.

We look forward to hearing from you on these critical issues. Please contact Amanda White at AmandaW@DisabilityRightsMD.org or (443) 692-2508 by April 8, 2019 to set up a meeting to begin addressing these issues together.

Sincerely,

Luciene Parsley
Amanda R. White
Disability Rights Maryland

Keith Lotridge
Nabanita (Neeta) Pal
Maryland Office of the Public Defender

Cara McClellan
Ajmel Quereshi
*NAACP Legal Defense and Educational
Fund, Inc.*

Michael Harris
Hannah Benton Eidsath
Lauren Lystrup
National Center for Youth Law

Monisha Cherayil
Renuka Rege
Public Justice Center

CC: Eddie Pounds, Board Counsel
Shauna Garlington Battle, General Counsel
Dr. Gwendolyn Mason, Chief of Special Education and Student Services
Edward Burroughs III, Vice Chair, District 8
David Murray, District 1
Joshua M. Thomas, District 2
Pamela Boozer-Strother, District 3
Patricia Eubanks, District 4
Raaheela Ahmed, District 5
Belinda Queen, District 6
K. Alexander Wallace, District 7
Sonya Williams, District 9
Paul Monteiro, Appointed
Sandra D. Shephard, Appointed
Curtis Valentine, M.P.P., Appointed
Amanya Paige, Student Member of the Board