

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DISTRICT

UNITED STATES OF AMERICA)	Civil Action No. H-70-C-10
)	
v.)	
)	
COTTON PLANT SCHOOL DISTRICT #1, ET AL.)	Hon James M. Moody
(WATSON CHAPEL SCHOOL DISTRICT #24))	

CONSENT ORDER

Plaintiff United States of America (“United States”), and defendant Watson Chapel School District #24 (“the District”) (collectively “the Parties”) having engaged in good-faith negotiations, seek the entry of this Consent Order by the Court. After reviewing the terms, the Court concludes that the entry of this Consent Order comports with the objectives of the Fourteenth Amendment to the Constitution of the United States of America and applicable federal law, and will further the orderly resolution of this matter. The Parties agree to comply with the terms of this Consent Order.

I. BACKGROUND AND PROCEDURAL HISTORY

The United States filed this action on July 9, 1970. On November 17, 1970, the Court entered an Order enjoining the District from “discriminating on the basis of race against black students attending the public schools” in the District. On December 5, 2012, the United States notified the District in writing that it had concluded that the District had complied with its desegregation obligations in faculty and staff assignment, the administration of the Gifted and Talented Education Program, and inter-district transfers.

In 2015, the United States focused its monitoring efforts on the last outstanding issue in the case: whether the District was discriminating against Black students in its administration of school discipline. The United States requested and the District provided documents regarding its administration of discipline, including policies and procedures, incident reports, and data. The United States conducted a site visit in November 2015 to interview District and school administrators and staff about District disciplinary practices and the documents the District provided.

The United States concluded based on these monitoring efforts that during the 2014-2015 school year the District suspended and expelled Black students at high rates, significantly higher than for White students, and that District policies, procedures and practices were responsible for both the frequency of discipline and the disparities. The United States learned during the site visit that the Superintendent, who was hired after the 2014-2015 school year, was committed to replacing the District's use of punitive discipline as the primary response to student misbehavior with more positive approaches, as part of an overall focus on improving student achievement.

The District denies that it has engaged in any discrimination in regard to its discipline practices. Because the Parties agreed on the need to reform the District's discipline practices, they agreed to focus on devising and implementing remedial measures rather than engaging in contested litigation. This Consent Order is the result of those efforts, and was the product of voluntary negotiations.

II. DEFINITIONS

“**Alternative Education Program**” refers to an Alternative Learning Environment as provided for in AR Code § 6-48-103.

“**Behavior Management Plan**” or “**BMP**” refers to a plan created by appropriately trained professionals for an individual student comprised of positive behavior interventions, strategies, and supports, which may include modifications to the nature of instruction, curriculum, or school routine. Such plans are typically developed based on the outcome of a Functional Behavior Assessment and reflect feedback from parents or guardians regarding the emotional, mental, and physical health of the student. While such plans are often prepared for students with a documented disability, they can be prepared for any child.

“**Compliance**” refers to the District satisfying the requirements of each paragraph of this Consent Order, including effectively implementing any required policies and procedures, and the United States having a reasonable opportunity to conduct the monitoring activities necessary to assess whether the District has met this standard.

“**Corporal Punishment**” refers to any physical contact with a student by any school personnel for the purposes of administering a disciplinary consequence. This term does not include 1) a physical escort, which is a temporary touching of the hand, wrist, arm, shoulder, or back for the purpose of guiding or directing a student who is behaving in a manner inconsistent with school policies to walk to a safe location; or 2) reasonable contact to intervene in a physical altercation.

“**Detention**” refers to a consequence for a violation of the Code of Conduct that does not remove the student from the classroom during instructional time but requires a student to spend

some amount of time in a particular school location during lunchtime, after school or on the weekend.

“Exclusionary Discipline” refers to any disciplinary consequence that removes a student from classroom instruction in his/her home school, including, but not limited to, In-School Suspension, Out-of-School Suspension, Expulsion, or transfer to an Alternative Education Program. It does not refer to positive interventions, corrective strategies or Detention.

“Expulsion” refers to a consequence for a violation of the Code of Conduct that removes a student from his/her home classroom and school for more than ten days.

“Functional Behavior Assessment” or **“FBA”** refers to a systematic set of strategies that is used to determine the underlying function or purpose of a behavior, so that an effective Behavior Management Plan can be developed. Such a plan identifies pupil-specific, socio-affective, cognitive and/or environmental factors associated with the occurrence (and non-occurrence) of specific behaviors, to understand the function or purpose behind the behavior. An FBA consists of describing the problem behavior, identifying preceding or subsequent events that control the behavior and developing and testing a theory of the behavior. It should be completed by qualified professionals after reviewing student records and other relevant data, conducting interviews with the student and the student’s parents or guardian, and direct observation. FBA’s are most commonly conducted for Students with a Disability, but can be conducted for any child.

“In-School Suspension” refers to a consequence for a violation of the Code of Conduct that removes a student from the regular classroom to a different in-school setting during the course of the regular school day, a setting where the student has the opportunity to complete his/her school work.

“**Instructional Staff**” refers to certified staff (e.g., teachers and counselors) and non-certified staff (e.g., teacher aides) who work directly with students.

“**Law Enforcement Powers**” refers to arrest, citation, search, seizure, handcuffing or the Use of Force.

“**Out-of-School Suspension**” refers to a consequence for a violation of the Code of Conduct that removes a student from his/her classroom and school for ten days or less.

“**Student(s) with a Disability**” refers to a student who would qualify to receive disability-related services under the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act (“ADA”), or Section 504 of the Rehabilitation Act of 1975 (“Section 504”).¹

“**Use of Force**” refers to any physical contact or coercion used to control or restrain a student. The term does not include a physical escort, which is a temporary touching of the hand, wrist, arm, shoulder, or back for the purpose of guiding or directing a student who is behaving in a manner inconsistent with school policies to walk to a safe location.

III. POSITIVE SCHOOL CLIMATE

1. The District shall transition away from using Exclusionary Discipline as the primary response to student misbehavior.
2. The District shall implement an approach to classroom management and student behavior that focuses on positive interventions and supports to:
 - A. Foster a positive school climate conducive to student success; and
 - B. Keep students in the classroom where they can learn and achieve.

¹Nothing in this Consent Order is intended to conflict with the requirements of the IDEA, the ADA or Section 504 and the provisions of this Consent Order shall be read consistent with those requirements.

3. The District shall effectively implement in each school a system of behavior management that:
 - A. Addresses student misbehavior whether it occurs in classrooms or other parts of the school (e.g., hallways and the cafeteria);
 - B. Uses a “ladder” or a similar system of tiered consequences and interventions that only escalates discipline after less-intensive strategies have been tried multiple times and have proven not effective at modifying student misbehavior;
 - C. Emphasizes the repeated and consistent use of positive interventions such as redirection, verbal counseling, conference, and reflective essay;
 - D. Involves parents and guardians in addressing behavior issues in positive and helpful ways; and
 - E. Ensures that interventions to change or modify behavior and the results of those interventions are appropriately documented and analyzed for effectiveness.

4. The District shall assign responsibility and authority to a School Culture and Climate Specialist for the District who is qualified to oversee implementation of the District’s positive school climate efforts and will be responsible for their implementation.

5. If necessary the District shall provide the School Culture and Climate Specialist with any additional training required to fulfill the responsibilities of the position, including training on creating positive school climates and on training teachers to create positive school climates.

6. The School Culture and Climate Specialist shall ensure that each school has the behavior management system described above and takes appropriate steps to implement that system in each school and classroom.

7. The School Culture and Climate Specialist shall, working with the Director of Special Education and other appropriate Instructional Staff, coordinate and implement an annual professional development program that supplements existing training regarding:

- A. Behaviors that are, or could be, related to a disability; and
- B. Responses to such behavior.

IV. CODE OF CONDUCT

8. The District shall undertake revision of its Code of Conduct in conformity with the requirements below and submit those revisions for the review and approval of the United States.

- A. The Parties anticipate that the revised Code of Conduct will become effective for the 2017-18 school year.
- B. The District will provide a draft of the revised Code of Conduct to the United States no later than January 1, 2017.

9. The District's revised Code of Conduct shall set the disciplinary rules for all schools in the District.

10. The revised Code of Conduct shall list all disciplinary infractions or categories of disciplinary infractions and divide them into the following three levels:

- A. Level 1 – offenses that do not threaten safety or significantly disrupt the operation of the classroom or another school activity.

- B. Level 2 – offenses that threaten safety or significantly disrupt the operation of the classroom or another school activity but do not qualify as a Level 3 infraction.
- C. Level 3 – offenses that constitute a substantial threat to physical safety or that are serious crimes (e.g. possession of firearms or other weapons or burglary)

11. The revised Code of Conduct shall prescribe the consequences (or range of consequences) for each offense (or category of offense) including:

- A. Requiring that Level 1 offenses be handled using the system of behavior-management outlined in Section III above;
- B. Prohibiting the use of Exclusionary Discipline in response to a Level 1 offense;
- C. Allowing an In-School Suspension for a Level 2 offense only if the administrator reviewing the incident:
 - i. Reasonably believes that any classroom interventions and consequences, or non-classroom consequences (such as Detention or loss of privileges), would be ineffective because they have already been tried unsuccessfully multiple times with the same student; and
 - ii. Properly documents the basis for that decision.
- D. Allowing an Out-of School Suspension for a Level 2 offense only if:
 - i. The offense poses a direct threat to the safety of others; and

- ii. The administrator reasonably believes any classroom interventions and consequences, non-classroom consequences (such as Detention or loss of privileges) or In-School Suspension would be ineffective because they have already been tried on multiple occasions with that student; and
 - iii. The administrator properly documents that decision.
- E. Allowing an Expulsion or an Out-of-School Suspension of more than 3 days only for a Level 3 offense.
- F. Specifying the consequence (or range of possible consequences) for repeated violations of the same Code of Conduct provision. The sanction for repeated violations of the same provision shall not exceed the maximum consequence allowable for that level of offense unless:
 - i. The administrator reviewing the incident reasonably believes that any consequence available for that level would be ineffective because it has already been tried unsuccessfully to address previous violations by that student of the same provision; and
 - ii. The School Culture and Climate Specialist approves the administrator's decision in writing.
- 12. The revised Code of Conduct shall prohibit the use of Corporal Punishment.
- 13. In determining whether the State requirements for referral to an Alternative Education Program are satisfied, the District may cite "disruptive behavior" as a basis for referral only when the student has engaged in a Level 3 offense.

14. The District's Code of Conduct may include provisions that lessen the consequences for some or all offenses (or repeated violations of the same infraction) based on grade level.

V. DISCIPLINARY PRACTICES

15. The District's administration of discipline shall comply in all respects with the provisions of its Code of Conduct (as revised to satisfy the requirements of this Consent Order).

16. The District shall provide due process before any student receives an Out-of-School Suspension or an Expulsion or is cited for "disruptive behavior" as a basis for the student being referred to the Alternative Education Program. Such due process shall include:

- A. A review by the principal that provides the student with the opportunity to respond to the charges verbally or in writing before the consequence is imposed (unless immediate removal of the student is required to remedy an ongoing significant danger to school safety - in which case the review shall occur as soon after the student's removal as practical); and
- B. The right to formally appeal the determination to the Superintendent.

17. All schools shall have In-School Suspension and either lunchtime or after-school Detention. Schools may, but are not required to have weekend Detention.

18. Within one year of the entry of this Consent Order the District shall conduct a comprehensive needs assessment of the District's support services for Students with a Disability and identify action steps the District should undertake to:

- A. Supplement existing training for Instructional Staff to recognize and respond appropriately to behaviors that are or may be related to a disability; and
- B. Modify policies, practices, or procedures and take all reasonable measures to provide needed supports and services to obviate the need to resort to Exclusionary Discipline or involve a law enforcement officer in addressing conduct by Students with a Disability.

19. The District shall share with the United States the needs assessment conducted under the preceding paragraph and identify the actions required by that paragraph it has taken as a result of that assessment.

20. When any student engages in a pattern of misbehavior that persists despite repeated interventions and consequences, the District shall conduct an FBA. The District may, however, where appropriate and likely to successfully resolve particular discipline issues, develop a BMP instead of conducting a FBA

21. When a student who has been identified as a Student with a Disability is subject to a disciplinary referral for a violation of the Code of Conduct, the District shall:

- A. Ensure that the appropriate professional staff considers whether the behavior should lead to a FBA; and
- B. Consider in all cases whether the violation was caused by the student's disability or a failure to take prescribed medication and therefore warrants modification of the consequences for the violation.

VI. LAW ENFORCEMENT

22. The District shall only involve School Resource Officers (SROs) or other law enforcement in response to offenses that constitute an imminent and substantial threat to physical safety or that are serious crimes.

23. The District should ensure that all SROs receive appropriate training on their roles and responsibilities including working with youth, practices to improve school climate and the consequences of student involvement in the criminal and juvenile justice systems.

24. The District shall enter into a memorandum of agreement with any law enforcement agency that supplies SROs to the District that:

- A. Makes clear that SROs are not to become involved in enforcing routine school discipline rules;
- B. Limits the use of law enforcement powers to offenses that constitute a substantial threat to physical safety or that are serious crimes; and
- C. Requires SROs to provide a written report to the District in a timely manner describing in detail any circumstance in which they became involved in a school-related incident or used their law enforcement powers on school property during school hours or during a school-related activity.

VII. DATA REVIEW AND ANALYSIS

25. Starting no later than the second semester of the 2016-17 school year, at least once a semester the Positive School Climate Coordinator shall review a sample of disciplinary reports, and every incident where a student was subject to Exclusionary Discipline or where a law enforcement officer was involved, to:

- A. Correct any departures from District policies or procedures;
- B. Identify:
 - i. Any classroom management issues in the classes where discipline is being used most frequently or disproportionately administered;
 - ii. Any school-level concerns, including locations or times of day when discipline is most often administered, and with the way discipline is being implemented; and
- C. Address:
 - i. Any needs for additional classroom supports for Instructional Staff (including assisting teachers in designing and implementing positive interventions) or students; and
 - ii. Any needs for training or professional development for Instructional Staff on positive interventions, classroom management, the District's Code of Conduct or other discipline policies.

26. Starting no later than the second semester of the 2016-17 school year, at least once a semester all principals, working with the School Culture and Climate Specialist, shall review the discipline data from their school (disaggregated by type of infraction, teacher, race of student and the combination of those variables) to:

- A. Identify, and examine the cause of, any disparities or outliers in the data; and
- B. If such disparities or outliers exist, take appropriate remedial measures.

27. Starting no later than the second semester of the 2016-17 school year, at least once a semester the Superintendent, working with the School Culture and Climate Specialist, shall review the discipline data from each District school (disaggregated by type of infraction, teacher, race of student and the combination of those variables) to:

- A. Identify, and examine the cause of, any disparities or outliers in the data;
and
- B. If such disparities or outliers exist, take appropriate remedial measures.

VIII. STUDENT, PARENT, GUARDIAN AND COMMUNITY ENGAGEMENT

28. The District shall host student assemblies and classroom meetings to communicate positive core values and behavior expectations, to explain the disciplinary rules in an age-appropriate manner, and to give students an opportunity to ask any questions or raise any concerns about the disciplinary process.

29. At least once during each school year, the District shall hold informational sessions for parents, guardians and other interested community stakeholders at a time and in a place that is convenient for attendees regarding the District's positive core values and behavior expectations, to explain the disciplinary rules (including due process rights and complaint procedures), and to provide an opportunity for parents to raise any questions or concerns about the disciplinary process.

IX. TRAINING

30. Before the revised Code of Conduct provided for in Section IV above goes into effect, the District shall provide training to all administrators and Instructional Staff on the Code of Conduct that:

- A. Emphasizes positive interventions and supports and keeping students in the classroom; and
- B. Highlights the revisions required by this Consent Order and the reasons for those revisions.

31. After the revised Code of Conduct provided for in Section IV above goes into effect, the District shall provide training, at least annually, to all new administrators and Instructional Staff on the Code of Conduct that:

- A. Emphasizes positive interventions and supports and keeping students in the classroom; and
- B. Highlights the revisions required by this Consent Decree and the reasons for those revisions.

32. After the revised Code of Conduct provided for in Section IV above goes into effect, the District shall provide training, at least annually, to all returning administrators and Instructional Staff on the Code of Conduct that focuses on any concerns with the implementation of the Code of Conduct identified by the School Culture and Climate Specialist or the United States.

33. Prior to the second semester of the 2016-17 school year, the District shall provide all principals with training sufficient to carry out their responsibilities under Section VII above. All principals hired subsequent to this initial training shall receive such training before assuming

their job responsibilities. The District will provide annual training to principals to address any concerns with the way principals are carrying out their responsibilities under Section IV of this Consent Order identified by the School Culture and Climate Specialist or the United States.

X. MONITORING AND ENFORCEMENT

34. On or before January 31 of each year this Consent Order is in effect, the District shall provide a status report to the United States.

35. Each District status report shall provide, for each paragraph in Sections III-IX above, a narrative describing the District's efforts to comply with that paragraph since the last status report (or since the Consent Order was entered in the case of the first status report) and any documents that demonstrate the District's efforts to comply with that paragraph.

36. Each District status report shall include copies of any written complaints,² whether made by a student, a parent or guardian, or any other person, regarding the administration of discipline in the District, and any documents related to the investigation and resolution of that complaint.

37. The first District status report shall provide the total number and percentage of students, disaggregated by race/ethnicity, enrolled in each grade in the District for the 2015-2016 and 2016-2017 school years. The District shall provide this information separately for each school year. Each District status report thereafter shall provide for the current school year the total number and percentage of students, disaggregated by race/ethnicity, enrolled in each grade in the District.

² The District will accept and consider complaints that are provided in alternate formats, including those communicated verbally.

38. Each District status report shall include an excel spreadsheet listing all referrals of students for discipline that includes the following fields from the District's discipline tracking system for each referral: "Name (Last, First, Middle) – Offender," "Grade – Offender," "Ethnicity – Offender," "Gender – Offender," "Incident Date," "Offense code description," "Reported to – incident," "Action Name – Offender," "Scheduled Duration – Offender Action," and "Name (Last, First, Middle) – Reported By"

A. The first status report shall provide this information for the 2015-2016 school year and for the 2016-2017 school year through December 31, 2016.

B. Each District Status report thereafter shall include this information for the period of time since the time period covered by the previous status report.

39. The United States may request additional documents and data, tour schools, attend training and conduct other activities necessary to monitor implementation of the Consent Order. The District shall provide the United States with 60 days notice of any training it is providing to its employees to comply with the requirements of this Consent Order (with the exception of training for individual new employees).

40. If any part of this Consent Order is held to be unlawful, or otherwise unenforceable for any reason by a court of competent jurisdiction, such decision shall not affect the validity of any other part of this Consent Order.

41. This Consent Order shall be enforceable only by the Parties and nothing in this Consent Order shall be construed to give rise to an action by a third party to enforce its terms.

42. This Consent Order constitutes the entire agreement by the Parties, and no other statement, promise, or agreement, whether written or oral, made by any party or agents of any

party, that is not contained in this written Consent Order shall be enforceable regarding the matters raised in this Consent Order.

43. This Consent Order is final and has binding effect on the Parties, including all principals, agents, employees, successors thereof.

44. The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Consent Order and to execute and legally bind the Parties to it.

45. Failure of the United States to seek enforcement of this Consent Order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver of such enforcement with regard to that instance or provision or any other instances or provisions.

46. The District shall notify the United States in writing when it believes it has achieved Compliance with this Consent Order.

A. If the District provides such notification within three years of the date of the entry of this Consent Order, termination shall only be granted if the United States agrees that the District has achieved Compliance.

B. If the District provides such notification three or more years after the date of the entry of this Consent Order, and the United States does not agree that the District has achieved Compliance, the District may move the Court for a briefing schedule on its motion for termination. The parties agree that such a motion for termination shall be governed by the definition of Compliance in this Consent Order.

47. The United States reserves the right to petition this Court to enforce the specific commitments and obligations of the District under this Consent Order if it believes the District is

not attempting in good faith to comply with any of its provisions. However, the United States agrees not to initiate or pursue any enforcement action without first attempting to resolve any issues by negotiating in good faith with the District.

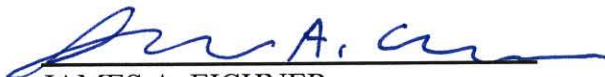
48. The United States may waive any individual reporting requirement contained in Section X if it determines that such reporting is no longer necessary to ensure compliance with this Consent Order or that such reporting does not serve the purpose for which it was intended. Such waiver shall be in writing and be acknowledged by a representative of the United States and the District.

Dated this 21st day of September 2016

For the United States:

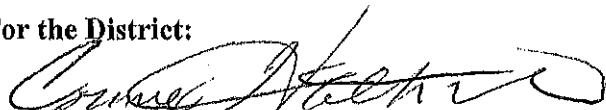
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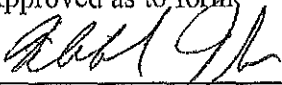
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SO ORDERED, this ____ day of _____ 2016.

United States District Judge