



Daniel K. Glazier
Executive Director and
General Counsel

Education Justice Program

Advancing education equity and racial justice for all children

June 8, 2022

Attn: Dr. Joseph Davis, Superintendent
Jenelle Harris, Student Records Custodian
Ferguson-Florissant School District
8855 Dunn Road
Hazelwood, MO 63042

Attn: President Dr. Courtney Graves
Ms. Tiffany Bush
Dr. Kevin Martin
Mr. Terry Tyson
Dr. Donna Paulette-Thurman
Dr. Sheila Powell-Walker
Mrs. Jillian Dunn
Members of the Board of Education
Ferguson-Florissant School District
8855 Dunn Road
Hazelwood, MO 63042

+Via PDF only at hjanis@fergflor.org

RE: Practice of Not Providing Due Process in the Case of Administrative Transfers

Dear Dr. Davis, Dr. Graves, and Members of the Ferguson-Florissant Board of Education:

We are writing to express our concern with Ferguson-Florissant School District's unlawful practice of failing to provide adequate due process for students who are administratively transferred or reassigned placements, whether in person or virtually. We are offering these comments and suggestions based on our expertise and years of experience as community lawyers who work to combat the School-to-Prison Pipeline using a race equity lens at the Education Justice Program at Legal Services of Eastern Missouri.

Over the 2021-2022 school year, we have become aware of numerous students in Ferguson-Florissant School District ("the District") who have been denied their right to a hearing and an appeal when removed from the regular classroom for disciplinary reasons. Such transfers are especially concerning when they are made to an educational setting of lesser quality than the traditional classroom, like virtual education without synchronous teaching. Not only is this systemic lack of due process for disciplined students an extension of exclusionary practices that our former clients have previously experienced in the District, it also exacerbates disparities along the lines of race, gender, and disability status.

4232 Forest Park Avenue, St. Louis, Missouri 63108 • 314.534.4200 • 1.800.444.0514 • www.lsem.org



In light of the important legal and social considerations detailed in this letter, we ask the District to immediately review and revise its practices related to administrative transfers and reassignments so that all students are provided with due process and kept within their home schools as much as possible.

Administrative Reassignment Requires Process

The District's practice of "reassigning" students without process and to educational venues of lesser quality implicates the same due process requirements that long-term suspension does, regardless of the label the District gives this removal from the regular classroom. The District's Student Expectation Code refers to such a transfer as a "discipline reassignment."¹ Section 167.171, RSMo, which covers suspensions and procedures for suspensions, also covers administrative "reassignment" and requires the District to offer additional due process, including the right to appeal. Per recent guidance issued by the Missouri Department of Elementary and Secondary Education ("DESE"), "LEAs [should] consider **multiple intervention strategies** for students before implementing discipline policies" (emphasis added). This guidance further recommends that "[i]n the event that a long-term suspension occurs, LEAs should limit the number of days that a student is removed from the regular school setting."² In addition, under Missouri law, "[s]chool districts are encouraged . . . to search for other acceptable discipline alternatives prior to using suspension of more than ten days or expelling the student from school."³ The District's practice of "reassigning" students to alternative education is not in line with DESE's guidance. The District's practice cannot be to unilaterally transfer students for more than ten days without the right to appeal.

A unilateral reassignment of students for more than ten days without a hearing or an opportunity to appeal is a due process violation, as is a transfer to inadequate alternative education. Alternative education implicates constitutional due process when the alternative program is "significantly different from or inferior to" the education of a "regular public school." *E.S. by and through D.K.*, 2018 WL 2338796 *3 (D.S.D. May 23, 2018) (quoting *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1359 (6th Cir. 1996)).

The alternative education that the District provides is significantly different from or interior to the education students would receive in a traditional classroom. In written communications that our clients have received, and in documents received thus far from the District pursuant to a request under the Missouri Sunshine Law, RSMo Section 610.011 et seq., the District has confirmed that its alternative education program runs only two days a week in person, as opposed to the five days a week that students would receive in "regular public school." Face-to-face instructional time is greatly reduced for students on virtual learning. This discrepancy raises questions about the adequacy of the alternative education the District provides and is all the more egregious for students who are already behind in their credit accrual, as many reassigned students are per the "Restoration Notes from DEC Mtgs" document we received in response to our recent Sunshine request. Dr. Davis even acknowledged the significant difference between the regular classroom setting and the alternative settings to which students have been reassigned without due process: in an attachment to an email dated January 31, 2022, that we received in response to our Sunshine request, Dr. Davis wrote to parents of students who were administratively transferred: "I want your child to get a great education, but your child's actions are preventing that at this time."

¹ See 2021-2022 Student Expectation Code, Ferguson-Florissant School District 15 (2021), https://www.fergflor.org/cms/lib/MO01000341/Centricity/Domain/84/Proposed%20FFSD%20Student%20Expectation%20Code%20-%20BJ%206_15_2021.pdf.

² See LS-20-004: Guidance on the Long-Term Suspension of Students from the Regular School Setting, Mo. Dep't of Elem. & Second. Educ. (Aug. 19, 2021), <https://dese.mo.gov/guidance-long-term-suspension-students-regular-school-setting>.

³ RSMo. § 167.164(1).

Reassigned Students in the District Are Not Receiving Appropriate Due Process

Despite its legal obligation to provide due process in all instances of removal from the regular classroom setting for more than ten days, including administrative transfers or disciplinary reassignments, the District has consistently skirted process requirements in administering disciplinary removals in ways that have exacerbated disparities for the District's most marginalized students. As early as 2019, we represented a client J.S. who, as a Black student with a disability, was unlawfully reassigned to the alternative school despite a finding of "relatedness" of the underlying incident to his disability.

In March 2021, we represented another client, M.C., a Black second grader and student with a disability who was involved in a disciplinary incident that occurred in late January 2020. Instead of keeping M.C. in her home school while she was being evaluated for special education, and against her mother's wishes, the District transferred her to Ferguson-Florissant's alternative education program, where she was the only child of her age and grade level. Our client was out of her home school for four months in first a physical alternative education placement and then a virtual one. Following our advocacy, M.C. and her mother entered into a settlement with the District, requiring among other things "that Ferguson-Florissant will review its policies long-term suspending or transferring children with disabilities to alternative education programs and will review its policies and practices relating to the review and/or appeal of administrative transfers."

It is clear that the District has not taken the steps necessary to comply with this binding settlement agreement. Since the settlement last spring, we have learned that the District's unlawful practice of administratively transferring students to alternative education without the right to appeal has continued.

Another former client, P.T., a Black teenage girl, was assigned to instruction at the Restoration Center without the right to appeal in fall 2021. After a first-time incident of fighting, P.T. was suspended out of school for ten days. P.T. was not provided with any of the restorative practices or other supports provided within the School Expectation Code and Policy Book.⁴ P.T.'s mother was subsequently informed via email that P.T. would be reassigned to the Restoration Center for the remainder of the school year, in addition to the initial out-of-school suspension.⁵ The Restoration Center, as described above, provided P.T. with significantly less instructional time than she had received in the regular classroom setting, and P.T.'s mother wished to appeal this reassignment decision. The District refused to provide P.T. with an appeal of this alternative placement.

Moreover, through Sunshine requests, we have learned that during the fall 2021 semester, Dr. Davis changed the placement of a large group of McCluer students from in person to virtual, unilaterally and without hearings. (The documents we received are internally inconsistent as to the precise number of students, but it appears to be between 40 and 60 students.) In an email dated January 31, 2022, Dr. Davis wrote: "While these students at McCluer were placed in virtual learning prior to the board giving me direction on increasing due-process, we have since invoked the hearing process as directed by the board for students whose placement may change." Although Dr. Davis indicated in this email that he would "assess the next steps" to determine whether students would remain in virtual learning at the midpoint of the quarter, letters sent to parents of reassigned students stated that the reassignment would be effective "for the remainder of the school year." The letters that parents eventually received were not individualized to each student; they did not provide notice of the alleged offenses

⁴ 2021-2022 Student Expectation Code, Ferguson-Florissant School District 35 (2021), https://www.fergflor.org/cms/lib/MO01000341/Centricity/Domain/84/Proposed%20FFSD%20Student%20Expectation%20Code%20-%20BJ%206_15_2021.pdf.

⁵ While only at Level Five Behaviors should a superintendent hearing and reassignment to an alternative school considered, the incident that P.T. was involved in should have been considered, at most, a Level Three Behavior. It is unclear what level the District considered this incident to be because neither P.T. nor her mother was given notice of this information.

that undergirded the transfers. Furthermore, these students were given no opportunity to appeal the placement decision that took effect “immediately.”

We most recently heard from a family that a suspected child with a disability, A.G., was administratively transferred to virtual learning in the last few weeks of the school year following a ten-day suspension. A.G. was not given the opportunity to appeal the decision to remove her long-term from her regular classroom setting.

As a superintendent, Dr. Davis should be aware that students who are placed in virtual learning have always been legally entitled to due process—which cannot happen retroactively. We find it concerning that Dr. Davis was not previously providing hearings to students before the Board took action. Even if the hearing process was invoked for students whose placements “may change,” as Dr. Davis indicated, the lack of notice of the underlying offenses for which students were disciplined and the lack of a right to appeal both violate due process as well. To comply with M.C.’s settlement agreement and constitutional law, the District must change these practices.

The District’s Reassignment Practices Exacerbate Disparities and Obfuscate Data

While violations of due process harm students no matter their identity, the District’s actions related to administrative reassignment are particularly troubling because they disproportionately affect Black students and students with disabilities. In both our clients’ experience and in the documents we received in response to our Sunshine request, we have seen evidence that administrative reassignments exacerbate existing discipline disparities. Yet we are concerned that the true scope of this disparate impact may not even be able to be measured currently because of the way the District’s inconsistent coding and data collection seem to be preventing accurate tracking of systemic patterns.

Racial disparities in school discipline are evident nationally, at the state level, and in the District, and also fall along intersection of race, gender, and disability. Nationally, Black girls are more than five times more likely to receive an out-of-school suspension than white girls.⁶ Black girls are also more likely to be disciplined for subjective infractions such as fighting.⁷ Numerous studies have documented how this disproportionality contributes to cyclical disparities in school pushout and results in the school-to-prison pipeline. For example, Black girls are three times more likely to be referred to juvenile court than white girls and 20% more likely to be detained there.⁸ Exclusion from the classroom has devastating and potentially life-altering effects on any child’s education, including increased risk of classroom disengagement and school dropout. For Black girls, there can be a particularly damaging loss of leadership and mentorship opportunities.⁹ And nationally, Black students with disabilities have a 24.8% risk for experiencing a disciplinary removal from school at least once in a given year.¹⁰

⁶ 2017-18 State and National Estimations, Civil Rights Data Collection, Office for Civil Rights (Oct. 2020), <https://ocrdata.ed.gov/estimations/2017-2018>.

⁷ Rebecca Epstein, Jamilia J. Blake, Thalia Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Georgetown Law Center on Poverty & Inequality 10 (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

⁸ *Black Girls Matter: Pushed Out, Overpoliced and Underprotected*, African American Policy Forum, Columbia Law School Center for Intersectionality and Social Policy Studies 24 (Feb. 2015), https://www.law.columbia.edu/sites/default/files/2021-05/black_girls_matter_report_2.4.15.pdf.

⁹ See Epstein et al. at 11.

¹⁰ Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies, March 22, 2021. The Center for Civil Rights Remedies at The Civil Rights Project | Proyecto Derechos Civiles, www.civilrightsproject.ucla.edu at 36.

In 2017-18, Black students in Missouri made up 39.0% of all students with one out-of-school suspension, **despite being only 15.7% of the total population of students in the state.**¹¹ The District itself contributes to these statewide disparities: data from the U.S. Department of Education’s Office for Civil Rights reflects that in the 2017-18 school year, Black students made up 82.5% of the District student body—but 90.7% of all out-of-school suspensions and 100% of all expulsions.¹² This disproportional practice of discipline in the District has raised national concern in the past.¹³

We are alarmed to see that these practices are continuing despite the District’s adoption of its current Student Expectation Code.¹⁴ Of the 41 students listed in the “McCluer Virtual” document we received in response to our Sunshine request, 39 are Black, as are all of the clients we have represented in discipline matters in the District in recent years. In addition, nearly a quarter of students listed in the “Reassigned Students” document we received are identified as students with IEPs. The “Reassigned Students” are also disproportionately female: the list indicates that over 62% of students who have been reassigned are female.

It is our understanding that the District’s Board of Education has called for comprehensive tracking of discipline practices in the District, but no clear picture of the District’s disciplinary practices is publicly available at this time. The District Data Web reports statistics on District actions related to out-of-school suspensions, in-school suspensions, and other disciplinary matters.¹⁵ Glaringly, this dashboard omits any mention of “disciplinary reassignments” or administrative transfers, and it is unclear how the District is categorizing such actions: are they considered out-of-school suspensions? Or are they coded as non-suspension actions and therefore not reflected in the District’s suspension data? The “2021-22 Long Term Suspension” document we received in response to our Sunshine request seems to indicate that the District has frequently utilized administrative reassignments in lieu of “suspensions,” yet despite how widespread this practice appears to be, its tracking is inconsistent. Furthermore, the District Data Web does not include any information about student race, gender, or disability status, so its usefulness in actually measuring discipline disparities is limited.

In addition to its effects on disparity data, the inconsistent coding of reassignments may have implications for the District’s CORE data collection and attendance tracking for funding purposes. Although Dr. Davis cited to DESE guidance on attendance hour claiming in Exhibit 4 of his January 31 email, this guidance actually explains that the process he described is intended to be used for students who are suspended and receiving virtual learning, not students who are administratively transferred. The District cannot have it both ways: either these reassigned students are suspended and can be claimed for attendance purposes, or they are not suspended and must be accounted for separately. (As we discuss above, whether or not the District is labeling these transfers as “suspensions,” due process is still owed to the reassigned students.) The District must immediately evaluate these practices related to tracking reassignments, ideally with the assistance of the state auditor.

¹¹ 2017-18 State and National Estimations, Civil Rights Data Collection, Office for Civil Rights (Oct. 2020), <https://ocrdata.ed.gov/estimations/2017-2018>.

¹² Ferguson-Florissant LEA Summary, Civil Rights Data Collection, Office for Civil Rights (Oct. 2020), <https://ocrdata.ed.gov/profile/9/district/27900/summary>.

¹³ See Evie Blad, *Schools in Ferguson, Mo., Suspend Black Students at Higher Rates Than Their Peers*, Education Week (Aug. 21, 2014), <https://www.edweek.org/leadership/schools-in-ferguson-mo-suspend-black-students-at-higher-rates-than-their-peers/2014/08> (detailing a racial disparity present in schools in the District where Black students are more likely to face some forms of discipline than their white peers).

¹⁴ See Tony Messenger, *Board President Hopes New Year Brings Far Fewer Suspensions in Ferguson-Florissant Schools*, St. Louis Post-Dispatch (Aug. 21, 2021), https://www.stltoday.com/news/subscriber/messenger-board-president-hopes-new-year-brings-far-fewer-suspensions-in-ferguson-florissant-schools/article_47324f50-96d5-51e2-bdd9-df8130dc5b1a.html.

¹⁵ District Data Web, Ferguson-Florissant Sch. Dist. (last accessed June 8, 2022), <http://new.fergflor.k12.mo.us/data-web/discipline/restructured/action-count-comparison.cfm?month=06&day=08>.

CONCLUSION

As the COVID-19 pandemic continues to expose students to trauma and exacerbate existing disparities, we urge the District to review how its discipline practices are serving its school communities and students, especially Black students and students with disabilities. It appears that the Student Expectation Code was written with an eye toward restorative discipline practices, but now it is time for the District to implement it with fidelity. The District must act to address its unlawful practices related to due process for administratively reassigned students, and it must do so in a way that rectifies disparities and increases data transparency. These steps are necessary to comply with the District's legal obligations under the M.C. settlement and federal and state law—and to truly create the public trust necessary for the safe schools that the District wants and deserves.

Sincerely,

Hopey Fink
Staff Attorney

Elizabeth A. Vandenberg
Staff Attorney

Amanda J. Schneider
Managing Attorney

cc: Lisa Stump, Counsel for the District

Sarah Madden, Counsel for the Missouri Department of Elementary and Secondary Education