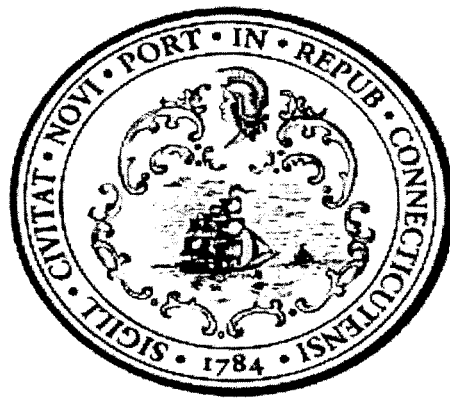


OFFICE OF THE CORPORATION COUNSEL
OF THE CITY OF NEW HAVEN



A REVIEW OF RACE AND DISCIPLINE IN THE
NEW HAVEN DEPARTMENT OF FIRE SERVICES

Introduction

In June of 2013, members of the New Haven Firebirds, an organization representing African-American firefighters, claimed that the Chief's Office of the New Haven Department of Fire Services ("NHFD" or "Fire Department") subjected African-American and Latino firefighters to harsher treatment with respect to discipline. More specifically, they allege that such treatment began after the hiring of Assistant Chief Patrick Egan on September 22, 2010. At the direction of the Mayor of the City of New Haven ("City"), the Honorable John DeStefano, Jr., the City's Corporation Counsel has undertaken a review of the serious incidents of discipline issued by the NHFD Chief's Office since September 22, 2010, reviewing every incident of suspension from that date until June 30, 2013.

After a careful review of these incidents, the following Report has been prepared, concluding that there is no basis for alleging that NHFD treats African-American and Latino firefighters more harshly with respect to discipline. Two major findings support this conclusion:

- *First*, very few New Haven firefighters have been suspended since September 22, 2010, no matter what race they are. In addition, using a test commonly employed by the Equal Employment Opportunities Commission ("EEOC") to identify evidence of racial discrimination, an analysis of two calendar years of NHFD suspensions does not support the claim that African-American and Latino firefighters have been treated unfairly; and

- *Second*, there is no evidentiary basis for concluding that African-American and Latino firefighters have experienced longer terms of discipline *because* of their race and/or ethnicity. In fact, any perceived differences in the length of discipline experienced by African-American and Latino firefighters is explained by a practice, if not a policy, of progressive discipline or the presence of other offenses.

This Report contains several parts: (1) a background section providing a historical overview of the context in which these serious charges must be viewed; (2) a methodology section describing how these allegations will be addressed; (3) a findings section, wherein the data compiled regarding discipline issued by the NHFD's Chief Office in the relevant time period is reviewed and discussed; and (4) a conclusion section, briefly summarizing all of the Report's findings.

Part I: Historical Background

Given the City of New Haven's long history with issues of race discrimination in hiring and promotions, it is proper to take allegations about racial discrimination in the handling of discipline seriously.

In 1973, a lawsuit filed by the New Haven Firebirds (the "Firebirds") challenged nearly every aspect of the hiring and promotional process and resulted in a consent decree requiring the department to increase minority recruiting, develop job-related entrance and promotional exams and modify other promotional practices to diminish

the adverse impact of those practices on African-American firefighters.¹ In 1989, the Firebirds again filed suit to challenge discrimination against African-American and Latino firefighters in promotions, resulting in the termination of “stacking,” a practice of disproportionately promoting white firefighters to positions that were not yet vacant, just prior to the expiration of a promotional eligibility list.² In 1998, a group of African-American firefighters sued to challenge the practice of “underfilling,” where a larger number of lower-ranked officers were promoted to fill positions originally and lawfully budgeted for a higher rank.³ This lawsuit resulted in the appointment of a Special Master to oversee the City’s promotional process, a position that recently ended by court order.

Even more recently, in 2003, a group of white firefighters and a single Latino firefighter sued regarding the City’s failure to certify the results of promotional examinations in the ranks of captain and lieutenant, a decision prompted by concern over the test’s impact on the career opportunities for African-American firefighters.⁴ This lawsuit, which resulted in a landmark decision by the United States Supreme Court, culminated in the certification of the 2003 exams and the payment of substantial amounts of damages and attorney’s fees. Following the Supreme Court’s decision, two separate lawsuits have been brought by a single African-American firefighter and a group of African-American firefighters, including officers in the Firebirds, claiming that the City’s certification of the results and subsequent promotions resulted in racial

¹ See *Firebird Soc’y of New Haven, Inc. V. New Haven Bd. Of Fire Comm’rs*, 66 F.R.D. 457, 460-463 (D.Conn.), *aff’d mem.*, 515 F.2d 504 (2d Cir. 1975).

² See *New Haven Firebird Soc’y v. Bd. Of Fire Comm’rs*, 593 A.2d 1383, 1384 (Conn. 1991); see also *New Haven Firebird Soc’y v. Bd. Of Fire Comm’rs*, 630 A.2d 131, 134-35 (Conn. App. Ct. 1993).

³ *Broadnax v. City of New Haven*, 851 A.2d 1113 (Conn. 2004).

⁴ *Ricci v. DeStefano*, 557 U.S. 557 (2009).

discrimination against them, even though the City merely complied with an order of the United States Supreme Court.⁵

Given this considerable history with the issue of race discrimination, any suggestion that there continues to be race discrimination in the NHFD must be taken seriously, even though, to date, with all of this litigation and all of the allegations of racial discrimination in the Fire Department, the issue of racially disparate discipline in the Fire Department has not been the focus. Instead, as noted above, the issue has been racial discrimination in hiring and/or promotion at the Fire Department. Nevertheless, the suggestion of racial discrimination in the handling of discipline warrants serious treatment.

Part II: Report Methodology

To address the claim of racial discrimination in the administration of discipline by the Fire Department's Chief Office since September 22, 2010, an analysis has been conducted of every disciplinary action resulting in suspension since that date until June 30, 2013, and reviewed based on the applicable legal standards. In terms of the Report's methodology, two important points must be made.

First, this Report assumes that any and all instances of serious misconduct have been reported through the chain of command, as required by the Fire Department's Rules and Regulations. Given the NHFD Rules and Regulations, this assumption is proper. Any misconduct "shall be reported through the chain of command." As a result, if firefighters are or were aware of misconduct and have not reported it – therefore, not providing the Chief's Office with an opportunity to address it

⁵ See *Briscoe v. City of New Haven*, 654 F.3d 200 (2011); *Tinney v. City of New Haven*, CV 11-01546 (filed October 11, 2011).

– such a failure to report would in and of itself be a violation of the Department’s Rules and Regulations.

Second, analyses common to legal claims have been conducted for diagnostic purposes -- that is, to determine whether there is a legal problem with racial discrimination in discipline. The analyses undertaken can uncover evidence of discrimination, but any such analysis *alone* is insufficient to support a legal finding of discrimination. Indeed, under both Title VII of the Civil Rights Act of 1964 and the Connecticut Fair Employment Practice Act (“CFEPA”), the statute of limitations likely has long since passed for any such claim.

In any event, the documentary review conducted and the various analyses undertaken below indicate that there is no evidentiary basis for the conclusion that the New Haven Fire Department, in particular, the Chief’s Office, has discriminated against African-American and Latino firefighters because of their race in administering discipline.

Part III: Report Findings

Finding #1: Very Few New Haven Firefighters Have Been Suspended, Regardless Of Race

A review of the discipline data, specifically the data relating to suspensions, reveals a significant fact: the evidence shows that the overwhelming majority of NHFD firefighters have not been suspended over the relevant time period, regardless of race. Just as the percentage of employees who pass an examination may indicate an examination’s potentially discriminatory effects, the percentage of members of the institution who were *not* suspended may indicate whether the NHFD discriminates in

the administration of discipline, making a non-discipline rate an appropriate benchmark, similar to an exam's passage rate.

To create a non-discipline rate, information on the imposition of serious discipline – suspensions – by race and ethnicity were compared to the overall population totals for each of these racial/ethnic categories, using the most recently filed EEO-4 data maintained by the City in 2011. An EEO-4 report is a report that state and local governments with over one hundred employees are required to submit biennially to the EEOC, recording the number of employees by race, sex, and job function, throughout the government, including the Fire Department, and is prepared every two years. See 29 C.F.R. Section 1602.30, 1602.32. Of course, this 2011 data only presents a snapshot of the racial demographics of the Fire Department at that particular time, but this data should be a sufficiently useful tool for uncovering the existence of racial bias, at least at a threshold level.

In terms of creating a fair and reasonable non-discipline rate for the period from September 22, 2010 until June 30, 2013, the best means is to review the two *full* calendar years during this time period: 2011 and 2012. With two full calendar years, you can take every case of serious discipline – in this case, every suspension – and compare that to the best information on the respective racial and ethnic populations at that time, the EEO-4 data reports.

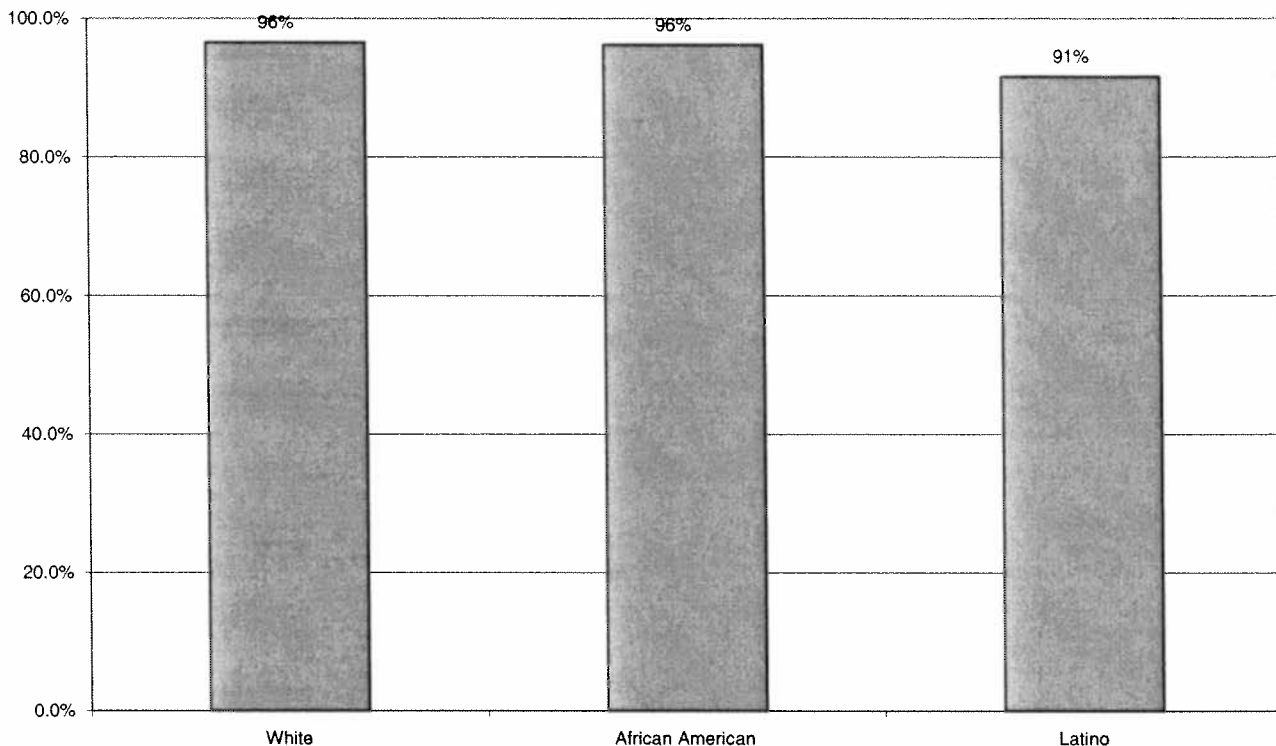
The analyses of these two calendar years, 2011 and 2012, show that: (1) the overwhelming number of members in the NHFD are not subject to serious discipline, regardless of race; and (2) the statistical differences between the non-discipline rates

between and among the three racial groups analyzed here do not provide evidence of adverse impact, using a standard commonly used by the EEOC.

2011 NHFD Non-Discipline Rates

In 2011, 14 different firefighters were subjected to discipline: 7 white firefighters, 3 African-American firefighters, and 4 Latino firefighters. Overall, more than 95% of the NHFD's firefighters were not subjected to serious discipline in 2011. Dividing the number of white firefighters not disciplined (169) by the total number of white firefighters (176), the non-discipline rate for whites would be 96%, or put another way, 96% of the NHFD's white firefighters were not disciplined in 2011. By dividing the total number of African-American members of the Fire Department not disciplined (76) by the total number of African-American members in the Fire Department (79), you obtain a 2011 non-discipline rate for African-American members of the Fire Department of 96%, essentially the same as for white firefighters in that year. Lastly, by dividing the total number of Latino members of the Fire Department not disciplined (44) by the total number of Latino members of the Fire Department (48), you obtain a 2011 non-discipline rate for Latino firefighters of 91%. The three non-discipline rates translated into a bar graph appear as follows:

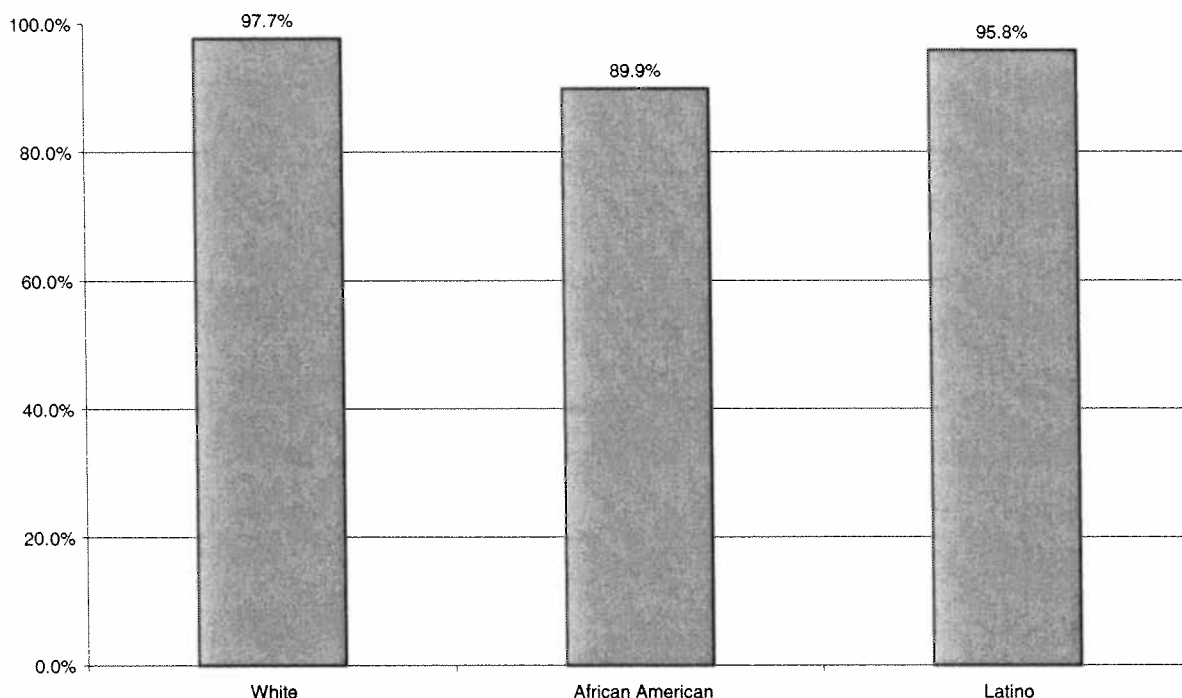
**Discipline Analysis January 1, 2011 to December 31, 2011
Rates of Non-Discipline**



2012 NHFD Non-Discipline Rates

In 2012, 14 different firefighters were subjected to discipline: 4 white firefighters, 8 African American firefighters, and 2 Latino firefighters. As in 2011, overall, more than 95% of the Fire Department's members were not subjected to serious discipline. Using the same methodology employed above, the non-discipline rate for white firefighters was 97%, the non-discipline rate for African-American firefighters was 89%, and the non-discipline rate for Latino firefighters was 95%. The three non-discipline rates translated into a bar graph appear as follows:

**Discipline Analysis January 1, 2012 to December 31, 2012
Rates of Non-Discipline**



**Application of the EEOC's 80% Rule to the 2011 and 2012 NHFD
Non-Discipline Rates**

To determine whether there are statistically significant differences in the respective non-discipline rates for white, African-American and Latino firefighters, the 2011 and 2012 NHFD non-discipline rate data has been reviewed using the EEOC's 80% Rule. "[I]t is an objective standard which the EEOC and other agencies employ to trigger investigations and to provide 'evidence' of disparate impact."⁶ Larson, *Employment Discrimination*, 2nd Ed., Section 22.10[2]. The Uniform Guidelines on Employee Selection Procedures describes the test as follows:

⁶ Larson, *Employment Discrimination*, 2nd Ed., Section 22.10[2].

A selection rate for any race, sex or ethnic group which is less than four-fifths (or eighty percent) of the rate of the group with the highest rate will be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.

Id. With employment tests, the EEOC commonly applies an 80% rule to determine whether there are statistically significant differences in the pass rates of an examination, i.e., how successful African-American and Latino candidates are on the exam vis-à-vis white candidates. The same test thus makes sense for a further review of the 2011 and 2012 NHFD non-discipline rates.

Now, in applying the 80% rule to the non-discipline rates in 2011, you would take the highest rate, 96%, which is the rate obtained for both African-American and white firefighters, and determine if the non-discipline rate for Latino firefighters, 91%, is within 80% of 96%. The answer is clearly yes. 80% of 96% is 76.8% and 91% is significantly higher than the 80% number. As a result, the non-discipline rates for 2011 do not provide evidence of adverse impact under the EEOC's 80% rule.

Applying the 80% rule to the non-discipline rates in 2012 reveals that 80% of the highest rate (the rate for whites, which is 97%) is 77.6%. The non-discipline rates for both African-American and Latino firefighters, 89% and 95% respectively, is higher than 77.6%, indicative of a lack of evidence of adverse impact under the EEOC's 80% rule.

Accordingly, the rates of non-discipline for members of the Fire Department across races for this two full year period do not provide evidence of a racially adverse impact in the imposition of discipline, using an EEOC standard.

Finding #2: African-American and Latino Firefighters Have Not Experienced Longer Terms of Discipline Because Of Their Race and/or Ethnicity

While an examination of the non-discipline rates for 2011 and 2012 of the Fire Department by race did not suggest any adverse racial impact on African-American and Latino members of the Fire Department using the EEOC's 80% rule, the non-discipline rate looked at the issue of discipline as a single activity, while, in fact, individuals are disciplined for specific actions or violations of the Fire Department's rules and regulations. As a result, a review of the various categories of discipline dispensed during this time period from 2010 to 2013 is warranted because a specific individual who had been disciplined for a specific offense may believe that his or her treatment with respect to that particular offense constituted racial discrimination under a disparate treatment analysis. This analysis also allows for a fair review of every suspension issued during this time period, not just for the years of 2011 and 2012. An analysis of this data does not reveal any evidence of discrimination.

The United States Supreme Court has defined a disparate treatment claim under Title VII as one in which "an individual alleges that an employer has treated that particular person less favorably than others because of the plaintiff's race, color, religion, sex, or national origin."⁷ For an employer to be found liable, the plaintiff is required to prove that the employer's decision was motivated by discriminatory intent or motive.⁸

⁷ *Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 985-86 (1988).

⁸ *Id.* at 986. In both state and federal court, disparate treatment claims are analyzed under the approach outlined in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). Generally, under the *McDonnell Douglas* scheme, to make out a prima facie case of disparate treatment, a plaintiff must establish that (1) he is a member of a protected class, (2) he was performing his duties satisfactorily, (3) there was an adverse employment action, and (4) non-members of the protected class were treated more favorably, giving rise to an inference of discrimination. *Id.* at 802; *See Graham v. Long Island R.R.*, 230 F.3d 23, 38 (2d Cir.

Essentially, to establish an inference of discrimination, an employee must show that he or she was similarly situated in “all material respects” to individuals with whom he seeks to compare himself.⁹ To satisfy the “all material respects” standard, an employee “must show that his co-employees were subject to the same performance evaluation and discipline standards...[and that] similarly situated employees who went undisciplined engaged in comparable conduct.”¹⁰ Although employees’ conduct need not be identical to be considered similarly situated, the conduct should be of “comparable seriousness.”¹¹ Generally, courts look at employees’ position, performance, qualifications, and conduct in determining if they are similarly situated.¹²

Lastly, to be similarly situated, there cannot be other differentiating or mitigating circumstances that would distinguish the respective employees’ conduct or the appropriate discipline for it, i.e., two people being subjected to discipline for different offenses or two people who have differing discipline histories, such as where one person has been disciplined before.¹³ Determining whether employees are similarly situated for purposes of a disparate treatment claim requires consideration on a case-by-case basis, analyzing the unique facts of each offense and each case.

From September 22, 2010 through June 30, 2013, there were thirteen separate offenses for which thirty-seven different firefighters were disciplined: (1) Rule 4

2000); see *Jones v. Southwest Airlines*, 99 F.Supp.2d 1322, 1325 (D.N.M. 2000). After a prima facie case of racial discrimination is established, the burden shifts to the employer to articulate a “legitimate, non-discriminatory reason” for the adverse employment action. *McDonnell Douglas* at 802. If the employer produces such evidence, the plaintiff must prove by a preponderance of the evidence that the employer’s reasons were a pretext for discrimination, a “cover-up for a racially discriminatory decision.” *Id.* at 805.

⁹ *Graham*, 230 F.3d 23 (2000).

¹⁰ *Graham*, 230 F.3d at 41.

¹¹ See *McDonnell Douglas*, 411 U.S. at 804.

¹² *Blake-McIntosh v. Cadbury Beverages, Inc.*, 3:96-CV-2554(EBB), 1999 WL 643661 (D. Conn. Aug. 10, 1999) at 11; see *Hargett v. National Westminster Bank, USA*, 78 F.3d 836 (1996).

¹³ *Id.*

(absence without leave); (2) Rule 11 (unexcused absence from a fire scene); (3) Rule 16A (deception); (4) Rule 16F (insubordination); (5) Rule 16G (use of inappropriate language); (6) Rule 16H (conduct prejudicial to the Department); (7) Rule 16K (untruthfulness or willful misrepresentation); (8) Rule 40 (failure to report to duty timely); (9) Article 12 of the Collective Bargaining Agreement (abuse of sick leave policy); (10) Section 12 (requirement of Deputy Chief to hold Battalion Chiefs responsible for ensuring that all rules and orders are obeyed); (11) Section 7 (requirement of Captains to preserve order and discipline at all times); (12) Article 14 of the Collective Bargaining Agreement (abuse of special leave); and (13) General Order #100 (failure to return required medical documentation timely). This Report will take each separate offense, examine the discipline issued and review whether there are any differences in the length and/or nature of the punishment, based on race.

a. Rule 4: Absence Without Leave

The text of Rule 4 is stated as the following:

Any member who fails to report with his division or leaves quarters without permission shall be deemed guilty of absence without leave.

During the relevant time period, eleven different firefighters were disciplined for the offense of absence without leave. The review of the available data does not reveal any meaningful differences in the length of discipline sought on the basis of race.

The data shows fairly consistent treatment of violators of this offense, regardless of race. While, of the eleven firefighters disciplined, only African-American and Latino firefighters received more than two days of suspension for this offense, every African-American and Latino firefighter who received more than two days of suspension had been disciplined previously for the same offense. In other words, they

were repeat offenders and the imposition of increasingly greater punishment for each separate offense reflected a practice, if not a policy, of progressive discipline.

Indeed, the most common basis for the difference in the length of discipline issued for this offense is whether the offender had violated this rule on more than one occasion. Every firefighter who received discipline for absence without leave for the first time during this time period received the same amount of discipline: one day of discipline, except for one firefighter -- who is white -- who received two days of suspension.¹⁴

b. Rule 11: Unexcused Absence from a Fire Scene

The text of Rule 11 is stated as the following:

Shall attend all fires and alarms to which he is assigned or may be called, unless excused by an officer having the power to do so. Shall ride on apparatus going to or returning from an alarm of fire unless otherwise directed by the Commanding Officer.

During the relevant time period, six firefighters were suspended for violating Rule 11.

The review of the available data does reveal that white firefighters generally received twice as much suspension time than African-American or Latino firefighters, although there is no basis to conclude that the differences in suspension time were due to their race.

Of course, the fact that white firefighters received more suspension time for this offense than African-American and Latino firefighters means that there is *no* factual basis for the African-American or Latino firefighters, who were suspended for this offense, to believe that they were treated more harshly than their white counterparts.

¹⁴ Indeed, two African-American employees, who received disciplined during this time period, had been disciplined prior to this time period, accounting for their increased discipline during the course of this time period.

None of the African-American firefighters suspended for a violation of Rule 11 received more than three days. None of the white firefighters suspended for violating Rule 11 received less than six days. The lone Latino firefighter suspended received a three-day suspension.

c. Rule 16A: Deception

Rule 16A of the Rules and Regulations of the Fire Department provides for discipline if someone is “guilty of deception of any law, rule, regulation or order.” During the relevant time period, only one firefighter, a Latino, was suspended for fifteen days for violating Rule 16A, as well as violating two other rules (16K and Article 12 of the CBA). Since no other firefighter has this firefighter’s combination of offenses, there is no valid comparison with other firefighters. As a result, this Latino firefighter cannot say that he was treated differently from a “similarly situated” white firefighter – much less on the basis of his race – effectively dooming a viable disparate treatment claim.

d. Rule 16F: Insubordination

A Rule 16F violation is “to neglect or refuse to obey the authorized orders of a Superior Officer. During the relevant time period, nine firefighters were suspended for violating Rule 16F. The review of the available data does not reveal meaningful differences in the length of discipline sought on the basis of race.

In all but one case, the violation for this offense resulted in a suspension of not less than one day and not more than six days. A white firefighter received the largest amount of suspension time, a total of six days, and every other African-American or

Latino firefighter received no more than three days of suspension for violating Rule 16F.

That said, there was an outlier, a situation where the length of discipline far exceeded the norm of one to six days of suspension: a firefighter, who identifies himself as African-American and white, who received a ninety-day suspension. Further investigation revealed that this ninety-day suspension was the result of a negotiated resolution of this disciplinary matter between the City and Local 825 and the firefighter. Under the terms of that settlement agreement, that firefighter agreed that “[t]here is just cause for discipline for these violations” and that there was “just cause to suspend without pay [this firefighter] for ninety (90) calendar days.” Indeed, this firefighter admitted to “purposely and intentionally alter[ing] and chang[ing]” documentation and lying about it to Assistant Chief Egan. Accordingly, there is no – nor could there factually, legally or logically be a – viable claim of discrimination based on this firefighter’s race or ethnicity.

e. Rule 16G: Use of Inappropriate Language

A Rule 16G violation is “to use obscene, immoral or disrespectful language.” During the relevant time period, only one firefighter, a white firefighter, was suspended for violating Rule 16G. The violation was accompanied by two other violations (16F and 16H) and led to a nine-day suspension. During the relevant time period, no African-American or Latino members of the Fire Department were disciplined for this particular offense. Since no African-American or Latino firefighter was disciplined for this offense, there is no basis for claiming that this Rule has been used to treat African-American or Latino firefighters unfairly.

f. Rule 16H: Conduct Prejudicial to the Department

A Rule 16H violation is “to be guilty of conduct in any manner prejudicial to the good name and reputation of the Department.” During the relevant time period, five firefighters were suspended for violating Rule 16H. The review of the available data does not reveal meaningful differences in the length of discipline sought on the basis of race.

The severity of discipline ranged from one day to six days with the least severe suspension for this offense – one day – issued to a Latino firefighter – the only African-American or Latino firefighter to be suspended for this offense. The remaining firefighters suspended for this offense – all of whom are white -- received suspensions of three, four or six days. As a result, there is no factual basis for the one Latino firefighter suspended for this offense to believe that he was disciplined more harshly than his white counterparts.

g. Rule 16K: Untruthfulness or Willful Misrepresentation

Rule 16K of the Rules and Regulations provides for discipline for “untruthfulness or willful misrepresentation in matters affecting the Department of employees.” During the relevant time period, two firefighters were suspended for violation of Rule 16K, a Latino firefighter and a firefighter who identifies himself as African-American and white. One of these firefighters, referred to above in Part III, Finding #2d, agreed to accept a ninety-day suspension. As noted above, there can be no valid legal claim based on the treatment of this firefighter. The other firefighter, discussed in Part III, Finding #2c, had a fifteen-day suspension. Again, as discussed above, this Latino firefighter cannot

say that he was treated differently from a “similarly situated” white firefighter – much less on the basis of his race – effectively dooming a viable disparate treatment claim.

h. Rule 40: Failure to Report to Duty Timely

Rule 40 states that “all members are required to report on duty to Station Officer from G.O. 75 or injury leave by 7:00 AM or 5:00 PM on the day that they will return to duty.” During the relevant time period, only two firefighters were suspended for violation of Rule 40: one white and one African-American. The review of the available data does not reveal meaningful differences in the length of discipline sought on the basis of race. Both violations resulted in the same length of suspension time, regardless of race: a one-day suspension.

i. Article 12 of the Collective Bargaining Agreement: Abuse of Sick Leave Policy

Article 12 of the Collective Bargaining Agreement states in relevant part: “the use of sick leave for purposes other than sickness as defined in the sick leave plan will result in appropriate disciplinary action.” During the relevant time period, four firefighters were suspended for violation of Article 12. The review of the available data does not reveal a meaningful difference in the length of discipline sought on the basis of race. All of the firefighters disciplined for violating this one offense alone received three-day suspensions, regardless of race. There was a Latino firefighter, who received a fifteen-day suspension for this offense, but, as discussed previously, the suspension was for the violation of a number of other rules as well, including Rule 16A and Rule 16K, making this firefighter not “similarly situated” to a white firefighter. As a

result, a claim of discrimination based on the suspension time received for this offense vis-à-vis others suspended for this offense would be hard to sustain.

j. Section 12: Holding Battalion Chiefs responsible for ensuring that all rules and orders are obeyed

Section 12 states that the Deputy Chief “shall hold the Battalion Chiefs responsible for promptness in the discharge of their duties, see that all rules and orders are obeyed, and report to the Chief of any violation of same brought to their attention.” During the relevant time period, only one firefighter – a white firefighter -- was suspended for violation of Section 12. He received a one day suspension. No African-American or Latino firefighters were disciplined for this offense.

k. Section 7: Requiring Captains to Preserve Order and Discipline

Section 7 states that the Captain “shall preserve order and discipline at all times. Shall enforce a strict compliance with the Rules and Regulations of the Department and orders of his superior officers. Attend all fires to which the Company is assigned and promptly report their arrival to the officer in command. Assume command at fires when he is first to arrive and exercise command until the arrival of a superior officer.” During the relevant time period, only one firefighter – a white firefighter -- was suspended for violation of Section 7. He received a four-day suspension. No African-American or Latino firefighters were disciplined for this offense.

I. Article 14 of the Collective Bargaining Agreement: Abuse of Special Leave

Article 14 of the Collective Bargaining Agreement provides for discipline for “abuse of the provisions of this article, as determined by the Chief, including but not limited to the failure to appear for an assignment that the employee has agreed to cover for another employee.” During the relevant time period, two firefighters were cited for violating Article 14: one was white and one was Latino. The review of the available data indicates that both firefighters received a punishment of “no special leave for one year.” The white firefighter, however, also received a separate one-day suspension for violating Rule 4. As both firefighters were disciplined equally for the same Article 14 offense, regardless of race, there is no basis to conclude that either punishment was motivated by racial discrimination.

m. General Order #100: Failure to Provide Proper Documentation

General Order # 100 of the Rules of the NFD provides that employees “return the Department’s Medical Certificate, properly filled out by the treating Physician to the Deputy’s office before booking on.” During the relevant time period, only one firefighter, a white firefighter, received a suspension for violation for this rule only and for a single day. A Latino firefighter also received discipline for this offense, but the length of discipline related to other offenses as well, which resulted in a fifteen-day suspension, and, as discussed above, this firefighter cannot be said to be “similarly situated” to the white firefighter disciplined for this particular offense. Since the difference in discipline is the result of discipline for *other* offenses, in addition to this

offense, there is no basis for claiming that this Latino firefighter was disciplined excessively for this offense on the basis of his race and/or ethnicity.

Part IV: Conclusion

Based on the data reviewed for this Report and the various analyses conducted, there is no basis for concluding that African-American and Latino firefighters are disciplined more harshly in the New Haven Department of Fire Services. The overwhelming majority of the NHFD's members are not subjected to serious discipline at all, regardless of race. For those individuals who have been disciplined seriously, an examination of the NHFD's Non-Discipline Rates for 2011 and 2012 does not provide evidentiary support for a disparate impact claim, using the EEOC's 80% rule.

Moreover, a closer examination of the length of discipline administered for the violation of each offense does not reveal any evidence of racial bias. In fact, as further evidence of a lack of propensity within the NHFD Chief's Office to punish African-American or Latino firefighters more harshly, during the time period between September 22, 2010 and June 30, 2013, white firefighters were more likely to receive discipline for matters for which no African-American or Latino firefighter received discipline, and there were instances where white firefighters received a longer term of discipline than African-American and Latino firefighters for the same offense.

To be clear, this Report finds no basis for concluding that white firefighters experienced discrimination on the basis of race with respect to discipline. First of all, as discussed above, differences alone do not amount to legal discrimination; there must be differences in treatment between and among similarly situated individuals *and* race must be the reason for or account for any such differences. Second, a review of

the circumstances surrounding each suspension has revealed *no* evidence to support the claim that white firefighters were treated unfairly either *because of* or *on account of* their race. This point, however, underscores the lack of an evidentiary basis for asserting that the New Haven Fire Department discriminates against African-American and Latino firefighters on the basis of race in administering discipline.