

December 30, 2013

D. Joseph Corr
Superintendent of Schools
North Colonie Central Schools
91 Fiddlers Lane
Latham, New York 12110

Re: Case No. 02-12-1184
North Colonie Central Schools

Dear Superintendent Corr:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the North Colonie Central Schools (District). The complainant alleged that the XXXXXXXX of the District's Southgate Elementary School (the School) discriminated against her XXXXXX (the Student), on the basis of his race (XXXXXXXXXXXX), by denying XXXXXX XXXXXX (Parent 1's) requests to observe the Student in his classroom, made on XXXXXXXX XX, 2011, and XXXXXXXX xx, 2012 (Allegation 1). The complainant also alleged that the District treated the Student differently on the basis of his race, and subjected the Student to racial harassment, by disciplining the Student more harshly than non-XXXXXXXXXXXX students during school year 2011-2012 (Allegation 2). In addition, the complainant alleged that the District discriminated against the Student on the basis of his race, or in the alternative retaliated against the Student because the complainant XXXXXXXXXXXXXXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX, by suspending the Student's transportation privileges on or about XXXXXX XX and XXXXXX XX, 2012 (Allegation 3).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

The regulation implementing Title VI provides that:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing held in connection with a complaint.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant, Parent 1, and District staff. OCR made the following determinations.

OCR determined that the Student was in one of the two XXXXX grade classes at the School during school year 2011-2012. The Student was XXXXXXXXXXXXXXXXXXXX students in the XXXXXXXX grade, out of a total of XX students.

Allegation 1

The complainant alleged that the School's XXXXXXXX discriminated against the Student, on the basis of his race, by denying Parent 1's requests, made on XXXXXX XX, 2011, and XXXXXX XX, 2012, that xx be allowed to sit in the back of the Student's classroom one to two times per week to observe the Student's behavior. OCR determined that on XXXXXXXX XX, 2011, the complainant, Parent 1, and the XXXXXXXX XXXXXXXX (Parent 2) attended a conference with the Student's XXXXXXXX and a XXXXX XXXXXXXX to discuss the Student's classroom behavior. OCR further determined that at the meeting, Parent 1 requested to sit in the Student's classroom a few times per week to observe the Student's behavior and "to keep him on track."¹ The XXXXXXXX acknowledged that she rejected Parent 1's request on that date. OCR determined that on XXXXXX XX, 2012, the complainant and Parent 1 met with the XXXXXXXX, the Student's XXXXXXXX, the XXXXXXXX, and a school XXXXXXXX to discuss the District's ongoing concerns about the Student's behavior,² as well as concerns about the Student's academic performance. OCR determined that during this meeting, the complainant questioned why Parent 1 could not sit with the Student in his classroom and asserted that the Superintendent had given Parent 1 permission to do so.³ The XXXXXXXX advised OCR that she explained that the Superintendent had not granted Parent 1 permission to observe the Student, and reiterated her denial of the complainant's request.

District staff informed OCR that they denied Parent 1's requests to observe the Student because parents typically only attend classes if they are serving as volunteers, and it is not the District's practice or policy to allow parents to sit in class with a student on a regular basis to ensure that a student is behaving him/herself. OCR determined that parental visits to the school are governed

¹ Parent 1 additionally told OCR that XXXXXX wanted to be in the classroom to determine whether school staff members' descriptions of the Student's behavior were accurate.

² This behavior included being disruptive, yelling, lacking focus, putting his hands on other students, using inappropriate language, and making fun of other students with special needs.

³ Parent 1 asserted that subsequent to the meeting on XXXXXXXX XX, 2011, the Superintendent told XXXXXX that it would be a good idea for XXX to be allowed to visit the Student's classroom to address the Student's behavior issues. The Superintendent stated that he never granted the complainant's and/or Parent 1's request to observe the Student in the classroom. The complainant did not provide, and OCR did not find any evidence to substantiate the complainant's assertion.

by District Policy 1240, “Visitors to the Schools.” District Policy 1240 states that “[p]arents are encouraged to visit the schools as a means of gaining greater understanding and knowledge of the school program.” The Superintendent stated that District Policy 1240 also encompasses parents’ visits to the building to talk about a child’s progress with staff, or meet with the principal to talk about a student with a disability or a suspected disability; however, the District’s policies, regulations, and practices do not provide for parental visits for the purpose of monitoring or managing students’ classroom behaviors. The Superintendent noted that any parental visit must be cleared with the principal and teacher, must not be disruptive of routines or instruction, and must be consistent with guarding the confidentiality rights of students.

OCR determined that in a School newsletter to parents at the beginning of school year 2011-2012, dated September 2011, the XXXXXXXX stated that visitors are not allowed in the classrooms unless such a visit has been previously arranged with the teacher. OCR further determined that the School hosts “Visitation Day,” a one-day visitation held during specific hours for parents to “observe [their children’s] instructional programs.”⁴ The District advised OCR that no parent other than Parent 1 requested to observe his/her child during school years 2010-2011 or 2011-2012. The complainant did not provide, and OCR did not find any evidence to indicate that parents of children of other races were allowed to sit in classrooms to observe their children’s behavior.

Based on the above, OCR determined that the District proffered legitimate, non-discriminatory reasons for denying Parent 1’s requests to allow Parent 1 to attend class with the Student; namely, that having Parent 1 sit with the Student in his classroom was not consistent with the School’s practice or policy. OCR determined that the proffered reasons were not pretextual, because the XXXXXXXX acted consistent with the District’s and School’s policies, and there was no evidence to indicate that parents of children of other races were treated differently. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the Principal discriminated against the Student, on the basis of his race, by denying Parent 1’s and/or the complainant’s requests to observe the Student in his classroom, made on XXXXXXXX XX, 2011 and XXXXXXXX XX, 2012. Accordingly, OCR will take no further action with respect to Allegation 1.

Allegation 2

The complainant alleged that the District treated the Student differently on the basis of his race, and subjected the Student to racial harassment, by disciplining the Student more harshly than non-XXXXXXXXXX students during school year 2011-2012. Harassment based on race (which can include verbal, written, graphic, physical, or other conduct by an employee, a student, or a third party) is a form of discrimination prohibited by Title VI and its implementing regulation. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to limit an individual’s ability to participate in or receive benefits, services, or opportunities in the institution’s program. If OCR determines that harassing conduct occurred and the District had actual or constructive notice of the harassment, OCR will examine additional

⁴ OCR determined that on October 13, 2011, the School held a “Parent Visitation Day” in which all parents were invited to come to their children’s classes to observe a typical instructional program between 9:30 a.m. and 1:30 p.m. Parent 1 informed OCR that XXXX did not attend this event, and was not aware that it occurred.

factors to make a determination as to whether a hostile environment existed and whether the District took prompt and effective action to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

In investigating alleged harassment involving incidents perpetrated by representatives of recipients, OCR may apply a standard different treatment analysis. In determining whether a student has been subjected to harassment based on race, OCR examines whether an employee or agent of the recipient, acting within the scope of his or her official duties, has treated the student differently on the basis of race without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities, or privileges provided by the recipient.

The complainant identified the following incidents that she believed constituted discrimination and racial harassment:

- (a) requiring the Student to sit in the XXXXXXXX office for approximately four days beginning on XXXXXXXX XX, 2012;
- (b) requiring the Student to sit by himself in the cafeteria during lunch on XXXXXXXX XXX, XXX, and XXX, XXXXX XX, and XXXXXXXX XX, 2012;
- (c) requiring the Student to sit by himself in the School on XXXXXXXX XX, 2012;
- (d) requiring the Student to sit in the XXXXXXXX office during recess on XXXXXXXX XXX and XX, 2012; and,
- (e) prohibiting the Student from participating in a science activity on or about XXXXXXXX XX, 2012.

With respect to Allegation 2(a), the complainant alleged that the XXXXXXXX disciplined the Student more harshly than similarly-situated non-XXXXXXXXXXXX students, and subjected the Student to racial harassment, by requiring the Student to sit in XXX office for approximately four days beginning on XXXXXXXX XX, 2012.

The Student's XXXXXX XXXXXX informed OCR that XXXXXX XXXXXX XXX XXX on or about XXXXXXXX XX, 2012, he observed the Student out of his seat and trying to hit another student with an object that he was moving back and forth. The XXX XXXXXX stated that he called the Student to the front of the bus and confiscated the object, which appeared to be XX XXXXXXXX XXX XXX with a XXXXXX for a handle. The XXXXXX XXXXXX stated that he referred the incident to the District's XXXXXXXX XX XXXXXXXX for discipline because the Student had behaved disruptively on the bus; it was inappropriate for the Student, a XXXXXXXX grader, to wave a pointed XXXXXX on the bus and he was concerned that the Student might injure someone with the XXXXXX of the XXXXXXXX.

OCR determined that later that day, the XXXXXXXX XXXXXXXX spoke with the XXXXXXXX, and forwarded a bus referral report and a picture of the XXXX to her. The bus referral stated that the Student made a XXXXXX XXXXXX and pretended to shoot it on the school bus,⁵ threw an object

⁵ OCR determined that the picture of the XXXXXX XXXXXX depicted what possibly may be a XXXXXXXX XX XXX XXXXXXXXXXXXXXX, approximately XXXXXX XX XXXXXX.

toward the rear of the bus, hit another student with his seatbelt, left his seat while the bus was in motion, and flipped over seats on the bus.

OCR determined that the Student acknowledged making the XXXXX XXXXX.⁶ OCR determined that the XXXXXXXX disciplined the Student for this behavior with XXXXX XXX XXXXX, a form of XXXXXXXX, for XXXXX XXXXX. The XXXXXXXX stated that she required the Student to sit in xxx office during those times because XXX believed the Student's inappropriate, disruptive, and unsafe behavior on the bus warranted this sanction.

OCR determined that pursuant to the District's Discipline Policy 5300, the principal has the discretion to impose sanctions that are based on the seriousness of a student's misconduct on a bus. Possible consequences include "suspension, internal restrictions, loss of bus privileges, detention, parental contact and warning." OCR further determined that during school years 2010-2011 and 2011-2012, 19 non-XXXXXXXXXX students received XXXXX XX XXXXX as a sanction for bus infractions, which included inappropriate, unsafe, and disruptive conduct such as bullying, harassment, fighting, hitting, punching, disrespect, inappropriate language, and touching. OCR further determined that during school year 2010-2011, the XXXXXXXX issued a XXX, XXX XXXXXXXX XXXXXXXX (ALE)⁷ to a XXXXXXXX XXXXXXXX grade student (Student A) for hitting another student on the bus and threatening to go to that student's home and XXXXX him with a XXXXX. OCR determined that the XXXXXXXX also sanctioned Student A with XXXXX XXXXX in the ALE on a separate day for telling a student to hand him a XXXXX so that he could XXXXX another student. The complainant did not provide, nor did OCR find, any evidence indicating that the XXXXX sanction of XXXXX for the Student was because of or motivated by his race.

Based on the above, OCR determined that the District proffered a legitimate, non-discriminatory reason for disciplining the Student with XXXXX for XXXXX XXXXX for his behavior on the bus on or about XXXXX XX, 2012; namely, the Student engaged in inappropriate, disruptive, and unsafe behavior on the school bus, which included waving a XXXXX XXXXX, leaving his seat, hitting another student, and flipping seats. OCR determined that the proffered reason was not pretextual, as the sanction imposed was consistent with the District's disciplinary policy, and the XXXXX imposed similar or more severe sanctions on non-XXXXXXXXXXXX students who engaged in conduct similar to that of the Student.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District disciplined the Student more harshly than non-XXXXXXXXXXXX students, and/or subjected the Student to racial harassment, by requiring the Student to sit in XXX office beginning on XXXXXXXX XX, 2012 for making a XXXX XXXXXXXX. Accordingly, OCR will take no further action with regard to Allegation 2(a).

With respect to Allegation 2(b), the complainant alleged that District staff members disciplined the Student more harshly than similarly-situated non-XXXXXXXXXXXX students, and subjected

⁶ Parent 1 confirmed to OCR that the Student admitted to XXX that he made a XXXX XXXX in the classroom and brought it onto the bus.

⁷ During ALE, a student remains in school but is removed from his or her classroom and normal activities (i.e., lunch, recess, etc.) for the period of the in-school suspension (e.g., one day).

the Student to racial harassment, by requiring the Student to sit by himself in the cafeteria during lunch on XXXXXX XXX, XXX, and XXX, XXXXXX XXX, and XXXXXX XXX, 2012.

OCR's review of the Student's disciplinary log revealed that on XXXXXX XX, 2012, the School's XXXXXX XXXXXX required him to sit by himself on the side of the cafeteria opposite from his and the other XXXXXX grade class⁸ for "budg[ing]" in line at lunch. The XXXXXX XXXXXX similarly moved the Student on XXXXXX XX, 2012, for an unspecified reason. The XXXXXX XXXXXX moved the Student in the same manner for a third time on XXXXXX XX, 2012, for talking in line at lunch. On XXXXXX XX, 2012, the XXXXXX XXXXXX reminded the Student and three XXXXXX students (Students B, C, and D) not to throw or stomp on food, to keep their hands to themselves, and to otherwise meet expectations for behavior in the cafeteria; otherwise, they would have to sit alone on the opposite side of the cafeteria. The XXXXXX XXXXXX stated that Students B, C, and D did not continue to misbehave after that date. The XXXXXX XXXXXX advised OCR that on XXXXXX XXX, 2012, the Student stomped on a plastic cup, creating a loud popping sound; therefore, for this fourth offense, xxx required him to sit by himself on the side of the cafeteria opposite from his and the other xxxxxx grade class. OCR determined that based on this fourth offense, the XXXXXX XXXXXX made the Student sit by himself in the cafeteria on XXXXXX XXX-XXX, and again on XXXXXX XXX-XXX, 2012.⁹ Neither the District nor the complainant provided evidence corroborating that the Student sat by himself in the cafeteria on either XXXXXX XXX, 2012 or XXXXXX XXX, 2012. Accordingly, OCR determined that the Student sat by himself for six consecutive school days, and then three other days, for a total of nine days.

OCR determined that the District does not have a written policy or other documentation specifically addressing the School's handling of cafeteria behavior management. The XXXXXX XXXXXX explained that xxx required the Student to sit by himself in the cafeteria on the above-referenced days because he was not meeting behavioral expectations even after being warned every day. The XXXXXX XXXXXX stated that the Student deserved this sanction because he misbehaved on a daily and repeated basis, and to a greater degree than the other three students. XXXXX also said that of the four students, he was always the instigator. The District further asserted that this sanction was also a reflection of the Student's behavioral issues that extended outside of the cafeteria, including problems in the classroom, hallway, recess, and the school bus.

OCR determined that the XXXXXX XXXXXX and the XXXXXX required other students to sit on the opposite side of the cafeteria for misconduct in the lunchroom; however, the evidence indicated that the XXXXXX XXXXXX did not require any of those students to sit

⁸ The XXXXXX XXXXXX described the area in the cafeteria where the Student was directed to eat as "the XXXXX XXXXXX area," which was not occupied during the Student's lunch period. The District further stated that the XXXXXX and XXXXXX grade areas of the cafeteria are separated by an aisle that is approximately six to eight feet wide.

⁹ OCR determined that between XXXXXX XXX and XXX, 2012, the District was not in session due to "mid-winter recess."

alone in the cafeteria for similar lengths of time or as frequently as the Student.¹⁰ The complainants advised OCR that this prolonged period of isolation made the Student feel as if he was “being targeted by the XXXXX XXXXXXXX, being watched because XXXXXXXX XX XXX XXXXXXXX.” This action resulted in XXX XXXXX XXXXXXXX XXXXXXXX students being publicly separated, in the presence of his peers, for a prolonged period of time. OCR noted, however, that the evidence indicated that the other XXXXX XXXXXXXX XXXXXXXX students were not subjected to similar treatment, lending credence to the District’s assertion that the Student’s sanction was not because of his race but because of the severity and persistence of his misbehavior.¹¹

On December 20, 2013, the District voluntarily agreed to the enclosed resolution agreement to resolve Allegation 2(b). OCR determined that during the course of the complaint resolution process, the District took actions that comply with the terms of this resolution agreement.¹² Namely, the District provided documentation to OCR indicating the following:

- On or about August 28, 2013, the District’s Superintendent disseminated a memorandum to all administrators, teachers, and staff members at the School stating that the District does not tolerate acts of discrimination/harassment on the basis of race, color, or national origin.
- On or before September 10, 2013, the School revised its procedures to provide that the separation of a student in the cafeteria from other students for a period of more than two consecutive lunch periods as a result of an act of misconduct by the student will be documented in writing, and retained in accordance with the District’s procedures for the retention of disciplinary records.

¹⁰ The XXXXXXXX XXXXXXXX recalled one incident in which Student B squished a grape on the floor in the lunchroom and as a result he was moved to the other side of the cafeteria for two days; however, because the District did not maintain documentation for discipline in the cafeteria, OCR could not find any documentation to support this assertion. The XXXXXXXX XXXXXXXX also recalled occasionally requiring Students B, C, and D to sit alone in the cafeteria prior to the incident on XXXXXXXX XXX, 2012, but could not provide any specific details. One of the XXXXXXXX XXXXXXXX (XXXX 1) informed OCR that she could not recall any student aside from the Student being required to sit on the other side of the lunchroom for any length of time, stating that it may have happened “one day here or there.” Another XXXXXXXX XXXXXXXX (XXXX 2) stated that she could not recall any other XXXXXXXX grade student, including Student B, C, or D, who sat by him/herself on the XXXXXXXX XXXXXXXX side of the cafeteria for misbehaving during school year 2011-2012. XXX 2 stated, however, that no other student in the XXXXXXXX grade had behavioral issues similar to those of the Student. OCR attempted to contact a XXXXXXXX XXXXXXXX XXX (XXXX 3); however, she is no longer an employee of the District and did not respond to OCR’s attempts to interview her.

¹¹ OCR determined that on XXXXXXXX XXX, 2011, a XXXXXXXX XXXXXXXX grade student (Student E) lost two days of recess for throwing food in the cafeteria, lying, and being disrespectful. OCR determined that on XXXXXXXX XXX, 2011, a XXXXXXXX XXXXXXXX grade student (Student F) was required to eat lunch in XXX XXXXXXXX XXXXXXXX for one day because the student was “fooling around” in the cafeteria, lying on top of another student, pushing students around, poking a student in the face, and refusing to stop when told to do so. OCR also determined that on XXXXXXXX XXX, 2011, a XXXXXXXX XXXXXXXX grade student (Student G) was required to eat lunch in XXX XXXXXXXX XXXXXXXX for one day after the student was disruptive in the cafeteria, lifted a bench and dropped it while students were sitting on it, and played basketball with garbage.

¹² The District also specifically denied the complainant’s allegations that it discriminated against the Student on the basis of the Student’s race, or that the District’s actions constituted a violation of Title VI.

- On or about September 10, 2013, the District extended a written offer of counseling to the Student through his parent to address any effects that moving the Student’s seat in the cafeteria at the School during school year 2011-2012 might have had on him.
- On September 10, 2013, the District provided training to administrators and staff involved in overseeing students in the cafeteria at the School, including the XXXXXXXX, XXX XXXXXXXX, XXXXX XXXXX, and all other relevant administrators and staff at the School. This training included instruction regarding: (a) the requirements for documenting misconduct and/or discipline for misconduct in the cafeteria; (b) the requirements of Title VI, prohibiting discrimination/harassment on the basis of race, color, or national origin, specifically as it regards discipline; and (c) the disciplinary sanctions applicable to anyone who engages in racial discrimination/harassment.

Based on OCR’s review of the information the District provided, OCR determined that the District has complied with the requirements of the agreement. Accordingly, OCR will take no further action regarding Allegation 2(b).

With respect to Allegation 2(c), the complainant alleged that District officials disciplined the Student more harshly than similarly-situated non-XXXXXXXXXXXX students, and subjected the Student to racial harassment, by requiring the Student to XXX XXX XXXXXXXX in the School on XXXXXXXX XXX, 2012. The XXXXXXXX informed OCR that she recalled one of the Student’s XXXXX/XXXXX XXXXX telling her that the Student XXX XXX XXX XXXXXXXX for throwing snow on one occasion during school year 2011-2012. The District did not provide, nor did OCR find a copy of any specific written disciplinary referral regarding the Student’s throwing snow on the playground; however, the XXXXXXXX stated that losing XX XXX XXX recess is a standard punishment for a student who throws snow. Parent 1 acknowledged to OCR that the Student told xxx that he and his friends, who are XXXXXXXX, had a snowball fight, and that they were all prohibited from continuing to play on the playground that day. OCR further determined that during school year 2010-2011, one mixed race (XXXXXXXX/XXXXXXXX XXXXXXXX) XXXXX grade student received XX XXXXXXXX, a XXXXX XXXXX grade student received XXXXXXXX XXXXX, and a XXXXXXXX XXXXX grade student received XXX XXX XXX XXXXX XXXXX for throwing snow.

Based on the above, OCR determined that the District proffered a legitimate, non-discriminatory reason for requiring the Student to XXXXX XXXXX; namely, he was throwing snow on the playground. OCR determined that the proffered reason was not pretextual as non-XXXXXXXXXXXX students who engaged in similar conduct were similarly disciplined. OCR also could not substantiate that the discipline imposed was because of or motivated by race. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that District officials disciplined the Student more harshly than non-XXXXXXXXXXXX students, and/or subjected the Student to racial harassment, by requiring him to XXX XXX XXXXXXXX in the School on or about XXXXX XXX, 2012. Accordingly, OCR will take no further action with regard to Allegation 2(c).

With respect to Allegation 2(d), the complainant alleged that District officials disciplined the Student more harshly than similarly-situated non-XXXXXXXXXXXX students, and subjected the Student to racial harassment, by requiring that the Student XXXXXXXX’X XXXXX XXXXX

XXXXXXXX on XXXXX XXX and XXX, 2012. The complainant and Parent 1 stated that they did not know why the Student was punished on XXXXX XXX, 2012, but stated that the Student was disciplined for throwing wood chips with other students in the playground on XXXXX XXX, 2012. The complainant stated that although the Student was disciplined for throwing the wood chips, non-XXXXXXXXXX students who also engaged in the misconduct were not punished.

District staff stated that they could not recall an incident for which the Student was disciplined on XXXXXX XX, 2012. Additionally, OCR could not find, nor did the District provide any information indicating that the Student was disciplined on XXXXXX XX, 2012. OCR determined that on XXXXXX XXX, 2012, the XXXXXXXX issued a disciplinary referral to the Student for throwing stones, climbing on a fence, and not following directions. The XXXXXXXX further noted that when it was time for the Student to re-enter the School building for lunch, the Student refused, laid himself on the ground, and refused to get up; he was thereafter brought to the XXXXXXXX office.¹³ OCR determined that the Student ate lunch in the XXXXXXXX office on March 15, 2012, and XXXX XXX XXX XXX XXXXXXXX. The disciplinary referral for the incident did not mention that any other student was involved in throwing stones with the Student. The XXXXXXXX stated that she imposed the XXX XXX XXX XXXXXXXX because the Student admitted engaging in the misconduct, and loss of recess is a typical consequence for this kind of misbehavior during recess. The XXXXXXXX stated that xxx required the Student to XXX XXX XXX XX XXXXX on XXXXX XXX, 2012 to regain his composure, because he had been crying when he was brought to XXX office following the incident, which occurred around lunch time.

OCR determined that pursuant to the Discipline Policy, an administrator has discretion to punish a student for creating a hazardous or physically offensive condition and for insubordination; the range of permissible punishments includes forms of detention, such as loss of recess. The complainant did not provide, nor did OCR find any evidence indicating that any other students were involved in the incident, or that the XXXXXXXX's imposition of the sanction was because of or motivated by the Student's race.

Based on the above, OCR could not substantiate that the Student was disciplined or required XX XXX XXX XXX XXXXXXXX XXXXX on XXXXXXXX XXX, 2012. OCR further determined that the District proffered a legitimate, non-discriminatory reason for requiring the Student to eat lunch in the XXXXXXXX's office on XXXXXXXX XXX, 2012, and XXXXX XXXXXXXX; namely, the Student engaged in misconduct during recess. OCR determined that the proffered reason was not pretextual, as the discipline imposed was consistent with the District's practice and Discipline Policy, and the XXXXXXXX frequently imposed loss of recess for other kinds of conduct such as throwing snow, throwing food, teasing, using offensive language, etc.

¹³ Parent 1 stated that the Student acknowledged throwing wood chips (not stones) on the playground with his friends, and climbing the fence with other students; however, the Student stated that he did not lie on the ground or refuse to enter the School building. Neither XXXX 1 nor XXXX 2 recalled this particular incident, but XXXX 2 informed OCR that the Student threw bark chips and stones on occasion. Parent 1 stated to OCR that XX told the XXXXXXXX that the Student threw wood chips, not stones.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that District officials disciplined the Student more harshly than non-XXXXXXXXXX students, and subjected the Student to racial harassment, by requiring that the Student XXX XXXXXXXX XXXXXXXX on XXXXX XXX and XXX, 2012. Accordingly, OCR will take no further action with regard to Allegation 2(d).

With respect to Allegation 2(e), the complainant alleged that the Student's teacher disciplined the Student more harshly than similarly-situated non-XXXXXXXXXX students, and subjected the Student to racial harassment, by prohibiting him from participating in a science activity involving XXXXXXXX on or about XXXXXXXX XXX, 2012. The XXXXX XXXXXXXX informed OCR that during XXXXXXXX 2012, students XX XXX XXXXXXXX conducted an experiment involving XXXXXXXX. The XXXXXXXX stated that she informed the students that they had to remain in their seats while the XXXXXXXX were out, and that if they did not do so, they would lose one day of handling the XXXXXXXX. The teacher stated that on the date in question, the Student did not remain in his seat while the XXXXXXXX were out; therefore, she prohibited him from touching the XXXXXXXX the next day.¹⁴ The teacher stated that she similarly restricted a XXXXXXXX student from handling XXXXXXXX for one day because he did not remain in his seat while the XXXXXXXX were out.

Based on the above, OCR determined that the District proffered a legitimate, non-discriminatory reason for prohibiting the Student from handling the XXXXXXXX for one day; namely, that the Student failed to follow his teacher's directive to remain seated during a portion of the lesson. OCR determined that the proffered reason was not pretextual, as a XXXXXXXX student who similarly failed to follow the teacher's instructions was also prohibited from handling the XXXXXXXX for one day. OCR also could not substantiate that the discipline described was because of or motivated by the complainant's race.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student, on the basis of his race, by disciplining him more harshly than similarly situated non-XXXXXXXXXX students and/or subjected the Student to racial harassment, by prohibiting him from participating in a science activity involving XXXXXXXX on or about XXXXX XXX, 2012. Accordingly, OCR will take no further action with regard to Allegation 2(e).

Allegation 3

The complainant alleged that the District discriminated against the Student on the basis of his race, or in the alternative retaliated against the Student because the complainant XXXXX XX XXXXXXXXXXXX by XXXXXXXX the Student's transportation privileges on or about XXXXX XXX and XXXXX XXX, 2012. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection

¹⁴ The teacher noted that while she did not permit the Student to handle the XXXXXXXX that day, she still permitted him to observe the entire lesson.

between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in a protected activity when she XXXXX XX XXX XXXXX XXXXXXXX XXXXXXXX¹⁵, XXXX XXXXXXXX XX XXXXX, in or around XXXXX 2011. OCR further determined that School administrators, including the XXXXXXXX, were aware of the complainant’s protected activity since at least XXXXX XXX, 2011.

OCR determined that on XXXXXXXX XXX, 2012, the XXXXXXXX XXXXXXXX issued a bus referral for the Student, stating that on that date, the Student would not remain in his seat on the bus, stood on and went over the top of seats, yelled out the window, initiated horseplay with other students, threw a marker at a student, poked a student in the face, and told another student’s mother that he wanted to have sex with her.¹⁶ OCR determined that in an electronic mail message (email) to the XXXXXXXX, dated XXXXX XXX, 2012, the XXXXXXXX XXXXXXXX described the Student’s behavior on the bus, and the XXXXXXXX responded, “I think it’s time you and I discuss a bus XXXXXXXX for [the Student] with [the Superintendent].” OCR further determined that in an email to the XXXXXXXX XXXXXXXX, the XXXXXXXX, the XXXXXXXX XXXXXXXX, and a XXXXXXXX XXXXXXXX, dated XXXXXXXX XXX, 2012, the XXXXXXXX stated that the Student’s behavior “will result in a bus XXXXXXXX.”

OCR determined that on XXXXXXXX XXX, 2012, the complainant and Parent 1 met with the XXXXXXXX, the XXXXXXXX XXXXXXXX, the XXXXXXXX, and a XXXXX XXXXXXXX. During this meeting, School officials showed Parent 1 a bus video demonstrating that the Student had behaved as alleged.¹⁷ OCR determined that by letter, dated XXXXXXXX XXX, 2012, the XXXXXXXX informed the Student’s parents that the Student XXX XXX XXX XXXXX XXX because his behavior was becoming “exceptionally problematic.” The XXXXXXXX informed OCR that xxx decided on this level of punishment because the Student’s behavioral issues on the bus had elevated, and because he had a long history of inappropriate behavior on the bus.¹⁸

OCR determined that on XXXXXXXX XXX, 2012, after the Student returned from his XXXXXXXX, the XXXXXXXX XXXXXXXX issued another bus referral for the Student for misconduct that occurred on that date. The referral stated that the Student blocked students from exiting the bus, stood on the bus, told the XXXXX XXXXXXXX, “kiss my ass,” and was verbally

¹⁵ According to the District’s published Guide to Program Planning, the District’s Title IX Compliance Officer is responsible for responding to inquiries regarding alleged discrimination on the bases of race, age, creed, color, national origin, sex, sexual orientation, religion, disability, marital status, genetic disposition, or HIV or hepatitis carrier status.

¹⁶ Parent 1 informed OCR that the Student denied stating that he wanted to have sex with another student’s mother.

¹⁷ OCR reviewed a copy of this video and confirmed that the Student had not remained in his seat, stood on top of seats, yelled out the window, initiated horseplay with other students, and threw an object. The audio of the video was not sufficiently clear to determine whether the Student told a parent that he wanted to have sex with her; however, the XXXXXXXX informed OCR that xxx spoke to this parent, who stated that the Student had made these comments to her.

¹⁸ The XXXXX XXXXXXXX informed OCR that it was common for the Student to misbehave. Additionally, OCR determined that the Student had previously received XXX XXXXXXXX on XXXXXXXX XXX, 2011, XXXXXXXX XXX, 2011, XXXXXXXX, 2011, XXXXXXX XXX, 2011, XXXXXXXX XXX, 2011, and XXXXXXXX XXX, 2012.

abusive to another student’s mother, including calling her an “idiot.”¹⁹ OCR determined that in a letter to the Student’s parents, dated XXXXXX 26, 2012, the XXXXXXXX stated that the Student’s bus transportation privileges XXXXX XXXXXXXX XXXXX XXXXX because his behavior had become “problematic and unsafe.” The XXXXXXXX stated that she, the Superintendent, and XXXXXXXX XXXXXXXX determined that this sanction was appropriate because of the severity of the specific incident as well as the Student’s prior behavioral history on the bus.

OCR determined that XXXXXXXX XXXXXXXXXX was consistent with the District’s Discipline Policy at Sections 5300 and 8410.6. OCR determined that the range of possible sanctions in the Discipline Policy for bus discipline includes a “loss of bus privileges.” Section 8410.6 of the Discipline Policy, entitled “Student Conduct on School Buses,” states that “because of the hazard created by misbehaving on the school bus, students who are disorderly or insubordinate shall be subject to the xxxxxxxx of their riding privileges.”

OCR further determined that during school years 2010-2011 and 2011-2012, 16 non-XXXXXXXXXX students were punished for misconduct on the school bus, which included not following directions, hitting, and/or using racial slurs against another student. OCR determined that none of these students engaged in conduct that was as severe or unsafe as the Student’s and/or had as many prior incidents of misbehaving on the bus; the majority of these students received penalties that ranged from a warning to a loss of recess for five days.²⁰ OCR determined that on XXXXXXXX XXX, 2012, the XXXXXXXX gave one of these students, a XXXXXXX XXXXX grader, a two-day XXXXXXXX of bus privileges for fighting with another student while on the bus. The XXXXXXXX informed OCR that xxx would have imposed a five-day bus suspension in this instance, but there were only two more days of school for the year when the incident occurred. OCR also determined that XXXXXXXX XXX, 2011, a XXXXXXXX XXXXX grade student was XXXXXXX XXXXX XXX XXX (pending a XXXXXXXXXXXXXXX XXXXXXXX) for writing on another student’s shirt, taking and writing in another student’s book, and lying about pinching another student.

Based on the above, OCR determined that the District proffered legitimate, non-discriminatory and non-retaliatory reasons for imposing XXX XXXXX-XXXXX XXX XXXXXXX on the Student; namely, that the Student’s misbehavior on the school bus on XXXXX XXX and XXXXXXX XXX, 2012, was severe and unsafe, and his prior history of misbehavior on the school bus warranted a more severe sanction. OCR determined that there was insufficient

¹⁹ The District informed OCR that it did not have a bus video for this incident; however, the XXXXXXXX stated that XXXX spoke to the XXXXXXXX XXXXXXXX and the Student about this incident. Additionally, OCR determined that the XXXXXXX XXXXXXXX spoke directly to the XXXXX XXXXXXXX, and reported this information to the XXXXXXXX. The XXXXX XXXXXXXX confirmed to OCR that the Student had behaved in the manner described in the bus referral. Parent 1 informed OCR that the Student told xxx that while he would go from “seat to seat” on the bus, he never called another student’s mother an “idiot” or told the XXXXX XXXXXXXX to “kiss my ass.”

²⁰ OCR determined that 3 of the 16 had prior disciplinary referrals for their conduct on the school bus during school year 2010-2011: on May 24, 2012, a XXXXXXXX XXXXX grade student with one prior disciplinary referral for conduct on the bus received a one-day loss of recess for hitting a student in the arm on the bus; a XXXXXXXX XXXXX grade student, who had one prior disciplinary referral for conduct on the bus, also received XXX-XXX XXXXX XXX XXXXX for the same behavior; and on XXXXXXXX XXX, 2011, a XXXXXXXX XXXXX grade student with one prior disciplinary referral for conduct on the bus was required to sit at the front of the bus for teasing another student on the bus.

evidence to conclude that the proffered reasons were pretextual, as the Student's bus XXXXXXXX were consistent with the District's Discipline Policy.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student on the basis of his race, or in the alternative retaliated against the Student because the complainant XXXXX XXX XXXXX XXXX XXXXXXX XXXXXXX, by XXXXXXX the Student's bus transportation privileges on or about XXXXX XXX and XXXXXXX XXX, 2012. Accordingly, OCR will take no further action with respect to Allegation 3, and has closed the complaint as of the date of this letter.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions about OCR's determination, please contact David Hensel, Compliance Team Attorney, at (646) 428-3778 or david.hensel@ed.gov; Jane Tobey Momo, Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXXXXXXXXXX.