



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

September 24, 2018

Matthew H. Malone, Ph.D.
Superintendent of Schools
Fall River Public Schools
417 Rock Street
Fall River, MA 02720
Via email to: mmalone@fallriverschools.org

Re: Complaint No. 01-12-1255
Fall River Public Schools

Dear Superintendent Malone:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Fall River Public Schools (the District). The Complainants, the Civil Rights Project at UCLA and the American Civil Liberties Union of Massachusetts, alleged that the District's disciplinary policies and practices discriminate against black students, Hispanic students, students with disabilities, and students who have a confluence of these traits, e.g., students that are black/Hispanic and have disabilities. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The District is subject to the requirements of Title VI, Section 504 and Title II because it is a recipient of federal financial assistance from the Department and a public entity.

Legal Standards

Title VI

Title VI states that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

by a recipient of Federal financial assistance. Title VI also prohibits a recipient, on the ground of race, color, or national origin, from denying an individual any service or benefit provided under the recipient's program; providing any service or benefit that is different from that provided to others under the program; or subjecting an individual to separate treatment in any matter related to the receipt of any service or benefit. In addition, a recipient may not, directly or through contractual or other arrangements, utilize methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

Title VI prohibits districts from intentionally disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is an example of prohibited intentional discrimination. When similarly-situated students of different races are disciplined differently for the same offense, it raises an inference of intentional discrimination on the basis of race. Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly-situated student. Additionally, a school's adoption of a facially-neutral policy with the intent to target certain races is prohibited intentional discrimination. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether District treated students less favorably than similarly situated individuals of a different race. If so, the District may proffer a legitimate non-discriminatory reason, and OCR determines if the reason is legitimate or the reason given by the District is a pretext for unlawful discrimination.

Section 504 and Title II

The applicable standards for determining compliance with Section 504 are set forth in the implementing regulation at Section 104.4(a) and (b)(1), which provides that a recipient may not treat persons differently on the basis of disability. OCR interprets 28 C.F.R. § 35.130 (a) and (b) of the regulation implementing Title II to prohibit different treatment of persons with disabilities, by public entities operating an education program, to the same extent as is required under the Section 504 regulation.

Investigation

During the investigation of this complaint, OCR reviewed documentation provided by the Complainants and the District. In May 2014, OCR conducted on-site visits to four District schools, including the District's high school, one middle school, and two elementary schools. During those visits, OCR interviewed District administrators regarding the District's policies and procedures for student discipline, including the: Superintendent; Assistant Superintendent of Curriculum, Director of Special Education (Special Ed Director), School Information Coordinator, Chief Operating Officer (COO); Director of Administrative and Environmental Services (SSO Supervisor); and principals and vice principals at the high and elementary schools. In addition, OCR conducted student and teacher focus groups.¹ During its

¹ OCR also interviewed staff from the New England Equity Assistance Center (NEEAC) and the Fall River Youth Advocacy Division as part of its investigation.

investigation, OCR analyzed data sets of disciplinary incidents obtained from the District for school years 2009-2010 and 2011-2012.

Pursuant to OCR's Case Processing Manual, before OCR completed its investigation, the District expressed a willingness to resolve this complaint and OCR determined that it was appropriate to resolve the allegations with an agreement. The Agreement is discussed in further detail below.

Background

The District is the 10th largest school district in Massachusetts. The District operates 17 public schools² including eight elementary schools; three pre-K-8 schools, three middle schools, one high school and one alternative high school that serves both regular and special education students. The District's enrollment for the 2017-2018 school year was 10,128 students: 7.8% Black, 4.1% Asian, 26% Hispanic, 53.5% white, 8.2% multi-racial, 0.2% Native American, and 0.1% Hawaiian/Pacific Islander.

Code of Conduct

The District's Discipline Code is provided in a "District Handbook for pre-K-12 School Students," distinguished by level (elementary, middle, and high school) and the Durfee High School (Durfee HS) Student Handbook (collectively, the Code). The Code is provided to students in the handbooks at the beginning of each school year and is available online. In addition, the Durfee HS Staff Handbook (HS Staff Handbook), also available online, contains information on how staff are to make disciplinary referrals.

During the course of the investigation, in May 2017, the District implemented a revised Code for the 2017-2018 school year that continues to be in effect. Accordingly, OCR reviewed both the version that was in effect through the 2016-2017 school year (the former Code) and the revised, current version (the new Code).

Former Code

The former Code stated that the District would impose discipline on a student for behavior that "detracts from the good order of the school," intrudes on another person's rights, "creates an atmosphere not consonant with the educational goals of the school," or "threatens the health and well-being of students or staff[.]" OCR noted that the former Code did not rank disciplinary offenses or penalties, and set forth offenses that were potentially open to subjective interpretation. The former Code for elementary students indicated that OSS "from one to nine days" *shall* occur when there is a "serious disruption" of the learning process, which can include assault or vandalism, but also "stubbornness," and "insubordination" (the latter defined as "disregard and defiance of school authority"). The former Code for middle school students indicated that OSS of one to nine days may be imposed for subjective offenses such as "Insubordination to a Member of the School Staff" (which is not further defined) and "Any offense not specifically covered herein but which detracts from the good order of the school[.]"³

² <http://www.fallriverschools.org/schools.cfm>

³ The former Code later clarifies that "suspension should be considered the usual punishment."

The former Code for high school students stated that students should “act with courtesy towards faculty, staff and fellow students,” and those who do not can be subject to a progression of disciplinary actions including long-term OSS. In addition, the former Code for high school students provided that students “whose chronic pattern of behavior and offenses demonstrate a lack of interest in adhering to the rules of the school, and an indifference to receiving an education,” at the discretion of the principal or vice principal, could be subject to a remedial discipline plan.

New Code

The new Code significantly changed the District’s approach to discipline. The new Code provides objective definitions of misconduct that distinguish between similar acts and includes specific examples. The new Code describes the types of misconduct that may be addressed through alternate methods or techniques instead of disciplinary sanctions, and provides a description of the alternative methods or techniques and examples of these instances. The new Code provides five infraction levels, defined as: (1) uncooperative/noncompliant behavior; (2) disorderly behavior; (3) disruptive behavior; (4) aggressive or injurious/harmful behavior; and (5) seriously dangerous or violent behavior.

The new Code provides clear examples of each level of misconduct at the elementary, middle, and high school levels separately, with detailed lists of the interventions which must be employed in each instance, and the range of possible consequences.⁴ Further, the new Code provides that behavioral interventions in lieu of discipline may include parent outreach, a collaborative problem-solving conference, referral to a Response to Intervention (RTI) team, counseling, and various types of referrals to community organizations and services. The new Code also provides for a series of restorative approaches, including advisory meetings, collaborative negotiations, mediation, and restorative conferences. In addition, the new Code references the State law, which requires administrators to complete detailed checklists documenting the behavioral interventions and restorative steps employed before disciplinary action is taken, particularly with reference to exclusionary discipline.

Discipline Data

The data reviewed by OCR for school years 2009-2010 and 2011-2012 at the high school level indicated that black students, and students with disabilities (regardless of race or national origin), received ISS more frequently than other students. Further, black and Hispanic high school students, and students with disabilities, received OSS more frequently than other students.

OCR’s review of student referrals at Durfee HS from the 2011-2012 school year indicated the following:

- A black student who cut class (his first referral of the school year) received one day of ISS, while a similarly situated white student cut class three times and received two detentions

⁴ Both the former and new Codes provide for behavior to be reported to legal authorities when it may constitute a criminal offense.

and a conference. Another white student cut class 20 times over the course of the school year and received detention each time.

- A black student who refused to give up his phone (his fourth referral of the school year) received one day of OSS. A white student who engaged in the same conduct (her sixth referral of the school year) received one day of ISS.
- A Hispanic student who left school (his first referral of the school year) received one day of ISS. A white student who engaged in the same conduct (his 11th referral of the school year) received detention.
- A Hispanic student who engaged in disrespect of an adult (his fourth referral of the school year, and only one for this type of conduct) received one day of OSS. A white student with four referrals for the same infraction was given seven chances by the teacher to redirect on the first occasion, and received a detention each time.
- A Hispanic student who engaged in “inappropriate behavior” (her third referral of the year and the second for this type of infraction) received one day of ISS for inappropriate behavior. A white student who had seven referrals for the same conduct over a five month period received a detention each time.

Further investigation would be necessary to determine whether or not the above-referenced differences were the result of unlawful racial discrimination. Prior to OCR completing further investigation into this issue, the District agreed, pursuant to the Agreement, to analyze its current discipline data, including referral data, for any evidence of unlawful racial discrimination and implement corrective actions to address any identified concerns.

Training and Record Keeping

Prior to OCR completing further investigation, the District agreed to continue to train its staff and to address concerns OCR identified regarding the District’s discipline recordkeeping practices, including tracking students with disabilities. Provisions regarding training and record-keeping are set forth in the attached Agreement.

This concludes OCR’s investigation of the complaint. This letter 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to

protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney James Moser at (617) 289-0146 or by e-mail at james.moser@ed.gov.

Sincerely,

/s/

Adrienne -Shephard *w/p EK*
Acting Regional Director

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXX
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Via email to: XXXXXXXXXXXXXXXXXXXXX