



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 6, 2019

Terry J. Dade
Superintendent of Schools
Rochester City School District
131 West Broad Street
Second Floor
Rochester, New York 14614

Re: Case No. 02-19-1227
Rochester City School District

Dear Superintendent Dade:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Rochester City School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his race/color (black/dark skin), by failing to appropriately respond to her complaint that the Student's XXXXX teacher (teacher 1) at the XXXXXX X. XXXXXXXX School No. XX (the School) treated the Student differently and subjected him to harassment, because of his race/color, by sending him out of her classroom on a weekly basis, beginning in January 2019 (Allegation 1). The complainant also alleged that the District discriminated against the Student, on the basis of his race/color, by failing to respond appropriately to her complaint that teacher 1 subjected the Student to harassment because of his race/color, or in the alternative retaliated against the Student because the complainant filed a complaint about teacher 1 with the District's Board of Education (the Board) in XXXXXXXX 2019, alleging race discrimination and harassment, by shoving the Student during an incident on March 6, 2019 (Allegation 2).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities 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.

OCR interviewed the complainant and District staff during the course of its investigation. OCR also reviewed information and documentation that the District provided. OCR made the following determinations.

OCR determined that during school year 2018-2019, the Student was enrolled in the XXXXX grade at the School. The Student attended XXXXX class with teacher 1 once per week from XX:XX X.X. until XX:XX X.X.

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his race/color, by failing to respond appropriately to her complaint that teacher 1 treated the Student differently and subjected him to harassment because of his race/color, by sending him out of her classroom on a weekly basis, beginning in January 2019. The complainant asserted that each time the Student attended his weekly XXXXX class, teacher 1 would send the Student to other teachers' classrooms through the School's "buddy teacher system" and falsely report to the other teachers that the Student had been misbehaving. The complainant asserted that teacher 1 did not send white or Hispanic students out of the classroom; instead, she only sent black/darker-skinned students, including the Student, out of her classroom.¹ The complainant also asserted that, although she had filed multiple complaints with the Board and Office of Parent Engagement (OPE) alleging that teacher 1 had discriminated against the Student on the basis of his race/color, the District did not provide her with any information about its investigation or any actions it had taken with respect to teacher 1.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which the regulation applies. Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include oral, written, graphic, physical or other conduct by an employee, a student, or a third party; as well as conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious so as to interfere with or deny a student's participation in, or receipt of benefits, services or opportunities in, the recipient's program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the District took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. In determining whether the responsive action was reasonable, OCR will consider, among other things, whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

District Policy 0100, entitled "District Policy Prohibiting Discrimination or Harassment of Students or Employees" (the policy) prohibits discrimination and/or harassment on the bases of race, color, national origin and other bases, as well as retaliation. The policy states, in pertinent part, that it is a "violation of this policy for District students or employees (including contractors) to engage in behavior that subjects any student, employee or applicant for employment to discrimination and/or harassment at a school/worksite location . . . where such conduct: (1) adversely affects any aspect of a student's educational opportunities, including the opportunity to participate in programs and activities; . . . or (3) creates a hostile, offensive, or intimidating educational or work environment." The policy further requires that the District "promptly and equitably investigate and respond appropriately" to all complaints or allegations of unlawful

¹ The complainant asserted that teacher 1 had a history of such treatment towards dark-skinned students.

discrimination, including harassment and retaliation; and, take appropriate action to protect individuals from retaliation. The policy provides that victims of unlawful discrimination/harassment should immediately report such conduct to the District’s designated compliance officers in accordance with District regulation (0100-R), in writing or verbally. Further, the policy provides that in the absence of a specific complaint, if the District has knowledge of unlawful discrimination, including harassment, it will conduct a prompt, equitable, and thorough investigation. The policy further provides that if the District determines that an employee or student has violated the policy, it will take immediate corrective action.

Regulation 0100-R, the District’s procedures for reporting complaints of discrimination or harassment, provides that “[r]eports of unlawful discrimination or harassment should be made by completing the District’s Complaint Form (#1510F) and then filing that form with the Office of Human Capital Initiatives” (the HR office). The regulation requires the Chief of Human Capital Initiatives (HR Chief) or his designee to request an investigation of the complaint by the Office of Safety and Security (OSS); and the OSS to investigate and report its findings to the HR Chief or his designee.² The HR Chief or his designee “will determine what action, if any, is appropriate based on the outcome of the investigation and the applicable Board policies,” and applicable state and federal law and collective bargaining agreements; and, will issue a written determination within 90 days of receipt of the complaint, absent extenuating circumstances warranting an extension of time.³ The regulation states that complainants and respondents will be notified in writing of the determination. The regulation also sets forth procedures for student complaints, and informal complaints of employees or students, which may be handled at the building level, i.e., through a building principal or supervisor, and “involve resolution steps short of a comprehensive investigation and/or formal hearing.” Principals/supervisors may take steps such as interviewing each party; and if the principal/supervisor concludes that the complaint is founded, the principal/supervisor will direct the accused party to cease the offensive conduct and impose any appropriate discipline. The regulation provides that a principal/supervisor will take any necessary remedial action within 15 school days of receiving a complaint. If either party is unsatisfied with the informal resolution, s/he may ask that the HR Chief review the allegations and informal decision.

OCR determined that during school year 2018-2019, the District had in effect a “buddy teacher system,”⁴ which enabled a teacher to send individual students to another teacher’s classroom if a student needed a brief period of time to settle down. According to the Board’s Code of Conduct (the code), the buddy teacher system was considered a Level 1 guidance intervention⁵ at the

² District staff informed OCR that HR representatives are responsible for conducting investigations of discrimination complaints. One HR representative informed OCR that her practice is to involve the OSS only if she deems it to be necessary.

³ Regulation 0100-R states that if an employee is found to have violated the District’s policies, appropriate disciplinary measures up to and including termination of employment may be imposed, consistent with contractual and legal guidelines.

⁴ This system was also referred to in various District resources as the “buddy room” or “buddy classroom” system.

⁵ The code listed 11 options for Level 1 guidance interventions at the classroom level, including but not limited to reminders and redirection; written reflections or apologies; seat changes; and, student/teacher or parent/teacher conferences.

classroom level, rather than a disciplinary response.⁶ According to an email that the School principal sent to School staff on September 10, 2018, about the buddy teacher system, each teacher was assigned a “buddy room” to which they could send their students after first providing the students with time to reflect in the in-classroom “reflection center.”⁷ The principal’s email also stated that students could stay in a “buddy room” for only up to 20 minutes, and that students should sign in and out of the “buddy room.” The principal’s email further stated that the sign-in sheets would be collected every Monday, to allow School administrators to monitor the use of the buddy system and identify any students who may have behavioral challenges. The District had no written records of the Student being sent out of teacher 1’s classroom pursuant to the buddy teacher system;⁸ however, OCR determined from interviews of District staff that on at least three occasions in January 2019, teacher 1 sent the Student to another teacher’s (teacher 2’s) classroom under the buddy teacher system.⁹

Teacher 2 informed OCR that on the first day on which teacher 1 sent the Student to teacher 2’s classroom (incident 1), teacher 1 approached teacher 2 in the morning before school began and asked teacher 2 whether she could send the Student to teacher 2’s classroom if she encountered any problems with the Student that day. Teacher 2 agreed to teacher 1’s request.¹⁰ Teacher 2 informed OCR that later on the same day, at approximately XX:XX a.m., the Student arrived in her XXXXX-grade classroom, where he remained seated at a table in the back of the classroom for approximately 25 minutes before returning to teacher 1’s class.¹¹ Teacher 2 stated that she did not observe any disruptive behavior by the Student while he was in the classroom.

Teacher 2 informed OCR that the second time that teacher 1 sent the Student to teacher 2’s classroom (incident 2), the Student arrived at approximately XX:XX a.m. with a pass from teacher 1 and sat in the back of the classroom, again for approximately 25 minutes before returning to teacher 1’s class.¹² Teacher 2 informed OCR that she did not observe the Student engaging in any disruptive or agitated behavior while he was in her classroom.

⁶ The District denied that the buddy teacher system was disciplinary in nature and asserted that sending a student to another classroom under the buddy teacher system was not considered a “teacher removal” under the code. The School maintained a written Restorative & Discipline Protocol, which also listed the buddy teacher system as a Level 1 restorative practice.

⁷ The School paired specific teachers together as “buddy partners” with whom to send their respective students; however, OCR determined that teacher 1 was not on the School’s list of buddy partners.

⁸ The District provided to OCR copies of “Buddy Room Sign-in Sheets” that included students whom teacher 1 sent to other teachers during school years 2018-2019; however, the Student’s name was not listed on these sign-in sheets. The District informed OCR that the School did not collect these sign-in sheets consistently.

⁹ OCR asked the Student to identify the names of any teachers to whom teacher 1 had sent him, and the Student identified teacher 2. Teacher 2 could not recall the dates of the specific instances in which teacher 1 sent the Student to her classroom. The District has no written record of any of these incidents.

¹⁰ Teacher 2 informed OCR that incident 1 was the first time that teacher 1 had approached her about sending a student to her class. Teacher 2 stated that she had no prior knowledge of the Student and teacher 1 provided no information about him; however, teacher 2 understood teacher 1’s request to be pursuant to the buddy teacher system.

¹¹ At one point during incident 1, one of teacher 2’s students (student A) asked her if he could sit with the Student and work with him. The Student agreed to this request and worked with student A to practice reading. The Student left teacher 2’s classroom when teacher 2 escorted her class to the lunchroom, at which time the Student returned to teacher 1’s class.

¹² As in incident 1, teacher 2 stated that student A asked to sit with the Student, and the Student agreed to work with him. He left teacher 2’s classroom when teacher 2 and her students left for lunch time, at which time he returned to teacher 1’s class.

Teacher 2 informed OCR that the third time that teacher 1 sent the Student to teacher 2’s classroom (incident 3) was approximately two weeks after incident 2, towards the end of January. Teacher 2 informed OCR that the Student arrived again with a pass from teacher 1; and that after the Student had been in teacher 2’s classroom for approximately ten minutes, she asked him whether he wished to return to teacher 1’s classroom. Because the Student stated that he wished to return and did not otherwise seem upset, agitated, or to be misbehaving, teacher 2 sent him back to teacher 1’s classroom. Teacher 2 informed OCR that the Student did not subsequently come to her classroom again. The District provided to OCR the names of six other teachers to whom teacher 1 might have also sent the Student.

Following the incidents of teacher 1’s sending the Student out of the classroom, on XXXXXXXX XX, 2019, the complainant filed a complaint with OPE, alleging that teacher 1 was removing the Student from her class every day, and that teacher 1’s actions were racially motivated. The complainant also requested a mediation with teacher 1 to address the complaint.

On Monday, January 28, 2019, a representative from OPE (OPE representative 1) sent a summary of the complainant’s allegations by email to the principal, the Chief of Schools designated for the School,¹³ the Director of Community and Parent Involvement, and another representative from the OPE (OPE representative 2). On XXXXXXXX X, 2019, a mediation occurred with the complainant, the Student, teacher 1, teacher 1’s union representative, the principal, the School’s assistant principal, and OPE representative 2. At this mediation, the complainant again alleged that teacher 1 was sending the Student out of her classroom so frequently because he is black. Teacher 1 discussed the Student’s behavior and her classroom expectations, and she and the Student agreed to work towards building a relationship. Teacher 1 agreed to have a second mediation session with the complainant and the Student, which was scheduled for XXXXXXXX XX, 2019.

On February 12, 2019, the Chief of Schools sent an email to the principal, asking whether the mediation had occurred.¹⁴ The principal responded, confirming that the mediation had occurred; but stated that the complainant was still uncomfortable and wished for an investigation of teacher 1’s actions, in addition to a second mediation session. In her email, the principal also described previous reports and/or complaints about teacher 1, including that in student survey results from school year 2017-2018, multiple students called teacher 1 “racist”; each year, three or four parents requested students to be removed from teacher 1’s class because of teacher 1’s treatment; another student’s (student B’s) parents had complained that teacher 1 had mistreated student B because he was black; and, that other staff complained about teacher 1’s interactions with black boys.¹⁵ In her email, the principal requested an investigation of teacher 1. OCR determined that the Chief of Schools did not initiate an investigation or otherwise refer the principal’s request for an investigation. The Chief of Schools further informed OCR that she was not aware of any specific written policies or procedures of the District governing complaints of discrimination.

¹³ The District has five employees designated as Chiefs of Schools, each of whom oversees certain schools.

¹⁴ Also copied on this email were OPE representative 2 and the Director of Community and Parent Involvement.

¹⁵ The District provided to OCR copies of emails the principal sent to teacher 1 and to District administrators in 2018, which reflected similar concerns to those the principal expressed in her email on February 12, 2019.

On February 19, 2019, OPE representative 2 sent an email to the principal, Chief of Schools, and a Human Resources representative (HR representative 1), stating that he had obtained copies of school year 2017-2018 student surveys from the School, which he had delivered to HR representative 1 and a second HR representative (HR representative 2), whom he also added to his email response. HR representative 2, who was assigned to handle issues related to the School, sent an email to the Chief of Schools, asking to discuss “the information” further. HR representative 2 informed OCR that she subsequently spoke with the Chief of Schools; and that she concluded that the surveys did not indicate a problem with race, but rather that “students did not like XXXXX class.” HR representative 2 acknowledged to OCR that four of the surveys stated that teacher 1 was “racist” and that complaints of racial discrimination by District employees were within her purview to investigate; however, HR representative 2 informed OCR that she considered four survey results to be an “insufficient number” to warrant further action. HR representative 2 further informed OCR that she referred the matter to the Chief of Schools, though she did not provide the Chief of Schools with copies of the surveys. The Chief of Schools informed OCR that she did not personally initiate an investigation, because she saw that HR representatives were copied on the relevant emails; therefore, she assumed that HR would conduct an investigation, if necessary.¹⁶ HR representative 2 asserted to OCR that she did not investigate the complainant’s allegation of racial discrimination because she had not been asked to do so.¹⁷ HR representative 2 further informed OCR that she was not aware of any written policies or procedures in the District governing complaints of discrimination.

OCR determined that the second mediation session that was scheduled for XXXXXXXX XX, 2019, did not occur, because teacher 1 refused to meet without her union representative present. On the same day, the principal sent an email to the Chief of Schools and HR representative 2, in which she forwarded a message from the assistant principal to teacher 1, stating that another student’s (student C’s) parents had requested that student C be withdrawn from teacher 1’s class. OCR determined that student C is black.

On the evening of XXXXXXXX XX, 2019, the complainant attended a Board meeting,¹⁸ during which she publicly stated that teacher 1 was discriminating against students who were “darker than a brown paper bag” and that teacher 1 was repeatedly sending the Student out of her classroom. At the meeting, the Board directed the complainant to speak with some District administrators who were present. The Chief of Schools informed OCR that she and two or three other administrators stepped out of the Board meeting to speak with the complainant. The Chief of Schools stated to OCR that she obtained the complainant’s name and contact information and assured her that she “heard her” and would speak with the principal; however, the Chief of Schools did not ask the complainant any other questions at this time. The Chief of Schools further informed OCR that, on or about the following day, she called the principal to share what the complainant had stated at the Board meeting and to ask the principal to obtain additional information about the complainant’s

¹⁶ The District’s records indicate that on February 19, 2019, HR representative 2 was copied on a string of emails, starting from OPE’s email dated January 28, 2019, summarizing the complainant’s initial complaint to OPE; and including the principal’s response dated February 12, 2019, in which she summarized race-based concerns about teacher 1 and requested an investigation.

¹⁷ HR representative 2 asserted that she investigated only one of the complainant’s allegations that she was assigned to investigate, as described in Allegation 2 below.

¹⁸ OCR reviewed a video recording of the Board meeting held on XXXXXXXX XX, 2019, as well as the Board’s formal minutes from this meeting.

allegations. The Chief of Schools informed OCR that the principal stated that she and the assistant principal had previously held a meeting with the complainant about the same concerns about teacher 1 and would hold a follow-up meeting. The Chief of Schools informed OCR that her understanding at this point was that the complainant wished for a “restorative kind of meeting,” and the Chief of Schools did not otherwise see the need for an investigation; therefore, she did not further refer the complainant’s complaint to anyone else in the District.

On April 15, 2019, the principal issued a memo to teacher 1, titled “Counseling Memo – Showing Professionalism” (the counseling memo). The counseling memo stated that it was “being issued as a result of a parent complaint made on XXXXXXXX XX, 2019, which launched an investigation.” OCR determined that “the parent complaint” referred to the complaint that the complainant initially made to OPE on XXXXXXXX XX, 2019. OCR further determined that the counseling memo addressed the allegation about teacher 1 allegedly shoving the Student during an incident on March 6, 2019 (which is the subject of Allegation 2). It further stated that, “[a]fter investigation, it was determined that [teacher 1] failed to show professionalism when [she] responded to [the Student’s] social emotional challenge in XXXXX class by: making unintentionally [sic] contact with the [Student], frequently sending the [Student] out of class, and refusing to meeting with the [Student’s] parent to restore the relationship.”¹⁹ The counseling memo outlined the expectations set for teacher 1 going forward, including refraining from touching students when she disagreed with their behavior; implementing specialized behavior plans as required for students with disabilities;²⁰ using restorative practices with students and parents; scheduling regular parent-teacher conferences; and, creating a positive behavior plan to reward good behavior in her classroom. OCR determined that the counseling memo did not mention race or otherwise refer to the complainant’s allegations of racial discrimination made against teacher 1.

To date, the District has not investigated or reached any determination with respect to the complainant’s allegation that teacher 1 sent the Student out of her classroom because of his race, or with respect to whether teacher 1 had created a racially hostile environment.

Prior to OCR’s completing the investigation of Allegation 1, on September 4, 2019, the District signed the enclosed agreement to resolve this allegation without further investigation. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation. Upon the District’s satisfaction of the commitments made under the Agreement, OCR will close the case.

With respect to Allegation 2, the complainant alleged that the District discriminated against the Student, on the basis of his race/color, by failing to respond appropriately to her complaint that teacher 1 subjected the Student to harassment because of his race/color, or in the alternative retaliated against the Student because the complainant filed a complaint about teacher 1 with the Board in XXXXXXXX 2019, alleging racial discrimination and harassment, by shoving the Student during an incident on March 6, 2019. The complainant asserted that teacher 1 had a practice of marking students’ papers and lowering their grades if they were not paying attention

¹⁹ The incident underlying the counseling memo’s reference to “unintentional[] physical contact” is discussed below in Allegation 2.

²⁰ OCR determined that the District classified the Student as a student with a disability in the category of “XXXXXX XXXXXXXXXXXX.”

during an assignment; and that on March 6, 2019, teacher 1 came to the Student's desk to make such a mark on his paper. The complainant asserted that the Student moved his paper in an effort to prevent teacher 1 from making a mark, and that teacher 1 became frustrated and shoved the Student with such force that his desk moved. The complainant asserted that the Student immediately complained to the vice principal, who took statements from the other students in the class; however, the complainant stated that the District did not share the results of its investigation with her.

Based upon a review of the District's records of the incident and its subsequent inquiry, OCR determined that on March 6, 2019, the Student's XXXXX class was engaged in a listening exercise, during which the students were to remain quiet. Because the Student was talking during the exercise, teacher 1 came to the Student's desk and tried to make a mark on his paper; however, the Student moved his paper away, and teacher 1 made physical contact with him. The Student immediately complained to the assistant principal, asserting that teacher 1 had pushed him. The Student's regularly assigned teachers then had each student in the class, including the Student, write a statement as to what they had witnessed. Most students stated that teacher 1 had pushed or otherwise made physical contact with the Student.²¹ The assistant principal collected these nine statements and submitted them to HR.

The principal immediately notified HR about the incident, which was assigned to HR representative 2 for further investigation. The complainant informed OCR that on or about XXXXX X, 2019, she filed another complaint with OPE, which added her new concerns regarding this incident to her previously filed complaint.

According to the District records of the incident, teacher 1 was sent home on March 6, 2019, and placed on paid administrative leave from XXXXX X, 2019, until XXXXX XX, 2019, pending the outcome of the investigation. On March 6, 2019, the Chief of Schools sent an email to the principal, requesting information about how the student witness statements regarding the incident were collected; summarizing her conversation with the complainant that day regarding the incident; and, outlining several "actions," including that an investigation would be conducted, the District would arrange a meeting per the complainant's request, the principal would submit any written documentation of concerns related to teacher 1, and the principal would provide all disciplinary referrals from teacher 1 against the Student and other students. On March 7, 2019, the Chief of Schools sent an email to the Coordinating Administrator for Special Education, requesting counseling for the Student because he was upset from the prior day's incident.²²

On March 12, 2019, HR investigator 2 interviewed teacher 1 in the presence of her union representative.²³ In this interview, teacher 1 asserted that on March 6, 2019, she had her class engage in a listening assignment. She stated that she had informed the class that if any students

²¹ Of the eight students who gave witness statements, other than the Student, one student (student D) stated that she did not witness what had occurred, two (students E and F) stated that teacher 1 had held the Student back when the Student tried to move his chair; three (students G, H, and I) stated that teacher 1 had pushed the Student; one (student J) stated that teacher 1 had grabbed the Student's hand and pulled him back; and, one (student K) stated that teacher 1 was pushing the Student and holding him back.

²² In this email, the Chief of Schools also requested information related to the Student's special education and Behavior Intervention Plan.

²³ OCR reviewed HR representative 2's contemporaneous notes from her interview of teacher 1.

talked during the assignment, she would put a check mark on their paper and deduct points from their grade. Teacher 1 asserted that because the Student began to talk, she went to put a check mark on his paper; however, the Student then pulled his paper back and slid his chair back, saying to other students, “she shoved me; did you guys see that?” The Student then left the classroom and returned with the assistant principal. Teacher 1 further asserted that the assistant principal asked the students in the class to raise their hands if they had seen teacher 1 shove the Student, and that the Student was trying to encourage students to raise their hands. During this interview, teacher 1 also informed HR representative 2 that she had sent the Student out of her classroom on two prior occasions; and, that the complainant had told teacher 1 that the Student felt that teacher 1 was targeting black boys and that teacher 1 did not like the Student because he had not joined her chorus group. Teacher 1 denied sending any other students of color out of her classroom; and, asserted that the School administration was creating a hostile work environment for her by asking students to say things about her that were not true.

HR representative 2 requested that an investigator from the Office of School Safety and Security (the school safety investigator) review the students’ written witness statements with each of the respective students.²⁴ On March 26, 2019,²⁵ the school safety investigator individually met with the Student and with seven of the eight student witnesses²⁶ to review their written statements. Each student reviewed their respective written statements and all but one offered additional or clarifying facts.²⁷ On March 28, 2019, the student safety investigator issued a memo, summarizing each student’s interview and concluding that the “students were consistent in that [teacher 1] had some contact with [the Student], whether intentional or accidental.” The school safety investigator referred the matter to HR and the District’s law department for further follow-up.

On April 4, 2019, the principal sent an email to the Chief of Schools, stating that she had spoken with complainant to inform her that the investigation was ongoing. The principal also stated that the complainant had told her that although the Chief of Schools had informed the complainant that the Student could transfer to another school if he was uncomfortable, the complainant did not want him to do so for his XXXXX XXXX of XXXXXXXXXXXX XXXXXX in school year 2019-2020.

As discussed above with respect to Allegation 1, on April 15, 2019, the principal issued the counseling memo to the teacher. On April 22, 2019, the complainant met with the Chief of Schools, the principal, HR representative 2, and OPE representatives 1 and 2.²⁸ Although the complainant was supposed to meet with teacher 1 that morning, teacher 1 arrived early in the morning and met only with her union representative and the principal, leaving before the complainant arrived. The Chief of Schools informed the complainant that the investigation was

²⁴ HR representative 2 informed OCR that she made this request because she had not liked that the students’ written statements had been gathered in a group setting.

²⁵ The school safety investigator sent an email to the principal on March 25, 2019, to arrange a time to speak with the students.

²⁶ Student J was absent on this date.

²⁷ Student K had nothing to add. The other students added details such as the manner in which teacher 1 touched the Student and/or that they heard the Student tell teacher 1 something like “don’t touch me.” Student I clarified that he believed teacher 1’s contact with the Student was accidental.

²⁸ OCR reviewed an email from the Chief of Schools to the principal, HR representative 2, and OPE representatives 1 and 2, dated April 22, 2019, memorializing what had occurred on this date. The complainant provided a similar account to OCR.

complete and that it was considered “a personnel matter” and did not disclose any further details of the District’s inquiry. The complainant requested a copy of the District’s investigative report, and the Chief of Schools and HR representative 2 informed her that it would not be possible to receive a copy, even if redacted. The complainant was assured at this meeting that the matter was taken care of.

On XXXXX XX, 2019, teacher 1 began medical leave that extended through the end of the school year. On April 29, 2019, the complainant met with the HR Chief, at which time she reiterated her request for records related to the District’s investigation of teacher 1. By letter dated April 30, 2019, the HR Chief listed the types of documents that the complainant had requested; reiterated that the District could not provide her with copies of the requested records; and, stated that “we can assure you that the actions taken against [teacher 1] have been placed in her file.”

On June 27, 2019, the HR Chief issued a letter to teacher 1, confirming her transfer to another school for school year 2019-2020 and her continued area of tenure in XXXXX. The District informed OCR that it had transferred teacher 1 to a different school based on her request.

Prior to OCR’s completing the investigation of Allegation 2, on September 4, 2019, the District signed the enclosed agreement to resolve this allegation without further investigation. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation. Upon the District’s satisfaction of the commitments made under the Agreement, OCR will close the case.

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 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 individual may file a 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or aditi.shah@ed.gov; Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Samantha Crane, Esq. (via email)