



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 14, 2017

Mr. Dale Cline, Executive Director
Paramount Academy
11039 West Olive Avenue
Peoria, Arizona 85345

Via email only to XXXX@XXXX.com

Re: **Paramount Academy**
OCR Case Number: 08-17-1341

Dear Mr. Cline:

We write to advise you of the resolution of a complaint that was filed with our office against Paramount Academy (“the School”). The complaint alleged that the School discriminated against the Complainant’s son (“the Student”) on the basis of race. Specifically, the Complainant alleged that: (a) a teacher at the School harassed her son (“the Student”) on the basis of race (*i.e.*, repeatedly and negatively commenting about his afro hairstyle in front of other students); and (b) the School treated her son differently in the administration of the School’s dress code because he is an African American student with an afro hairstyle.

We investigated the complaint pursuant to Title VI of the Civil Rights Act of 1964 (“Title VI”), and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance from the U.S. Department of Education (“the Department”). As a recipient of Federal financial assistance from the Department, the School is subject to this law and regulation.

Our investigation established, by a preponderance of the evidence that the School discriminated as alleged. Upon being advised of this finding, the School voluntarily agreed to enter into a resolution agreement to resolve the matter. A signed copy of the agreement is enclosed with this letter. The reasons for our conclusions are set forth in this letter.

I. Legal Standards

A. Harassment by Employee

The regulations implementing Title VI, at 34 C.F.R. Section 100.3(a) and (b), prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance. Schools are responsible under Title VI and its regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color, or

national origin can result in the denial or limitation of a student's ability to participate in or receive education benefits, services, or opportunities.

Schools provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in harassment on the basis of race, color, or national origin that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school is responsible for the discriminatory conduct whether or not it has notice.

Under Title VI and its regulations, if a student is harassed by an employee on the basis of race, color, or national origin, the school is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the school must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The school must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student reports of harassment. The school also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In determining whether a hostile environment based on race, color, or national origin has been created, OCR evaluates whether or not the conduct was sufficiently serious – severe, persistent, or pervasive – to deny or limit the student's ability to participate in or benefit from the school's program. OCR examines all the circumstances, including: the type of harassment (*e.g.*, whether it was verbal or physical); the frequency and severity of the conduct; the age, race and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors.

B. Different Treatment

The Title VI regulations, at 34 C.F.R. Section 100.3(a) and (b), provide that a school may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. To determine whether a school has discriminated against a student on the basis of race in the discipline process, OCR looks at whether there is evidence that the student was treated differently than students of other races

under similar circumstances, and whether the treatment has resulted the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the school provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. To find a violation, the preponderance of the evidence must establish that the school's actions were based on the student's race.

II. Investigation

Our investigation focused on obtaining the evidence necessary to determine whether the School complied with these legal standards, or whether the School engaged in discrimination as alleged. Specifically, our investigation consisted of: interviewing the Complainant, the School's Director, and the School's Assistant Principal (AP); and reviewing documents and information submitted by the Complainant and the School. For reasons set forth below, we were not able to interview former School staff who were witnesses to the allegations.

III. Evidentiary Standard

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

IV. Facts

A. Background

The School is a kindergarten through eighth grade public charter school in Peoria, Arizona. The Student is African American. During the 2016-2017 school year he was in XXXX grade at the School.

B. The School's Policies

During the 2016-2017 school year, the relevant portions of the School's dress code read:

Hair accessories such as headband [sic], clips, and hair ties may only be worn if they are navy blue, white or black. ... No bandanas, headbands, distracting headwear, or hair restraints. ... No unnatural or distracting hair colors or trendy hair styles. No faux hawks, shaved designs or under shaving. ... Hair color and/or styles that are not in compliance are required to be fixed before a student may return to school.

The School's "Parent and Student Agreement" read, in relevant part: "The Student Agrees: ... To be properly dressed, according to the required dress code policy, as established by [the School]; and "The Parent Agrees: ... [t]o support and enforce that his/her child is properly dressed in accordance with the [the School] dress code[.]" The "Student Handbook" includes the dress code and agreement, but does not otherwise mention hair.

The School's "Discipline Matrix" indicates that dress code violations for students in kindergarten through fourth grade will result in: "Verbal warning/parent notified/clothing change to compliance" for a first and second offense; and a "1 day in school suspension /parent notified/ clothing change to compliance."

C. Harassment by Employee

On or about April 24, 2017, the Student changed his hairstyle from braids to an afro. According to the AP, he became aware that the Student was reportedly out of compliance with the School's dress code. The AP told the Student's teacher ("the Teacher") to tell the Student to get a haircut.

According to the Complainant, on April 25, 2017, the Teacher, in front of other students, yelled at the Student about his hair. The first comment occurred while students were waiting in line at the water fountain; the second occurred in the classroom. The Teacher told the Student, "You need to do something with your hair;" and "Don't come to School with your hair looking like that."

The Complainant further reported that, on or about May 4, 2017, the Teacher told the Student, during class, in front of other students, that he needed to "put something" in his hair. Since the Complainant had already cut the Student's afro, the Complainant assumed that the Teacher was critiquing the texture of the Student's hair. So, that evening, the Complainant wrote to the Teacher, "Could you please refrain from making comments about [the Student's] hair. He does not have to put 'something' in his hair. [The Student's] hair is natural and there is nothing wrong with that. Thank you." The Teacher replied, "Yes, Mam. FYI: It wasn't anything negative."

D. Different Treatment

On the morning of April 26, 2017, the Complainant went to speak with the AP about the Teacher's comments. The Student was also present during the meeting. The conversation proceeded as follows:

- The Complainant and the Student described the Teacher's comments.
- The AP said, "His hair is a bit high there. We do have a rule that we don't want it to be too distracting. ... [The Teacher] did mention yesterday that ... he keeps pushing it up ... trying to keep it, I'm not sure, off his ears or something. He keeps doing that." The AP added, "I definitely don't think she should've yelled at him, if that's what happened at all. I mean, she definitely shouldn't have done that."
- The Complainant pointed out that the dress code does not include a provision about hair height. The AP responded, "The main thing is, ... if he has students sitting behind him, and they can't see over his hair, ... that's our main concern."
- The Complainant asked if there is also a rule about hair being too long. The AP noted that long hair does not get in the way of seeing "the board."
- The Complainant explained that the afro was the Student's natural hair and hair growth direction. She also noted that other students could grow out their hair and it would be permissible because their hair grows differently. The AP said, "He had his hair in a

weave or something before.” The Complainant clarified that his hair was in braids. The AP said the braids were fine because they kept the Student’s hair down.

- The AP said the Director requires staff to use a “rule of three.”
- The Complainant asked the AP if the Student had to cut his hair. The AP answered, “Yes.” The Complainant said that she was not going to cut the Student’s hair.
- The AP told the Complainant, “You can’t have hair that’s going to be distracting, is the way they’ve described it.”¹ The Complainant asked how the Student’s hair was distracting. The AP answered that the Teacher reported that the Student is “constantly messing with it.”
- The AP informed the Complainant that he had talked to the Teacher on the previous day about the Student’s hair. He claimed the Teacher said that the Student was “getting stuff in his hair, like leaves or dirt, or something.” He added, “And so he’s having to get that out.” The Complainant asked the Student if that had happened; he said, “No.”
- The Complainant pointed out that other students were touching the Student’s hair. The AP said such behavior was not acceptable.
- The Complainant requested to meet with the Director.²

On the afternoon of April 26, 2017, the Complainant met with the Principal, AP, and Director regarding the Student’s hair.³ The conversation proceeded as follows:

- The AP told the Complainant that the Student’s hair was distracting to the students around him because they could not see “the board.”
- The Complainant reported that the Teacher told the Student, “Don’t come to School with your hair looking like that tomorrow.”
- The Director said he was fired from a job 15 or 20 years ago for having long hair, and added, “So, I have all the background on hair. ... There is [sic] no discriminatory things with hair.”
- The Director said students’ hair needs to be a “clean cut style.” He further explained that the School’s expectations about hair were “like the military,” where they tell you – “one finger above the ear, and that’s what they give you. They say it’s high and tight, and that’s your policy.” He continued, “Same with us as far as our uniforms and dress code go. What we have done is, we’ve said three fingers. So, nothing sticks out past your head in a three-finger width. And it doesn’t matter whether it’s a bun, a ponytail, or just hair.”
- The Director said the School “tries to keep everyone looking clean cut,” and “is looking for a dress look.”
- The Complainant asked, “So, afros aren’t allowed, then?” The Director replied, “Afros actually, if you Google them, are considered, believe it or not, trendy,” and trendy hairstyles are prohibited by the dress code.
- The Director said, “It could be an afro, but it would have to be smaller.”

¹ The AP did not clarify who he meant by “they.”

² This summary was created from an audio recording of the meeting.

³ In its data response, the School indicated that only the Director and AP were present, but available evidence shows that the Principal was also present.

- The Director said, “We wouldn’t say you can’t have ... [mumbles] ... People have to have a bun. People have to have something to do with their hair.” The Complainant responded, “But he doesn’t have to have a big afro?” The Director answered, “Can’t have a big afro.”
- The Complainant asked, “Long is okay, but big is not okay?” The Director responded, “Yeah, yeah. ... They can put it in a ponytail, they can have it long, he can do whatever he wants, go back to braids ... We just try to keep them, everybody looking clean cut around the head so we can see their face [sic].” The Complainant pointed out that the Student’s face could easily be seen with his hair in an afro style. The staff laughed. The Director said, “I haven’t seen him. I don’t know what he looks like.”
- The Complainant asked about the dress code and pointed out that it did not include anything about three-fingers. The Director said that the dress code prohibits distracting hair. The Complainant pointed out that the dress code actually prohibits distracting hair *colors*. The Director said that, in another section of the dress code, about “jewelry and stuff and clothing and it’s anything distracting.” The Complainant again pointed out that the section about hair only mentions distracting colors. The Director replied, “Yeah, yeah, we’ve had that too.”
- The Director again mentioned the prohibition on trendy hair. The Complainant pointed out that afros are not trendy, but rather the result of letting the Student’s hair grow naturally. The Director replied, “Actually, when you google it, it actually lists trendy, afros as trendy. I don’t know why, but it’s like it’s [sic].” The Complainant noted to the staff that “trendy” is an individualized, subjective characterization.
- The Complainant asked what would happen if the Student kept his hair in an afro style and continued to grow it out. The Director said the Student’s hair would be a dress code violation.
- The Complainant pointed out that she never agreed to cut the Student’s hair. The Director said that she signed the code of conduct, and it is in the student handbook.
- The Complainant again pointed out that the handbook used the word “trendy” and her son’s hair was not trendy. The Director replied, “The great thing about it is, at the bottom, it says, ‘As figured out by the administration.’” He went on to explain that the policy allows the School’s administration to define “trendy” however they want because, for instance, a group of kids at another school were in a gang and cutting their hair the same way to show their affiliation.
- The Director reiterated, “We’re just looking for, you know, a nice, sharp, clean cut look.”
- The Complainant asked, “So, anything above three inches of hair is considered trendy here at Paramount?” The Director responded, “Well, we don’t consider it clean cut ... which ... would falling into a trendy category[.]”
- The Complainant pointed out that her other son who attends the School has had a high flat top since the beginning of the year, without the administration having raised it as an issue. The Principal replied, “I think the difference that I see between the two boys is, ya know, [the other son]’s gets kinda high, and I agree with that, but I think, part of the difference I see, like with [the Student], when I saw him the other day, and we were out in the wind, and ya know, he was passing me, and the thing I noticed is it was kinda, like I said, his, like, I don’t know, like his like kinda poofed out, like it’s just bigger.” The Complainant said, “He has an afro.” The Principal continued, “Yea, but it looks different than [the other son]’s, you know what I mean. So, I don’t know how to explain that. But

you know, it doesn't, [the other son]'s is still, like, the clean cut kinda look." The AP added, "He keeps the sides cleaned up good."

- The Complainant noted that she was surprised to hear about the three-finger rule because of how her other son's hair has been all year. The Principal responded, "I think his is just, like I said, more clean cut looking so it doesn't draw attention."
- The Director said, "We don't consider [the Student's afro] clean cut."⁴

According to the Complainant, on the same evening, she cut the Student's hair to avoid disciplinary consequences and further ridicule from the Teacher.

V. Analysis

A. Harassment by Employee

In the School's initial data response to OCR, it reported that the Teacher retired in May 2017, but also listed her as a witness. The School's narrative response did not address the Teacher's alleged comments to the Student.

On August 2, 2017, we asked the Director what the Teacher said to the Student regarding his hair. The Director reported that he did not talk to the Teacher about what she said, that "it had become a 'he said-she said' thing," and that once it got to administration, there was "no need to talk to teacher."

On August 2, 2017, we emailed the Director to request the forwarding contact information for the Teacher. On August 11, 2017, the Director replied, "We have decided releasing personal information of our students and former employees would be a violation of their FERPA rights and we will, therefore, not release that information at this time." Our notification letter to the School read, in part:

The regulation implementing Title VI, at 34 C.F.R. Section 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. Pursuant to 34 C.F.R. Sections 100.6(c) and 99.31 (a)(3)(iii) of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

On August 15, 2017, we emailed the Director to request an opportunity to interview the Teacher. On August 21, 2017, the Director replied, "As we explained in our last email, and under the advice of our insurance, until we receive documentation of a citation, accusation, or violation and until our retained attorney has had the opportunity to review such documentation we are unable to provide any further information."

During a phone call with OCR on August 30, 2017, the School's attorney reasserted the School's refusal to provide contact information for the Teacher and Principal. Later that day, we emailed

⁴ This summary was created from an audio recording of the meeting.

the School's attorney, "Additionally, during our call, you indicated that [the Director] refuses to provide OCR with forwarding contact information for [the Teacher] and [the Principal] – two former school employees. Please let me know if he will reconsider." On September 5, 2017, the School's attorney emailed us, "The School will honor the requests of [the Teacher] and [the Principal] not to release their personal contact information. It likely will be fairly easy for you to obtain such information [sic] through other sources."

During an interview with OCR on September 7, 2017, the Director said he did not know what the Teacher said to the Student about his hair, and that he was not aware of any communications between the Teacher and the Student regarding the Student's hair. Additionally, we asked the Director, "What did [the Teacher] say to the Complainant regarding the Student's hair?" The Director said that the Complainant never mentioned any comments from the Teacher. The Director made such assertions despite the conversation with the Complainant on the afternoon of April 26, 2017 (described above).

During an interview with OCR on September 7, 2017, we also asked the AP about the Teacher's comments to the Student. He indicated that he did not know what the Teacher had said, whether other students were present, or how the Student reacted to the comments. The AP also said that he did not hear about any inappropriate comments regarding the Student's hair, despite the aforementioned conversation with the Complainant on the morning of April 26, 2017.

Since the School refused to provide contact information for the Teacher,⁵ and either could not or would not provide a defense to the harassment allegation in its data response and interviews, we must proceed with our analysis solely using the information from the Complainant. For the following reasons, we find, by a preponderance of evidence that the Teacher's comments and the School's lack of response amounted to discrimination as alleged.

The Teacher made the alleged comments at the School, during School hours, while the Student was under her supervision; therefore, she was acting in the context of carrying out her responsibilities as an employee. The Teacher's alleged comments appear to be based on race because they were specifically about the Student's afro, a natural hairstyle predominantly worn by African American people, and then about the texture of the Student's hair. Also, we have not been presented with any evidence that the Teacher made similar comments to students of other races.

There is sufficient evidence that the alleged comments amounted to a hostile environment. According to the Complainant, the Student was very upset by the Teacher's comments. After the alleged comments on April 25th, the Student did not want to return to School and felt uncomfortable in class. Then, following the second comment, the Student attempted to cut his own hair and straighten his own hair with a flatiron. Additionally, the alleged comments were made on three occasions, in front of other students, by an adult, white teacher to a third grade (*i.e.*, very young), African American, male student.

⁵ OCR searched public records and was unable to successfully locate and contact the Teacher.

Fourth, since the Student was allegedly harassed by the Teacher on the basis of race, the School was responsible for determining what occurred and responding appropriately. By its own admission, the School did not respond at all, much less conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred.

B. Different Treatment

Title VI prohibits schools from intentionally disciplining students differently based on race. The School's written dress code is racially neutral on its face, meaning that it does not explicitly differentiate between students based on their race. However, selective enforcement of a facially neutral policy against students of one race is prohibited intentional discrimination.

i. Is there evidence that the Student was treated differently than students of other races under similar circumstances?

In analyzing different treatment allegations under Title VI, we first evaluate whether there is evidence that the student was treated differently than students of other races under similar circumstances. In this case, for the following reasons, we could not compare the Student to known, specific, similarly situated students of other races.

In our first data request (on June 13, 2017), we asked the School for "all records related to all students who violated the dress code policy, as determined by the School, during the 2015-16 and 2016-2017 [school years.]" The School wrote in its response (on January 28, 2017), "1st offense verbal warnings are not written." The School also provided, on one page, a table, for the 2016-2017 school year, with five columns: grade, sex, the number of the same offenses by the student; date, and ethnicity. The table did not include the students' names, the type of dress code violation (*e.g.*, clothing versus hair), or any narrative details. The table also did not include any of the oral warnings that were reportedly issued.

We followed up on the initial data response (on June 30, 2017) by requesting data for the 2015-2016 school year, as well as more details about the violations in the table previously provided. In response to our first request, the School replied, "Paramount does not keep dress code violations past a year." In response to the second request, the School wrote:

The majority of the dress code violations for lower grades were belt issues (*i.e.* not having one) and shoelace violations. Of the verbal violations that we remember, related to hair and dress code, there were probably less than half a dozen issues. Of those, four stand out – two white males with faux hawk hairstyles, one Hispanic male with a design shaved on the sides of his head, and one white female who colored her blond hair tips red. In all cases, students/parents were notified, and hairstyles were removed or colored to comply with acceptable standards. There are no written dress code violations.⁶

⁶ Notably, all of the examples described involved unnatural hairstyles. During an interview with OCR, the Director said that he could not remember the names of the students. He indicated that he was likely given the information by the Principal.

During a phone call with OCR on July 11, 2017, the Director reiterated that the School does not maintain discipline records from year-to-year and has had very few hair violations.

On August 30, 2017, we requested, via email to the School's attorney, for the 2015-2016 and 2016-2017 school years, "data, records, and/or narrative descriptions of all students who were either issued warnings (oral or written) or disciplined for violating the School's dress code with respect to hair, including for each student: (a) full name; (b) race; (c) a description of the violation; (d) the date or approximate date of the violation; and (e) the consequence for the student. The School did not provide the requested information.

So, during interviews with the Director and AP on September 7, 2017, we asked for more information about each of the instances in which the three-finger rule was enforced for hair. The Director reported that "faux hawk issues" were the only three-finger rule violations that the School had encountered in the last couple of years. The Director also stated that there were only two students who had violated the three-finger rule, but he could not recall details. The AP said he only knew of one female student since the beginning of the school year who had hair that was almost five inches tall, but he did not know her race and no record was made of her verbal warning. He added that her family moved before she could comply with the warning.

In short, the School did not provide comparator data – *i.e.*, information about other students who were disciplined (*e.g.*, verbally warned or suspended) for natural hair that violated the three-finger rule. The School also did not provide detailed, concrete information about somewhat similarly situated students (*e.g.*, students who were warned for unnatural "faux hawks"). We reasonably concluded that the Student was the only student, in at least the last two school years, who was disciplined for having natural hair bigger than three inches.

However, under Title VI, statistical evidence may not be needed in different treatment cases. We may also consider other circumstantial evidence to determine whether there was discrimination in the School's administration of discipline. The facts in Section V(B)(iv) of this letter provide adequate circumstantial evidence that the Student was treated differently than students of other races.

ii. Did the different treatment result in the denial or limitation of education services, benefits, or opportunities?

We find that the treatment of the Student – *i.e.*, the School warning him to cut his hair and threatening him with further disciplinary action, resulting in the Student becoming upset and the Complainant cutting his hair – amounted to a "denial or limitation of education service, benefits, or opportunities."

iii. Did the school provide a nondiscriminatory reason for its actions?

The School did not provide a clear nondiscriminatory reason for telling the Student that he was in violation of the dress code and that he needed to cut his hair. Instead, the School provided multiple reasons, which we classified into three groups – the School asserted that the Student's hair violated the School's: (1) written dress code's prohibition on "distracting" hair; (2) written

dress code's prohibition on "trendy" hair; and (3) unwritten "three-finger" policy designed to keep students looking "neat" and "clean cut."⁷

iv. Is there evidence that the stated reasons is a pretext for discrimination?

After examining all available evidence, we have determined, by a preponderance of the evidence, that the School's stated reasons are pretext for discrimination.

First, as evidenced by Section V(B)(iii) of this letter, the School provided shifting explanations for its actions, depending on who was giving the explanation, the recipient of the explanation, and the context of the conversation. Even within the aforementioned three groups of reasons, the School offered shifting rationales. For instance, at various points, the School claimed that the Student's hair was "distracting" because: (a) it could obstruct other students' view of "the board;" (b) the Student kept "pushing it up ... trying to keep it, ... off his ears or something;" (c) that it "draw[s] attention;" and (d) the Student was "getting stuff in his hair, like leaves or dirt, or something."

Second, the School could not provide any evidence of evenhanded application of its reasons. In fact, photographs of the School's students, provided by the Complainant and included in the School's yearbook, cause us to believe that selective enforcement of the stated reasons occurred. For instance, the photographs show non-African American students who: (a) appear to have hair higher than three inches; (b) have hair that is shaggy and hanging in front of their faces; and (c) have large bows or headbands in their hair. The Student was the only student, in at least the last two school years, who was disciplined for having natural hair bigger than three inches. Application of rarely enforced policies may contribute to a finding of pretext

Third, the legitimacy of the School's "three-finger rule" ("the rule"), and its application of it to the Student, added to our suspicion of pretext. The rule is unwritten, and students and parents have no notice of it.⁸ Additionally, the School offered rationales for the rule that do not apply to the Student's situation. At one point, School administrators explained to the Complainant that they "like everyone looking clean cut around the head so [they] can see their face [sic]." The Complainant pointed out that the Student's face could easily be seen because, as the School had claimed, his hair grew out/up. Staff laughed, and then, the Director said, "I haven't seen him. I don't know what he looks like." Moreover, the School indicated that the rule is applied imprecisely and inconsistently. For instance:

- During the meeting on the afternoon of April 26th, the School admitted that it does not enforce the rule against students with big hair when staff subjectively determine a student's hair to be "clean cut." After learning of the three-finger rule, the Complainant

⁷ During a phone call with OCR, the Director said he did not know who came up with the three-finger rule or when it was developed and implemented. Then, during an interview with OCR, the Director stated that the three-finger rule was developed by the military, and the School used to have a large percentage of students who were children of members of the military.

⁸ During an interview with OCR, the Director claimed that students and parents receive notice of the three-finger rule. Later in the same interview, he acknowledged that the three-finger rule is not in writing. Additionally, all other evidence indicates that his initial claim was untrue.

pointed out that another student had a flattop that was higher than three inches. The Director told her that the other student's hair was "neater looking." Additionally, the Principal replied, "I think the difference that I see between the two boys is, ya know, [the other students]'s gets kinda high, and I agree with that, but I think, part of the difference I see, like with [the Student], when I saw him the other day, and we were out in the wind, and ya know, he was passing me, and the thing I noticed is it was kinda, like I said, his, like, I don't know, like his like kinda poofed out, like it's just bigger." The Principal continued, "Yea, but it looks different than [the other students]'s, you know what I mean. So, I don't know how to explain that. But you know, it doesn't, [the other student]'s is still, like, the clean cut kinda look." The AP added, "[The other student] keeps the sides cleaned up good."

- During an interview with OCR, the Director stated that the School uses a measurement tool to implement the rule; however, he also said that the tool was not used to determine the height of the Student's hair.
- The School claimed that the rule was designed to ensure that students are "clean cut."⁹ However, during interviews with OCR, neither the Director nor the AP could define "clean cut" hair.

Fourth, the School's "trendy" dress code rule, and its application to the Student, caused additional concerns for us about pretext. During an interview with OCR, the Director said that the School does not maintain a list of "trendy" hairstyles and only knows of the "trendy" styles mentioned in the dress code (*i.e.*, "faux hawks, shaved designs [and] under shaving"). The AP said, during an interview with OCR, that he was not sure if the School maintains a list of "trendy" hairstyles, or if afros are deemed to be "trendy." Their answers also highlighted the highly subjective nature of the "trendy" rule. For instance, they stated that cornrows are not trendy, and thus, are permissible, but they were uncertain when asked about dreadlocks.

Fifth, despite repeated inquiries from OCR, the School did not provide any concrete evidence to support its claims that the Student's hair was distracting. During an interview with OCR, the Director claimed that the Student's hair was identified as "distracting" by multiple individuals, but then stated that he did not know of anyone actually reporting the Student's hair. Additionally, we requested, all reports about the Student's hair being distracting. The School wrote in response, "No written complaints." So, we then requested "a narrative description of any oral reports or complaints from students, parents, or staff regarding the Student's hair." The School replied, "The School is not aware of any other verbal reports/complaints." We could not ask the Teacher about the Student's hair being a distraction because, again, the School refused to provide her forwarding contact information and we were unable to locate her using publically available records.

Sixth, the Director often contradicted himself when proffering reasons for the School's treatment of the Student. For example:

⁹ Notably, the staff again contradicted themselves when the AP also told us, during an interview, that "neat and clean cut" is not a requirement; it is merely a request.

- The Director claimed that the dress code prohibited distracting hair. However, the School's dress code did *not*, in fact, prohibit distracting hair generally. Instead, the dress code's plain language prohibited "distracting headwear" and "distracting hair colors."
- The Director claimed that, according to Google, afros are "trendy," and thus, prohibited by the dress code. However, mere seconds later, the Director told the Complainant that the Student's hair "could be an afro, but it would have to be smaller." Then, later, the Director claimed that the Student's hair was "trendy" because the School did not "consider it clean cut."
- The Director told the Complainant, "So, nothing sticks out past your head in a three-finger width. And it doesn't matter whether it's a bun, a ponytail, or just hair." However, the Complainant asked the Director, "Long is okay, but big is not okay?" The Director responded, "Yeah, yeah. ... They can put it in a ponytail, they can have it long[.]" Furthermore, the Director told OCR that a four-inch high bun on the back of a student's head would be permissible.
- Evidence clearly shows that the Director told the Complainant that the Student's afro hairstyle was "trendy" (according to Google), and therefore, prohibited by the dress code. Yet, the Director then told OCR, in an interview, that he never deemed the Student's hair to be "trendy" and never raised the issue of "trendy" with the Complainant.¹⁰

Seventh and finally, the School used language that could reasonably be viewed as coded language for negative characterizations of hair for most African Americans. School staff described the Student's hair as "very, very high, poofy," "a little bit more [sic] wild side," and "unmanageable." Additionally, the Teacher told the Student to "put something" in his hair, even after it was cut. The Complainant reports to OCR that she interpreted the School staff to be saying that the Student's hair was "nappy" and "dirty." Notably, the School allows long hair that grows down (the natural hair growth direction for most white people), but not long hair that grows out/up (the natural hair growth direction for most African American people).

VI. Conclusions

After reviewing the documentation, information, and facts uncovered in our investigation, OCR determined that the weight of the evidence shows the School discriminated against the Student on the basis of race when: (a) a teacher at the School harassed the Student on the basis of race; and (b) the School treated the Student differently in the administration of the School's dress code because he is an African American student with an afro hairstyle.

We thank the School for voluntarily entering into an agreement with OCR to resolve these issues. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the School demonstrating that the terms of the Agreement have been fulfilled. We will provide the School with written notice of any deficiencies regarding

¹⁰ Notably, the Director told the Complainant, "We don't consider [the Student's afro] clean cut." And, as previously stated, the School accused the Student of violating the dress code and being a distraction. However, the Student, with his hair in an afro style that was seemingly taller than three inches, was featured on page 19 of the School's 2016-2017 school yearbook.

implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the School has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title VI, and their implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the School, copied to the Complainant, stating that this case is closed. If the School fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the School's compliance or noncompliance with Title VI or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that the School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual 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, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at XXX-XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure: Resolution Agreement
cc (w/ enclosure): Kim Alvarado, Grasso Law Firm, Attorney for the School (via email)
cc (w/o enclosure): Diane Douglas, Arizona Superintendent of Public Instruction