UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

December 9, 2013

Tom Uslan,
Superintendent
Lincoln Unified School District
2010 W. Swain Road
Stockton, CA 95207

(In reply, please refer to case no. 09-13-1182.)

Dear Superintendent Uslan:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Lincoln Unified School District (District). The complainant alleged that the District discriminated against his son (Student) based on disability, and against African American students as a class based on race. The complainant also alleged that the District retaliated against him. OCR opened the following specific allegations for investigation:

1. The District failed to provide the Student with a free, appropriate public education (FAPE) by failing to enroll him in the District and provide him an individualized education program (IEP);

2. The District retaliated against the complainant for advocating on behalf of the Student and other students he believed the District had discriminated against based on race or disability by harassing him on campus; and

3. African American students at a District high school are disciplined more harshly than students of other races.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and their implementing regulations. Title VI and Section 504 prohibit discrimination on the basis of race and disability, respectively, in education programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department and is subject to Title VI, Section 504 and Title II.

The applicable legal standards, OCR's disposition of each allegation and the facts OCR gathered relevant to each allegation are summarized below.

Allegation One: The District failed to provide the Student with a FAPE by failing to enroll him in the District and provide him an IEP.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

- For most of the 2012-13 school year, the Student attended school in another district. According to his IEP from that district, the Student has a Specific Learning Disability. The IEP provided for independent study with up to five hours of individual instruction per week. Notes from IEP meetings show that the independent study placement was intended to address the Student's chronic absences from school.
- On March XX, 2013, the complainant attempted to enroll the Student as a XXXXXX at a District high school (School). According to the District, the enrollment was initially delayed for administrative reasons related to the Student's previous XXXXXXXXX XXXX the District. Additionally, the District was on spring break from April 1 through April 5. The District enrolled the Student on April XX. Seven school days elapsed between the date the complainant requested enrollment and the date of enrollment.
- Upon the Student's enrollment, the District immediately created a 30-day interim IEP. This plan provided for the same placement and services as the IEP from the Student's previous district.
- The District convened an IEP meeting on May X, 2013. At the meeting, the team – composed of administrators, a special education teacher, a general education teacher, a psychologist, an RSP teacher, the complainant, and the Student, who is XX years old -- proposed a placement of independent study with 60 minutes of Specialized Academic Instruction per week. The IEP record reflects that the reduction in instructional time from the previous IEP was made at the Student's request.
- The notes also indicate that the Student rejected the District's offer of Extended School Year services. The complainant said this was because the services did not fit into the Student's schedule.
- The Student left before the meeting concluded, and neither the Student nor the complainant signed the IEP. The complainant told OCR that neither he nor the Student objected to the IEP developed by the team, and that they were aware of the right to file for due process if they disagreed with the placement.

The complainant alleged that the District denied the Student FAPE by refusing to enroll him, and failing to develop an IEP. The evidence showed that the Student's enrollment was delayed by only seven school days, and that the delay was unrelated to the Student's disability. Under the circumstances of this case, this short delay does not constitute a denial of FAPE. The evidence further showed that the District placed the Student on an interim IEP immediately upon his enrollment, and convened an IEP meeting attended by appropriate people before the end of the 30-day interim placement. A new IEP was developed at the IEP meeting. There was no point during the Student's enrollment that he did not have an IEP.[1] Based on these facts, OCR concluded that the District did not violate Section 504 or Title II with respect to this allegation.

Allegation Two: The District retaliated against the complainant for advocating on behalf of the Student and other students he believed the District had discriminated against based on race or disability by harassing him on campus; and

The Title VI regulations, at 34 C.F.R. §100.7(e), prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title VI. The Section 504 regulations, at 34 C.F.R. §104.61, incorporate this prohibition. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

The complainant alleged that the District retaliated against him for advocating on behalf of the Student and other students he believed the District to have discriminated against based on race or disability by harassing him on campus. On May X, 2013, after OCR opened this complaint for investigation, the complainant filed a Uniform Complaint Procedures (UCP) complaint with the District raising the same allegations. Specifically, the complainant alleged that during his visits to the School, a security guard accompanied him and once asked him to leave, and a District administrator attempted to forcibly obtain documents from his possession.

Under Section 110(a) of OCR's Case Processing Manual, OCR will not pursue resolution of allegations of discrimination if the same allegations have been addressed through a recipient's internal grievance procedures and the resolution meets OCR regulatory standards, i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies meet OCR's standards. Accordingly, OCR examined

[1] Absent extraordinary circumstances, as a matter of Department policy OCR does not make determinations about the appropriateness of a particular placement or services for an individual student as long as the evaluation and placement process complies with Section 504 regulatory requirements.

whether the District's response to the complaint met these requirements.

- According to a written report prepared by the District, the District's Associate Superintendent of Human Resources investigated the complainant's UCP complaint by interviewing witnesses, including the complainant, another parent identified as a witness by the complainant and District- and School-level administrators accused by the complainant of engaging in the retaliatory conduct. She also reviewed relevant documentation, including documents provided by the complainant, District policies and procedures, written statements provided by District and School administrators, IEP meeting notes and correspondence from the District to the complainant.
- Based on her investigation, the Associate Superintendent concluded that the complainant's allegations did not have merit. Specifically, she found that, while the School had required that the complainant have an escort while on campus, this was the result of the complainant violating rules applicable to all campus visitors, misrepresenting his purpose on campus, and engaging in harassing conduct toward School staff. Additionally, while she found the evidence inconclusive as to whether the complainant and an administrator physically struggled over possession of a document, the document was the property of the District, not the complainant.
- In her written report, the Associate Superintendent described her investigation and set forth the facts she gathered, her conclusions regarding each allegation and the basis for her conclusions. She also explained the District's appeal process. The District sent this report to the complainant within a month of its receipt of the UCP complaint.

Because the District responded to the complainant's retaliation complaint under its internal complaint process, OCR examined the adequacy of the District's response. With respect to each alleged incident, a District administrator quickly undertook an investigation to determine what occurred. The investigation was thorough, entailing interviews of relevant witnesses, and review of relevant documents. The administrator reached conclusions about whether retaliatory conduct had occurred, and those conclusions were supported by the evidence she gathered. Finally, she notified the complainant of the steps she took to investigate the allegations, her conclusions, and the complainant's right to appeal. Because OCR's investigation revealed that the District's internal response met OCR's regulatory standards, OCR did not investigate the complainant's underlying retaliation allegation.

<u>Allegation Three</u>: African American students at a District high school are disciplined more harshly than students of other races.

The standards for determining compliance with Title VI are set forth in the regulations at 34 C.F.R. §100.3(a) and (b). 34 C.F.R. §100.3(a) states that no person shall, on the grounds 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 receiving federal financial assistance. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are

different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. In addition, 34 C.F.R. §100.3(b)(2) provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of 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.

Data provided by the District and available on the California Department of Education's website shows that African Americans are disproportionately represented among students at the School receiving expulsions, suspended expulsions, rescinded expulsions and stipulated agreements. In 2012-13, for example, African American students represented approximately 11% of the School's student population, and approximately 31% of the students recommended for expulsion. In 2011-12, African American students represented approximately 12% of the student population, and approximately 29% of the students recommended for expulsion.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District expressed to OCR its interest in reviewing the data and its policies and practices on student discipline to understand why the disparity in expulsions of African American students exists, and taking other steps to voluntarily resolve this allegation. On December 3, 2013, the District voluntarily signed the attached agreement to resolve this allegation. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Title VI. OCR will monitor the District's implementation of the agreement.

OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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 whether or not OCR finds a violation.

OCR routinely reminds districts that they 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.

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

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Suzanne Taylor, OCR attorney, at 415-486-5561.

Sincerely,

/s/

James Wood
Team Leader

Enclosure

cc: XXXX XXXXXXXX, Esq.