



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
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SAN FRANCISCO, CA 94102

May 29, 2018

Dr. Cesar Morales
Superintendent
Oxnard Elementary School District
1051 South A Street
Oxnard, California 93030-7442

(In reply, please refer to case no.09-14-1436.)

Dear Dr. Morales:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Oxnard Elementary School District.

Specifically, the complaint alleges the following:

1. Whether the District provides students who are English learners and whose primary language is Mixteco with access to the content of the curriculum.
2. Whether the District fails to provide limited English proficient parents whose primary language is Mixteco with important information in their primary or home language, when such information is provided to English-speaking and Spanish-speaking parents.
3. Whether the District subjected the Student¹ to different treatment based on national origin when he was suspended on multiple occasions after he engaged in fights with peers who had subjected him to national origin harassment while the other non-Mixteco students were given less harsh forms of discipline.
4. Whether the District failed to respond effectively to notice of harassment based on national origin when the Student, a student of Mixteco origin at a middle school (the School), was subjected to derogatory comments and physical aggression by other students.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The district receives funds from the Department and is therefore subject to Title VI and the regulation.

¹ OCR informed the District of the identity of the Student when the investigation began. We are withholding the Student's name from this letter in order to protect the Student's privacy.

During its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant, and District officials, students, and staff.

Allegations 1 and 2: Whether the District provides students who are English learners and whose primary language is Mixteco with access to the content of the curriculum; and Whether the District fails to provide limited English proficient parents whose primary language is Mixteco with important information in their primary or home language, when such information is provided to English-speaking and Spanish-speaking parents.

Legal Standard

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On July 17, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (May 25, 1970), reprinted in 35 Fed. Reg. 11,595 (July 18, 1970) (hereinafter May 25th memorandum). The May 25th memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students.

The May 25th memorandum states that school districts must take affirmative steps to address the language needs of limited English proficient students (English learners or EL students) in order to provide meaningful access to such students. The May 25th memorandum also states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. School districts have an obligation to ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents.

School districts must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. It is important for schools to take parents at their word about their communication needs if they request language assistance. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and training in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

Allegation 1: Access to Curriculum

Factual Findings

The complaint alleged that the District did not provide Mixteco students with language support services that enabled them to access the core instructional curriculum and that the District had failed to identify limited English proficient students in the District who speak indigenous languages, including Mixteco. The Complainant noted that, according to CDE data, only thirteen Mixteco speaking students were enrolled at the School during the 2013-14 school year. The complaint alleged that this data vastly underestimated the number of Mixteco-speaking students in the District and at the School, and that as a consequence of this miscount, speakers of indigenous languages receive fewer and inappropriate language services than other students.

During an interview with OCR, the Complainant stated that the indigenous languages of Mexico are primarily spoken, rather than written, and Mixteco parents often rely on others to complete written forms when they register their children for school. Sometimes school staff fill out forms for these parents and make assumptions about the parents' primary language. She alleged that this practice may lead to the under-identification of Mixteco-speaking students. She also stated that parents are sometimes reluctant to identify themselves as Mixteco-speaking. The Complainant also clarified that, although the District provided Spanish-speaking English learner (EL) students with academic support in their primary language, it did not provide Mixteco-speaking students with similar support. She acknowledged that English language development instruction was provided at the school.

Based on these allegations, OCR investigated only whether the District was implementing adequate procedures to identify students who spoke Mixteco and other indigenous languages, and whether it had a program in place designed to provide them access to the core curriculum.

OCR determined that, although California Department of Education (CDE) data from 2012-13 identified only thirteen Mixteco-speaking students at the School, by the time of OCR's onsite in March 2015, the District was aware of 33 Mixteco-speaking students at the School. Neither the Complainant nor parents and community members interviewed by OCR identified other Mixteco-speaking students at the School whose home language was misidentified. OCR did not find other evidence of any unidentified Mixteco-speaking students.

At the time the complaint was filed, the District program for English language learners was outlined in a Master Plan for Services to English Learners adopted in 2008. The Master Plan included procedures for identifying EL students which were generally consistent with California state law. Parents completed a Home Language Survey (HLS) as part of their initial registration, which asks them to identify languages other than English that are spoken by the student or in his/her home. Students whose HLS responses indicated that they might speak a language other than English were given the California English Language Development Test (CELDT).²

²Since the date of OCR's on-site, the District has revised the Master Plan to reflect new English Language Development Standards. The revised Master Plan does not change the enrollment and identification procedures described here.

The District advised OCR that its enrollment process is centralized and Enrollment Center staff assist parents with the completion of forms, including the home language survey. OCR interviewed Enrollment Center staff about the assistance they provided to parents who requested clarification of the HLS or who required assistance in completing the form. They stated that they occasionally assist parents who are unable to write, but that when they do so they transcribe the answers provided by the parents onto the form. They also stated that parents frequently note on the HLS that they speak both Spanish and Mixteco, and that they were not aware of circumstances in which Mixteco-speaking parents misidentified their primary language on the HLS form. They also stated that Mixteco interpreters are readily available at the Enrollment Center for parents who do not speak Spanish or English.

OCR confirmed that the District offered Dual Language Immersion (DLI) and Transitional Bilingual Education (TBE) programs at a number of elementary schools. These programs are offered in Spanish, but not in Mixteco or other indigenous languages. At the time of the OCR on-site investigation, there were no bilingual programs in place at the School. Instead, students who had been enrolled in school in the United States for less than 18 months were enrolled in a Newcomer Academy. Academy classes were offered in English language arts, Social Studies, Math, and Science. Additional classes designed for EL students were offered in each of these subject areas. All content classes were taught by teachers who possess Cross-cultural Language and Academic Development (CLAD) certification or the equivalent. Teachers were expected to provide access to the core curriculum through specially designed instruction in English (SDAIE).

Analysis and Conclusions

Under Title VI and the regulation, districts are required to adopt and implement programs that are reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time. Title VI does not specify the means by which districts must provide EL students access to instruction; districts may choose to provide instruction in students' primary language, but are not required to do so, as long as their program provides all EL students with meaningful access to content instruction. Similarly, districts are not required to adopt the same program for all EL students.

OCR found that most of the EL students in the District spoke Spanish, and that two of the EL programs available in the District (though not at the School) provided content instruction in Spanish. The failure to provide a similar primary language program in Mixteco does not by itself violate Title VI and the regulation. The preponderance of the evidence did not establish that the District failed to identify students at the School who spoke Mixteco, or failed to address their needs in designing or implementing its EL program. OCR's preliminary review of the EL program at the School showed it was designed to provide EL students access to the core curriculum through specialized EL classes for newcomers and for students whose English proficiency was limited. Instruction in these classes was provided in English, through specialized instruction and methodologies. The preponderance of the evidence did not establish

that the EL program denied Mixteco-speaking students access to the core curriculum, in violation of Title VI.

Allegation 2: Parent Communication

Factual Findings

The Complainant alleged that the District does not provide qualified interpreters for meetings with the Parent and for other Mixteco speaking parents. The District denies that it fails to provide Mixteco-speaking parents with important information in their primary or home language. It cites its contract with a non-profit organization, (Contractor 1), to provide interpretation services and that it hired two full time staff interpreters to interpret for Mixteco parents as evidence of compliance with Title VI. The District states that it is committed to providing interpretation services upon request for parent conferences, community meetings, general functions and any informational meetings.

For the 2012-13 and 2013-14 school years, Contractor 1 provided Mixteco interpretation services to the District. The District states that another contractor (Contractor 2), provides interpretation and translation in 240 additional languages. In addition, at the time of the on-site, the District employed two full time Mixteco interpreters and two full time Spanish interpreters, and had identified other employees throughout the District who were qualified to provide interpretation and translation in Spanish.

OCR notes that the District has not adopted formal procedures for interpreting and translating communications between schools and LEP parents. According to the District, school staff members are able to communicate with parents in Spanish, and know to call the English Learner Services Department if they need an interpreter in a language other than Spanish. Staff informed OCR that Spanish interpretation and translation services were coordinated through the superintendent's office, while an assistant to the Director of EL services managed language services in other languages.

OCR's investigation revealed that there have been instances when Mixteco-speaking students have been asked by the District, specifically by teachers, to translate for parents when needed. As reported by Complainant, the Student's Parent went to the school for a meeting with the Science Teacher, who requested that a Mixteco-speaking student translate for him. One teacher admitted to OCR when interviewed, that he can ask a student to translate for his or her parent, or ask another student to translate. This practice was also confirmed by Mixteco-speaking students who were interviewed by OCR. One student said that she was asked 3 times to interpret or translate from 2013 to 2014. Another student said he had been asked once to interpret.

OCR interviewed the Mixteco-speaking staff interpreters hired by the District. One of them stated that she had received no formal training as an interpreter, but followed the other District interpreter and learned from her.

At a community meeting, OCR questioned Mixteco-speaking parents about the adequacy and availability of translation services provided by the District. A number of the parents expressed

concerns about receiving most of the notices about their child's education, including recorded telephone messages, in Spanish. Some parents stated they only receive notices from the school that are in English, and a number of parents said they did not understand the notices that they received from the school district.

OCR is investigating translation and interpretation services provided to Spanish speaking parents in proceedings involving students with disabilities in another complaint, OCR Case number 09-17-1007. However, systemic issues regarding interpretation and translation overall are addressed in the current case (09-14-1436). OCR's review of documents submitted by the complainants and the District in 09-17-1007 has raised concerns that special education documents were not consistently translated into Spanish for parents of students with disabilities who requested such translations.

Analysis and Conclusions

As part of their obligation to provide an equal educational opportunity to national origin minority students, school districts must ensure that their communication with Limited English Proficient (LEP) parents is meaningful and conducted in a language the parents can understand, and that LEP parents are adequately notified of school information that is brought to the attention of English speaking parents. In order to fulfill this responsibility, school districts must assign appropriate competent staff, or appropriate and competent outside resources to provide language assistance to LEP parents.

The use of family members, friends and children to help in providing language assistance to parents may raise issues of confidentiality, privacy, or conflict of interest. For these reasons, recipients should not plan to rely on these individuals to provide meaningful access to important programs and activities. The use of minor children raises particular concerns about competency, quality and accuracy of interpretations, and about privacy.

OCR found that the District had assigned two full time staff to provide interpretation in Mixteco, and that many staff members were proficient in Spanish and able to communicate directly with Spanish-speaking parents. In addition, OCR found that the District had contracted with outside agencies to provide Mixteco interpretation and to translate important documents into other languages. Although the District had assigned staff to coordinate interpretation and translation services, however, it has not adopted formal procedures governing the provision of such services.

During its investigation, OCR found evidence that students were, on occasion, called upon to provide interpretation for communication between school staff and their parents, or the parents of other students, and that Mixteco-speaking parents did not always receive telephone messages and other notices from their students' schools in a language they could understand. Evidence reviewed in a related investigation also raised concerns that special education documents were not always promptly translated for LEP parents.

Based on these facts, OCR has identified compliance concerns regarding the District's provision of adequate communication to Mixteco-speaking parents and to other limited English proficient (LEP) parents. The District expressed an interest in resolving the allegation and OCR determined that it is appropriate to resolve the allegation pursuant to Section 302 of the Case Processing Manual (CPM).

Allegation 3: Whether the District subjected the Student to different treatment based on national origin when he was suspended on multiple occasions after he engaged in fights with peers who had subjected him to national origin harassment while the other non-Mixteco students were given less harsh forms of discipline.

Legal Standard

The Title VI regulations, at 34 C.F.R. §100.3(a) and (b), provide that a school district 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 district has discriminated against a student on the basis of race, color or national origin in the discipline process, OCR looks at whether there is evidence that the student was treated differently than students of other races, colors, or national origins 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 district 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 district's actions were based on the student's race, color or national origin.

Factual Findings

The Complainant alleged that the Student was subjected to different treatment based on his Mixteco status in that he was disciplined more harshly than non-Mixteco students. The Complainant did not identify specific instances in which non-Mixteco students received less harsh treatment than the Student with regard to discipline. The Student's parent alleged that the Student's discipline was sometimes due to him acting in self-defense in response to bullying. OCR examined whether a review of the Student's discipline record provided evidence that he was treated differently than non-Mixteco students.

The District's discipline policies (Board policy 5144 and Administrative regulation 5144) describe the process the District follows to address student behavior. The policy provides multiple options of discipline strategies including conferencing with parents, identifying additional supports for the student, convening Student Success Team, referrals for special education assessment, restorative justice, recess restriction, after-school or Saturday school detentions, suspensions, and expulsions. The policy provides that alternatives to suspensions or expulsion be used with students who are truant, tardy, or otherwise absent from school activities.

The grounds for suspension that are listed in the District policy are those identified under the California Education Code (EC) 48900³ for which a student may be suspended or expelled. Grounds for suspension include, for example, attempting to cause or threatening to cause physical injury; committing an obscene act or engaging in habitual profanity or vulgarity; and disrupting school activities or otherwise willfully defying valid authority of school personnel.

The Student received 95 discipline referrals during the 2013-2014 school year. The discipline referrals resulted in the following consequences for the Student: counseling, parent meetings, a behavior contract, no-contact contracts, 73 instances of detention, 56 instances of being removed from a classroom for one or more periods, and four (4) out-of-school suspensions totaling thirteen (13) days. The majority of the discipline referrals for the Student were for disruptive behavior, making inappropriate or lewd comments, or defiance. Behaviors for these referrals included shouting in class, excessive talking, making fun of the teacher, making fun of other students, erasing the teacher's agenda from the board, throwing things, refusing to follow a directive (to stop, move, or hand over an object), or using vulgar language. Additionally, there were twelve referrals for excessive tardies which resulted in office detentions and seven referrals for behaviors that involved other students (pushing, fighting, threatening, and name-calling).

OCR reviewed the incidents from the 2013-14 school year in which the Student engaged in behavior involving other students, and those for which the Student received out-of-school suspensions.

The Student's number of discipline referrals (95) during the 2013-2014 school year significantly exceeds the number of referrals that any other Mixteco students in the School received. OCR reviewed the number of behavior referrals that other Mixteco students received during the 2013-2014 school year and found that they ranged in number from two (2) referrals to sixteen (16) referrals. An analysis of the Student's 95 behavior incidents reveals that that the Student was disciplined for behavior issues repeatedly, some of them involving disputes with other students, some of whom were Mixteco. Many incidents concerned the Student's behavior in school and did not involve other students. With regard to the behavior incidents involving other students, three of them were incidents or altercations with other Mixteco students. There were also two incidents in which the Student was received a behavior referral for engaging in or attempting to engage in a physical altercations with another student in which the race or national origin of the other student is not identify in the documentation about the incident. The following are other behavior incidents involving the Student and another student of a different national origin:

- On February X, 2014 the Student received an office detention for saying to another student (Student A) that he would "squish his head and lemon juice comes out". Student A is identified as a Spanish speaker with 101 behavior incidents in the 2013-2014 school year.
- Also on February X, 2014 the Student received an after-school detention for flashing "signs" at another student (Student B). Student B is identified as a Spanish speaker with 23 behavior incidents over 2 years.

³ Specifically, EC 48900(a)-(r)

- On February XX, 2014, the Student engaged in a physical confrontation (pushing) with another student (Student C) who he alleged was bullying him. Witness accounts of the incident reflect that both students were calling each other names. Because the Student's parent complained about this discipline incident to the Principal, the Principal investigated the incident by interviewing witnesses identified by both students. Witnesses were conflicting about which of the two students was the first one to push. Both students were required to sign a No Contact Contract. The Student was suspended for the rest of the period. Student C's Student Profile Report does not similarly show that he was suspended for the remainder of the class period. Student C's Profile Report identifies him as a Spanish speaker and that the February XX, 2014 incident was his fifth behavior incident that school year. He had no prior incidents that month and his most recent behavior incident was on December X, 2013 which also resulted in a No Contact Contract. The February XX, 2014 incident was the Student's 55th incident that school year and his 8th incident that month.
- On April XX, 2014 the Student pushed another student (Student D) while making a derogatory statement to him in Spanish in an angry tone. He received one in-school classroom suspension for the incident. Student D is identified as a Spanish speaker with 33 behavior incidents.
- On May XX, 2014 the Student received an office detention and was removed from class for the rest of the period for calling a male student (Student E) a " girl" , and being disruptive in class (making dog noises and comments about students and dogs). Student E is identified as White and had a total of 47 behavior incidents that school year.

Analysis

In assessing whether the Student was subjected to different treatment in discipline based on his Mixteco status, OCR examined whether there was evidence of similarly-situated non-Mixteco students being disciplined less harshly for the same or similar infractions. The Complainant generally stated that the Student was disciplined more harshly due to being Mixteco. However, the Complainant did not provide specific incidents in which students of other races or national origins were treated less harshly. The Student's parent asserted that the Student's discipline was sometimes the result of the Student acting in self-defense due to the School's failure to respond to harassment based on the Student being Mixteco. (OCR addresses this harassment allegation under Allegation 4 below.) OCR first reviewed the Student's discipline incidents in which the Student and another student who is not Mixteco were engaged in physical altercations. Because incidents of two students engaging in a physical altercation in some circumstances could be comparable conduct (depending on history of prior offenses and other mitigating circumstances), OCR examined those incidents to determine whether the students were similarly situated, whether the conduct was, in fact, comparable, and whether the students were treated differently. Three of the incidents of the Student engaging in physical altercations with other students were altercations with Mixteco students and thus, are not analyzed here. With regard to two of the incidents, OCR does not know the identity of the other student and so those incidents are also not analyzed here.

The only other incident involving a physical confrontation with the Student and a non-Mixteco student occurred on February XX, 2014. In that incident, the Student and Student C were about to engage in a fight. Both students were referred to the office and both students were required to sign a No Contact Contract. The Student was suspended from the class for the remainder of the period. The record for Student C does not reflect that he was similarly suspended for the remainder of the period. However, OCR finds that both students did not have similar histories of prior offenses and were not, therefore, similarly situated. Including the February XX, 2014 incident, the Student had 55 behavior incidents for the school year by that point in time, while Student C had far fewer referrals. The February XX incident was the Student's eighth behavior incident that month. Student C, on the other hand, had no other behavior incidents that month and his most recent behavior incident prior to February XX, 2014 occurred on December X, 2013.

OCR also examined the Student's behavior incidents to identify if there were other students who had a similarly history of high number of behavior incident referrals. No other Mixteco student had similarly large number of behavior incident referrals. OCR found that four of the students identified in behavior incidents with the Student also had large numbers of behavior referrals. OCR found that during the incidents with those students, the other students' behavior was not comparable to the Student's behavior. In one case, the Student threatened to "squish" another student's head; in each of the others, the Student either flashed gang "signs" at the other student or called the other student names. OCR found no evidence that the other students engaged in similar behavior. For this reason, these incidents did not provide evidence of different treatment based on Mixteco status.

OCR reviewed the 95 behavior incidents for which the Student was referred. OCR found no pattern of the Student being disciplined while other non-Mixteco students were not, for the same or similar infractions. Accordingly, based on a preponderance of the evidence, OCR concludes that there is insufficient evidence that the Student was treated differently based on his Mixteco status when he was disciplined by the school.

Allegation 4: Whether the District failed to respond effectively to notice of harassment based on national origin when the Student, a student of Mixteco origin at the School, was subjected to derogatory comments and physical aggression by other students.

Legal Standard

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulation 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 the student's ability to participate in or receive education benefits, services, or opportunities.

A district violates Title VI and the regulations if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious -- severe, persistent, or pervasive -- so as to limit or deny a student's ability

to participate in or benefit from the services, activities or privileges provided by a district; (2) the district had actual or constructive notice about the harassment; and (3) the district failed to take an appropriate, reasonable, timely, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.

Under the Title VI and the regulations, once a district has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately.

The district is not responsible for the actions of the third party, but rather for its own discrimination if it fails to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate, timely, responsive, and effective action is the district's responsibility, whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the district received notice, that notice will be imputed to the school.

Factual Findings

The District provided copies of its policies prohibiting race or national origin-based harassment against students, as follows:

- BP 410: Nondiscrimination in District Programs and Activities
- BP 5131.2 Bullying
- BP 5149: At Risk Students
- BP 6174: Education for English Language Learners
- AR 1312.3: Uniform Complaint Procedures

The District also provided a copy of District Board Resolution No. 11-22, Resolution for Respect of Indigenous Peoples, in English and Spanish, and advised OCR that each school Principal ensures that a positive behavior program is provided that addresses anti-bullying for students. The District reports it uses CHAMPS, Lesson One, and the Olweus anti-bullying program for behavior support and that the School has had two years of CHAMPS training.

Both the Student and his parent told OCR that the Student was the target of bullying by a group of 5 to 6 other students during the 2013-2014 school year. The Complainant reported that the Student was hit by these students several times, and that during some of these incidents the Student would also hit the harassers. In those instances, the Student faced discipline for using physical force. The Student's Parent told OCR that she reported the harassment to staff at the School, including the Principal, on several occasions during the 2013-14 school year. With respect to the Student, the Complainant alleges that during the 2013-14 school year, the Student was bullied by other students based on his race, national origin and color.

The Complainant alleges that the Student was subjected to derogatory names, such as "Oaxaco", referring to his indigenous background and "Caca" (feces in Spanish.) The Complainant contends that she repeatedly advised the School Principal and Former Principal of these incidents

and was told they would “look into it”, but no meaningful investigation was undertaken. The Complainant further contends that neither the Student, nor his Parent, was ever advised of any district rules about or procedures for reporting bullying or harassment.

The District contends that it investigated and responded to each notice of harassment alleged by the Student’s Parent as soon as it was made aware of each. A number of meetings were held with the Parent to discuss harassment of the Student and related disciplinary issues. The District states that it investigated each allegation and interviewed all students and witnesses involved and determined the appropriate persons at fault and the correct disciplinary actions.

On November XX, 2013, the Student was suspended for two days for engaging in a physical altercation with another student. In a statement, the Student said the other student was calling him and a friend “bad stuff”.

On January XX, 2014, the Student and Parent wrote a letter to the School to report the bullying of the Student. While he did not specifically describe incidents that clearly indicated harassment based on race, color, or national origin, the Student did state that the other students called him gay and told him that he did not know how to fight. They reported that the Student walks away when they confront him, but the other students still go after him. The Student shared his concern that the students were encouraging others to attack him and that no one at the School was helping him. The Parent also complained to the District that the Student was being bullied daily, and was in physical danger, but that teachers were ignoring the bullying.

The District reported to OCR that as a result of the letter, the Principal spoke to the Student about reporting any bullying the same day it occurs, and that the School would monitor the Student during his interactions between himself and the other students. The Principal reportedly spoke to all the students about bullying.

The former School Principal stated to OCR that the Student and his Parent reported that he was being harassed based on his Mixteco heritage in response to discipline referrals that the Student received. She stated that the Parent reported to her on a few occasions that the Student was being called names, and she insisted that he was the victim in incidents in which he was referred for discipline. The former School Principal stated that she believed that the Student’s behavior was triggered by neighborhood issues, where he was the instigator, and not due to harassment. However, in response to the Student’s and Parent’s concern, she stated that she had established with the Student that he had free access to her at any time, but he never came to meet with her. The former Principal offered as an example the February XX, 2014 incident in which the Student was engaged in a physical confrontation with a Spanish-speaking student. The former Principal stated that the Student’s version was that he was bullied and pushed while going from one class to another class, which she investigated. Upon investigation, some witness accounts identified the Student as the instigator of the incident while others indicated that the other student was the instigator. The record of the incident reflects that the other student called the Student “caca” (Spanish word for feces) and “stupid”. Also, upon investigation, the former Principal found that the Student was also engaged in name-calling and that the altercation occurred far from his classes, in an area where he was not authorized to be at that time.

OCR also interviewed the Assistant Principal, who stated that he did not hear a specific complaint of harassment from the Parent other than when the Student had a discipline issue. When the Assistant Principal investigated a discipline incident, he did not see evidence that the Student was being harassed based on the Student being Mixteco speaking.

OCR interviewed a group of Mixteco students and a teacher about alleged harassment by non-Mixteco peers. Two of the Mixteco students stated that they have been called names at school because of how they look, while another student heard “Oaxacita” being directed to students at school. Other students know that they are Mixteco. No students in the group experienced physical harassment, but two students indicated that if they are called a derogatory name, they fight back. They indicated that this has been effective for them in stopping the harassment, but both ended up getting suspended.

OCR’s interview of a teacher revealed that Mixteco students are harassed because of their color or appearance. He described to OCR that some students are identifiable as Mixteco students due to the way they look and that there is some intimidation towards and from non-Mixteco students and other students. He also stated, that “acculturated” students “pick on” Mixteco students.

Analysis

The Complainant and Student’s Parent allege that the Student was subjected to harassment based on being Mixteco, such as being called names or engaged in physical altercations, and that this led to him being disciplined. While the Student and his parent stated to OCR that he was regularly subjected to bullying by a group of students, the specific incidents described to OCR involved those in which the Student engaged in physical altercations with the other Student resulting in discipline of the Student. In this case, the evidence is conflicting regarding whether the incidents that the Student and his parent described were ones in which the Student was subjected to harassment based on race or national origin. For example, in one incident that occurred on November XX, 2013, the Student’s statement to the School was that the other student was calling him and his friend, “bad stuff”, but does not describe the specifics of what was said. The other incident highlighted by the Student’s parent was one that occurred on February XX, 2014. In that incident, Student C reportedly called the Student names such as “caca” which is a derogatory reference to the Student’s skin color. Witness reports for that incident show that the Student also called the other student names.

Name-calling based on race, color, or national origin could, in some circumstances, rise to the level of being sufficiently severe persistent or pervasive so as to constitute discriminatory harassment. Similarly, physical assaults due to race, color, or national origin, are likely to be sufficiently severe to constitute discriminatory harassment. While the evidence shows that the Student engaged in physical altercations with other students, and while both the Student and Parent complained to the School that the Student was being bullied, OCR found insufficient evidence to establish that the altercations that the Student was involved in were ones which, in light of the totality of the circumstances, were due to harassment based on race, color, or national origin or resulted in a hostile environment for the Student. The February XX incident in which the Student was called a derogatory name was one in which the evidence indicated that the

Student may have been the instigator of the incident and one in which both students were using mutually offensive language towards each other.

However, there is some evidence to support the allegation that Mixteco students are singled out and are subjected to national origin harassment that is observed by staff. While the specific incidents described by the Student and his Parent did not establish by a preponderance of the evidence that the Student was subjected to harassment, OCR has compliance concerns regarding peer harassment at the Middle School against Mixteco students, and whether the District has responded appropriately and effectively to such harassment.

Prior to OCR making a final determination regarding this Allegation and Allegation 2 above, the District expressed an interest in voluntarily resolving Allegations 2 and 4 pursuant to section 302 of OCR's Case Processing Manual⁴, and OCR agreed it was appropriate to do so. On May 25, 2018, without admitting to any violation of law, the District signed the enclosed Resolution Agreement, which, when fully implemented, is intended to address allegations 2 and 4, in the complaint.

Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

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

Please be advised that the District may not harass, coerce, intimidate, retaliate, 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 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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

⁴ <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>

OCR thanks Mary Hernandez for the courtesy and cooperation extended to OCR during its investigation. If you have any questions, please contact Judith O'Boyle, Attorney, at (415) 486-XXXX by email at Judith.Oboyle@ed.gov.

Sincerely,

/s/

Anamaria Loya
Chief Attorney

Enclosure

cc: Mary Hernandez, Esq., Counsel for recipient