



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

August 25, 2020

VIA ELECTRONIC MAIL

James Moore
Superintendent
Alta Loma School District
9390 Baseline Road
Alta Loma, CA 91701
XXXXXXXXXXXXX
XXXXXXXXXXXXX

(In reply, please refer to case no. 09-15-1345.)

Dear Superintendent Moore:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Alta Loma School District (the District). The Complainant alleged that the District discriminated against the Student on the basis of race and disability.¹ Specifically, OCR investigated whether the District:

1. treated the Student differently based on race, from other students who engaged in similar conduct, when it disciplined him;
2. treated the Student differently based on race, from other students who engaged in similar conduct, when it referred him to local law enforcement;
3. discriminated against African American students based on race by disciplining them more frequently and harshly than similarly situated students of other races;
4. treated the Student differently based on race when it revoked his inter-district transfer; and,
5. did not provide the Student with a free, appropriate public education (FAPE) by not following adequate procedures for evaluation and placement of the Student.²

With respect to issues 1, 2, 3, and 4, 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 subject to Title VI and the regulation.

¹ OCR previously provided the District with the identity of the Complainant, Student, and Parent. We are withholding their names from this letter to protect their privacy.

² OCR reorganized the allegations from the July 1, 2015 notification letter for purposes of clarity.

With respect to issue 5, OCR also investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, as well as Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, and their implementing regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District and by interviewing the Student's mother (Parent), Teacher, Principal, Assistant Principal, and Associate Superintendent. With regard to issue 2, OCR identified a compliance concern that the Student may have been treated more harshly than his peers based on race when he was referred to law enforcement. Prior to OCR completing its investigation, the District voluntarily agreed to address the compliance concern identified by OCR with respect to issue 2. With regard to issues 1, 3, 4, and 5, OCR found insufficient evidence of a violation of the laws enforced by OCR. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Issues 1 and 2: Whether the District treated the Student differently based on race when it disciplined him; and whether the District treated the Student differently based on race when it referred him to local law enforcement.

Legal Standards

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 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 in 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.

Findings of Fact

The Student is an African American boy. During the time at issue, at the start of the 2014-2015 school year, the Student was XXXXX years old and in XXXX grade at the School.

The relevant incidents with regard to Issues 1 and 2 took place in November and December 2014. OCR reviewed the Student's discipline records for 2014-2015 (the Student left the School during that school year). Prior to the incidents at issue in this case, according to the District's

2014-2015 data regarding office referrals, the Student had seven referrals in September 2014. The Student's referrals all involved causing or attempting to cause physical injury to another student. For one of these September 2014 referrals, the School issued the Student an in-school suspension after he grabbed two students by the neck and tried to hit their heads together. The Student had two referrals to the office in October 2014, one for throwing a pencil at another student and wishing the student was dead and one for obscene gestures.

November X, 2014 Incident

According to the Notice of Suspension, on November X, 2014, "[the Student] verbally threatened to kill other students, put his hand in the shape of a pretend gun and pretend fired into their heads." According to the School, the Student said he was mad at the other students and he admitted to threatening and pretending to kill them. The Student's behavior was a Level 4 behavior according to the School-Wide Discipline Plan in the School's 2014-2015 Handbook, which describes Level 4 as the most severe behaviors that are intended to or have the potential to cause physical or mental harm and/or the behavior is illegal. Staff must immediately respond to Level 4 behaviors and notify parents, and staff may also notify law enforcement. Level 4 consequences depend on the frequency and severity of the behavior and may include in-school suspension, out-of-school suspension, a behavior contract/plan, expulsion, and notification of law enforcement.

The School investigated the incident on November X, 2014. On November X, 2014, the Principal emailed the Parent about the incident and also notified the County Sheriff. According to the District, the Principal called the Sheriff's Department due to the serious nature of the threats made against other students and uncertainty regarding guns which the Student may have access to.

The School Resource Officer's (SRO's) report describes the November X, 2014 incident as: "...A XXXX GRADER, MADE SEVERAL RUDE COMMENTS TO TWO OF HIS CLASSMATES. HE ALSO X---content redacted---X MADE REFERENCE TO [STUDENT] HATING THE OTHER TWO AND SHOOTING THEM. A COMP CK WAS NEG FOR ANY FIREARMS REGISTERED TO [STUDENT'S] MOTHER. HE STATED THERE WERE NO FIREARMS AT HOME AND HAD NEVER SEEN A REAL GUN BEFORE..." (All capitals in original.)

According to the District, an officer followed up with the School Principal and notified her that the Student did not have access to firearms. The School issued a one-day suspension to the Student for November X, 2014, under California Education Code Section 48900(a)(1) for causing, attempting to cause, or threatening to cause physical injury to another person.

According to the complaint, the Student's conduct on November X, 2014 entailed singing an adult version XX XXX XXXXXX song X---content redacted---X and bending his fingers in the form of a pretend gun and shooting into the air. The Student learned the song and hand play from relatives. The Student was very frightened when he was questioned by law enforcement, and he and the Parent were nervous about sending him back to the School. The Parent told OCR that she did not believe the Student told the other students that he was going to kill them. Instead, he was singing the song, which, at the time, he did not know was inappropriate.

December X, 2014 Incident

A few weeks later on December X, 2014, the School suspended the Student for two days for similar Level 4 behavior under California Education Code Section 48900(a)(1) for causing, attempting to cause, or threatening to cause physical injury to another person. The Notice of Suspension states that “[the Student] placed another student in a headlock, used his hand to pretend he was shooting a gun, and verbally threatened to shoot the student in the head.”

The School notified the County Sherriff regarding the incident the same day. According to the District’s narrative response, the Principal called the SRO to ensure the Student’s safety and the safety of others given the Student’s threats to use a firearm and kill other students and the uncertainty of his ability to carry out those threats.

The SRO’s report describes the December X, 2014 incident as follows: “PRINCIPAL REQ REPORT FOR INC INVOLVING TWO XXX GRADE STUDENTS. [STUDENT] PUT ONE OF HIS CLASSMATES ([STUDENT A]) IN A CHOKE HOLD, HELD HIS HAND UP TO [STUDENT A’S] HEAD SIMULATED LIKE A GUN AND TOLD [STUDENT A] HE WAS GOING TO KILL HIM. [STUDENT] IS X YRS OLD. HE CONFIRMED HE HAD DONE THE ABOVE. HOWEVER, HE COULD NOT REMEMBER WHAT HE SAID, BUT, DENIED SAYING HE WAS GOING TO KILL [STUDENT A]. [STUDENT] DID NOT HAVE A REASON FOR DOING THE ABOVE. [STUDENT A] HAD NOT SAID OR DONE ANYTHING TO PROVOKE HIM. NO INJURIES REPORTED. PER PRINCIPAL, ONE OF THE SCHOOL’S PROCTORS WITNESSED THE INC.” (All capitals in original.)

According to the complaint, on December X, 2014, the Student was horsing around with another student and playfully put him in a headlock. The Student had no intention of hurting the other student. The Student did not pretend he was shooting a gun nor did he verbally threaten the other student. The Student told the Parent that law enforcement questioned him and showed him their handcuffs, stating, “We are going to take you away in these if you keep acting up.” The Student was very upset and nervous to return to the School because he was scared that he would be arrested. Additionally, the Student was confused and upset because he did not hurt anyone, and he became convinced that he would get arrested if anything else happened at the School.

The Parent told OCR that she believed the Principal wanted the Student out of the School. In contrast, she told OCR that the previous year’s principal (Former Principal), who was African American, would sit and talk to the Student rather than making him feel like he was a bad child.

A letter from the District to the Complainant dated April X, 2015 stated that the District did not have a policy regarding contacting law enforcement about students and such calls are made on a “case by case basis.” In a written response to OCR, the District also stated that “if a student threatens to harm others and there is any question about the student’s access to weapons in the home, the SRO will be asked to assess the potential danger to school safety.” Additionally, an SRO is involved “whenever a student engages in potentially criminal or violent behavior.” The District further explained that “SRO referrals are generally reserved for Level 4 unacceptable behavior that is intended to or has the potential to cause another individual physical or mental harm and/or is illegal.” However, “[e]ven in such circumstances, notifying local law enforcement

is the last consequence unless stipulated by legal requirement” and, rather than to enforce school rules, law enforcement will be contacted to ensure safety from possible criminal or violent behavior. The Principal told OCR that she contacts law enforcement anytime she believes there is a need due to student safety or the safety of others and when there is a potential safety issue beyond the school day. The District and the Principal told OCR that the Principal contacted law enforcement regarding the Student because he was making threats and she did not know whether he could carry out those threats. According to the information the District provided OCR, there were no other records of the Principal contacting law enforcement during the 2014-2015 or 2015-2016 school years.

The District stated to OCR that the Student demonstrated frequent, unacceptable, and persistently increased behaviors during the 2014-2015 school year in addition to the November X, 2014 and December X, 2014 incidents described above. As stated above, OCR reviewed the Student’s discipline file, which showed he had more referrals at the start of the 2014-2015 school year and the referrals decreased in frequency over time. Specifically, the Student had seven referrals in September 2014, two referrals in October 2014, one referral in November 2014, and two referrals in December 2014.

Similarly Situated Students

OCR reviewed evidence of other students at the School who engaged in similar, Level 4 behavior like the Student, including threats and hands-on behavior, to compare how they were disciplined and whether the School contacted law enforcement.

OCR analyzed potential student comparators of all races from the 2014-2015 school year and the 2015-2016 school year by reviewing student discipline incident descriptions and individual student discipline files. Based on this review, OCR identified several students of other races who engaged in similar threats. As discussed below, OCR specifically compared two similarly situated students who made threats that were similar to the threats the Student made on November X, 2014 and December X, 2014.

First, on December X, 2014, a Latino XXXXX grader threatened to shoot another student. This was the Latino XXXXX grader’s first incident during the 2014-2015 school year. The School disciplined the Latino XXXXX grader by having him write an apology note at recess and contacted his parents, who imposed consequences at home.

Second, on March XX, 2016, a Hawaiian XXXXX grader threatened another student by pointing a stick towards her and asking if she was ready to die. The Hawaiian XXXXX grader had also had his hands on another student during recess. This was the Hawaiian XXXXX grader’s first incident during the 2015-2016 school year. The School disciplined the Hawaiian XXXXX grader with counseling by the teacher and Assistant Principal.

Analysis & Conclusions of Law

As explained above, to determine whether a school district has discriminated against a student on the basis of race, OCR looks at whether there is evidence that the student was treated differently from students of other races under similar circumstances, and whether the treatment has resulted

in 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.

Issue 1: Different treatment in discipline

Here, OCR examined whether there was evidence the Student was disciplined more harshly than students of other races under similar circumstances.

With regard to the District's decision to suspend the Student, OCR found that in 2014-2015 and 2015-2016, there were two students (one Latino XXXXX grader and one Hawaiian XXXXX grader) who made similar threats toward other students. Specifically, the Latino XXXXX grader threatened he was going to shoot a student, and the School required him to write an apology note at recess and spoke to his parents who imposed consequences at home. The Hawaiian XXXXX grader threatened another student while pretending a stick was a gun and asked if she was ready to die, and the School counseled him as a consequence for his conduct. Neither the Latino XXXXX grader nor the Hawaiian XXXXX grader received an out-of-school suspension, like the Student had when he made a similar threat.

With regard to the discipline issued to these students, OCR found that the Latino XXXXX grader's and Hawaiian XXXXX grader's threats were each their first incident of the school year, and they had fewer prior discipline incidents as compared to the Student. OCR determined that, based on the discipline histories of the other students who engaged in similar threats, the Student was not similarly situated as the Latino XXXXX grader and Hawaiian XXXXX grader because the students had different discipline histories. Therefore, OCR was unable to compare the discipline the students received. OCR concluded, pursuant to Section 303(a) of the OCR Case Processing Manual (CPM), there is insufficient evidence of a violation of Title VI with regard to this issue of different treatment in discipline.

Issue 2: Different treatment with regard to contacting law enforcement

With regard to the decision to contact law enforcement, the School's rationale for contacting law enforcement regarding the Student was not based on progressive discipline. Rather, the School's rationale for contacting law enforcement was based on safety and the possibility that the Student's threat could be carried out and therefore they contacted law enforcement to assess whether the Student had access to firearms in his home. This kind of threat evaluation therefore would apply to the threats made by the Latino XXXXX grader and Hawaiian XXXXX grader. However, the Principal did not call law enforcement in response to the threats to kill by the Latino XXXXX grader and Hawaiian XXXXX grader or other similar threats that OCR identified. Thus, based on the evidence gathered to date, OCR is concerned that similar conduct nevertheless resulted in different treatment for the Student with respect to contacting law enforcement because he is African American.

After analyzing whether there was different treatment, OCR analyzed whether the different treatment resulted in the denial or limitation of education services or opportunities. OCR found that the two calls to law enforcement denied and limited the Student's access to education because he missed instructional time. In addition, there is evidence that the Student, who was

XXXXX years old at the time, was very frightened to return to school after speaking to law enforcement, and he was scared that he would be arrested if anything else occurred at school.

OCR found that the other students who engaged in similar threats as the Student were similarly situated with respect to the safety-based response of contacting law enforcement, and therefore OCR analyzed whether the District had a legitimate nondiscriminatory reason for contacting law enforcement regarding the Student but not the other students who made similar threats.

In assessing whether the School had a legitimate nondiscriminatory reason for treating the Student differently and more harshly than the other students described above, OCR examined several possible reasons in light of the District and School policies and procedures as well as the explanations provided to OCR for the treatment of the Student. However, based on the information gathered to date, OCR did not find that District policies, the nature of the Student's conduct as compared to other students' conduct, the discipline histories, or other specific characteristics of the other students explained why the School called law enforcement on the Student but not on the other students.

The District/School discipline policies and the nature of the Student's conduct did not explain the harsher treatment of the Student with respect to contacting law enforcement. OCR identified other Level 4 behavior that, according to District/School policy, is similarly serious and warrants similar consequences such as threats to harm others. Thus, the Student's verbal threats on November X, 2014, and December X, 2014 and the comparator students' verbal threats to shoot or kill others are all Level 4 behavior, and yet only the Student had law enforcement called on him.

The District also stated that student safety necessitated calling law enforcement when the Student misbehaved. According to the District, the Principal called the law enforcement twice because she was uncertain about the Student's ability to carry out his threat of shooting a classmate when he put his hand into a shape of a gun and pretended to shoot. However, the evidence OCR gathered to date raises two concerns regarding pretext as to the District's assertion of student safety. First, the Latino XXXXX grader and Hawaiian XXXXXX grader also engaged in conduct that put student safety at risk, including making threats to shoot or kill (and with a prop such as a stick as a pretend gun). Despite the similarities between the Student's and the comparator students' conduct, the School called only law enforcement on the Student for his November X, 2014 threat. Because OCR found that the School did not call law enforcement to address the comparable incidents OCR identified during the two years analyzed, OCR is concerned that the District's reason for calling law enforcement on the Student is not supported by the evidence gathered to date regarding its treatment of students of other races who engaged in similar behavior and therefore may be a pretext.

Second, the District's assertion of student safety and checking the Student's access to guns as the reason for calling law enforcement a second time on the Student on December X, 2014 is called into question by the SRO's incident report after the first time the School contacted law enforcement regarding the Student's November X, 2014 threat. Specifically, after the first incident, the SRO found no firearms registered to the Parent, and the report indicated that the Student did not have access to firearms and said he had never seen a real gun. Furthermore, according to the District, an officer informed the Principal that the Student had no access to

firearms after the first incident. Thus, the School knew that the Student, an XXXXX-year-old child, had no access to guns – the safety justification provided for contacting law enforcement – and could not carry out any such threats. However, despite the SRO’s determination that there were no firearms in the Student’s home and the Student’s first threat did not warrant further action, and the Principal’s knowledge that the Student had no access to firearms according to law enforcement, the Principal called law enforcement again when the Student made a second threat on December X, 2014. The SRO’s report and information provided to the Principal after his first contact with the Student did not support the School’s explanation for contacting law enforcement in response to the Student’s similar behavior the second time, and as discussed above, the School did not contact law enforcement for similar threats by students of other races and students for whom an SRO had not already recently conducted a gun registration check and determined there was no threat and no action necessary.

Similarly, the District provided written reasons to OCR to explain the Principal’s actions in contacting law enforcement regarding the Student, that are not consistent with the evidence OCR has gathered to date. The District wrote that school administrators contact law enforcement “whenever a student engages in potentially criminal or violent behavior” and “if a student threatens to harm others and there is any question about the student’s access to weapons in the home, the SRO will be asked to assess the potential danger to school safety.” However, over the two years analyzed, OCR found similar incidents involving threats made by students of other races, including threats to shoot or kill others while pretending to have a gun, and the only two incidents for which the School contacted law enforcement involved the Student, who is African American.

OCR also found that despite these written explanations from the District, there is no District policy regarding the initiation or documentation of calls to law enforcement. With no policy guidance for administrators on when to contact law enforcement, such contacts are made at the discretion of school administrators. According to the District, calls to law enforcement occur on a case by case basis, and as explained above, the Principal told OCR she calls law enforcement when there is a concern about student safety. Based on the evidence described, OCR is concerned that the lack of guidelines for the Principal and other school site administrators to ensure consistency in contacting law enforcement may have resulted in different treatment of the Student based on race.

The evidence OCR has gathered to date with respect to the decision to contact law enforcement regarding the Student’s behavior raises compliance concerns that the School treated the Student, who is African American, more harshly than similarly situated students of other races (Latino and Hawaiian) who made similar threats. In order to complete the investigation of this issue, OCR would interview or re-interview several witnesses, including the Principal, Assistant Principal, and Teacher, for further information, including whether any of the legitimate nondiscriminatory reasons OCR has considered here, or that the District can provide, explain the different treatment or whether any such explanations are pretextual. However, as explained above, the District has agreed to resolve OCR’s concerns with respect to this issue with a Resolution Agreement Reached During an Investigation pursuant to Section 302 of the CPM.

Issue 3: Whether the School discriminated against African American students based on race by disciplining them more frequently and harshly than similarly situated students of other races.

Legal Standard

See the legal standard provided under Issues 1 and 2.

Factual Findings

School Demographics

The School is one of eight elementary schools (grades K-6) in the District. The District also operates two middle schools (grades seven and eight). According to data provided to OCR by the District, in 2014-2015 and 2015-2016, XXX and XXX students were enrolled in the School, respectively. As provided in the chart below, in 2014-2015 and 2015-2016, Latino³ students accounted for most of the students enrolled in the School, at approximately XX-XX%, while white students made up roughly XX-XX% of the School and African American students were XX-XX% of the School. Asian students were XX-XX% of students at the School, while Native Hawaiian, American Indian/Alaskan Native and students with no race or multiple races accounted for the remaining XX-XX% of students at the School.

X---content redacted---X

District & School Discipline Policies and Procedures

OCR reviewed the District and School discipline policies that were in effect for the 2014-2015 and 2015-2016 school years, including the District's Parent/Student Handbook (Policies and Procedures) as well as the School Parent Handbook, and relevant board policies and procedures. These policies and procedures were substantially the same in all material respects related to the school discipline issues in this case for the two school years. The discussion below is focused on the 2014-2015 School Parent Handbook (2014-2015 Handbook) because this document often provided the most specific, relevant policies and procedures.

2014-2015 Board Policies/Parent/Student Handbooks/Discipline Documents⁴

According to District Board Policy 5144 "Students" (BP 5144), "Staff shall use preventative measures and positive conflict resolution techniques whenever possible," and "Disciplinary measures that may result in loss of instructional time . . . such as suspension and expulsion, shall be imposed only when required by law and when other means of correction have failed." BP 5144 also provides that, "[s]taff shall enforce discipline rules fairly, consistently, and in accordance with the District's nondiscrimination policies." Administrative Regulation 5144 "Students" (AR 5144) provides that "[t]o the extent possible, staff shall use disciplinary strategies that keep students in school and participating in the instructional program."

³³ The District data used the term "Hispanic." OCR has used the term "Latino" in this letter.

⁴ Policies and Procedures in place as of July 29, 2015, unless otherwise noted.

The District Parent/Student Handbooks for 2014-2015 and 2015-2016 (District Handbooks) list the various types of behaviors for which a student may be disciplined based on California state law. The District Handbooks track the California Education Code language regarding such suspendable offenses, but do not define terms such as defiance, disruption, or threats, and they do not explain which possible consequences are associated with each type of offense, or how a particular consequence is determined for an offense. For more specific discipline information, the District Handbooks refer to the School Handbooks and “School-Wide Discipline Plan” discussed below.

The School’s 2014-2015 Handbook as well as its 2015-2016 Parent Handbook (2015-2016 Handbook), included a “School-Wide Discipline Plan,” which consists of “four levels of unacceptable behavior and consequences to ensure a positive learning environment.”⁵ The School Handbooks also included information on school discipline. Specifically, the 2014-2015 Handbook discussed the use of “progressive discipline . . . so that students may learn to be responsible for their choices.” Level 1 behaviors are the least serious and are described as behaviors that occur in the classroom and interfere only with the learning of that student (e.g., not having appropriate supplies, sleeping, off task). According to the 2014-2015 Handbook, the Level 1 consequences depend on frequency of the behavior and included using a verbal response/signal, a teacher walking toward the misbehavior, and other non-exclusionary responses, as well as time-out in another room.

Level 2 behaviors are described as behavior “that occurs in the classroom and disrupts the learning of other students.” Level 2 behaviors include failing to follow a reasonable request from the teacher, talking at inappropriate times, horseplay, and passing notes. Level 2 behavior requires immediate teacher attention and immediate correction. Level 2 consequences depend on frequency, and may include a verbal reprimand, “isolation,” time-out, a behavior contract, loss of privileges, detention, in-school suspension, and being sent home.

According to the 2014-2015 Handbook, Level 3 behaviors are defined as behavior that occurs at school (rather than specifically in the classroom, as with Levels 1 and 2), is not intended to cause physical harm and is not illegal, but “destroy[s] order.” Level 3 behaviors include disruptive behavior, intimidation, name calling, teasing, rough play, and defiance/disrespect toward an adult. Level 3 consequences depend on the frequency and severity of the behavior, and range from a verbal reprimand/warning, to a time-out, behavior contract, detention, loss of privileges, in-school suspension, suspension or exclusion from school-related activities, or out-of-school suspension.

Level 4 behaviors are described in the 2014-2015 Handbook as the “highest priority” behaviors and include behavior “that is intended to or has the potential to cause” physical or mental harm and/or is illegal. Such behaviors include possession of weapons or other dangerous objects, theft, fighting, assault or battery, hitting, biting, kicking with intent to cause harm, gross disrespect toward adult, alcohol or drug possession, habitual profanity or vulgarity, “continued harassment, threatening, or intimidation (bullying),” and defiance of authority or disruption. Such behavior requires immediate staff attention, parental notification, and “possibly notification of law

⁵ Any relevant distinctions between the 2014-2015 and 2015-2016 versions are noted.

enforcement officers.” Level 4 consequences depend on the frequency and severity of the behavior, and may include in-school suspension, out-of-school suspension, behavior contract/plan, expulsion, and notification of law enforcement.

The 2014-2015 Handbook discussion of Level 1-4 behaviors provides no guidance on how a behavior that could be classified in more than one category should be appropriately categorized. Additionally, although the discussion states that frequency (Levels 1 and 2) or frequency and severity (Levels 3 and 4) will determine whether the consequence given is more or less severe, there is no further explanation as to how frequency and/or severity will be used to make such a determination as to the appropriate consequence in a situation.

The District’s 2014-2015 discipline documents also included a “Discipline Policy/Code of Conduct” which lists the various possible consequences for misbehavior. The possible consequences listed included detention, behavior reflection/counseling, expulsion, in-school suspension, out-of-school suspension, loss of privileges, law enforcement contacted, removal from class, and systematic exclusion (described as readjustment of student schedule to a modified day). According to the document, “law enforcement will be contacted if drugs, alcohol, or weapons are brought onto campus, serious threats, serious physical altercation incidents, or at principal’s discretion.” The document does not describe what behaviors may result in in-school or out-of-school suspension. The document states that students may be assigned to in-school suspension at the discretion of the principal or designee for suspendable behavior. Out-of-school suspension is also listed as a consequence, but there is no explanation regarding when this consequence is appropriate. The document states that law enforcement “will be contacted if drugs, alcohol, or weapons are brought onto the campus” and a SRO will also be contacted for fighting, bullying and other necessary infractions of school rules.

Discipline Consequences

OCR requested that the District provide the specific sanctions commensurate with various behaviors for the time at issue. In response to this request, the District declined to provide specific sanctions commensurate with actions, stating that except for the few offenses for which suspension is mandatory, “[t]he District does not impose discipline pursuant to a rigid set of sanctions.” The District explained that various ages, maturity, and formative development “require careful and sensitive application of discretion in response to behavioral issues.” The District wrote that “[a]s a general rule, the level of sanctions for repeated offenses follows progressive intervention” and “sanctions are progressively applied for each successive violation.” Moreover, the District wrote that the “severity of the offense and school safety are also considered as well as ‘one time occurrence’ versus ‘repeating patterns’ of behavior violations that are more serious in nature.” “[S]tudent demeanor and intent” are also considered and continued “similar violations” could lead to in-school and/or out-of-school suspensions for repeated behaviors. In addition to these criteria, the District stated that “[t]he range of sanctions is determined using the student’s current status in the progressive intervention process while considering the student’s age, efforts to improve behaviors, willingness to accept responsibility and participate in Behavior Reflections, and an evaluation of the cause-effect of the violation.”

Staff Training & Self-Monitoring on Discipline

According to the District, School staff development was provided to teachers on “whole child” (academic, social, emotional, physical well-being) principles in August 2014, prior to the 2014-2015 school year. In addition, the District stated that administrators have ongoing discussions with staff to support them with respect to student discipline and discipline is discussed at regular proctor meetings. The District also told OCR that it provided a teacher training in 2014 on the process to refer students to counseling services and behavioral indicators that may prompt such referral. From August 2015 to March 2016, the District began Positive Behavior Interventions and Supports (PBIS) training for five schools in the District, which included the School and included establishing and training a PBIS team at the School, and various PBIS related trainings for site staff regarding student behavior.

The District reviews each School Site Safety Plan annually, and administrators have meetings with staff on a biweekly basis. Pursuant to Board Policy 5144.1, the Superintendent also annually presents a report to the Board regarding suspension and expulsion in the District. The report includes “outcome data and data related to the effect of suspensions and expulsions on the District’s minority student populations.” The School also holds site level meetings regarding discipline.

Referrals to Law Enforcement

According to the District, the City and the County Sheriff’s Department provided two SROs to service District schools during the time at issue. The SROs are not assigned to a particular school. One SRO responds to calls for assistance on each side of the District. According to the District, site administrators refer students to law enforcement for discretionary, non-mandatory reasons “on a case-by-case basis depending on the specific situation. Matters involving weapons, drugs, or alcohol on a school campus will generally lead to contact with law enforcement.” As stated above, the District also wrote, “if a student threatens to harm others and there is any question about the student’s access to weapons in the home, the SRO will be asked to assess the potential danger to school safety.” The School’s 2014-2015 Handbook stated that the School would contact law enforcement for drugs, alcohol, or weapons brought onto campus, “or at principal’s discretion.” The District further explained that it has counseled principals on the appropriate use of SROs, and “SRO referrals are generally reserved for Level 4 unacceptable behavior that is intended to or has the potential to cause another individual physical or mental harm and/or is illegal.” (See Issue 2 above for more information regarding law enforcement referrals.)

Discipline File Review

The School’s discipline records showed that in 2014-2015, the School referred 54 students for misbehavior. African American students accounted for XX% of the School’s enrolled students and 22% of students referred. By comparison, white students accounted for XX% of enrollment, and 38.9% of students referred, and Latino students made up XX% of enrollment and 37% of students referred. The following year, in 2015-2016, the School referred 83 students for misbehavior. African American students accounted for XX% of the School’s enrollment and 14.5% of students referred. White students accounted for XX% of students enrolled and 36.1%

of students referred, while Latino students accounted for XX% percent of students enrolled and 42.2% of students referred.

In 2014-2015, seven referrals resulted in in-school or out-of-school suspensions (five in-school suspensions and two out-of-school suspensions). These seven suspensions involved three students: two African American students (the Student received two out-of-school and one in-school suspension, and the other African American student was in the XXXXX grade and received one in-school suspension) and one white, XXXXX grade student (who received three in-school suspensions).

Of all 83 students who received one or more referrals in 2015-2016, two students received in-school suspensions and no student received an out-of-school suspension. Of the two students who received in-school-suspensions, one was African American and one was white; the African American student received one in-school-suspension and the white student received five in-school-suspensions. Both students were in the XXXXX grade.

OCR also reviewed the incident descriptions for all disciplinary referrals at the School during the 2014-2015 and 2015-2016 school years. The School and District discipline policies provided for a progressive discipline policy. However, OCR's analysis revealed that the School rarely followed its published School-Wide Discipline Plan, found in the School's Handbook, with respect to the most serious "Level 4 Unacceptable Behaviors." As explained above, the School's published "Level 4 Unacceptable Behaviors" Discipline Plan stated that fighting, theft, "hitting, choking, biting, and kicking with intent to cause harm," "gross disrespect toward an adult (cursing, name calling, threatening, etc.)," habitual profanity or vulgarity, "continued harassment, threatening, or intimidation," or defying adult authority and disrupting school activities would result in consequences, "depending on frequency and severity" that could include in- or out-of-school suspension, a behavior contract or plan, an in lieu of expulsion contract, having the parent accompany the student on campus, expulsion for the rest of the year or the calendar year, and notification of law enforcement. The referral incident descriptions OCR reviewed from the two years showed numerous instances of students engaged in fighting, hitting, kicking, and/or biting, threats, and other Level 4-type behaviors that were typically addressed by the School with loss of recess, counseling, or other non-exclusionary consequences which were significantly less severe than the consequences listed under Level 4 Behaviors of the School's School-Wide Discipline Plan.⁶

The School typically used non-exclusionary consequences to address student behavior, even after repeated incidents of misbehavior by a student. OCR reviewed the incident descriptions for all student discipline referrals for the 2014-2015 and 2015-2016 school years, to assess whether students were being treated equally in the administration of discipline consequences. As explained above, OCR's review of suspensions in 2014-2015 showed that three students received in-school or out-of-school suspensions that year: one was a XXXXX grader who was the African American student named in this complaint (the Student), and two were XXXXX graders (one white student and one African American student). As stated under Issues 1 and 2, the Student

⁶ Threats are listed in the examples of Level 4 behaviors in the School-Wide Discipline Plan, as "continued harassment, threatening, or intimidation." Level 4 behaviors also include behavior that is intended to or has the potential to cause physical or mental harm.

received an in-school suspension on September XX, 2014 (his seventh referral) and out-of-school suspensions on November X, 2014 (tenth referral) and December X, 2014 (eleventh referral, see above for more detail). The white student received two two-day in-school suspensions, first on October XX, 2014 (third referral) (use of profanities and racial slurs) then on April X, 2015 (tenth referral) (tripping and injuring another student); he also received a one-day in-school suspension on April XX, 2015 (eleventh referral) (extreme disruption and defiance in the classroom and office). The other African American student received one half-day in-school suspension for cussing out another student (fifth referral).

OCR found that during 2014-2015 at least five other students were repeatedly referred for behavior problems that included Level 4 types of behavior, but none received an in- or out-of-school suspension. These students included two other African American students at the School who received four referrals each, two Latino students who received six and four referrals, respectively, and one white student who received four referrals.

OCR found a similar pattern of non-exclusionary discipline at the School in 2015-2016. As described above, in 2015-2016, no students received out-of-school suspensions, and two XXXXX grade students received a total of six in-school suspensions: one white student and one African American student. The white student had over forty behavior referrals and received five of the six in-school suspensions that year. Specifically, his fourth referral was a half-day suspension; his eleventh referral was a one-day suspension; his fourteenth referral was a two-day suspension; his eighteenth referral was a two-day suspension; and, his thirty-fifth referral was a half-day suspension. The white student was suspended for various behavior that included Level 4 offenses, such as pushing, hitting, and kicking other students, defiance, and using profanity toward other students and staff. The other student who was suspended during 2015-2016 was African American, and he received one in-school suspension for defiance/disruption on his fourth offense. His three other prior referrals, which resulted in less severe consequences than suspension, included defiance and kicking another student's chair, causing that student to fall. As with OCR's findings during the 2014-2015 school year, during the 2015-2016 school year, there were at least 20 other students of various races who were repeatedly referred for behavior problems that included Level 4 types of behaviors, but who did not receive in-school or out-of-school suspensions. These students included eight other white students, six other African American students, five Latino students, and one Filipino student. These students, of various races, engaged in behavior similar to that of the two students who received in-school suspensions in 2015-2016.

OCR found that, in both 2014-2015 and 2015-2016, with the exception of just a few students who received suspensions and who are discussed above, students of all races were typically given consequences that were non-exclusionary and less severe than the consequences described for Level 4 behaviors under the School-Wide Discipline Policy. Typically, students received loss of recess, counseling, detention, or other non-exclusionary consequences.

Analysis

Disparate Treatment

OCR examined evidence to determine whether African American students at the School were treated differently than students of other races under similar circumstances in discipline, including by reviewing and analyzing discipline data for the School and reviewing individual discipline incidents. In analyzing how African American students at the School were treated in discipline, as compared to similarly situated white and Latino students, OCR did not find by a preponderance of the evidence that other African American students were treated differently in school discipline.

OCR found that the School's discipline policy generally bears more heavily on African American students as compared to white and Latino students, mainly with respect to discipline referrals. However, except in rare cases, statistics alone are not sufficient to prove discriminatory intent. Therefore, OCR closely analyzed the individual disciplinary incidents involving African American, Latino, and white students at the School to determine whether there was evidence that African American were treated more harshly than Latino or white students in similar circumstances. OCR found that just one other African American student received one in-school suspension (for a half day) in 2014-2015, and just one African American student received one in-school suspension in 2015-2016. No African American student, other than the Student, received an out-of-school suspension in 2014-2015, and no African American student received an out-of-school suspension in 2015-2016. OCR found that one white student received in-school suspensions in both 2014-2015 (five days total) and 2015-2016 (six days total), after repeated behavior referrals both years. OCR also found that for students of all races, the School rarely used in- or out-of-school suspensions, even in response to behavior for which such consequences were listed in the School-Wide Discipline Policy. Instead, the School used an array of non-exclusionary consequences for students of all races, including after repeated instances of misbehavior, such as Level 4 misbehavior.

As such, OCR did not find, by a preponderance of the evidence, that African American students were treated more severely in discipline than students of other races at the School. For these reasons, pursuant to CPM Section 303(a), OCR found insufficient evidence that the District violated Title VI with respect to this issue.

Issue 4: Whether the District treated the Student differently based on race when it revoked his inter-district transfer.

Legal Standard

See the legal standard provided under Issues 1 and 2.

Findings of Fact

According to the District, the District is a desirable school district and the School staff routinely review existing student information on file and request clarification or further documentation to address suspected fraudulent residency claims. During the 2013-2014 school year, the School noted discrepancies in the Student's records, and School staff offered the Parent support in completing the inter-district transfer paperwork. Though the Parent did not respond to provide the required paperwork, the Student and his sister remained enrolled at the School through the

end of the 2013-2014 school year. According to the Assistant Principal, address issues do not impact a student's ability to attend the School as the School would still educate the student.

At the start of the 2014-2015 school year, the Parent listed a home address outside of the District's boundaries on the Student's August 2014 Emergency Card, as well as his December 2014 Emergency Card.

From August to December 2014, the School requested the Parent, along with three other families, provide updated information and proper transfer paperwork. Of these three other students, one was African American, one was Latino, and one was white. The three other students' parents completed and returned the transfer paperwork after clarifying their residency information. These parents provided the transfer requests on August X, August XX, and December X, 2014, and the District approved all of them.

OCR reviewed two August XX, 2014 emails between the Senior Clerk and the Principal. First, the Senior Clerk emailed the Principal that she called the Parent that morning. Second, the Principal emailed the Senior Clerk stating the Parent called the Principal, likely in response to the Senior Clerk's earlier call, and stated her children have been attending the School for three years and she was never been asked about transfer paperwork until now. The Principal and Parent discussed where the students live, which was in a different school district, and the Principal stated she needed a release from the home district and that the Senior Clerk could help the Parent with the transfer paperwork. The Principal concluded that the Parent provided all the missing paperwork, except the transfer request document. The Parent told OCR that the School staff did not call her about completing an inter-district transfer.

According to the District's narrative response, the School asked the District for assistance contacting the Parent to complete and submit the transfer paperwork. According to the Assistant Superintendent, she called the Parent, who asked why she had to provide residency information. The Assistant Superintendent explained that residency is a legal requirement and space was not an issue at the School, so the District simply needed the required paperwork. According to the Assistant Superintendent, the Student and his sister were allowed to continue at the School through fall 2014 because the District did not want to interrupt their education at the start of the school year or middle of the semester. The Parent told OCR that the Assistant Superintendent of Education Services did not call her about transfer paperwork.

According to the District's narrative response and the Assistant Superintendent, the District informed the Parent that the transfer paperwork was required before the semester break on December XX, 2014. The Parent denied that the District informed her of this.

On December XX, 2014, three days after the second incident with law enforcement on December X, 2014, described above under Issues 1 and 2, the District sent the Parent a letter informing her that her two children, the Student and his sister, would be dis-enrolled from the District on December XX, 2014. The Associate Superintendent signed the December XX, 2014 letter, which stated that the Student was attending the School without the requested inter-district transfer agreement. The letter cited six criteria for the approval and continuation of inter-district transfer permits, specifically bolding the criterion number 3: "Maintenance of proper student behavior, academic grades, and attendance." The letter proceeded to state that the District was dis-

enrolling the Student because the necessary paperwork to approve an inter-district transfer was not submitted. According to the letter, the District contacted the Parent on August X, XX, XX, and XX, September XX and XX, and once in October for the necessary paperwork, and each contact was followed by a recorded message. The District repeatedly informed the Parent that the Student would be dis-enrolled if the paperwork was not submitted, and the letter concluded by recommending the Parent enroll the Student in his district of residence. The District sent an identical letter dis-enrolling the Student's sister, including the bolded reason about proper student behavior though she did not have any disciplinary incidents during her time in the District.

According to the Assistant Superintendent, she does not know why the letter has criterion 3 ("Maintenance of proper student heavier, academic grades, and attendance") bolded. She believes this criterion is highlighted in every revocation letter so that parents know that this is a ground for transfers to be revoked. The Assistant Superintendent further told OCR that this December XX, 2014 letter is not a revocation letter because the Student never had an inter-district transfer.

According to the Complainant, the letter was incorrect because School staff did not indicate to the Parent that completing the paperwork was necessary for her son's and daughter's continued enrollment. Additionally, the District's reliance on the absence of undefined paperwork is pretext for discrimination because the paperwork was missing for three months prior to the December X, 2014 incident, which precipitated the Student's removal from the District. The District also did not provide the Parent a chance to submit the paperwork after the letter, and if the paperwork was truly the issue, then the District could have provided a short window to correct the deficiency.

On December XX, 2014, the Parent came to the School to discuss a disciplinary matter involving the Student, and she stated that the Student would not be returning to the School. The Student enrolled in a different school district starting in the spring 2015 semester.

From January to May 2015, the School continued to review residency information and contacted the parents of eight students to clarify information and/or submit transfer paperwork. Of these eight students, six were Latino and two were white. These students' parents/guardians submitted transfer requests on January XX, 2015, February XX, 2015, March XX, 2015, March XX, 2015, and April X, 2015. The District timely approved each of these transfer requests.

OCR also reviewed three inter-district transfer revocation letters from the 2014-2015 and 2015-2016 to compare with the December XX, 2014 letter from the Assistant Superintendent to the Parent. The December XX, 2015 and April XX, 2016 letters both acknowledge that the student has an inter-district transfer agreement. Then, the letters follow the same structure as the December XX, 2014 letter to the Parent, including the six criteria for approval and continuation of the inter-district transfer agreement. On the December XX, 2015 letter, criterion 3 ("Maintenance of proper student heavier, academic grades, and attendance") was bolded, and the District further wrote that the student repeatedly demonstrated poor behavior; thus, the District was revoking the transfer permit, effective December XX, 2015. The April XX, 2016 revocation letter was slightly different because the student in that case had a disability which affected attendance and thus, per the Education Code, must receive individual instruction from the

student's home district; the District stated that the student's last day on the transfer would be May XX, 2016. Last, OCR reviewed a July XX, 2014 revocation letter, which relied on a different template from the previously discussed letters; in this letter, the District wrote the student's inter-district permit was rescinded and checked two of the five possible criteria for the revocation (unsatisfactory behavior and unsatisfactory attention/punctuality).

Analysis

OCR found insufficient evidence that the District treated the Student differently based on his race when it dis-enrolled him at the end of the fall 2014 semester. First OCR analyzed whether there was evidence that the Student was treated differently than students of other races under similar circumstances, and whether the treatment resulted in the denial or limitation of services, benefits, or opportunities. In this case, the District dis-enrolled the Student, as well as his sister, while it did not dis-enroll the 11 other students who similarly lived outside the District boundaries. Ten of the 11 students were of a different race than the Student and his sister, which indicates that race may be a factor. Dis-enrollment denied the Student and his sister the opportunity to continue their education in the District.

Next OCR examined the District's nondiscriminatory reason for dis-enrolling the Student and his sister. According to the District, it dis-enrolled the Student and his sister because the Parent did not submit the required inter-district transfer paperwork while the parents/guardians of the 11 other students had. The District provided OCR with the dates these parents/guardians submitted the required paperwork. In contrast, the Parent did not submit inter-district transfer paperwork to the District. The Parent told OCR that the School and District did not contact her during the fall of 2014 regarding an inter-district transfer, while the District contends it contacted the Parent regarding the transfer paperwork on August X, XX, XX, and XX, September XX and XX, and in October 2014. The Principal's August XX, 2014 email to the Senior Clerk describes a conversation with the Parent about the required transfer paperwork. The preponderance of the evidence supports the District's assertion that the School contacted the Parent for the required transfer paperwork, which she did not provide.

Lastly, OCR reviewed evidence that the District's stated legitimate nondiscriminatory reason was a pretext for discrimination and found insufficient evidence of pretext. The December XX, 2014 letter dis-enrolling the Student emphasized a reason for inter-district transfer revocation ("Maintenance of proper student behavior, academic grades, and attendance"), which suggests that the missing paperwork is pretextual and the real reason for dis-enrolling him was his behavior. Indeed, the letter was submitted to the Parent three days after the School called law enforcement on the Student for the second time and behavior as a reason for revocation was bolded in the letter. The Assistant Superintendent told OCR she does not know why behavior was bolded in the letter, and she stated it was highlighted in every letter so parents know this is a ground for revoking transfers. The fact that that behavior was highlighted in the letter dis-enrolling the Student's sister, who never had any disciplinary issues, supports the Assistant Superintendent's assertion that the reason is always highlighted. OCR found that two revocation letters in the 2015-2016 school year follow the same template as the December XX, 2014 letters to the Parent, and in one of the letters, the behavior reason is bolded though that student demonstrated poor behavior. However, even if the real reason for revoking the Student's inter-district transfer was due to behavior rather than incomplete paperwork, this would not, on its

face, constitute different treatment based on race in violation of Title VI and its implementing regulations.

In addition to the bolded part of the December XX, 2014 dis-enrollment letter, the Complainant alleged to OCR that any required transfer paperwork is pretextual because the District could have provided the Parent a short window to correct the deficiency, particularly since the District allowed her two children to continue the entire semester without the required inter-district transfers. Instead of providing the Parent one last chance to submit the required paperwork, the dis-enrollment letters encouraged her to enroll the children in their home district. According to the District, it does not remove students during a semester because it is disruptive, and the date of the revocation letters from the 2014-2015 and 2015-2016 (July XX, 2014, December XX, 2015, and April XX, 2016) indicate that the District waits until the end of a semester or during a break to revoke a transfer. Lastly, the dates when the District approved the inter-district paperwork from the other 11 out-of-district students supports the District's nondiscriminatory reason of required transfer documentation. The same semester that the District was attempting to get the transfer paperwork from the Parent, it approved the transfer paperwork of an out-of-district student whose parents/guardians submitted the required documents on December X, 2014. The next semester, the District approved two inter-district transfers on April X, 2015. The District's willingness to accept inter-district transfer paperwork several months into the semester supports its contention that the Parent had time to submit the required paperwork but she did not, which resulted in the dis-enrollment of her children at the end of the semester. Therefore, OCR determined that based on a preponderance of the evidence, there is insufficient evidence that the District's nondiscriminatory reason for removal was pretextual.

For these reasons, pursuant to CPM Section 303(a), OCR found insufficient evidence that the District violated Title VI and its implementing regulations with regard to this issue.

Issue 5: Whether the District failed to provide the Student with a FAPE by not following adequate procedures for evaluation and placement of the Student.

Legal Standards

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 Individualized Education Program (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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any

subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Under § 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (e.g., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Findings of Fact

The Student began attending the School in August 2011 as a XXXXXX. He came to the District with an IEP, dated November X, 2010, for speech and language services.

According to the Student's November X, 2011 triennial IEP, the Student exited special education because he demonstrated good progress in class and on his IEP goals and thus, no longer qualified for speech and language services. The IEP further stated, in two different sections, that the Parent had no academic concerns for the Student.

According to the complaint, at the time of the Student's exit from special education, the Parent began having concerns regarding the Student's struggle to focus on academic tasks and need for one-on-one reinforcement to complete his homework. The Parent told OCR that she did not want the Student to exit out of special education, and the District did not re-assess him despite her request.

During the 2013-2014 school year, when the Student was in XXXXX grade, his teacher recommended the Student receive counseling because of his mood changes, self-criticism, inappropriate behaviors, non-compliance, difficulty concentrating, lack of interest in school and social activities, and suspensions/referrals.

According to the complaint, on or about the end of May 2014, the Former Principal told the Parent that the Student would be assessed for special education services, but she did not provide the Parent with an assessment plan. The Parent did not recall how the Former Principal informed her that the Student would be assessed at the end of XXXXX grade, which could have been in person or over the phone. Ultimately, the Student was not assessed during XXXXX grade.

During the 2014-2015 school year, when the Student was in XXXXX grade, the School had a new principal (Principal). According to the complaint, when the Student began XXXXX grade, the School did not provide the previously promised special education evaluation. The School did not provide the Parent with an assessment plan, and the Parent told OCR that she is not sure if she told the Principal that the Former Principal offered to evaluate the Student. She is not sure if, during the Student's XXXXX grade year, she asked that he be assessed for special education services.

According to the District's narrative response, the School repeatedly attempted to provide support for the Student, but the Parent was unresponsive. On September XX, 2014, the Principal recommended the Student for a Student Support Team (SST) and school-based counseling, and the Parent declined both. The Assistant Superintendent, Principal, and Assistant Principal told OCR that the special education evaluation process typically begins with the SST, where parents/guardians and School staff can discuss interventions. They stated that a student does not need an SST before an evaluation for special education, but it is typical for an SST to precede a special education evaluation. In this case, the Principal, Assistant Principal, and Teacher told OCR they recommended an SST because of the Student's behavior, which included verbal and physical aggression as well as being quick to anger. The Principal and Assistant Principal told OCR that despite the Student's behavior, which they found troubling, they did not suspect the Student as having a disability. Instead, the Principal stated that she believed the Student needed supportive counseling.

According to the District's narrative response, on September XX, 2014, the Principal reiterated the offers to hold an SST to review the Student's behavior and to start counseling services, and the Parent declined again. On November X, 2014, the Principal explained the SST process to the Parent again and asked to meet regarding the Student's behavior, which the Parent declined. The Principal also discussed counseling services and asked the Parent to sign the counseling services referral form, which she did. On December X, 2014, the Principal discussed the Student's behavior with the Parent and again suggested initiating the SST process, which the Parent rejected.

The Parent told OCR that she did not believe the Principal spoke to her about an SST for the Student. She stated that the Principal was not trying to get the Student any resources, and the Principal never spoke to her about counseling for the Student.

On December XX, 2014, the Student's grandmother (Grandmother) came to the School to drop off a letter requesting a special education assessment for the Student. According to documents from the District and interviews with the Principal and Assistant Principal, the Grandmother said she was submitting the letter on behalf of the Parent. The Grandmother asked for an initialed copy of the letter, and the Assistant Principal responded that a copy could only be provided to the Parent due to confidentiality. The Assistant Principal knew the Parent recently updated the Student's emergency card on December X, 2014 and removed the Grandmother as a point of contact. When the Assistant Principal informed the Grandmother that she would follow up with the Parent, the Grandmother then took the letter and left the office. The Grandmother did not leave the letter or a copy of it with the School. The Principal tried to contact the Parent by phone to discuss the Grandmother's visit, but she did not receive a response from the Parent. The Parent told OCR that she is not sure if she asked the Grandmother to deliver a request for assessment.

After the Student left the District, he completed XXXXX and XXXXX grades at another school district, where he was never evaluated for special education or related services. At the start of XXXXX grade, the Student enrolled in a third district, which assessed him for special education in XXXXX grade and he did not qualify. Though the Student does not have an IEP or 504 Plan, the Student received counseling once or twice a week at his school during the 2018-2019 school year.

Analysis

OCR found insufficient evidence that the District failed to provide the Student with FAPE by failing to follow adequate procedures for evaluation and placement of the Student.

First, OCR found insufficient evidence that the Parent requested a special education assessment. The complaint and Parent reported two times when the Parent requested an evaluation for special education. Initially, the Parent stated she asked the District to re-assess when the Student was exited from special education. OCR reviewed the Student's IEPs and found he was receiving speech services, which ended on November X, 2011 because he demonstrated sufficient progress on his IEP goals and no longer qualified for speech and language services. Though the complaint and Parent stated she was concerned about his exit from special education, his November X, 2011 IEP stated that the Parent had no academic concerns. Thus, there is insufficient evidence of a request for a special education evaluation when the Student exited special education in November 2011.

There is also insufficient evidence of a promise to evaluate the Student at the end of XXXXX grade. Though the complaint states the Former Principal told the Parent that the Student would be assessed for special education, OCR did not find evidence to support this. The Parent could not identify how the Former Principal communicated this to her, and she is not sure if she followed up with the Principal during the Student's XXXXX grade year about the Former Principal's promise to evaluate. There was no assessment plan from the Former Principal. Thus, there is insufficient evidence that the Former Principal offered to evaluate the Student for special education services.

OCR also evaluated any requests for evaluation when the Student was in XXXXX grade. The Parent told OCR that she was not sure if she asked for an assessment when the Student was in XXXXX grade. On December XX, 2014, the Grandmother came to School to submit a letter requesting a special education assessment for the Student. However, the Grandmother took back the letter and there was no response from the Parent when the School followed up to discuss the Grandmother's visit. Thus, OCR found that there was insufficient evidence of a request for an evaluation on December XX, 2014.

Second, OCR also found insufficient evidence that the District should have evaluated the Student because he was believed to need or suspected of needing special education services. The complaint alleges that the Student's behavior in XXXXX and XXXXX grade should have indicated to the School that the Student may need special education or related services. OCR found that the School responded to the Student's behavior by offering counseling in XXXXX and XXXXX grade. The Student's behavior and the School's suggestion of counseling do not sufficiently indicate that the School should have known the Student needed special education services. OCR found that during the 2018-2019 school year, Student received counseling but was not identified for special education services through an IEP or 504 Plan.

OCR also analyzed the School's suggestion of an SST for the Student during XXXXX grade. According to the District, the Principal repeatedly recommended an SST to review the Student's behavior and develop interventions, but the Parent rejected these overtures. The repeated

recommendation of an SST could have been notice of a potential disability, but the Parent told OCR that the Principal did not speak to her about an SST or other resources when the Student was in XXXXX grade. Additionally, the Principal and Assistant Principal told OCR that an SST is not required prior to evaluating a student for special education, and in this case, they felt that his behavior was troubling and could benefit from an SST. They told OCR they did not suspect he had a disability. Lastly, OCR found that when the Student was eventually evaluated for special education in XXXXX grade, he did not qualify. Thus, the preponderance of the evidence does not show that the District failed to evaluate a student who was believed to need special education services.

For these reasons, pursuant to CPM Section 303(a), OCR found insufficient evidence that the District violated Section 504, Title II, and implementing regulations with regard to this issue.

Conclusion

This concludes the investigation of this 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. When fully implemented, the Resolution Agreement is intended to address the concerns identified in Issue 2. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 has a right to appeal OCR's determination of Issues 1, 3, 4, and 5 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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 Complainant 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, it will seek to protect, to the extent provided by the 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 regarding this letter, please contact OCR attorneys Brian Lambert, at Brian.Lambert@ed.gov, or Annie Lee, at Annie.Lee@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Lindsey Steinholt, Counsel for the District (via email only)

Enclosures (1): Resolution Agreement