



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

January 22, 2019

VIA ELECTRONIC MAIL

Richard Martinez
Superintendent
Pomona Unified School District
800 S. Garey Ave. Suite 209
Pomona, CA 91766

(In reply, please refer to case no. 09-16-1275.)

Dear Superintendent Martinez:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Pomona Unified School District (the District). OCR investigated whether the District discriminated against African-American students at Palomares Academy of Health Sciences (School) by disciplining African-American Students more harshly and frequently than Latino 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 subject to Title VI and the regulation.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. Prior to OCR completing its investigation and making a compliance determination as to that issue, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so.

The legal standards, facts gathered, and resolution are summarized below.

Legal Standard

The Title VI regulations, at 34 C.F.R. §100.3(a) and (b), provide that a school district may not deny an individual an opportunity to participate in a program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others based on race, color, or national origin. Evidence of racially discriminatory intent can be either direct or circumstantial. Circumstantial evidence is evidence that allows OCR to infer discriminatory intent from the facts of the investigation as a whole, or from the totality of the circumstances. If

there is evidence of different treatment, 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.

Background

The School serves approximately 430 students in grades 7-12. For the 2015-16 school year, the School served 88% Latino students, 6% African-American students, 2% Asian students, and 2% white students.

The complaint filed on XXXXX X, 2016 alleged that a teacher (the Teacher) was repeatedly targeting African-American students for removal from class for minor infractions, including one student in particular (the Student). The Teacher, who is Latina, XXXXXXXX XXXX XXX XXXXXXXX at the end of the 2015-16 school year.

The District's Investigation Regarding the Teacher

After the OCR complaint was filed, the District hired an outside investigator to investigate the allegation that the Teacher had discriminated against African-American students. The District provided OCR with a copy of the investigative report on June X, 2018. The investigator interviewed the Complainant, the Teacher, the Student, the Student's guardian, the Principal, an Assistant Principal, the Dean of Students, another teacher, and eight other students in the Teacher's classes.

According to the interview notes from the District's investigation, two administrators, including the School's principal, stated that they recognized that the Teacher was more likely to tolerate misbehavior from Latino students or students of other races, while more likely to refer African American students for the same behavior; and other staff raised concerns about the Teacher's classroom management and noted that she singled out certain students, but did not articulate a belief that the treatment was race-based. The Teacher told the investigator that any difference in the frequency of discipline issued to students was on account of the frequency with which the behavior occurred, not the students' race.

The investigative report also included documents showing that the Teacher was issued a number of disciplinary memoranda and letters of reprimand XXXXXXX XXX XXXXXXX XX XXXX, including one letter (after this complaint was filed) documenting that the Principal met with the Teacher regarding alleged inequitable disciplinary practices based on race and the supports the Teacher needed to improve the culture and climate in her classroom. The District's investigation concluded that the Complainant's allegations of racial discrimination as to the Teacher were unsubstantiated.

OCR's Investigation Regarding the Teacher

The District provided data showing that the Teacher issued 47 disciplinary office referrals from the beginning of the school year through May XX, 2016. Twenty seven of the referrals were for African-American students, 17 were for Latino students, and 3 were for white students. Of the 47 office referrals, 44 were for defiance/disrespect or disruption. Those referrals included 11 different Latino students, 5 different African-American students, and 1 white student. For the five African-American students, the twenty seven referrals resulted in two detention sessions, one in-school suspension, and two incidents where students were suspended or sent home.

As part of OCR's investigation, OCR interviewed the Principal. The Principal told OCR that the Teacher struggled with classroom management. The Principal also reported to OCR that the Teacher sometimes sent students out of class for minor issues like not having a pencil, getting up to throw away paper, tapping their pencils, or chewing gum, which was an issue that school administrators had been trying to work with her on improving.¹ Another school administrator reported that the Student was being sent out of class weekly, and that the Teacher was not always notifying School administrators or notifying the Student's parents or guardians of the referrals.

As part of OCR's review of the School's discipline records discussed below, OCR reviewed all of the available records regarding the Teacher's referrals.

OCR's Investigation Regarding Disciplinary Consequences at the School Issued by Administrators Schoolwide

For the 2015-16 school year, 42% of African-American students received one or more discipline referrals, compared to 20% of Latino students. Similarly, 27% of African-American students received one or more out-of-school suspensions (including students who were sent home), compared to 6% of Latino students. The average suspension length for both African-American students and Latino students was approximately 1.5 days.

OCR notes that disparities in referral rates alone, without further evidence, do not establish intentional racial discrimination because other factors besides intentional discrimination could result in such disparities. OCR also conducted a review of discipline records for the School for the 2015-16 school year. In conducting the file review, OCR looked at whether there were instances where African-American students were treated differently from similarly situated Latino students, as described below.

First, OCR reviewed each incident that resulted in a referral to School administration for the 2015-16 school year and did not find any examples where similarly situated African-American students received a harsher punishment from School administration for similar conduct within the same incident. For example, in one incident where an African-American seventh grader and a Latino eighth grader were found to have engaged in pushing, hitting and slapping after one

¹ OCR also reviewed the Principal's interview taken in the District's investigation, which is referenced above.

student took another student's ruler, and where both students did not have any prior disciplinary referrals for that year, both students received a one-day out-of-school suspension.

As described below, OCR also compared students of different races referred for similar offenses to determine if African-American students were being treated differently. In order to focus on students who were similarly situated, OCR reviewed incidents where the referred student had not received a previous discipline referral in the 2015-16 school year, meaning that the offense was the student's first referral of the year.

There were eleven African-American students who received a referral during the 2015-16 year. OCR reviewed the first referral for each of the eleven students to determine whether there were similarly situated Latino students. For a number of incidents, OCR did not find a Latino student who was similarly situated. For the other incidents where a comparator was identified, the evidence did not reveal that African-American students were treated more harshly than similarly situated Latino students.

For example, African-American Students 2 and 3 received referrals for behavior related to refusing to move their seat in class. African-American Student 2, a ninth grade student, received a referral for talking across the room and refusing to move seats and received a detention session. Similarly, African-American Student 3, a twelfth grade student, received a referral for moving to a new seat and refusing to move back, and that referral resulted in a conference with the student. OCR found that there were three Latino students who were referred for similar behavior. One Latino eleventh grade student was referred for refusing the teacher's request on two occasions to move to another desk, and that student received an on-campus suspension. Another Latino ninth grade student received a referral for continuing to get up out of his seat without permission and not following the rules, and the student received a detention session. A third Latino twelfth grade student received a referral for moving seats several times without permission, and the result was a conference with the student. African-American Student 2 therefore received a more harsh consequence than one Latino student, a less harsh consequence than one Latino student, and the same consequence as a third Latino student. African American Student 3 received a less harsh consequence than two Latino students and the same consequence as one Latino student.

OCR also conducted further review of the School's records as to disciplinary consequences for subsequent referrals of African-American students by analyzing whether there were comparators and reviewing those comparators for different treatment, but did not identify evidence of different treatment.

Analysis

With respect to the review of the available School discipline case files, OCR did not find evidence that African-American students referred for discipline in the 2015-2016 school year received more harsh consequences (such as suspensions) from administrators than Latino students for similar offenses. In reviewing the School's discipline records for that year, OCR found no incidents where, when African-American students and Latino students were involved in the same incident, School administration disciplined them differently for similar behavior. OCR also looked at the first referrals for each of the eleven African-American students who received a

disciplinary referral and did not find examples where School administrators provided a similarly situated Latino student with a lighter disciplinary consequence. The evidence also did not reveal examples of different treatment with respect to disciplinary consequences for subsequent referrals of African-American students.

Prior to the completion of OCR's investigation, the District expressed an interest in entering to a voluntary resolution agreement and OCR deemed it was appropriate to do so. During its investigation to date, OCR identified Title VI compliance concerns: the record indicates that two administrators noted they had concerns that the Teacher may have been treating African-American differently students based on race but neither administrator addressed the matter with the Teacher or took other appropriate steps prior to this complaint being filed. The District has entered into the attached Agreement to address these concerns.

Conclusion

To address the concern identified above, without admitting to any violation of law, the District entered into the enclosed Resolution Agreement (Agreement).

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the 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.

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, 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 Blake Thompson, Civil Rights Attorney, at blake.thompson@ed.gov or at (415) 486-XXXX.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: XXXXXXXX XXXXXXXX, Counsel for the District (by email)