



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

March 20, 2018

VIA ELECTRONIC MAIL

Jorge A. Aguilar
Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, California 95824-4528
jaguilar@scusd.edu

(In reply, please refer to case no. 09-16-1478.)

Dear Superintendent Aguilar:

In a letter dated September 22, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the Sacramento City Unified School District (District) of the above-referenced complaint filed by the Complainant on behalf of the Student.¹ The investigation of this complaint addressed the following issues:

1. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by:
 - a. failing to implement the Student's Section 504 plan; and,
 - b. disciplining the Student without following adequate evaluation and placement procedures.
2. Whether the Student was subjected to harassment by other students based on race and disability, and whether the District failed to respond appropriately and effectively to notice of the harassment.
3. Whether the District disciplined the Student differently on the basis of race than other students who engaged in similar conduct.
4. Whether African American students at XXXXXXXXXXXX Elementary School (the School) are disciplined more frequently and more harshly on the basis of race than white students who engage in similar conduct.

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 by recipients of Federal financial

¹ OCR identified the Complainant and Student in its initial notification letter to the District and is withholding their names from this letter to protect their privacy.

assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

OCR is also responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is similarly responsible for enforcing 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. 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.

To investigate this complaint, OCR interviewed the Complainant, School and District employees, and an advocate for the Complainant. OCR also reviewed documents and other information provided by both the Complainant and the District. As to Issue 1(a), OCR did not find evidence to conclude that the District was in violation of Section 504 or Title II, and, as to Issue 2, did not find evidence to conclude that the District was in violation of Title VI. OCR did find that the District was not in compliance with Section 504 and Title II as to Issue 1(b). As to Issues 3 and 4, prior to the completion of the investigation, the District agreed to enter into a Resolution Agreement (Agreement) to address the concerns identified by OCR in the investigation of those issues to date. The legal standards, facts gathered, analysis, and the terms of the Agreement reached with the District are summarized below.

Issue 1: Whether the Recipient failed to provide the Student with a free, appropriate public education (FAPE) by (a) failing to implement the Student's Section 504 plan and (b) disciplining the Student without following adequate evaluation and placement procedures.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (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. 34 C.F.R. §104.33(b)(2). 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.

The Section 504 regulations, at 34 C.F.R. §104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special education or related

aids and services before initially placing the student and before any subsequent significant change in placement. Subsection (c) requires that placement decisions 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 that is carefully considered and documented. Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than 10 consecutive days, or for a total of more than 10 cumulative days in a school year under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Under Section 504, OCR's determination of whether a series of exclusions creates a pattern of removal is made on a case-by-case basis, and may include consideration of several factors including the length of each removal, the proximity of the removals to each other, and the total amount of time the child is excluded from school. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Findings of Fact

On November X, 2013, when the Student was in XXXXX XXXXX at a different school in the District, the Student's physician completed a screening for attention deficit hyperactivity disorder (ADHD) and determined that the Student met the criteria for ADHD. The District found that the Student was not eligible for special education services but subsequently created a Section 504 plan for the Student dated May XX, 2014.

The Student enrolled at the School in XXXXX XXXXX. After he enrolled, the Section 504 Plan was revised as of December XX, 2015 to include the following accommodations: "Tutoring two days a week before school [sic] Mom will bring [Student] to tutoring as well as check his daily homework to ensure it is complete and returned" and "[Teacher] will redirect [Student] as needed, continue to repeat my expectations."

The Complainant alleged that the School failed to implement the Student's Section 504 plan by 1) failing to redirect the student; 2) failing to provide tutoring, and 3) placing the Student in a resource teacher's (the Resource Specialist's) class even though he did not meet the standard for placement in special education.

With respect to tutoring, the Complainant told OCR that during the first part of the year she would bring the Student in to school for tutoring, but that he stopped going after there were a number of disputes between the Complainant and the School about other issues. The Complainant did not explain how she was prevented from continuing to bring the Student to tutoring. The Complainant told OCR that she did not ask the Student's teacher (the Teacher) or the School's principal at that time (the Principal) about any concern she had about whether the Student could continue to attend tutoring. The Teacher told OCR that she offered small group tutoring two days a week before school and that the Student attended fairly regularly at first, but then stopped attending in the spring of 2016. The Teacher told OCR that the tutoring continued for other students throughout the whole year and was available to the Student and the whole class for the entire time the Student was attending the School.

With respect to the allegation of the Student's placement in the Resource Specialist's class, the Complainant told OCR that she believed that the Student was working with the special education teacher at the school. The Complainant told OCR that the Student told her he went into the resource teacher's class to finish work after lunch. The Complainant told OCR that she did not talk to the Teacher or to the Principal about this issue because it arose during a time when she was temporarily prohibited from coming on campus because of a previous incident. The Teacher, the Principal, and the Resource Specialist all told OCR that the Student was never in the Resource Specialist's class. The Resource Specialist told OCR that she never had any 1-on-1 time with the Student, and that the only times she saw the Student were when she had yard duty before school, when she would see him in the hall, during his Section 504 and SST meetings, and on one occasion when she was working in his classroom with two other students on her caseload who were receiving special education services.

With respect to the requirement in the Section 504 plan that the Teacher redirect the Student, the Complainant told OCR that the Student's Teacher seemed unable and unwilling to adjust her instructional methodology to match the Student's learning style. She also told OCR that at the December XX, 2015 Section 504 meeting, the Teacher was talking about the Student having trouble staying on task for more than 15 minutes, so the Complainant asked her what the Teacher could do to help the Student stay on task, and the Teacher had no answer. The Complainant also told OCR that even though the Section 504 plan provided that the Teacher would redirect the Student as necessary to keep him on task, she believed that the Teacher either allowed the off-task behaviors or sent him out of class. The Teacher told OCR that she redirected the Student and repeated her expectations for him just like she does with all students, but that she particularly did so for the Student given his Section 504 plan.

As to whether the District disciplined the Student without following adequate evaluation and placement procedures, the School disciplined the Student during the 2015-16 school year as described below.

First, according to the Teacher, on November XX, 2016, the Student was given a one-day in-school suspension.² The Student was later given a one-day out-of-school suspension on January XX, 2016, a two-day out-of-school suspension on February XX, 2016, a three-day out-of-school suspension on March XX, 2016, and a five-day out-of-school suspension on April X, 2016.

On April XX, 2016, the Principal completed a "Central Behavior Review Request" form requesting a behavior review for the Student. That form included a space for "Manifestation determination date," which was filled in as "N/A." The form notes that manifestation determinations are "required for students who receive special education services."

On April XX, 2016, the District conducted a "behavior review" hearing for the Student, which included two behavior hearing officers and the Principal. The District's documentation for the hearing states that the result of the hearing was that the Student could stay at the School, but that the District placed certain conditions on the Student, and stated that a failure to follow any of these conditions would result in a hearing for "Violation of Contract" and that "a change of placement will be considered at that time." The documentation for the hearing does not mention the Student's disability. Shortly after the hearing, the Complainant decided to remove the Student from the School because she felt that the School was not supporting him.

The Principal told OCR that the School did not have a manifestation determination for the Student. When asked by OCR whether the School considered holding a manifestation determination, the Principal told OCR that the Student was not receiving special education services, and she was not sure if a student with a Section 504 plan was required to have a manifestation determination. The Resource Specialist told OCR that she was not sure whether manifestation determinations were required for students served by Section 504 plans, but that the Principal was responsible for initiating the manifestation determination process when a student was getting close to ten cumulative days of suspension.

According to the District's Section 504 handbook provided to OCR,³ "[u]nder Section 504, as with the IDEA, the suspension or expulsion of a student with disabilities for more than 10 consecutive school days constitutes a significant change in placement." The handbook defines a significant change of placement to include "[d]isciplinary actions that create a pattern of exclusion from school (e.g., cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions)." For a significant change in placement, the District requires a "manifestation determination to determine whether the student's misconduct was related to his or her disability."

² The School's discipline records show that the consequence for the incident was classified as a "behavior review" and not an in-school suspension. OCR determined that the preponderance of evidence was that it was an in-school suspension, but that it was not recorded accurately in the School's discipline records.

³ See http://www.scusd.edu/sites/main/files/file-attachments/section_504_handbook_final_draft.pdf.

Analysis

Issue 1a – Failure to implement the Student’s Section 504 plan

Once a Section 504 plan is created, Section 504 requires that the District, including any staff identified as responsible, must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the District fails to implement the plans, such failure can cause the district to be in noncompliance with Section 504.

OCR found that the District did not violate Section 504 by failing to implement the Student’s Section 504 Plan. The Section 504 plan provided that tutoring would be offered to the Student, and OCR found that the tutoring was offered to the Student as required by the plan. The Student’s teacher offered small group tutoring sessions before school and the Student attended the tutoring regularly at first, but then stopped attending the tutoring towards the end of the school year. The Complainant did not provide any explanation as to how he was prevented from continuing to attend the tutoring sessions, nor did she ask the Teacher whether the Student could continue attending.

OCR also did not find sufficient evidence to conclude that the District violated Section 504 by failing to redirect the Student as needed. The Complainant claimed that she asked the Teacher during the Section 504 meeting about what the Teacher could do to help redirect the Student, and that the Teacher had no answer. OCR determined that, even if accurate, this does not establish a failure to comply with Section 504’s requirement that the District provide the Student with a free appropriate public education. The Teacher told OCR that she did regularly attempt to redirect the student, and the Complainant did not provide any evidence (beyond the assertion that the Student was sometimes sent to the office) to establish that the Teacher was not complying with this element of the Section 504 plan.

Finally, OCR also found that the District did not violate Section 504 and its implementing regulation by placing the Student in a special education class without the Complainant’s knowledge. OCR found that the Student was not placed in a special education class. OCR interviewed the Resource Specialist, who stated that her only substantive interaction with the Student was at the Student’s Section 504 and Student Study team meetings, and that the Student was never in her class. Both the Teacher and the Principal also confirmed that the Student was never in a special education class.

Issue 1b - Disciplining the Student without following adequate evaluation and placement procedures.

As explained above, the Section 504 and Title II regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a student with a disability without reevaluating the student and affording due process protections. Excluding a student with a disability from his or her program for more than 10 cumulative days in a school

year under circumstances that show a pattern of exclusion constitutes a significant change in placement. In addition, placement decisions for individuals with a disability must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. In such cases, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate.

Here, the Student was suspended four times for eleven days over a period of less than three months in early 2016, on January XX, February XX, March XX, and April X, in addition to the earlier in-school suspension in November 2015. The District's Section 504 handbook provides that a significant change of placement includes "cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions."

Here, there was no determination as to whether the disciplinary actions constituted a pattern of exclusion from the School, and therefore no manifestation determination by a group of persons knowledgeable about the student, the evaluation data, and the placement options. OCR found that the reason that this determination was not made was that neither the Principal nor the Resource Specialist were aware that manifestation determinations were required for students served by Section 504 plans. This confusion was also reflected in the District's behavior hearing review form, which stated that manifestation determinations were applicable to "students receiving special education services."

Instead of a manifestation hearing, a hearing was conducted by the District's behavior hearing office. In that hearing, there was no determination of whether the Student's conduct was caused by his disability, and no evidence that the Student's disability was even discussed. As such, the District violated Section 504 and its implementing regulation by failing to make a determination as to whether the School's discipline actions constituted a pattern of exclusion and whether the Student's conduct was caused by his disability.

Issue 2: Whether the Student was subjected to harassment by other students based on race, and whether the District failed to respond appropriately and effectively to notice of the harassment.

Legal Standard

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

A district violates Title VI and the regulations if the evidence shows that: (1) the harassing conduct (physical, verbal, graphic, or written) on the basis of race, color, or national origin is sufficiently serious -- severe, persistent, or pervasive -- so as to limit or deny a student's ability to participate in or benefit from the services, activities or privileges provided by a district; (2) the district had actual or constructive notice about the harassment; and (3) the district failed to take appropriate, timely, and effective responsive action that is within its authority to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence, and, where appropriate, remedy the effects of the harassment on the student who was harassed.

Under Title VI and the regulations, once a district has notice of harassment of a student on the basis of race, color or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the student, but rather for its own discrimination if it fails to respond adequately. Once the district has notice of harassment, the responsibility to take appropriate and effective action is the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. So long as an agent or responsible employee of the school received notice, that notice will be imputed to the school.

Findings of Fact

The Complainant told OCR that at the beginning of the 2015-16 school year, another white student at the School asked the Student if he wanted to have "FUN," which she said stands for F--- You N---r." The Complainant stated that she told the Principal and the Assistant Superintendent about this at a meeting near the end of the school year regarding the Student's behavior issues.

The Principal told OCR that she had never heard of that term and that the Complainant had not raised that issue with her. The Principal also told OCR that while the Complainant would sometimes raise concerns about how other students treated the Student, she was not aware of any allegations (from the Complainant or otherwise) of harassment or bullying based on race.

The Teacher also told OCR that she had never heard of the term "FUN" and that the Complainant had not raised that issue with her. She also reported that the Complainant did not share any concerns with her about any other kind of bullying or harassment based on race.

The Assistant Superintendent (who the Complainant said participated in the meeting where it was raised) also told OCR that she had never heard that term and the Complainant had not raised any issues of harassment based on race to her.

OCR also interviewed another individual who was serving as an advocate for the Complainant who participated in the meetings the Complainant had with the Principal and Assistant

Superintendent. That individual did not recall the “FUN” incident specifically being shared in any meetings with School or District staff that he participated in.

Analysis

Under Title VI and the regulations, once a school district has notice of race-based harassment between students, it is responsible for determining what occurred and responding appropriately. A comment from a white student to an African-American student like the one alleged by the Complainant, especially to a student as young as the Student, could potentially be sufficiently severe to constitute harassment on the basis of race. Here, however, OCR did not find sufficient evidence that the District had notice of any such incident.

The Complainant alleged that the incident occurred at the beginning of the school year, and that she told the District at the end of the school year at a meeting with District staff. However, none of the other people at the meeting, including the Principal, the Assistant Superintendent, and an individual advocating for the Complainant, remembered the Complainant making that allegation. The Teacher also was not aware of the allegation. Based on the fact that none of the other individuals present in the room remembered the Complainant raising that issue, and the fact that the Complainant did not mention the issue to the Teacher at any point during the school year, OCR found insufficient evidence to conclude that the District had notice of racial harassment against the Student, and thus found insufficient evidence that the District had violated Title VI and its implementing regulations by failing to respond appropriately to notice of harassment.

Issues 3 and 4: Whether the District disciplined the Student differently on the basis of race than other students who engaged in similar conduct, and whether African-American students at the School are disciplined more frequently and more harshly on the basis of race than white students who engage in similar conduct.

Legal Standard

The Title VI regulations, at 34 C.F.R. §100.3(a) and (b), provide that a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. To determine whether a school district has discriminated against a student on the basis of race 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.

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. Such circumstantial evidence may include, but is not limited to, whether the impact of a disciplinary policy or practice weighs more heavily on students of a particular race; whether there is a history of discriminatory conduct toward members of a student's race; the administrative history behind a disciplinary policy or decision; and whether there had been inconsistent application of disciplinary policies and practices to students of different racial groups. For example, if school officials gave conflicting accounts of why the Student received a higher sanction, OCR could determine that the alleged nondiscriminatory explanation was pretextual.

Factual Findings to Date

The District provided OCR with a spreadsheet showing all discipline referrals at the School, which included the date of each incident, the infraction category, a narrative description of the incident, and the disciplinary consequence that was issued. OCR reviewed and analyzed those incidents for the 2015-16 school year.

During that school year, African-American students at the School were 1.9 times more likely than white students to receive one or more referrals, and 2.2 times more likely to receive one or more suspensions than white students. Those differences were not statistically significant at a 95% confidence level because of the small number of reported referrals and suspensions at the School.⁴

When comparing suspension and referral rates between African-American students and non-African-American students, the differences were statistically significant at a 95% confidence level. Specifically, African-American students at the School were 3.2 times more likely than non-African-American students to receive one or more suspensions, which was statistically significant at the 95% confidence level. Similarly, African-American students were 2.6 times more likely than non-African-American students to have received one or more referrals, which was also statistically significant at the 95% confidence level.

The District's data showed that there were 70 total student referrals logged at the School for the 2015-16 school year. The Principal told OCR that when students were sent to the office, either the office administrator or Principal were required to enter the data into the School's electronic system for tracking behavior. The District also provided OCR with the Teacher's notes for the Student, which reflected other behavioral incidents that were not recorded in the School's electronic system and the data log produced to OCR. The Principal told OCR that some teachers entered behavior incidents into the electronic system directly, which had resulted in some incorrect entries. The Principal told OCR that at some point during the 2015-16 school

⁴ A disparity that is statistically significant at a 95% level of confidence means that there is less than a 5% likelihood that the disparity is due to chance.

year, after discovering the incorrect entries, the Principal told teachers that they were no longer allowed to enter individual incidents.

The Principal told OCR that she had complete discretion as to the consequences to issue for any particular behavior referral, apart from following the California Education Code. She did not rely on any specific guidance from the District beyond the California Education Code to determine whether to suspend a student and to determine the length of a suspension. The Principal told OCR that, in general, she looked at the “entire picture,” gathered relevant information, and tried to figure out the best resolution. The Teacher told OCR that she felt that there was a lack of consistency in how the Principal treated behavioral incidents. She said that the School needed a behavior plan so that all teachers could consistently apply the School’s behavior expectations.

The School logged eleven referrals for the Student during the 2015-16 school year. As noted above, based on those eleven referrals, the Student received one in-school suspension and four out-of-school suspensions for a total of eleven suspension days. Specifically, the Student received a one-day in-school suspension for allegedly calling another student a slur, a one-day out-of-school suspension for making a crude comment to another student, a two-day out-of-school suspension for getting in a fight at recess, a three-day out-of-school suspension for pointing an eraser towards other students and making sounds as if he was shooting a gun, and a five day out-of-school suspension for hitting another student. The Principal was not able to articulate to OCR why she determined that suspensions of those lengths were an appropriate consequence for each of the incidents.

In reviewing the School’s discipline data log, OCR identified a white student who the School identified in its log as having received nine referrals over the course of the same school year, which included six incidents in which he hit, pushed or hurt another student. That student, who was in XXXXX grade, received one, one-day out-of-school suspension. OCR has not yet received the white student’s teacher’s notes and any other school documents related to the white student’s behavioral record. The Principal told OCR that the white student was suspended if he physically hurt another student, but if the situation was verbal or if he just pushed another student, she did not suspend him. The Principal also told OCR that the white student was diagnosed with ADHD and that his disability affected her decisions regarding discipline for him less harshly than the Student. However, the black Student also had been diagnosed with ADHD, and both students had a Section 504 plan but had been found ineligible for special education services pursuant to an Individual Education Program at that time.

Analysis

For the School as a whole, African-American students were approximately twice as likely as white students to receive one or more referrals and to receive one or more suspensions. Similarly, when compared to all other students, African-American students were more than three times as likely to have received one or more suspensions and more than two and a half

times as likely to receive one or more referrals, differences that were statistically significant at a 95% confidence level.

OCR identified a white student with a number of disciplinary referrals logged by the School who may have been similarly situated to the Student but who received one day of suspension, compared to eleven days of out-of-school suspensions for the Student. The Principal told OCR that she did not suspend the white student for incidents that were only “verbal,” but OCR found that the Student, who was African-American, was suspended for three primarily “verbal” incidents. The Principal did not provide a specific rationale as to why with respect to those incidents the Student’s behaviors as compared to the white student’s behavior warranted suspensions. The Principal also could not articulate how she determined the difference in the length of suspensions for the Student versus the white student or other students who had been suspended that school year. This was consistent with the Teacher’s statement that there were not consistent standards for discipline decisions. OCR also noted that the Principal told OCR the white student was treated less harshly because of his disability, but both students had the same diagnosis of ADHD.

Thus, based on the information gathered to date, OCR had concerns about whether the Student, and potentially other African-American students in the School, may have received different or harsher consequences for similar behaviors based on race. In order to make a final determination as to allegations 3 and 4, OCR would need to review additional records and conduct additional interviews with other students, teachers, and staff. For example, OCR would need to review all records for the white student and speak to that student’s teacher to determine whether that white student was similarly situated to the Student, including any incidents that may not have been logged in the School’s electronic system. OCR would also need to review the complete discipline files for other African-American students and any potentially similarly situated non-African-American students to assess discrimination in discipline on the basis of race, and interview the School’s office administrator and other teachers to determine why some but not all behavior referrals and incidents were logged in the District’s electronic record system.

Accordingly, OCR did not make a compliance determination regarding allegations three and four. Prior to completing the investigation, the District agreed to enter into a Resolution Agreement to voluntarily resolve allegations three and four pursuant to section 302 of OCR’s Case Processing Manual.⁵ OCR determined that voluntary resolution was appropriate and the District entered into the enclosed Agreement, which resolves the concerns identified above. The enclosed Agreement is aligned with the complaint allegations and the information obtained by OCR during its investigation. The Agreement requires the District to conduct a self-assessment of the School’s discipline procedures, data, and training and, if it identifies discrimination in discipline based on race, to develop a plan to address it.

⁵ OCR’s Case Processing Manual can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Conclusion

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 its terms. 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 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 about this letter, please contact Civil Rights Attorney Blake Thompson at Blake.Thompson@ed.gov or at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Raoul Bozio, In-House Counsel for the District (by email)