



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

September 21, 2020

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*Via e-mail only to:* greg.baker@bellingshamschools.org  
Dr. Greg Baker  
Superintendent  
Bellingham School District No. 501  
1306 Dupont Street  
Bellingham, Washington 98225

Re: Bellingham School District No. 501  
OCR Reference No. 10171130

Dear Dr. Baker:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Bellingham School District (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that:

1. the district discriminated against the student on the basis of race when, in January 2017, it searched only the student and other students of color when they were in the hallway during class time, but did not search any of the white students also present in the hallway;
2. the district discriminated against the student during the 2016-2017 school year when it subjected him to different discipline on the basis of race; and
3. the district discriminated against the student on the basis of disability when it failed to identify and evaluate him for services during the 2016-2017 school year.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibit discrimination on the bases of race, color, national origin, and disability, respectively, in programs and activities receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability at public entities. The district receives federal financial assistance from this Department and is a public entity. Therefore, it is subject to Title VI, Title II, and Section 504.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

OCR determined that the evidence did not support a conclusion that the district failed to comply with Title VI with respect to allegation nos. 1 and 2. With regard to allegation no.3, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement). OCR considered information and documents provided by the complainant and the district in reaching these determinations discussed below.

Allegation No. 1 – Different Treatment with Respect to January 2017 Search of the Student

*Findings of Fact*

The student's guardian at the time (guardian) told OCR that in January 2017, the then assistant principal (assistant principal) searched the student, who is African American, as well as the student's African American friends, but not the student's white friends who were also with him, when they were late returning to class following lunch. The guardian told OCR that the student's white friends who were also late returning to class were allowed to proceed directly to class. When asked by OCR to identify the student's African American and white friends involved in the incident, the guardian did not identify the students; instead the guardian was only able to provide information regarding the identities of the student's African American friends in general, and told OCR that the guardian's other son, who is white, had generally witnessed the student being treated poorly by the district. The guardian's response to OCR did not identify whether these African American friends were present during the January 2017 search, did not provide the identities or a specific number of the student's white friends who were allegedly not subject to search during this incident, and did not reflect whether the guardian's other son was present during this incident.

The assistant principal told OCR that he did not recall a search of the student in January 2017. The district told OCR that there are no records, including disciplinary referrals, reflecting that any such search took place.

According to the district, if a search of the student did occur in January 2017, it would have been conducted pursuant to the student's safety plan. The district told OCR that the safety plan allowed the student to be searched and that this plan was instituted in response to two incidents where the student was found responsible for distributing marijuana prior to January 2017. The district provided documents regarding one of these incidents that reflected that in March 2016, the assistant principal searched the student's backpack and found a jar with loose marijuana and another jar containing five bags of marijuana, each with 4-5 buds of marijuana. The documents provided by the district indicate that in response to this incident, the student was suspended and the student, the district, and the student's biological parent, who had custody prior to the guardian, met to determine whether the student could return to the school and determined that the student could return to the

school provided that certain conditions were met. The district's documents reflect that one of these conditions, proposed by the student himself, was that he be subject to random searches to help ensure school safety.

The guardian told OCR that the district informed her in November 2016 that during the 2015-2016 school year the student had been found at school with eight grams of marijuana for which he was given a year's probation by the juvenile justice system. The guardian told OCR that the district informed her that pursuant to the conditions of his probation, the student could be searched at any time.

### *Analysis and Conclusion*

OCR investigated whether the district discriminated against the student on the basis of race when, in January 2017, it searched only the student and other students of color when they were late returning to class but did not search any of the white students who were with him in the hallway.

The regulation implementing Title VI, at 34 C.F.R. §100.3(a), states that no individual shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which the Title VI regulations apply. The Title VI regulations further state, at 34 C.F.R. §100.3(b)(1), that a recipient of federal financial assistance under any program to which the Title VI regulations apply may not, on the grounds of race, color, or national origin, provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program.

The guardian and the district have differing positions on whether a search of the student took place in January 2017, whether other students were subject to a search at that time, and the reason for any such search of the student. While the guardian told OCR that the student, an African American, and other African American students were subjected to a search by the assistant principal but white students who were present were not subject to search, the guardian did not provide OCR with information necessary to identify students allegedly present during the incident. The assistant principal told OCR that he does not recall such a search, and OCR found that the district does not have records reflecting the incident in question or any other search of the student during this timeframe. The district asserts that, while the assistant principal does not recall any search at that time and district records do not reflect it, if the student was in fact searched, it would have been pursuant to a safety plan that allowed for random searches.

As the guardian did not identify any of the other students whom she alleges were present during the incident, the assistant principal does not recall any search, and district records do

not reflect any search at that time, OCR is unable to resolve the factual dispute as to whether or not the student or others were searched in January 2017. Moreover, if the student was searched, the district has articulated a legitimate, non-discriminatory reason for the search other than the student's race, namely that the student's safety plan permitted such searches. Accordingly, OCR has determined that there is insufficient evidence to conclude that the district violated Title VI with regard to the issue investigated.

Allegation No. 2 – Different Treatment in Discipline during the 2016-2017 School Year

*Findings of Fact*

According to the guardian, during the 2016-2017 school year, the student was suspended on six occasions: November 14, 2016, November 30, 2016, December 8<sup>th</sup>, 2016, January 4<sup>th</sup>, 2017, and on two more occasions during January 2017. The guardian told OCR that the suspensions were not communicated to her in writing, only via telephone. The guardian alleged that generally she believed that the student was disciplined more harshly than white students engaged in the same or similar behavior. With the exception of the January incident described above in allegation no.1, however, the guardian did not assert that there were specific white students who engaged in the same or similar conduct that the student allegedly engaged in on the identified occasions who were not similarly disciplined, nor did she provide evidence of such. . Rather, the guardian's position is that each time the student was disciplined, the student was targeted for discipline based on cultural stereotypes regarding African American students. Specifically, the guardian told OCR that because the student is African American and "comes from that culture where his pants are below his waist, he blares his music and that is not the dominant culture here in [the city where the district is located] and that characterization is behind every disciplinary action against him."

With respect to the alleged November 14, 2016, suspension, the guardian told OCR that, following a telephone call informing her the student had been suspended, she spoke to the assistant principal on November 21, 2016. During this telephone call, the assistant principal told the guardian that, in accord with the student's safety plan, he had asked to search the student's backpack as the student was leaving school on November 14. The guardian told OCR that the assistant principal told her that the student initially refused to allow the assistant principal to search his backpack and became upset. The guardian told OCR that the eventual search of the student's backpack indicated that it was "clean." She told OCR that this incident was reflective of a pattern of searches where the student would be disciplined despite the search not identifying any contraband. She told OCR that the student was disciplined for his responses to the requests to search his belongings because he would question why he was being searched and that even when his response was not antagonistic, he would be disciplined and she believes that this was due to stereotypes about African Americans as described above.

With respect to the alleged November 30, 2016, suspension, the guardian told OCR that she received a voicemail on this date from the assistant principal indicating that the student had been suspended for threatening a teacher. The guardian told OCR that she and the student met with the assistant principal and another district employee on December 1, 2016, regarding the student's suspension. The guardian told OCR that during this meeting the student discussed the incident with her and the assistant principal. The guardian told OCR that the student said that he had been waiting in a hallway between classes to ask a teacher a question with another student of color when another teacher approached them and asked them to go to class rather than loitering in the hallway. The guardian said that the student said he informed the teacher that he would return to class shortly, and that the teacher stepped close to the student's face and told him to leave. The guardian said that the student said he asked the teacher to back away from him because the teacher's standing so close to him was making the student's anxiety flare up, but that the teacher moved closer. The guardian told OCR that the student stated that during the incident he responded by raising his voice and telling the teacher that the teacher needed to back away from the student because the student was having a difficult time controlling his emotions and the teacher told the student to leave the hallway. The guardian told OCR that eventually the student turned and left. The guardian said that during her December 1, 2016, meeting she tried to explain that the student felt threatened due to his past experiences and that he was experiencing anxiety. The guardian told OCR that she felt that the assistant principal and other district employee dismissed her explanations for the student's conduct and told her that it was unsafe for the student and other students for the student to be behaving in a defiant manner given his past.

With respect to the alleged December 8, 2016, suspension, the guardian told OCR that she received a telephone call from the school stating that the student had been suspended because of his attitude following a search of his belongings pursuant to an anonymous tip that he had a gun. She said that the search did not reveal a weapon but that upon being accused of having a gun, the student became upset and that he was suspended for how he responded. As noted above, the guardian believes that the student was suspended for his attitude, and that this suspension was again related to stereotypes regarding African Americans.

With respect to the alleged January 4, 2017, suspension, the guardian told OCR that the student was sitting with his friends listening to music on school grounds after school hours as he waited to meet with his tutor. She said that the student's friends were African American but that there were also white students in the same area. She said that the assistant principal asked the student and his friends to leave school grounds, but that none of the white students were asked to leave. She said that the student explained to the assistant principal that he was meeting with someone to help with his homework shortly in the

library, but that he was still asked to leave. She said that the student became upset and tried to enter the library to meet with his tutor and was restrained by security and suspended. According to the guardian, upon entering the school the following day to speak to the assistant principal about the suspension, she noted that there were white students listening to loud music and that she brought this information to the assistant principal's attention, asking why those students were not being spoken to while the student was suspended. The guardian told OCR that assistant principal informed her that the student would need to stop playing his "gangster" music at school in order to return. The guardian told OCR that the assistant principal told her that the student made things worse for himself with his aggressive attitude.

According to the guardian, there were also two other instances in January 2017, for which she did not provide dates, when the student was suspended. The guardian stated that one of these suspensions was due to the student's phone ringing while he sat outside during lunch and that the other was related to the student coming back to class late after lunch, which resulted in the search at issue in allegation no. 1 above. The guardian told OCR that she had no written documents related to these suspensions and she did not provide any additional details, including the dates of the incidents or who was involved. As noted above, she believes that the student was suspended on these occasions due to stereotypes about the student's African American race.

It is the position of the district that the student was suspended on three occasions during the 2016-2017 school year: November 3, November 16, and November 28, 2016. It is the district's position that these suspensions were consistent with the district's procedures for responding to the underlying misconduct. It is also the district's position that the student was not subject to discipline on any other occasions. In support of its position, the district provided documents including the student's disciplinary record and notices that it mailed to the student's parent regarding each disciplinary incident.

The district provided documents to OCR indicating that on November 3, 2016, the high school received information that the student had a gun in his backpack and the student's probation officer was called to assist with a search. The assistant principal told OCR that the student refused to allow a search of his backpack and ran off campus into a residential neighborhood, then returned and allowed the school to search his backpack. The district's documents indicate that the resulting discipline was an emergency expulsion for safety reasons that was converted into a one-day suspension. The district's disciplinary guidelines allow for a one-day suspension for this offense.

The district provided documents to OCR indicating that on November 16, 2016, the student made threatening remarks and gestures when a teacher asked the student why he had not been in class. The district's documents reflect that the student was given a one-day

suspension for disruptive behavior. The district’s disciplinary guidelines allow for a one-day suspension for this offense.

The district provided documents to OCR indicating that on November 28, 2016, the student was found selling a pot brownie to another student on school grounds. The student was given a short-term suspension for marijuana distribution. The district’s disciplinary guidelines allow for a short-term suspension for this offense.

The district’s documents reflect that the student received no other discipline during the 2016-2017 school year, including any suspensions for refusing to leave school grounds when asked to do so for playing loud music. When asked by OCR regarding the other incidents described by the guardian, including the statement about the student playing “gangster music,” the assistant principal, could not recall these incidents or suspending or otherwise disciplining the student on these dates.

#### *Analysis and Conclusion*

OCR investigated whether the district discriminated against the student during the 2016-2017 school year when it subjected him to different discipline on the basis of race.

As noted above, Title VI prohibits different treatment on the basis of race. This also includes different treatment on the basis of race with respect to discipline.

The guardian’s position is that the student was suspended six times during the 2016-2017 and that each time it was on the basis of cultural stereotypes about his African American race. The district’s position is that the student was suspended three times that same school year--once each for refusing a search, disruptive behavior, and marijuana distribution--and that each of these disciplinary decisions was appropriate pursuant the district’s discipline guidelines.

OCR did not find evidence that the student was treated differently than students of other races under similar circumstances as the guardian did not identify specific comparators. Additionally, OCR was not able to definitively reconcile the discrepancies between the district’s records regarding the number of the student’s suspensions and the guardian’s recollection. OCR did find that the district articulated a non-discriminatory reason for each of the student’s suspensions for which there were disciplinary records. The evidence did not establish pretext with respect to the asserted reasons. Accordingly, OCR has determined that there is insufficient evidence to establish that the district disciplined the student differently because of his race.

#### Allegation No. 3

OCR initiated an investigation into whether the district failed to identify and evaluate the student for special education services during the 2016-2017 school year following a request to do so from the guardian.

Before the conclusion of OCR's investigation, the district expressed an interest in voluntarily resolving this allegation. OCR's investigation to date identified a concern regarding whether the district failed to respond appropriately to the guardian's request for an evaluation of the student. Specifically, OCR identified information indicating that the guardian requested an evaluation from school's assistant principal, but that no evaluation was conducted and that the assistant principal's reason for not conducting an evaluation in response to the guardian's request was that he believed the district required that such requests be made in writing.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the point OCR issues a final determination, a recipient expresses an interest in resolving the complaint allegations, and OCR determines that it is appropriate to resolve the complaint allegations with a voluntary resolution agreement. In light of the district's willingness to address the concern identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate with respect to allegation no. 3. Further conversations with the district resulted in the district signing the enclosed agreement.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by December 18, 2020.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determinations.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. 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, we will seek to protect, to the extent provided by law, personally identifiable



information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainant has a right to appeal OCR's determination with respect to allegation nos. 1 and 2 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 with respect to allegation nos. 1 and 2; 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 recipient. 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.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Tina Sohaili, Attorney, at (206) 607-1634 or at [tina.sohaili@ed.gov](mailto:tina.sohaili@ed.gov).

Sincerely,

Barbara Wery  
Team Leader

Enclosure: Voluntary Resolution Agreement

Cc: The Honorable Chris Reykdal, State Superintendent of Public Instruction (*via e-mail only to: superintendent@k12.wa.us*)

XXXXXXXXXX, Director of Student Services, Bellingham Public Schools (*via e-mail only to: XXXXXXXXXXXXX@bellingshamschools.org*)