



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

September 25, 2019

Dr. Gregory C. Hutchings, Jr.
Superintendent
Alexandria City Public Schools
1340 Braddock Place, 6th Floor
Alexandria, VA 22314

Re: OCR Complaint No. 11-17-1324
OCR Complaint No. 11-17-1325
Letter of Findings/Resolution Letter

Dear Dr. Hutchings:

This letter is to advise you of the outcome of the complaints that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXXXXX and XXXXXXX against Alexandria City Public Schools (the Division).¹ The Complainant filed the complaints on behalf of XXXXX and XXXXX (hereinafter, Complainant 1 and Complainant 2, and to be collectively referred to as “the Complainants”) and their XXXXX (the Student), who attended XXXXXXXX (the School).² The Complainants alleged that the Division discriminated on the bases of race and/or color, national origin, and retaliated, during the XXXX school year. Specifically, the complaints alleged that:

1. The Division discriminated against the Student on the basis of her national origin (XXXXX)³, as well as other students on the bases of race and/or color (XXXXX) and national origin (XXXXX), when it:
 - a. Treated the Student differently from XXXXX students, by denying her enrollment in the School’s XXXXXXXX program (the Program) on XXXXXXX;
 - b. Delayed the Student’s participation in the Program, after an appeals committee approved her entrance into the Program on XXXXX;
 - c. Segregated the Student, as well as other XXXXX and XXXXX students, from XXXXX students, with respect to their classroom seating assignments, from XXXXX through XXXXXXX;
 - d. Denied the Student’s seating XXXXX request on XXXXXXX;

¹ The Complainants filed Allegations 1 and 2 under OCR Case No. 11-17-1324, and Allegation 3 under OCR Case No. 11-17-1325.

² Although the Complainants filed two separate complaints, OCR investigated the complaints simultaneously because they involve a common set of facts and circumstances.

³ Although the Complainants checked “origin” on their complaint forms with OCR, the complaints also referenced discrimination based on race and color. For purposes of Title VI, OCR investigated whether there was discrimination based on national origin, race, and/or color.

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by fostering educational excellence and ensuring equal access.

- e. Treated the Student differently from XXXXXX students (e.g., screaming at her, placing her in back of lines to the cafeteria and specials, and placing her in back rows for seating during story times); and
 - f. Graded the Student on a XXX scale rather than a XXX scale pursuant to Division policy throughout the XXXX.
2. The Division discriminated against the Complainants on the basis of XXXX, by failing to appropriately respond to the Complainants' complaint regarding the Division's denial of the Student's enrollment in the Program, as described in Allegation 1(a) above, on XXXXX.
3. The Division retaliated against Complainant 2 for the Complainants' complaints regarding Allegation 1 on XXXXX⁴, when it:
 - a. Harassed the Student by calling her into a meeting with the XXXXX regarding her XXXX into another class on XXXXX;
 - b. Created a unique visitation policy for Complainant 2, by requiring him to meet with the XXXXXX prior to any visitation to the classroom or the playground, on XXXXX;
 - c. Harassed Complainant 2, by following him and staring at him while he spoke with the Student's teacher on XXXXX;
 - d. Restricted Complainant 2's ability to have lunch with the Student on XXXX;
 - e. Harassed Complainant 2, by requiring him to sit in the School's Administrative Offices, while all other parents approved to XXXXX a student XXX to the XXXXXX were allowed to assemble in the classroom, on XXXXX; and,
 - f. Harassed Complainant 2 when the XXXXX attended the Student's parent/teacher conference on XXXXX.

Jurisdiction

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title VI.

Summary of Investigation

⁴ In letters dated XXXX, OCR notified the Complainants and the Division that OCR had opened the above-referenced complaints for investigation. Regarding Allegations 3(a) through (f), the original complaint notification letters stated that the Division both discriminated against Complainant 2 on the basis of his XXXX and retaliated against Complainant 2. However, during the course of OCR's investigation, and in a telephone conversation with OCR staff on XXXX, the Complainants notified OCR that they were not alleging XXXX discrimination with respect to Allegations 3(a) through (f); rather, they were only alleging retaliation. Accordingly, OCR will only address Allegations 3(a) through (f) as retaliation.

During the investigation, OCR reviewed documents provided by the Complainants and the Division and interviewed the Complainants and Division faculty and staff.

Before OCR completed its investigation, the Division expressed a willingness to resolve Allegation 1(c) and Allegation 2, on August 20, 2019. OCR determined that it is appropriate to resolve these allegations pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement. Further, after carefully considering all of the information obtained during the investigation, OCR dismissed Allegation 1(a) as resolved, and determined that there was insufficient evidence to substantiate Allegations 1(b), 1(d)-(f), and Allegation 3. OCR's findings and conclusions are discussed below.

Allegations 1(a) and 1(b), and Allegation 2: Different Treatment regarding the Program/Failure to Respond to Complaint regarding the Program

Allegations 1(a) and (b): Different Treatment

With respect to Allegations 1(a) and 1(b), respectively, the Complainants alleged that the Division treated the Student differently from XXXXX students on the basis of her national origin, by: denying her enrollment in the Program on XXXX; and delaying her participation in the Program, after an appeals committee approved her entrance into the Program on XXXXX.

Facts

In the summer of XXXX, the Student was enrolled in Grade X at the School and assigned to the teacher's (the Teacher) classroom. At the School, in order to qualify for the Program, a student is required to obtain a "Superior" rating based on three out of four specified criteria: 1) Ability, 2) Standards Based Performance, 3) Learning/Characteristics/Behaviors, and 4) Product Rating.⁵

In this instance, the School automatically referred the Student for consideration as to whether she would qualify for the Program as a result of her score on the Cognitive Abilities Test (the CogAT), which fell under (1) Ability.⁶ The School notified the Complainants of its determination in a notice sent on XXXXX, and the Complainants provided consent for further evaluation of the Student for the Program on the same date. Thereafter, the School considered the Student's package of standardized test performance, recent grades, work samples, and teacher rating scales to determine her eligibility.

After reviewing the Student's entire package, the Teacher gave the Student a "XXXX" rating in only one area, (1) Ability, due to the score that she received on the CogAT. In the other areas, the Student received the following ratings: "Proficient" in (2) Standards Based Performance; "Average" in (3) Learning/Characteristics/Behaviors; and "Proficient" in (4) Product Rating. On XXXXX, the Complainants were informed that the Student was not eligible for the Program

⁵ The Division informed OCR that the Program provides differentiated services beyond the regular curriculum for students in Grades K-12, whose accomplishments and demonstrated abilities indicate the need for such services.

⁶ The Division provided OCR with documentation indicating that the for Grade X students, the CogAT was one of the screening mechanisms used for automatic referral for consideration for the Program. Students could also be referred by a parent, teacher, community member, or a combination thereof, such that at least two screening mechanisms (e.g., CogAT plus a parent referral) would also result in an automatic referral.

because she had only received a “XXXXX” rating in only one area, instead of a “XXXX” rating in three areas, as required.

The School provided OCR with documentation indicating that parents have ten (10) instructional days to appeal a Program eligibility denial to the Division’s Program Coordinator (the Coordinator). The Coordinator serves as the facilitator of an appeals committee, composed of members from different schools; parents are also invited to attend.

On XXXXX, the Complainants appealed the Division’s decision to deny the Student’s enrollment in the Program. An appeals committee met on XXXXX, and, based on a rescoring of the Student’s Product Rating and an interview, determined that the Student was eligible for the Program on XXXXX. The Complainants signed a permission form for the Student to begin receiving Program services on XXXX. Students accepted into the Program began receiving services on XXXX; however, the Student did not begin participation until XXXX.

Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the recipient’s programs or activities on the basis of race, color, or national origin.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the recipient treated the complainant or injured party less favorably than similarly situated individuals of a different race, color, or national origin. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Analysis

Allegation 1(a)

The Complainants alleged that the Division initially denied the Student enrollment in the Program because of her national origin. As discussed above, the Division required that a student must receive a rating of “XXXX” in three of the four specified criteria. However, the Division initially determined that the Student was ineligible for enrollment in the Program on XXXX. After appealing the Division’s determination, an appeals committee met on XXXX, and, based on a rescoring of the Student’s Product Rating and an interview, the Division determined that the Student was eligible for the Program on XXXXX.⁷

Based on the foregoing, OCR is dismissing Allegation 1(a) under Section 108(j) of OCR’s *Case Processing Manual*, because the evidence obtained indicates that the allegation has been resolved and is therefore no longer appropriate for investigation. Specifically, through its appeals process, the Division reconsidered the Student’s eligibility for the Program and determined that she was eligible. Further, during the course of OCR’s investigation, OCR learned that the Teacher is

⁷ The School and the Coordinator asserted to OCR that it was not unusual for a Student who obtained close to a passing score to be admitted to the Program after the Program Committee collects additional information regarding the Student.

XXXXXX by the Division. Under these circumstances, OCR determined that there is no further prospective individual relief that is available for the Student. Accordingly, OCR will take no further action regarding Allegation 1(a).

Allegation 1(b)

With respect to Allegation 1(b), OCR determined that the Student was treated less favorably than students of other races/ethnicities, when her participation in the Program was delayed. Therefore, OCR has determined that the Complainants established an initial case of discrimination.

OCR next considered whether the Division proffered a legitimate non-discriminatory reason for the alleged different treatment. The School informed OCR that Grade X Program students are pulled out of their class to receive Program services once a week for 30 minutes. Further, such students are provided enrichment folders within their homeroom class. On XXXXX, Program students in the Student's homeroom class were pulled out to be introduced to the Program instructor. The homeroom teacher explained that the Student was not pulled from class on XXXXX because she and the Program teacher were not sure whether the Complainants had signed the permission forms for the Student to begin the Program. Further, the Student was not yet on the Program list provided to the homeroom teacher. All Program students, including the Student, were pulled out by the Program teacher the following week, XXXXX.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division's legitimate non-discriminatory reason was a pretext for discrimination, as the Division provided OCR with documentation indicating that there was confusion as to whether the Complainants had consent for the Student to begin the Program. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainants' allegation that the Student's participation in Program was delayed based on the Student's national origin. Accordingly, OCR will take no further action regarding Allegation 1(b).

Allegation 2: Failure to Respond

The Division discriminated against the Complainants on the basis national origin, by failing to appropriately respond to the Complainants' complaint regarding the Division's denial of the Student's enrollment in the Program, as described in Allegation 1(a) above, on XXXXX.

Facts

The Division completed an internal investigation of the Complainant's complaint on XXXXX. The Division interviewed school staff, conducted classroom observations, and reviewed the Student's file. The Division concluded that the Student was denied enrollment into the Program due to her overall work product and recent grades.

OCR reviewed the Division's documentation of its internal investigation and interviewed the Division Staff who conducted the investigation. The documentation indicated that the Division did not consider whether the Teacher treated students differently on the basis of race or national origin when determining whether to refer a student to the Program. As stated above, during the course of OCR's investigation, OCR learned that the Teacher is XXXXXXXX by the Division.

Legal Standards

A recipient's failure to respond promptly and effectively to race/color/national origin-based discrimination that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title VI. A recipient may also violate Title VI if an employee engages in race/color/national origin-based discrimination of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the recipient had notice of the employee's behavior.

When responding to racial or ethnic discrimination, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discrimination has occurred, a recipient must take prompt and effective steps reasonably calculated to end the discrimination, eliminate any hostile environment and its effects, and prevent the discrimination from recurring.

Analysis

Based on the foregoing, OCR has concerns that although the Division conducted an investigation in response to the Complainants' complaint regarding the Program, it failed to investigate whether the Teacher discriminated against the Student on the basis of her national origin, as the Complainants alleged. However, as discussed above, before OCR completed its investigation, the Division requested to resolve Allegation 2 through a resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.

Allegations 1(c), 1(d), 1(e), and 1(f): Different Treatment

Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the recipient's programs or activities on the basis of race, color, or national origin.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the recipient treated the complainant or injured party less favorably than similarly situated individuals of a different race, color, or national origin. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Allegation 1(c): Segregation in Classroom Seating Assignments

Regarding Allegation 1(c), the Complainants alleged that the Division discriminated against the Student on the basis of her XXXXX, as well as other students on the basis of XXXXX and XXXXX, when it segregated such students from XXXXX students, with respect to their classroom seating assignments, from XXXXX.

Background

Specifically, the Complainants informed OCR that they observed that there were four “quadrants” or groupings of desks within the Teacher’s classroom. They asserted that XXXX and XXXX students were grouped together in the front two and back left quadrants of the classroom (with the exception of one XXXX student located in the back left quadrant), whereas all of the other XXXX students were grouped in the back right quadrant of the classroom. The Complainants also asserted that there were more students in the front two and back left quadrants, where the XXXX and XXXX students were located.

In her interview with OCR, the Teacher explained that her practice was to seat students during the first nine-week period to achieve balance based on students’ sexes and races. For the second nine-week period, she assigned seats based on students’ personalities and learning styles. The Teacher stated that she does not document any of the students’ personality types or learning styles but such “information [is] kept in [her] head about the students.” The Teacher explained that, although she believed that balance based on sex and race was important for assigning students to groups for the first nine-week period, she did not realize that she had a group of all-XXXX students in the back right corner of her classroom until Complainant 2 brought it to her attention. The Teacher could not recall any specific reason (i.e., personalities or learning styles) regarding why she seated the group of all XXXX students together in the back right corner of her classroom. Thereafter, the Teacher and School staff informed OCR that the Teacher changed the seating of students for the next nine-week period, and OCR did not obtain any information to indicate that students continued to be grouped by race or sex.

Analysis

Based on the foregoing, OCR determined that the Complainants established an initial, or prima facie, case of discrimination, as XXXX and XXXX students were treated less favorably than XXXX students in the Teacher’s classroom with respect to seating. OCR next considered whether the Teacher had a legitimate, nondiscriminatory reason for the different treatment, and if the reason is a pretext, or excuse, for unlawful discrimination. However, as discussed above, before OCR completed its investigation, the Division requested to resolve Allegation 1(c) through a resolution agreement obtained pursuant to Section 302 of OCR’s *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.⁸

Allegation 1(d): Denial of Request for Seating XXXX Request of the Student

The Complainants alleged that the Teacher treated the Student differently from other students on the basis of her national origin, when she denied Complainant 2’s request to XXXX the Student’s seating placement.

The Teacher informed OCR that she changes seating assignments every nine weeks. She explained this policy to Complainant 2. The Teacher explained that, pursuant to her policy of XXXX seats at the end of each nine-week period, she had never XXXX any other student’s seat in the middle

⁸ In addition, although not an issue that OCR opened for investigation, to the extent that OCR’s investigation to date indicated that the Teacher may have also treated students differently on the basis of sex, OCR cautions the Division that such conduct may also constitute a violation of Title IX.

of a nine-week period. The XXXX and XXXXX confirmed that they were not involved making decisions about the Teacher's seating assignments. The Complainants did not provide, and OCR did not otherwise obtain any additional evidence that the Teacher treated other students differently with respect to seating assignments, as the Complainants alleged.

Based on the foregoing, OCR determined that there was no evidence to support that the Teacher XXXX other students' seating placements but did not do so for the Student. As such, OCR determined that the Complainants failed to establish an initial case of discrimination. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainants' allegation that the Teacher denied Complainant 2's seating XXXX request based on the Student's national origin, or that she otherwise treated the Student differently from other students in this regard. Accordingly, OCR will take no further action regarding Allegation 1(d).

Allegation 1(e): Various Acts of Different Treatment

The Complainants alleged that the Teacher treated the Student differently from XXXXX students by screaming at her, placing her in back of lines to the cafeteria and "specials" classes, and placing her in back rows for seating during story times. The Complainants did not identify any specific dates on which the alleged conduct occurred.

The Teacher denied that she screamed at the Student, and the Complainants did not identify any witnesses to the Teacher's alleged misconduct. The Teacher explained that her process for lining-up students is based on alphabetical order in the beginning of the year, and then based on alternating specific table-groups later in the year. For lunch, the teacher lines students up based on alternating students with "home lunch," or "school lunch." For story time, the Teacher randomly calls on specific table-groups to find a seat. The Teacher explained that she wears a XXXX due to XXXX.

OCR also interviewed other School staff regarding the Complainants' allegation. Although they observed that the Teacher sometimes speaks at a "higher level" or "a little loud," and that she has a "big voice," they universally agreed that it was due to her XXXX rather than any animus toward the students. Division staff observed the Teacher in the classroom and did not observe any preferential lining-up of students, calling on students, or seating of students during story time based on race and/or national origin.

Based on the foregoing, OCR determined that there was no evidence to support that the Teacher treated the Student differently from other students, as alleged. As such, OCR determined that the Complainants failed to establish an initial case of discrimination. Accordingly, OCR will take no further action regarding Allegation 1(e).

Allegation 1(f): Grading

The Complainants alleged that the Teacher treated the Student differently from other students on the basis of her national origin, when she did not give the Student a grade of "XX" on her report card. Instead, the Complainants alleged that the Teacher gave the Student a grade of XX, and that she only graded the Student on a grading scale that maxed-out at a grade of XX.

Facts

The Division's grading scale for elementary school ranges from 1.0 - 4.0 as outlined in the Division's grading policy. Accordingly, teachers must give rubric-based scores reflecting students' standards-based proficiency. Content areas assessed include Life, Work and Citizenship Skills, Language Arts, Social Studies, Mathematics, Science, Physical Education and Health, Art, General Music, and Band/Strings. A grade of 4.0 indicates that a student "consistently demonstrates a high level of conceptual understanding and skills mastery of standards taught this quarter." A grade of 3.0 indicates a student "frequently demonstrates . . ."; a grade of 2.0 indicates that a student "sometimes demonstrates . . ."; and a grade of 1.0 indicates that a student "seldom demonstrates concepts and skills taught this quarter."

The Division denied that the Teacher applied a grading scale of XX to the Student. Both Division staff and OCR reviewed the Teacher's Student Report Cards, which demonstrated that XXXX students had received grades of XX in her classes. Although such grades were predominantly given to XXXX students, several non-XXXX students did receive such grades, and some XXXXX students did not receive grades of XX. Further, the Teacher's grades for the Student were consistent with grades the Student received at her previous school, as well as with those that she received once she transferred out of the Teacher's classroom as of XXXXX.⁹

Analysis

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the Complainants' allegation that the Teacher treated the Student differently from other students on the basis of her national origin, by not giving her a grade of "XX". Accordingly, OCR will take no further action regarding Allegation 1(f).

Allegation 3: Retaliation

Regarding Allegation 3, the Complainants alleged that the Division retaliated against Complainant 2 for the Complainants' complaints regarding Allegation 1 (i.e., discrimination on the bases of race, color and/or national origin) on XXXX, when it:

- a. Harassed the Student by calling her into a meeting with the XXXXX regarding her XXXX into another class on XXXXX;
- b. Created a unique visitation policy for Complainant 2, by requiring him to meet with the XXXXX prior to any visitation to the classroom or the playground, on XXXXX;
- c. Harassed Complainant 2, by following him and staring at him while he spoke with the Student's teacher on XXXXX;
- d. Restricted Complainant 2's ability to have lunch with the Student on XXXX;
- e. Harassed Complainant 2, by requiring him to sit in the School's Administrative Offices, while all other parents approved to XXXX a student XXXX trip to the XXXXX were allowed to assemble in the classroom, on XXXXX; and,
- f. Harassed Complainant 2 when the XXXXX attended the Student's parent/teacher conference on XXXXX.

Legal Standards

⁹ The Division also reviewed this allegation as part of its internal investigation, wherein it issued a determination on XXXXX. The Division also did not obtain any information to support the Complainants' allegation.

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI.

With respect to Allegations 3(a) through (f), OCR determined that the Complainants engaged in protected activities, including filing complaints of discrimination on the bases of race, color, and/or national origin with OCR and the Division, of which the Division was aware.

Allegation 3(a)

With respect to Allegation 3(a), the Complainants alleged that Division staff retaliated against Complainant 2, by calling the Student into a meeting with the XXXX regarding her XXXX into another class, on XXXX. The Complainants informed OCR that they believed the XXXXX singled-out the Student after they requested and were granted a classroom XXXXX for the Student, and that the XXXX attempted to convince the Student to stay in her XXXX.

Facts

The Division explained that the XXXX already had a relationship with the Student, as the Student had participated in one of her programs. The XXXXX informed OCR that the School does not receive many classroom XXXX requests during the school year, but if they do, it is her job to support the student's transition into a XXX XXXXX. Regarding the Student, the XXXX denied trying to persuade the Student to stay in her XXXX XXXX. Rather, the XXXX informed OCR that on XXXX, the Student asked to speak with her regarding a problem she had with a friend and classmate, which OCR confirmed through documentation provided by the Complainants. The XXXXX informed OCR that she spoke with the Student about the issue with her friend. During that same discussion, the XXXXX asked the Student whether she was aware that she was XXXXX to another XXXXX and whether the Student had any concerns. The XXXXX stated that the Student responded that she was aware that she would be changing XXXXX, and that she was nervous but excited to meet new friends. The XXXXX informed OCR that she assisted the Student in transitioning into her XXXXXXXX by walking the Student to her XXXXXXXX that same day, as she would for any other student under the same or similar circumstances. The Division also provided OCR with a contemporaneous email from the XXXXX to the XXXX, dated XXXXX, as well as notes from the XXXXX regarding her meeting with the Student, dated XXXXX, which supports the XXXXX account.

Analysis

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the School took an adverse action against the Student or the Complainants, when the XXXXX met with the Student. Rather, the evidence obtained indicated that the Student requested to speak with the XXXXX about a friend and therefore initiated a meeting, and during the course of the meeting, the XXXXX asked whether the Student was aware of and had concerns about the classroom XXXX, and that she acted to ensure the Student's smooth transition into her XXXXX. Moreover, the evidence obtained indicated that the Student successfully transferred to her XXXXXXX, and there were no further interactions between the Student and the XXXXX regarding the XXXX. Therefore, in the absence of an adverse action, OCR has determined that the Complainants failed to establish an initial case of retaliation. Accordingly, OCR will take no further action regarding Allegation 3(a).

Allegation 3(b)

Regarding Allegation 3(b), the Complainants alleged that the Division retaliated when it created a unique visitation policy for Complainant 2, by requiring him to meet with the XXXXX prior to any visitation to the classroom or the playground, on XXXXX. The Complainants asserted that the XXXXX created a handwritten policy for Complainant 2 that did not apply to any other parent.

Facts

The Division's visitation policy is outlined in the student and parent/guardian handbooks. The policy states in relevant part that visitation to the School may only occur when it does not distract from the instructional learning program; and all visitors to the school building are required to report to the office. The School's individual visitation policy states that all classroom visitations by any visitor to the School must be prearranged with the XXXX for a limited time (usually not to exceed thirty (30) minutes), with the exception of specific lunch visitation policy, wherein a parent/guardian may visit with their child during the lunch period, as discussed in Allegation 3(d) below.

On XXXXX, the XXXXX met with Complainant 2 to inform him that his visits to the Student during recess, which often occurred after he had lunch with the Student, and to the Student's classroom, violated school policies. Specifically, the XXXX informed OCR that Complainant 2 would often visit the School to observe the Student but would remain in the building in excess of the thirty (30) minutes allotted for visitation. During the meeting, Complainant 2 and the XXXX reviewed the School's visitation policy, and Complainant 2 signed a document indicating that he had read, understood, and agreed to abide by policy, which required that he make arrangements with the XXXXX prior to classroom/recess visits and that he would not exceed the 30 minutes per visit. OCR did not obtain any evidence to indicate that other parents were allowed to visit the School without signing in and reporting to the front office or otherwise exceeding the allotted visitation timeframe. Further, OCR determined that Complainant 2 visited the School the very next day XXXXX, and on XXXXXXXXXX.

Analysis

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division created a unique visitation policy for Complainant 2, by requiring him to meet with the XXXXX prior to any visitation to the classroom or the playground. Rather, OCR determined that the XXXXX met with Complainant 2 to review the School's existing visitation policy, which is applicable to all visitors to the School, after Complainant 2 failed to adhere to said policy. As such, OCR determined that there was insufficient evidence Complainant 2 suffered an adverse action by meeting with the XXXXX to review the School's visitation policy. Therefore, in the absence of an adverse action, OCR has determined that the Complainants failed to establish an initial case of retaliation. Accordingly, OCR will take no further action regarding Allegation 3(b).

Allegation 3(c)

With respect to Allegation 3(c), the Complainants alleged that on XXXX, School staff members retaliated when they harassed Complainant 2, by following him and staring at him while he spoke with the Student's teacher. Specifically, the Complainants explained that as Complainant 2 was

standing and talking to the Student's teacher near the playground, the XXXX approached less than a minute after he arrived, stood behind the teacher, and stared at him. Complainant 2 believed that the XXXXX was attempting to intimidate him. Complainant 2 stated that after he left, the XXXX continued talking to the teacher.

OCR interviewed the XXXXX, XXXXXXXX, and the Student's teacher. Although none could recall the alleged incident in question, all denied following or staring at Complainant 2 at any point in time.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that Complainant 2 suffered an adverse action, as alleged. Therefore, in the absence of an adverse action, OCR has determined that the Complainants failed to establish an initial case of retaliation. Accordingly, OCR will take no further action regarding Allegation 3(c).

Allegation 3(d)

Regarding Allegation 3(d), the Complainants alleged that School staff members retaliated when they restricted Complainant 2's ability to have lunch with the Student on XXXXX.

Facts

OCR determined that the School has a flexible lunch visitation policy whereby parents/guardians can visit the school and have lunch with their child during the lunch period, without prior approval.

The Division informed OCR that Complainant 2 began having lunch with Student since the beginning of the school year and had lunch with the Student frequently, which entailed him sitting with the Student and other students. The School asserted that no other parent visited a student during lunch with as much frequency as Complainant 2. The School further informed OCR that when the Student's classroom changed on or about XXXXX, the Student's new classmates and their parents were unfamiliar with Complainant 2, and as a result, some parents expressed concerns about Complainant 2's daily lunch visitation with their children, the questions that he asked them, and the information that XXXXXXXX. In addition, School staff stated that some students were uncomfortable having conversations with Complainant 2 or having him present. The Complainants acknowledged that they were aware that at least one parent had expressed such concerns.

The Division/School scheduled a meeting with Complainant 2 to discuss these concerns on XXXXXX. The Division stated that it reached a compromise by allowing Complainant 2 to continue to visit during lunch with the Student but requested that he sit at separate location in order to respect the other students and parents' wishes for their children to have the space and privacy they desired, including for the students to be able to socialize with each other without a parent immediately present. The Division also documented its decision, and the rationale in a letter sent to Complainant 2 on XXXXX. OCR also reviewed information indicating that other parents expressed concern regarding Complainant 2's lunch visitation, including within two weeks prior to the Division's meeting with Complainant 2.

Analysis

Based on the foregoing, OCR determined that on XXXXX, Complainant 2 was not denied the opportunity to have lunch with the Student; rather, Complainant 2 was asked to sit at a separate

table to have lunch with the Student. OCR determined that while Complainant 2 was subjected to an adverse action by being told to sit in a separate location for lunch visitation with the Student, the Division had a legitimate, non-retaliatory reason for its action specifically, the School received complaints from other parents that had concerns over Complainant 2's daily visitation and interaction with their children. OCR further determined that the Division's actions were not pretext for unlawful retaliation since OCR reviewed correspondence from parents expressing concern about Complainant 2's visitation with their children. Accordingly, OCR will take no further action regarding Allegation 3(d).

Allegation 3(e)

With respect to Allegation 3(e), the Complainants alleged that School staff retaliated against Complainant 2, by requiring him to sit in the School's Administrative Offices, while all other parents approved to XXXX a XXXX trip to the XXXXX were allowed to assemble in the classroom, on XXXXX.

Facts

On XXXXX, Complainant 2 entered the School and went to the front office and informed staff that he was there to visit the Student's classroom. The XXXXX and XXXXXX subsequently were informed of Complainant 2's visit, at which point, Complainant 2 informed them that he was present to XXXXX XXX XXX. After School staff became aware of the purpose of his visit, Complainant 2 was granted permission to go to the Student's classroom. School staff informed OCR that the other parents that were XXXX immediately informed the front office of the purpose of their visit and were allowed to go the classroom. They explained that because Complainant 2 did not initially indicate that he was present to XXXX, his permission to go to the classroom was delayed for the purposes of adhering to the School's visitation policy, as discussed above with respect to Allegation 3(b).

Analysis

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that Complainant 2 suffered an adverse action, as alleged. Rather, OCR determined that School staff was initially unaware that Complainant 2 was XXXX a XXXX trip, but once they became aware, he was granted access to the Student's classroom. Therefore, in the absence of an adverse action, OCR has determined that the Complainants failed to establish an initial case of retaliation. Accordingly, OCR will take no further action regarding Allegation 3(e).

Allegation 3(f)

Regarding Allegation 3(f), the Complainants alleged that the School staff retaliated against Complainant 2, by harassing him when the XXXX attended the Student's parent/teacher conference on XXXXX.

Facts

The Complainants did not provide OCR with any additional information about the XXXXX conduct during the conference, other than the fact of his attendance. School staff informed OCR that on XXXXX, the Student's teacher had numerous parent/teacher conferences scheduled, some of which the XXXX attended in order to observe the teacher. The teacher was XXX XXX to the

School and was still on probation; as such, the XXXXXX was required to observe her as part of her job requirements. The XXXXXX observed the parent/teacher conference for another student in the Student's class prior to Complainant 2's scheduled conference regarding the Student. In addition, the Division provided OCR with documentation indicating that the XXXXXX observed other teachers during parent teacher conferences in XXXX and XXXXXXXX.

Analysis

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that Complainant 2 suffered an adverse action when the XXXXXX attended the Complainant 2's parent/teacher conference, as alleged. Rather, OCR determined that the XXXXXXXX attended the conferences for other students for the purposes of observing the teacher during her XXXXXX. Therefore, in the absence of an adverse action, OCR has determined that the Complainants failed to establish an initial case of retaliation. Accordingly, OCR will take no further action regarding Allegation 3(f).¹⁰

Conclusion

On September 24, 2019, the Division signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address Allegation 1(c) and Allegation 2. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to disseminate a memorandum to all School faculty and staff that the Division will ensure that all students are provided with an equal opportunity to participate in all classroom activities, regardless of race, color, or national origin, including with respect to seating assignments; and to provide training to all Division and School-level administrators responsible for responding to complaints regarding alleged violations of Title VI. The training will cover Title VI's prohibition against discrimination on the basis of race, color, and/or national origin. The training will include a discussion of: (a) examples of what constitutes race, color, and/or national origin discrimination, including but not limited to different treatment on those bases; (b) recognizing acts of discrimination on those bases; and (c) the effects of discrimination on those bases on students in the elementary and secondary education context. In addition, the training will cover the Division's policies and grievance procedures for addressing Title VI complaints. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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

¹⁰ As previously stated with respect to Allegations 3(a) through (f), although the original complaint notification letters stated that the Division both discriminated against Complainant 2 on the basis of his national origin, and retaliated against Complainant 2, during the course of OCR's investigation, the Complainants notified OCR that they were not alleging national origin discrimination with respect to Allegations 3(a) through (f); rather, they were only alleging retaliation. Nevertheless, during the course of its investigation, OCR also found no evidence to indicate that the Division discriminated against Complainant 2 on the basis of his national origin with respect to Allegations 3(a) through (f).

OCR official and made available to the public. The Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainants have a right to appeal OCR's determination regarding Allegations 1(b), 1(d)-(f), and Allegation 3 within 60 calendar days of the date of this letter. The Complainants must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainants must explain why they believe 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; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the Division. The Division has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Division.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact me at Letisha.Morgan-Cosic@ed.gov.

Sincerely,

Letisha Morgan-Cosic
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc (via email): XXXXXX
XXXXXX