



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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October 30, 2013

Laurence T. Spring  
Superintendent  
Schenectady City School District  
108 Education Drive  
Schenectady, New York 12303

Re: Case No. 02-10-5001  
Schenectady City School District

Dear Superintendent Spring:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on March 23, 2010. The compliance review assessed whether the Schenectady City School District (District) discriminated against black and Hispanic students, on the bases of race, national origin or disability, in the pre-referral and referral of these students for special education evaluation.

OCR initiated this review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department); Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. As a recipient of financial assistance from the Department and a public entity, the District is subject to Title VI, Section 504, and Title II. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into an agreement that commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review, and how the review was resolved.

## **Legal Standards**

### *Title VI*

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b). The regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi) further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

The pre-referral and referral of students for special education evaluation can result in unlawful discrimination based on race or national origin in two ways: first, if students are subject to different treatment based on their race or national origin; and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race or national origin.

Title VI prohibits schools from intentionally treating students differently based on race or national origin. Enforcement or application of a rule in a discriminatory manner is prohibited intentional discrimination. When similarly-situated students of different races or national origins are treated differently, OCR assesses the recipient's explanation for the differences in treatment to determine if the reasons were legitimate and nondiscriminatory or were a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated a student in a manner that was inconsistent with its established policies and procedures, or whether there is any other evidence of race or national origin discrimination. Intentional discrimination in the pre-referral and referral of students for special education evaluation can take many forms, and can be proven even without the existence of a similarly-situated student. Additionally, a school's adoption of a facially-neutral policy with an invidious intent to target students of certain races or national origins is prohibited intentional discrimination. Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular situation.

In addition to different treatment of students based on race or national origin, schools violate Federal law when they evenhandedly implement facially neutral policies or practices that were not adopted in order to discriminate but their implementation nonetheless has an unjustified effect of discriminating against students on the basis of race or national origin. The resulting discriminatory effect is commonly referred to as "disparate impact."

Facially neutral pre-referral and referral policies that result in an adverse impact on students of a particular race or national origin will be evaluated against the disparate impact standard to ensure that these are not discriminatory. In examining the application of a facially neutral policy, OCR will consider whether the policy results in an adverse impact on students of a particular race or national origin as compared with students of other races and national origins; whether the applicable policy is necessary to meet an important educational goal; whether the proffered justification is a pretext for discrimination; and even in situations where the policy is necessary to meet an important educational goal, whether there are comparably effective alternative policies available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected racial or ethnic group.

### Section 504

The regulation implementing Section 504, at 34 C.F.R. § 104.33, states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled students as adequately as the needs of nondisabled students are met, and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. The regulation implementing Section 504, at 34 C.F.R. §104.35, requires recipients to promptly conduct an evaluation of any person who needs or is believed to need special education or related services.

School districts may not assign students to special education on the basis of criteria that essentially measure and evaluate English-language skills. Accordingly, a school district must employ standards and procedures for the evaluation and placement of language-minority students that reliably identify students' educational disabilities, rather than the students' English proficiency skills.<sup>1</sup>

### **Overview of the District**

Schenectady City School District, located just north of Albany in upstate New York, is one of the larger school districts in the state of New York. The District is a K-12 district with 16 elementary schools, 2 middle schools, 1 high school, and 1 career and technical school.

During school year 2009-2010, Hispanic students represented 23% of those students classified as Learning Disabled (LD) and 26% of those students classified as Intellectually Disabled (ID)<sup>2</sup>, although Hispanic students only accounted for 15% of the overall student population. Additionally, during school year 2009-2010, black students represented 47% of those students classified as Emotionally Disturbed (ED), although black students only accounted for 35% of the overall school population. Data the District subsequently provided during OCR's review

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<sup>1</sup> See, e.g., Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited-English Proficiency, United States Department Of Education, Sep. 27, 1991

<sup>2</sup> This classification was previously termed "Mentally Retarded" and was changed by the District during the course of this review.

revealed that in school year 2012-2013, Hispanic students represented 23% of those students classified as LD and 16% of those students classified as ID, while Hispanic students accounted for 16% of the overall student population; and, black students represented 49% of those students classified as ED, while black students accounted for 35% of the overall student population.

OCR focused the review on pre-referrals and referrals, as this part of the special education process typically begins the disproportionality that is later observed. OCR also focused its review on the District's elementary school population, because the majority of teacher referrals occurred at the elementary school level. Additionally, OCR focused the review on practices of schools that had relatively large black and Hispanic populations (Elmer Avenue Elementary School; Academy of Culture and Communication at Pleasant Valley; Keane Elementary School; Yates Arts in Education Magnet School; and, Dr. Martin Luther King Jr. Math Science Technology and Invention Magnet School), as compared to those schools that had relatively large white populations (Paige Elementary School; Zoller Elementary School; and, Van Corlaer Elementary School).

### **Summary of Review**

In its investigation, OCR reviewed District policies and procedures regarding referral of students for regular education interventions<sup>3</sup> and referral of students for special education evaluation. OCR also reviewed files of students referred for regular education interventions and/or special education evaluations. In addition, OCR interviewed District staff members; including administrators, members of school-based support teams, and teachers who referred students to school-based support teams.

### **Information Obtained by OCR**

#### *Referral to School-Based Support Teams*

Each District elementary school has a school-based support team (SBST); a building-based team responsible for implementing the District's regular education intervention process.<sup>4</sup> The purpose of the SBST is to attempt to help students having academic or behavioral difficulties in the regular education classroom before those students are referred to the District's Committee on Special Education (CSE) for a special education evaluation. Students may be referred to the SBST by a classroom teacher, other District staff member, or parent. Classroom teachers referred the majority of students.

A total of 693 elementary school students were referred to the SBSTs during school year 2009-2010. Of the students referred, 114 (16.5%) were Hispanic; 249 (35.9%) were black; 280 (40.4%) were white; 49 (7.1%) were Asian; and 1 (.1%) was an American Indian/Pacific Islander. OCR examined whether there was any different treatment of Hispanic or black

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<sup>3</sup> This practice is also referred to as "pre-referral", since this is typically the first step that leads to the referral of a student for a special education evaluation.

<sup>4</sup> Such teams are referred to differently at different schools; titles include SBST, school-based intervention team and child study team. OCR will refer to all such teams as SBSTs.

students regarding their referral to the SBSTs, or whether any practice had a disproportionately adverse effect on Hispanic or black students.

OCR's investigation revealed that there was no set threshold or standardized criteria for referring a student to the SBST. The manner in which teachers referred students to the SBST differed from school to school, and from classroom to classroom. In some schools with relatively large black and Hispanic populations, teachers referred all students in their class to the SBST for the purpose of determining whether the students needed regular education interventions. Teachers at other schools with relatively large white populations stated that they referred to the SBST only those students who displayed academic, behavioral, or emotional problems.

Additionally, some teachers in schools with relatively large black and Hispanic populations stated that they referred students to the SBST early in the school year. Teachers at schools with relatively large black and Hispanic populations were less likely to attempt informal classroom interventions before referring students to the SBST. By contrast, teachers at schools with relatively large white populations stated that they waited several months to refer students to the SBST in order to try informal classroom interventions first. These differing practices were in part due to concern regarding long wait times for SBST meetings at certain schools with relatively large black and Hispanic populations.

OCR's investigation further revealed that teachers referred a larger number of students to the SBSTs at schools with larger black and/or Hispanic populations, resulting in a disproportionately large number of black and Hispanic students in the pipeline at those schools compared to other schools in the District. For example, 23.7% of black students enrolled in one school with a predominantly black and Hispanic enrollment were referred to the SBST, while only 6.6% of the white students enrolled in a school with a predominantly white enrollment were referred to the SBST.

Additionally, OCR identified 29 elementary school teachers who had racially diverse classrooms, but referred only non-white students to the SBST. These teachers all denied that the referrals were based on or motivated by the student's race or national origin, and instead stated that the students were referred for academic, behavioral, or emotional issues. OCR interviewed these teachers, and reviewed their classroom rosters, progress reports, and discipline records, to determine if there were white students presenting with the same or similar academic or behavioral challenges who had not been referred to the SBST. Based on the interviews and documentation reviewed, OCR identified the following 14 examples of different treatment in the referral of students to the SBST on the bases of race or national origin by referring teachers:

1. A teacher whose class contained 23 students (including 7 white, 6 Hispanic and 5 black, students) referred only 2 black students and 1 Hispanic student to the SBST; for fidgeting, distractibility, and behavior. The teacher did not refer any white students to the SBST. OCR identified 3 white students in the same class who had behavior similar to the referred black and Hispanic students, including 1 white student who had multiple disciplinary infractions; had grades of "unsatisfactory" and "inconsistent" in "habits and attitudes," and a progress report that reflected that the student "need[ed] to continue to work hard to have a positive attitude." When asked about these 3 white students, the

teacher stated that one was a “good kid,” who had no past behavioral problems; a second “didn’t need anything,” and “only had homework issues”; and a third white student was “very distractible,” but “not to the level that would have warranted referral.”

2. A teacher referred only 5 black students to the SBST. These students represented more than half of the black population of the class, which contained 24 students (including 8 black, 6 Hispanic and 5 white students). The 5 black students were referred for violent themes in writing, for behavior and discipline reports, for lack of progress, for aggressive behaviors, and for slow progress and lacking basic skills. OCR determined that notwithstanding these referrals, the teacher did not refer a similarly-situated white student who had numerous behavioral infractions, culminating in a one-day suspension for insubordination, and poor report card grades.
3. A teacher referred only 8 non-white students to the SBST, and no white students in a class of 24 students (including 8 black, 6 Hispanic and 5 white students). OCR determined that this teacher referred a black student to the SBST for behavior after he engaged in one offense, a minor altercation, for which he received an out-of-school suspension of up to five days; however, OCR determined that the teacher did not refer a white student who had engaged in similar offenses on *six* separate occasions, including intimidating, harassing, menacing, and bullying; two separate minor altercations; obscene language; and disruptive behavior.<sup>5</sup>
4. A teacher whose class contained 17 students (including 9 black, 4 Hispanic, and 3 white students) referred only 3 students to the SBST; 2 black students for behavior and academics, and 1 Hispanic student for academic challenges. OCR determined that there were no discipline records to substantiate the teacher’s referral of the black students to the SBST for behavior problems. OCR also determined that the Hispanic student referred for academic challenges earned a “2” in writing; “3” in science, math and social studies; and “4” in listening and speaking components of language arts. Notwithstanding these scores, this student was referred to the SBST, while two white students earning “2” in writing and math and “3” in all other categories, and one white student earning a “1” in reading and “3” in other categories, were not similarly referred to the SBST.
5. A teacher whose class contained 19 students (including 9 black, 4 Hispanic and 3 white students) referred 2 black students and 1 Hispanic student to the SBST. One black student referred to the SBST for behavior had only one incident of disrespectful language; while a similarly situated white student who engaged in one incident of disruptive conduct was not referred to the SBST.
6. A teacher with a class of 13 students (6 white, 3 Hispanic and 4 black) referred 2 black students to the SBST for being “easily distracted” and earning unsatisfactory grades in “habits and attitudes”; however, the teacher did not refer a white student whose progress reports indicated that he “had tremendous difficulty staying focused and productive” and “needed constant reminders to stay on task and not bother his neighbors, [and] stop

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<sup>5</sup> The same offense for which the black student received a suspension.

making noises that distract his neighbors.” This student earned two unsatisfactory grades in “habits and attitudes,” and five grades of “2” in reading, writing, and attention.

7. In progress reports a teacher prepared for her students, a teacher characterized all of the white students as “a joy” to have in class; however, none of the black students were so described in their progress reports. The teacher had 24 students in her class: 9 white, 9 black, 1 Hispanic, and 5 Asian students. This teacher referred 5 black students and 1 Asian student to the SBST. One of the black students referred to the SBST for “behavior concerns” earned all “3s” and “4s” on her progress reports, was at grade level in her courses, and had no references to behavior problems in discipline records or on the progress reports; however, a white student who earned a “1” in effort and a “2” in writing, and whose progress report reflected that “next year she needs to control her talking and keep her hands to herself,” was not referred to the SBST.
8. A teacher with a class of 17 students (including 10 black, 5 Hispanic and 2 white students) referred only 3 black and 1 Hispanic students to the SBST. OCR determined that a black student referred to the SBST for being “easily distractible,” having a “short attention span,” and having “low academic skills,” and “working slightly below grade level,” had earned four “2” and three “3” grades. A white student who earned four “2” and three “3” grades, and whose progress report noted that he was “still working slightly below grade level,” and his “inability to focus has impacted his progress,” but he is a “great little boy who... needs to slow down,” and “he continues to display inappropriate behaviors in the classroom” was not referred to the SBLC.
9. A teacher with a class of 16 students (including 7 black, 5 Hispanic, and 4 white students) referred only 2 black students to the SBST for “inconsistent grades”, and no white students. OCR’s review of the teacher’s progress reports and discipline records indicated that a white student who earned 3 “unsatisfactory” and five “inconsistent” grades in “habits and attitudes,” and had lower grades than the 2 referred black students was not referred, although the teacher noted that “he ‘benefitted from small group and 1:1 study,’ and “socially this year has been a struggle.”
10. A teacher with a class of 17 students (including 6 black, 5 Hispanic and 4 white students) referred only 5 non-white students to the SBST. OCR determined that one Hispanic student was referred for “behavioral difficulties,” because he had engaged in five disciplinary infractions, four of which were misbehavior, and one minor altercation; but a white student who engaged in three acts of insubordination was not referred.
11. A teacher referred only 2 black students to the SBST; one for inattentiveness, and one for behavior. The class had 28 students (including 12 white, 6 black, and 5 Hispanic students.) Two white students whose progress reports had nearly identical grades and stated that they were “easily distracted, extremely talkative, and distract[s] other students,” were not referred to the SBST.
12. A teacher with a class of 16 students (9 black, 4 Hispanic and 3 white) referred only 2 black students and 1 Hispanic student to the SBST. Both students had all satisfactory

marks in their “habits and attitudes,” and all “2”s and “3”s in their academic subjects. A white student with the same scores was not referred to the SBST.

13. A teacher whose class consisted of 25 students (including 9 black, 7 white, and 7 Hispanic students) referred only 4 black students and 1 Hispanic student to the SBST for “slow academic progress” and “peer skills”; but did not refer a white student who was given two unsatisfactory grades in “habits and attitudes”, in the categories of respect and self-control, and whose progress report indicated that he “needs to work on social behavior.”
14. A teacher whose class consisted of 18 students (8 white, 9 black and 1 Hispanic) referred only 2 black students and 1 Hispanic student for behavior problems. OCR determined that the Hispanic student who was referred had five disciplinary infractions, for unreasonable noise, a minor altercation, and three for disruptive behavior. One white student had ten infractions, one for unreasonable noise, one for misbehavior, and eight for disruptive behavior; while a second white student had eleven infractions, including eight disruptive behavior(s), one minor altercation, one misbehavior, and one smoking infraction. Yet neither of the white students was similarly referred.

#### SBST Review Process

The SBST review process includes several stages: problem identification (determining what the academic, behavioral, or physical problems were); analysis (discussing the classroom interventions already tried and what might work); developing proposed regular education interventions to be attempted to aid the student; and follow-up of outcomes. SBST members may include a student’s classroom teacher; remedial teachers; school psychologist; special education teachers; speech/language pathologists; physical and occupational therapists; and in some cases, the principal or assistant principal. If the SBST determines that interventions are appropriate, it generates a written intervention plan for the student. In some cases, the SBST creates a Section 504 plan for the student.

District administrators informed OCR that the quality of SBSTs varied among the District’s elementary schools. Administrators asserted that the SBSTs at some schools with relatively large black and Hispanic populations were “weaker” than the SBSTs at schools with relatively large white populations; particularly because the building principal did not attend the SBST meetings. The Assistant Director of Pupil Personnel Services advised OCR that SBSTs benefit when the building principal regularly attends meetings. OCR determined that principals at schools with relatively large white populations attended SBST meetings regularly or always; whereas principals at schools with relatively large black and/or Hispanic populations were less likely to attend SBST meetings.

OCR’s investigation revealed that SBSTs may utilize cognitive evaluation materials during the problem identification process; but that cognitive evaluation materials in Spanish were largely unavailable in the District. Further, at times there was no one appropriate available to evaluate Spanish-speaking students, and the SBST rarely called in the Spanish-speaking psychologist to conduct evaluations; instead, cognitive evaluations of such students were often based on quick



consultation with the English as a Second Language (ESL) teacher or classroom teachers, conversations with parents, and/or a file review. A teacher at one elementary school informed OCR that the SBST evaluated all students in English, even if English was not their primary language. Additionally, OCR found evidence that some SBSTs recommended “retention” as an intervention for certain black or Hispanic students, but did not do so for similarly situated white students.

#### *Teacher Implementation of Regular Education Interventions*

Once an intervention plan is generated, the classroom teacher is primarily responsible for implementing interventions. Teachers at schools with relatively large black and Hispanic populations stated that many prescribed interventions were not implemented due to time constraints and overextended staff members. In contrast, teachers at schools with relatively large white populations did not express this concern. An administrator informed OCR that the District does not provide enough money to Pupil Personnel Services, thereby making it difficult for the District to ensure that regular education interventions are provided when necessary and are provided in a uniform manner throughout the District.

OCR sought to determine whether the District referred a larger number of students to the CSE for special education evaluation at schools with larger black and Hispanic populations, resulting in a disproportionately large number of black and Hispanic students at those schools in the pipeline for classification as disabled. OCR compared the enrollment, by race/ethnicity, of these aforementioned schools to the referrals of students, by race/ethnicity, to the CSE for special education evaluation.

OCR determined that the District referred a larger number of students to the CSE at schools with larger black and Hispanic populations, resulting in a disproportionately large number of black and Hispanic students at those schools in the pipeline for classification as disabled. For example, during school year 2009-2010, 8.4% of the Hispanic students enrolled in a school with a predominantly black and Hispanic population were referred to the CSE for evaluation, while only 1.8% of the white students enrolled at a school with a large white population were referred to the CSE for evaluation.

#### *Measuring and Monitoring the Effectiveness of Regular Education Interventions*

The District does not have a policy or uniform practice for measuring and monitoring the effectiveness of interventions recommended by the SBST, and practices varied widely amongst the District’s elementary schools. Some teachers OCR interviewed stated that they did not keep comprehensive records of regular education classroom interventions they attempted with students. Teachers also reported that they did not receive anecdotal or written information concerning students in their classrooms whose previous classroom teachers provided interventions. Teachers also advised OCR that students often moved from one area of the District to another; and in the absence of reliable written records, it was difficult for teachers to determine what types of interventions had been tried and had been found effective or ineffective.

Several witnesses stated that the SBSTs did not reconvene after regular education interventions were implemented to determine whether these were effective or whether other interventions were necessary; rather, the SBSTs simply continued to provide the regular education interventions for the remainder of the school year, without consideration of their appropriateness or effectiveness. Other witnesses stated that the SBST convened follow-up meetings to determine the effectiveness of interventions only if the interventions were suspected to be insufficient. Teachers informed OCR that there were multiple SBST meetings for some of their students, but no follow-up SBST meetings for most of their students.

Although OCR determined that no school routinely measured or monitored the effectiveness of interventions provided, OCR determined that SBSTs at schools with relatively large white populations were more likely to have follow-up meetings to determine the effectiveness of regular education interventions provided than SBSTs at schools with relatively large black and Hispanic populations.

#### *Referrals for Special Education Evaluations*

The District did not set a maximum number of regular education interventions before referring a student for evaluation for special education related services, but the District attempted to exhaust all SBST-prescribed interventions before a referral to the CSE was made. A CSE referral could be made by building-level personnel, such as the SBST, or by a parent/guardian when a student was experiencing academic, behavioral and/or emotional difficulties.

Regardless of who referred the student, the classroom teacher completed the CSE referral form, which was then sent to Pupil Personnel Services. All CSE referrals must state the basis for the belief that the student might be disabled; include any test results, records or reports upon which the referral is based; describe attempts to remediate the student's performance prior to the referral, including supplementary aids or support services provided (or state the reasons why no such attempts were made); and provide information from a parent. Once the referral process begins, the school psychologist meets with the parent/guardian in person or by phone to explain the referral process, obtain consent to evaluate, and provide due process rights. Once the District completes the assessments, it sends the parent/guardian written notification of the CSE meeting date and due process rights.

The District's CSEs did not always consider Hispanic students' primary language and/or need for language acquisition services when deciding whether to classify such students. OCR determined that 10 of the 33 Hispanic students referred to the CSE during school year 2009-2010 were evaluated for speech and/or language impairments; however, 4 of the 10 students had no information in their special education files about whether their primary language affected their academic performance and necessitated language acquisition services, despite evidence that Spanish was their primary language or that they were bilingual.<sup>6</sup> OCR also determined that the

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<sup>6</sup> In the first case, the CSE minutes did not reflect that there was a discussion of the impact of language acquisition on a Spanish-dominant student's academic performance. In the second case, the CSE identified a bilingual student as manifesting "real difficulty only in language processing, despite average intelligence scores and evaluation results," yet did not discuss that the Student is bilingual and receives ESL services; the CSE classified the Student as speech/language impaired. In the third case, the District evaluated and sought to classify a bilingual student, without

special education files of 14 of the 33 Hispanic students referred to the CSE lacked the Primary Home Language Other than English (PHLOTE)/Home Language Questionnaire (HLQ). OCR determined that the CSE recommended retention of one Spanish-dominant student who was behind academically, with no discussion of ESL services.

Additionally, witnesses stated that the District does not have adequate personnel able to evaluate students in their native language, namely Spanish. As a result, students are not evaluated for speech/language impairments by the CSE in their native languages. It is notable that the only bilingual Spanish-speaking psychologist able to administer the speech language evaluations for the CSE in Spanish was at a school with a higher enrollment of white students, as opposed to one of the elementary schools with both a high Spanish-speaking population and a high number of students on a waiting list for services. OCR determined that although there was a Spanish-speaking psychologist at the high school who was called in for various CSE meetings, there were no Spanish-speaking psychologists at many of the elementary schools with higher numbers of Hispanic students.

### **Resolution Agreement**

During the course of OCR's investigation, the District expressed interest in resolving possible compliance concerns without further investigation. On September 26, 2013, the District agreed to implement the enclosed resolution agreement to resolve the compliance review. The resolution agreement requires the District to take steps to ensure that it is providing an equal opportunity for black and Hispanic students to receive assistance in the regular education setting prior to consideration for placement in special education, and that students of all races are treated equitably in the special education evaluation and placement processes.

In the resolution agreement, the District committed to hire an expert in addressing the overrepresentation of minority students in special education to review the District's procedures and make recommendations as to the measures the District should take to ensure that its determinations address the overrepresentation of minorities in special education and the root causes of this overrepresentation. The District will also develop and implement a plan to expand its universal screening process. Additionally, the District will develop written policies and procedures, which include the extent to which informal classroom interventions should be attempted prior to referral to the building-level teams; circumstances for referring students to the teams, and oversight to ensure consistency in each school. Further, the District will ensure that every school in the District has implemented a systematic, team-based means of providing intervention strategies for students experiencing academic or behavior difficulties; and review and revise its materials regarding intervention strategies distributed to District personnel, parents/guardians, students, and other stakeholders. The District will also provide training to: all teaching staff designed to increase awareness of the overrepresentation of black and Hispanic students in special education and explain the purpose and significance of placement in special education; all members of each school's building-level team on the intervention process and on

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any discussion of the effectiveness or ineffectiveness of ESL services. In the fourth case, the District evaluated and classified a Hispanic student as speech/language impaired in January 2010, although the Student had only enrolled in the district in September 2009; did not receive ESL supports; "nodded no" when asked if she spoke English at home; and rarely spoke in school.

intervention strategies for students; and all teachers about the purpose, procedures, process, and documentation of the building-level team. Additionally, the District will review special education records to assess whether eligibility and placement decisions were appropriate, and take appropriate action in response. Further, the District will ensure that Building-Level Teams and special education personnel evaluate students who are ELL (as indicated by the student's PHLOTE and HLQ form), and who have or are suspected of having disabilities, utilizing tests and other evaluation materials in their dominant language. The District will adapt its disability pre-referral, referral, evaluation, and placement policies, procedures, and practices to ensure that ELL students are not misidentified and placed as students with disabilities; and, that they are not denied appropriate services because they are ELLs. Finally, the District will maintain data and use the data and other information gathered during the implementation of the resolution agreement to evaluate the effectiveness of its screening, intervention, evaluation, and placement processes; and will also analyze data related to the provision of team-prescribed interventions and data related to teacher referrals of elementary school students to the building-level team, to determine whether students of all races and national origins were treated equitably.

Based on the commitments the District has made in the resolution agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information demonstrating implementation of the resolution agreement in a timely manner in accordance with the reporting requirements of the resolution agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the resolution agreement and is in compliance with Title VI, Section 504 and Title II with regard to the issues in the review.

OCR will monitor implementation of the resolution agreement. OCR will not close the monitoring of this resolution agreement until it has determined that the District has complied with the terms of the resolution agreement and is in compliance with Title VI, Section 504 and Title II. If the University fails to implement the resolution agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the resolution agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the resolution agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter 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. 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, or discriminate against any individual because he or she has participated in the complaint resolution process. If this happens, the individual may file a 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.

If you have questions regarding OCR's determination, please contact Janet Pfeffer, Senior Equal Opportunity Specialist, at (646) 428-3833; or James Moser, Compliance Team Attorney, at (646) 428-3792; or Emily Frangos, Compliance Team Leader, at (646) 428-3831.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case.

Sincerely,

/s/

Timothy C. J. Blanchard

Enclosure