



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

November 6, 2015

Lee Yang
Superintendent
Yav Pem Suab Academy
7555 South Land Park Drive
Sacramento, California 95831

(In reply, please refer to Docket # 09-14-1170.)

Dear Superintendent Yang:

This letter is to advise you of the resolution of the above-referenced complaint against the Yav Pem Suab Academy (Academy), which was investigated by the U.S. Department of Education, Office for Civil Rights (OCR), under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the Academy is subject to Title VI and the regulation.

OCR investigated whether the Academy failed to respond adequately to an internal complaint alleging that the complainant's grandson (the Student) was subjected to discrimination based on race when he was disciplined, and that Academy staff and students subjected the Student, his family, and other African-American parents to a hostile environment on the basis of race. OCR also investigated the Academy's disciplinary policies and practices and, specifically, whether the Academy discriminates against African-American students on the basis of race by disciplining them more frequently and more harshly than other students, in violation of Title VI and its implementing regulation.

Prior to the conclusion of OCR's investigation, and without admitting to any violation of law, the Academy expressed an interest in voluntarily resolving this case. On October 15, 2015, the Academy submitted a Resolution Agreement to OCR that commits the Academy to specific actions to address the concerns raised by the investigation. This letter summarizes the applicable legal standards, the information gathered during the investigation and how the complaint was resolved.

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

Legal Authority

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b).¹ 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 service or benefit to an individual which is different or provided in a different manner; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or deny an individual an opportunity to participate in a program through the provision of services or otherwise or afford an individual an opportunity to do so 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.

Student Discipline

OCR investigates alleged discrimination in the application of student discipline consistent with federal statutory authority, the Department's regulations, policies and pertinent case law. Disciplinary policies and practices can result in unlawful discrimination based on race in two ways: first, if students are intentionally subject to *different treatment* on account of their race; second, even if a policy is neutral on its face but has a disproportionate and unjustified effect on student(s) of a particular race, referred to as *disparate impact*.

Different Treatment

Title VI prohibits schools from intentionally disciplining students differently based on race, color, or national origin. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly situated students of different races are disciplined differently for the same offense, discrimination can be the only reasonable explanation for the different treatment. Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly situated student. Additionally, a school's

¹ The applicable legal standards are more fully described in the Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, jointly issued by OCR and the Civil Rights Division, U.S. Department of Justice (January 8, 2013), which is available on the Department's website at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

adoption of a facially neutral policy with an invidious intent to target certain races is prohibited intentional discrimination.

Title VI also protects students even if a school contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school's student safety or student discipline program. Schools cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, "contract" law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular discipline incident or series of incidents.

Disparate Impact

In addition to different treatment of students based on race, schools violate Federal law when they implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as "disparate impact." In determining whether a facially neutral student discipline policy has an unlawful disparate impact on the basis of race, OCR engages in the following three-part inquiry:

- 1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races?
- 2) Is the discipline policy necessary to meet an important educational goal?
- 3) Even in situations where a school can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative discipline policies available that would meet the school's stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school's proffered justification a pretext for discrimination?

Racial Harassment

Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Schools provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in harassment on the basis of race, color or national origin that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, i.e., creates a hostile environment, the school is responsible for the discriminatory conduct whether or not it has notice.

In addition, under Title VI and the regulation, if a school has notice of harassment between students on the basis of race, color or national origin, it is responsible for

determining what occurred and responding appropriately. The school is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school may violate Title VI and the regulations if:

- (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program;
- (2) the school knew or reasonably should have known about the harassment; and,
- (3) the school fails to take appropriate responsive action. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

Background Information

The Academy is a K-6 independent charter school located within the attendance area of Sacramento City Unified School District (District). While the Academy is chartered by the District, its discipline policies and practices are separate from those of the District.

The Academy is a school with an emphasis on Hmong culture and language. All instruction is in English, and Hmong is taught as a "heritage" or second language. The Academy's administrators state that the school was founded in an effort to reverse the low academic performance trend among Hmong students, but that it welcomes all students. The Academy is operated by the Urban Charter Schools Collective (Collective), and is currently the only school in the Collective. The Collective is administered by a superintendent and a seven-member board of directors.

During the 2014-15 school year, 72% of the students at the Academy were Asian-American, 13% were Latino, 8% were African-American, and 4% were white. During that year, eleven students were suspended; 18% of them were Asian-American, 9% were Latino, 55% were African-American, and 18% were white.

The complainant is African-American and has a grandson (Student) who attends the Academy. The Student has been enrolled at the Academy since August 2012, and during the 2013-14 school year was a first grader.

Internal Complaint of Discrimination

On January 15, 2014, the complainant submitted a complaint to the Academy alleging that the Academy's faculty, staff, and students had subjected the Student and his family to "bullying behavior and blatant racist practices" and a "hate crime" through: 1) "bullying and marginalization" and racist or inflammatory remarks made to the Student and his family; and 2) multiple inappropriate suspensions of the Student, including the removal of the Student from the classroom without a formal suspension. The complaint stated that

- Both the complainant and the Student's mother had observed the Student's kindergarten teacher, who was Asian-American, looking at the Student in ways they considered "malevolent" or threatening;
- The complainant had observed the former vice principal, who was African-American, yelling at the Student, and an Asian-American parent volunteer sitting in the Student's seat and refusing to allow him to access his desk;
- The complainant had observed an occasion on which the Student's first grade classroom was chaotic and that the Student was not adequately directed or supervised;
- On one occasion, the Student had told the complainant and the principal that he did not like to go to school because "nobody likes black people," and had then denied that he was African-American;
- The Student had received an evaluation of his participation in school enrichment activities on which three Asian-American teachers had rated him as needing improvement in music, dance and physical education, while a Latino teacher had given him satisfactory grades in Tae Kwon Do;
- The Student had been suspended at least four times and his parents had been asked to take him home on three other occasions; and
- The Student's parents were informed that he would not be allowed to attend a kindergarten field trip unless one of them accompanied him; this was described as part of a pattern of routinely excluding African-American students from activities as a form of discipline.

The complainant also alleged that the principal, who is Asian-American, had told another parent that, in his experience, "black women are loud and aggressive," and had admitted to the complainant that he had made the remark, justifying it as intended to encourage Hmong women to be more assertive. She also described an incident in which an Academy staff/volunteer had told the Student's parents that the Student was "wild and out of control," and three disputes between School staff and the complainant and the Student's parents. Finally, the complaint included a list of racist remarks allegedly made to the Student, his family, and his community by unidentified persons at the Academy between 2012 and 2014. This list included the statement about loud black women referenced above, and alleged comments by persons at the school that "black people are stupid," "black people steal all the time," "most black people go to prison," and "black people are killers."

The Academy referred the complaint to the former superintendent of the Collective (investigator) for investigation. The investigator reviewed documents submitted by the complainant, the Student's school records and disciplinary history, and conducted interviews with the complainant, the Student's teachers, witnesses identified by the

complainant, and Academy administrators. He prepared a narrative report of his findings (Report) and presented it to the complainant on February 28, 2014.

The Report examined the complainant's allegations and reviewed the incidents of alleged race-based language, including the principal's comment about black women, an alleged statement by a child in the Student's kindergarten class that she "did not like playing with black kids," and an alleged statement by the kindergarten teacher that "black people go to jail." It also addressed the allegations that the Student was excluded from a fieldtrip, that other African-American students had been excluded from field trips, and that the Student had been suspended on multiple occasions. The investigator found that the principal had made the alleged remark about aggressive black women, which was "insensitive" and belittling, and which the principal had not recognized was a "putdown." He determined that a child in the Student's kindergarten class had stated that she did not like playing with her cousins, who were African-American, and that the teacher's statement that "bad people go to jail" had been misinterpreted as "black people go to jail." He noted that the teacher had missed a "teachable moment" which she could have used to teach her students about racial stereotypes. The investigator also determined that the Student had been formally suspended once, not four times as stated in the complaint, and that he had not been excluded from the kindergarten field trip. He identified one other incident when two African-American fifth graders were excluded from a field trip for misbehavior, and found that the students' teacher had been disciplined for excluding them.

The Report determined that there was insufficient evidence to show that the Student was subjected to a "hate crime," and concluded that the actions of the principal and school staff, described above, "while lacking cultural sensitivity and cultural understanding," were not based on a discriminatory motive. The Report attributed many of the other incidents alleged, which did not involve explicitly race-based comments, to "poor communication" between the complainant's family and the Academy during the Student's first grade year, and concluded that the specific concerns raised by the complainant were resolved when the Student was moved to a different classroom, taught by an Asian-American teacher, who was better able to meet his needs.

Although the Report did not find that the complainant or the Student had been subjected to intentional discrimination, it concluded that "the absence of cultural sensitivity among staff members needs to be addressed immediately." The Report outlined a series of corrective actions to address this concern, including the employment of a consultant to plan school-wide diversity training, a request for proposals to deliver such training to school staff and parents, and a thorough review of the disproportionate discipline of African-American boys during the 2013-14 school year.²

OCR reviewed the Report and determined that the Academy examined the complainant's specific allegations with respect to race-based treatment of the individual

² OCR confirmed that the Academy contracted with consultants to conduct an audit of school climate, training, and assist in the development of a plan to address these issues. These efforts are discussed in more detail on pages 12-13.

Student.³ OCR also determined that the Report considered relevant information, including interviews with Academy staff and the complainant, and a review of the Student's records. However, OCR concluded that the Academy did not reach a conclusion as to whether the Student had been subjected to a racially hostile environment, and did not address the complainant's allegations that the Student was subjected to inappropriate discipline, short of formal suspension, on the basis of race. Therefore, OCR conducted its own review of the investigator's findings, and the underlying allegations, in order to determine whether the preponderance of the evidence established that the Student had been subjected to a racially hostile environment.

OCR's Investigation of the Underlying Allegations in the Internal Complaint

In examining the underlying allegations, OCR conducted interviews with the complainant, the Student's current and former classroom teachers, the principal, the former superintendent, the former vice-principal, and two African-American staff members/parent volunteers who requested to speak with OCR. The African-American staff members stated that they had not observed negative treatment of African-American students, and considered the school to provide them with a positive environment. None of the other witnesses described specific race-based comments directed to the Student, or specific incidents of race-based different treatment, beyond those addressed in the Report. In this regard, in response to OCR's attempt to obtain further details about the list of additional alleged racist comments made by people at the school, including "black people are stupid," "black people steal all the time," "most black people go to prison," and "black people are killers," the complainant did not provide any details regarding the identities of such students or staff or the location or time of such incidents and, as such, OCR was unable to further investigate the alleged remarks or the Academy's response. The witnesses also confirmed the Report's conclusion that many of the difficulties between the Student, his family, and Academy staff were resolved when he was moved to a different first grade classroom. Neither the investigator nor OCR determined that the Student was subjected to a racially hostile environment in his initial first grade class, or that the teacher of that class, who was white, discriminated against him on the basis of race. However, both Academy teachers and the complainant confirmed that the new placement resulted in no other behavior referrals and that communication between the Academy and the family had improved.

With respect to the allegation of the inappropriate suspensions of the Student, OCR confirmed the Report's finding that the Student was suspended for one day for fighting with another student on the playground in September 2013. The other student, who is Hmong, was also suspended for one day; therefore, OCR did not find evidence of race-based different treatment in discipline in connection with this incident.

³ While the report did not address each of the alleged racial remarks and slurs listed at the end of the complaint, the investigator contacted the complainant for details on these remarks, and investigated those for which specific information was provided.

The complainant told OCR that she alleged that the Student had been suspended more than once because the first grade teacher (prior to the new placement) had contacted the Student's father at least three times and requested that the Student be picked up from school because he was disruptive in class. The first grade teacher confirmed that she sent the Student to the office or contacted his parents on a few occasions after he became disruptive and she was unable to redirect him. Academy administrators confirmed the practice of "early dismissal" in response to misbehavior. They told OCR that, they did not consider the dismissal to be disciplinary and, for that reason, they did not maintain records as to the frequency with which the Student, or any other students, were removed from classroom instruction and sent home.

After reviewing the evidence discussed in the reports and the results of its own investigation, OCR concluded that the preponderance of the evidence did not establish that the Student was subjected to a hostile environment based on race. The Academy investigator and OCR were able to identify three isolated race-based comments: the first two comments were made in the presence of the student, a kindergartner's comment that she did not like to play with African-American children, and a statement made by other students in a kindergarten class that "black people go to jail." The third comment was made by the principal regarding "black women" being "loud and aggressive." These comments, while concerning, were not by themselves sufficiently severe, pervasive or persistent to create a racially hostile environment. While OCR understands that other incidents that occurred were hurtful, OCR did not find sufficient evidence to establish that they were race-based.

The practice of removing the Student from school because of his behavior, if it was applied frequently to him and not to other students who were not African-American, could contribute to a racially hostile environment, whether or not the Student was formally suspended. OCR was unable to evaluate if the Student was subjected to discriminatory discipline due to the absence of records to determine whether Student was subjected to different treatment with respect to this practice. OCR concluded, however, that even if the evidence had shown that the Student was treated differently with respect to early dismissals, the limited number of removals alleged by the complainant was not sufficient to create a hostile environment when viewed with the isolated incidents discussed above. OCR notes, however, that the Academy's practice of removing students for disciplinary reasons from school without appropriate recordkeeping and due process raises significant concerns because this practice makes it almost impossible for the Academy to assess whether it is meeting its duty of ensuring nondiscrimination with respect to discipline.⁴

In summary, OCR confirmed that the evidence did not support a finding that the Student and his family were subjected to a hostile environment on the basis of race. OCR also found that the District took a number of steps to address any racial harassment and prevent its recurrence and to meet its obligation to ensure a racially nondiscriminatory

⁴ In its Resolution Agreement, the Academy agreed to discontinue the practice of removing students from school without formally suspending them, and to develop and use recordkeeping system that will enable it to track all disciplinary incidents, regardless of sanction.

school environment. OCR confirmed that the transfer of the Student to a different first grade classroom had resolved the complainant’s immediate concerns about the Student’s treatment in the classroom, and the District engaged an outside expert of the complainant’s choosing to conduct an audit of the school’s culture and climate and provide recommendations for addressing equity issues with respect to discipline and other issues. Subsequently, the Academy has begun to amend its policies and procedures and train all staff.

In order to ensure that Academy administrators who investigate future complaints of discrimination are aware of the appropriate standards for identifying racial harassment and other forms of discrimination, the Academy agreed to ensure that all staff responsible for investigating such complaints participate in training to be provided by OCR.

Review of Academy-wide Discipline

In order to examine whether the complainant’s concerns about disparate discipline reflected systemic racial disparities in student discipline, OCR reviewed the Academy’s discipline policies and practices and requested data concerning overall student referrals for discipline and suspensions. The Academy provided OCR with records of suspensions during the 2012-13, 2013-14, and 2014-15 school years. The Academy also provided office referral documents from the 2011-12, 2012-13, and 2013-14 school years. The Academy informed OCR that it does not employ school resource officers and has not referred any students to law enforcement since it was founded. OCR did not obtain any evidence to contradict this statement. OCR confirmed that no students have been expelled from the Academy in the last three years. OCR’s analysis of the Academy’s behavior policy and discipline data is set forth below.

Enrollment Data

In the most recent school year, African-American students were 8% of the students enrolled in the Academy in 2014-2015 compared to the 72% of Asian-American students. Since 2012-13, the percentage of African-American students enrollment has decreased from 11% to 8%. Figure One reflects the enrollment in the Academy by race/ethnicity for the last three school years.

Figure One: Total Student Enrollment By Race/Ethnicity in 2012-13, 2013-14, 2014-15

School Year	African-American		White		Asian-American		Latino		Other		Total
	#	%	#	%	#	%	#	%	#	%	
2012-13	47	11%	10	2%	303	72%	48	11%	12	3%	420
2013-14	38	9%	19	4%	298	70%	57	13%	15	4%	427
2014-15	32	8%	17	4%	303	72%	54	13%	15	4%	421

Discipline Policies, Practices and Procedures

The Academy's official policies with respect to student discipline are outlined in the Academy's "Behavior Policy," which is published in the parent/student handbook and posted on-line. The Behavior Policy sets forth "guiding principles" and expectations for behavior in a variety of school settings (office, classroom, cafeteria, playground, etc.) under the categories of "Be Safe," "Be Respectful," and "Be Responsible." It also describes progressive consequences that will be imposed when school rules and behavior expectations are not followed. The Behavior Policy outlines a series of consequences for misbehavior that increase with the severity and/or the number of occurrences of a type of behavior. The progressive consequences begin with "[a]cknowledge or contact Scholar (verbal, gesture, touch)" after the first incident involving a student, and progress through a verbal warning or loss of time from recess a call home, referral to office, a parent-teacher conference, in-school suspension and, after the sixth incident, referral to principal and out-of-school suspension. The listed consequences are not differentiated by offense (i.e., the same consequences apply to "rough play," disruption of class, destruction of property, and "unsafe or threatening acts"). However, the Behavior Policy notes that, depending on the severity of the offense, a child may be referred directly to the principal for disciplinary action. It further states that "due to the seriousness of ['some behaviors'], they could result in Out-of-School Suspension on the first incident." The Behavior Policy does not specifically describe the behaviors that could justify suspension for a first offense.

In interviews with the teachers at the Academy, OCR learned that while some teachers referred students to the office, others did not. All teachers stated that they were expected to handle student behavior issues inside the classroom as much as possible. Some teachers stated that they send students to another teacher's classroom for a certain amount of time as a way to re-direct their behavior. The Academy's behavior policy includes "time-out in another class" as a possible consequence for a third incident of misbehavior. Other teachers used an area in their own classroom, called "Australia," for students to calm down or to take a time-out. This sanction is not mentioned in the Behavior Policy.

Academy administrators acknowledged following a practice through the 2013-14 school year in which they would ask a parent to come take a student home in response to a teacher referral of misbehavior. Such circumstances would be considered an "early release day" for the student. Although these early dismissals resulted in lost instructional time, they were not documented or considered as a form of suspension or disciplinary act. Further, this type of removal of a student from the school was not referenced in the Academy's discipline policies and procedures. The Academy told OCR in October 2015 that students are no longer sent home on an informal basis.

Discipline Data Analysis

Referrals for Discipline

Although Academy teachers and other staff recorded office referrals on a “behavior referral” form, information on referrals was not maintained in a central data system. In response to OCR’s request for data on referrals for discipline, the Academy provided 205 behavior referral forms from 2011-12, 2012-13, and 2013-14 school years. A majority of these forms contained the teacher’s comments describing the incident that led to the referral. The incidents described ranged from pushing and hitting other students, to defiance and distracting the class. The forms did not indicate the race/ethnicity of the students who were referred and, in most cases, did not describe what disciplinary action was taken. Because the Academy expressed an interest in entering into a resolution agreement, OCR did not obtain the race/ethnicity of the students referred from the Academy and did not conduct further interviews with parents and students to determine whether students were treated differently based on race during the referral process.

Formal Suspension Data

The Academy provided OCR with “Notice of Suspension” forms for out-of-school suspensions imposed during the 2012-13, 2013-14, and 2014-15 school years; OCR used these forms to review the number of suspensions imposed. Figure Two below shows the numbers and rates of suspension for African-American, white, Latino, and Asian-American students each year.

Figure Two: Total Out-of-School Suspensions By Race/Ethnicity in 2012-13, 2013-14, 2014-15

Year	Total students suspended		African-American students suspended		White students suspended		Asian-American students suspended		Latino students suspended	
	#	rate ⁵	#	rate	#	rate	#	Rate	#	Rate
2012-13	6	1.7%	0	0.0%	2	20.0%	3	1.0%	1	2.1%
2013-14	13	3.0%	7	18.0%	3	15.8%	3	1.0%	0	0.0%
2014-15	11	3.0%	6	18.8%	2	11.8%	2	1.0%	1	1.9%

OCR determined that in both 2013-14 and 2014-15, over half of the students suspended were African-American, although they constituted less than ten percent of the total student enrollment in both years. While only three percent of total student population was suspended during the 2013-14 and 2014-15 school years, almost twenty percent of

⁵ Percentage of total students in each category who were suspended.

the African-American students faced suspension. OCR determined that African-American students were disproportionately represented to a statistically significant degree in the proportion of students who were disciplined during the 2013-14 and 2014-15 school years.

A review of the “Notice of Suspension” forms by OCR showed that all the suspensions in 2013-14 involved infractions of either disruption/insubordination or fighting. Five out of the eight suspensions of African-American students, and two of the six suspensions of white and Asian-American (Hmong) students were for disruption/insubordination. Most of the incidents of disruption/insubordination involved students hitting classmates or hitting, kicking, or scratching staff. Six out of the thirteen students who were suspended were very young and either in kindergarten or first grade. One African-American kindergartener was suspended on two occasions.

A review of the suspensions in 2014-15 school year showed that most of the suspensions involved fighting, but two suspensions (one of a white student and one of an African-American student) involved sexual harassment and two suspensions (both of African-American students) involved defiance, without hitting or fighting. While there were fewer younger students suspended than in 2013-2014, two first grade African-American students were suspended twice.

OCR’s review of the suspension records for all three school years did not reveal evidence of different treatment of students with respect to the number of days of suspension among those who were actually suspended. Most students, regardless of race, received similar suspensions for similar acts. For example, an African-American student who was disruptive and insubordinate was given a two-day suspension and a white student who was disruptive and insubordinate was also given a two-day suspension. With one exception (a white sixth grade student who was suspended for four days in 2013-14), all students were suspended for either one or two days. The Academy provided OCR with incomplete information about the race/ethnicity of students, alleged discipline infractions, and disciplinary actions taken on its referral slips. The Academy expressed an interest in resolving the complaint, and so OCR did not engage in further investigation to determine whether students who were referred for similar incidents, but not suspended, were treated differently by race.

Recent Efforts

As a result of the Report completed in response to the complainant’s internal complaint, the Academy hired a consultant in 2014 to study the school climate and provide cultural sensitivity training for all Academy staff, administrators, and parents/family on these issues. The Academy’s consultant conducted an audit in the spring/summer 2014 that included reviews of school test results, interviews with teachers, students and parents. An audit report with recommendations was submitted on August 8, 2014 to the Academy and the Collective. The audit report made recommendations in the areas of instructional equity, guidance and student support, co-curricular equity, rewards and recognition, school ambience, home/school relations, shared leadership/staff access

and equity, and faculty and staff support for school wide cultural competency. In the area of student discipline, the audit report recommended the creation of a school-wide discipline committee. The discipline committee was to develop a uniform behavior management system, re-write discipline policies, revise procedures to address student name-calling, and to replace the existing behavior management system with a methodology that includes a restorative justice component. The discipline committee would also develop protocols on the removal of students from classrooms for poor behavior. The committee would further investigate perceptions among students that Hmong students are treated more favorably by the Academy's administrators. At the time of this letter, the Academy continues to work with its consultants to develop the new discipline procedures and approaches to positive school climate and student discipline.

Conclusion

OCR's investigation revealed that the Academy had adopted policies and procedures designed to minimize negative behavior and to outline school rules and progressive consequences for infractions. OCR found that the policies did not specifically define most infractions or differentiate the consequences for any of them. Interviews with teachers revealed significant differences among their approaches to discipline, including whether they referred students to the principal for discipline or addressed all issues in their own classrooms. OCR found little evidence that the escalating series of consequences for misbehavior outlined in the behavior policy were applied as written.

OCR's review of suspension data revealed significant disparities between the rate of suspension for African-American students and those of other students. Because the Academy did not maintain records that indicated the race/ethnicity of students who were referred for discipline or the disciplinary action (short of suspension) that was taken in response to student misbehavior and because the Academy request to resolve the complaint prior to conclusion of the investigation, OCR did not reach a conclusion as to whether African- American students were referred for discipline more often than other students, whether they received similar consequences for infractions, or whether the application of progressive discipline was applied equally to students of all races/ethnicities. Similarly, due to the absence of documentation of so-called "early dismissals" and the Academy's request to resolve the matter, OCR did not reach a conclusion with respect to whether African-American students were excluded from instruction through this practice more often than other students of different races.

On October 15, 2015, the Academy submitted the enclosed Agreement that is intended to, when fully implemented, resolve the issues in this complaint.

The Agreement requires the Academy to take steps to ensure that students of all races are treated equitably and fairly in the area of discipline. Pursuant to the Agreement, the Academy committed to designate an employee to serve as the Academy's Discipline Supervisor and oversee the implementation of the Academy's discipline policies and procedures in a fair and equitable manner for all students, regardless of race. The

Academy will also consult with and, as necessary, retain an expert or experts in non-discriminatory discipline practices to provide strategies for the Academy to meet its goals of ensuring that discipline is appropriately and equitably applied to all students, regardless of race.

OCR's Agreement reinforces Title VI's prohibition on the different treatment of students on the basis of race in the administration of discipline and on the use of facially neutral policies and procedures that have an unjustified effect of discriminating against students on the basis of race. The Agreement requires that the Academy, in consultation with the Discipline Supervisor and/or expert(s), examine the root cause(s) of the racial disparity in the discipline of its students and identify and, following OCR review and approval, take appropriate corrective actions necessary to address the root causes(s) in order to meet its goals of ensuring that discipline is appropriately and equitably applied to all students. The Agreement also states that, prior to the conclusion of OCR's monitoring of the Agreement, the Academy will provide documentation establishing that any remaining disparities in disciplinary referrals and/or sanctions are not the result of discrimination prohibited by Title VI.

Further, the Agreement requires the Academy to work with an expert to identify what is contributing to the relatively high rate of suspension for African-American students, how procedures and practices can be modified to minimize the disparity, and what modifications or alternatives to its current program are needed. The study will require the Academy to take the following steps:

- Analyze data and review behavior policies and practices;
- Hold school forums that allow students to discuss discipline-related issues;
- Hold a school forum for parent input, conduct a climate survey (or look at results of prior surveys);
- Evaluate the effectiveness and equitability of current student behavior programs;
- Use results from the preceding actions to create a plan for identifying and addressing the causes of disparity and developing effective and positive alternatives to discipline; and
- Work with the expert to develop a plan for school-based services for students experiencing social or emotional challenges from events outside of school, and to provide supports for students whose behavior is repeatedly disruptive.

In addition, under the Agreement, the Academy will revise its discipline policies to make sure they align with the results of the review described above, provide due process and alternatives to exclusionary discipline, and clearly prohibit the kinds of informal suspensions that OCR observed, which authorized the Academy to send students home from school without formally suspending them; the Academy will provide appropriate notice to parents and guardians of its newly revised conduct rules, discipline policies and procedures and the right to file discipline-related complaints with the Academy.

Under the Agreement, the Academy will establish uniform standards for the content of student discipline files and/or records to ensure accurate and complete records.

Further, the Academy will collect and evaluate on an annual basis data regarding all referrals for student discipline. At the conclusion of each semester, Academy administrators will study its discipline data and discuss with staff strategies for teaching, encouraging and reinforcing positive student behavior. The meeting will also consider any data or other information showing any evidence of disproportionate referrals for discipline for specific racial groups. If the data shows such disproportions, the principal and staff will identify and implement remedial measures. The Academy will annually report to OCR on its data, analysis of disproportionality, and any steps taken to address concerns.

Finally, the Academy committed to provide initial and annual training for staff on discipline policies, behavior intervention programs, classroom management, and positive and restorative behavior programs. The Academy further committed to train students on expectations on behavior and consequences in an age-appropriate, easily understood manner. OCR will also provide the Academy with training on investigating complaints of racial discrimination, including complaints of racial harassment.

Based on the commitments the Academy has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this case.

The Academy has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the Academy has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the Academy has complied with the terms of the Agreement and is in compliance with Title VI.

If the Academy fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the Academy written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an OCR complaint investigation. It 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.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Additionally, 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.

OCR greatly appreciates the ongoing cooperation received from the Academy during the investigation and resolution of this case. If you have any questions, please contact Ava De Almeida Law, Investigator, at (415) 486-5513 or Kana Yang, Attorney, at (415) 486-5382.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure