



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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November 7, 2016

Dr. Eliseo Dávalos
Superintendent
Stockton Unified School District
701 N. Madison Street
Stockton, California 95202

(In reply, please refer to OCR Docket Number 09-14-1216.)

Dear Superintendent Dávalos:

On March 5, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Stockton Unified School District (District) filed by the Complainant on behalf of the Student and all students with disabilities in the District.¹ The Complainant alleged that the District discriminated against the Student and other students in the District on the basis of disability. Specifically, OCR investigated whether:

1. the District denied the Student a free appropriate public education (FAPE) by 1) subjecting the Student to a significant change in placement without first conducting an evaluation to determine the appropriateness of the placement; 2) failing to evaluate the Student in all areas of suspected disability; 3) failing to implement the Student's IEP/behavior support plan; and/or 4) failing to provide the Student with educational services for over 20 days;
2. the District subjected the Student to disparate discipline on the basis of his disability; and
3. the District subjects students with disabilities to discrimination on the basis of disability by disciplining them more frequently and more harshly than similarly situated non-disabled students.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of Federal financial assistance from the Department. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination based on disability by public entities. The District is a recipient of Federal financial assistance from the Department and a public education entity. Therefore, the District is subject to the requirements of Section 504, Title II, and the regulations.

To investigate this complaint, OCR conducted two on-site visits, interviewed more than 20 school site and District staff members, reviewed publically available information regarding the issues, and all of the documentary evidence provided by the Complainant and in the District's response to OCR's data request. After careful review of the information gathered in the investigation, OCR concluded that, with respect to allegation 1, the preponderance of the evidence is sufficient to support a conclusion of non-

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

compliance with Section 504, Title II and the regulations. With respect to allegations 2 and 3, prior to the conclusion of the investigation, the District voluntarily agreed to address the areas of concern identified by OCR through the enclosed Resolution Agreement (Agreement). The legal standards, findings of fact, the reasons for OCR's determinations and the terms of the Agreement are summarized below.

Findings of Fact for Allegations 1 and 2

Student Background Information

- The Student attended the school of his residence (School) during the 2012-2013 school year as a kindergartner and for part of his first grade year until November XX, 2013. In December 2013, he enrolled in another District school (New School).
- The Student is eligible for special education services under the category of speech or language impairment (SLI). The Student's IEP states that he has articulation/phonology and language expression delays, and that his speech intelligibility is poor for a known listener in a known context. Although the Student understands what is said to him, he has extreme difficulty trying to convey his daily wants and needs. The Student has limited expressive vocabulary skills and limited expressive ability to use language. According to his IEP, the Student becomes frustrated when he cannot get his meaning across to others and he also has periodic impulsive behaviors.
- District records show that when he was in kindergarten, the School subjected the Student to five days of out of school suspension (OSS) and three days of in-school suspension (ISS). The School also disciplined the Student by assigning detention and weekend school on two separate occasions.
- In the fall of 2013, the Student began first grade. Between September X, 2013 and November XX, 2013, District records show that the School suspended the Student for a total of 30 days. From October XX, 2013 through November XX, 2013, the Student's attendance record shows that he was absent due to a referral for expulsion made by the School. After November XX, 2013, the Student was no longer enrolled at the School. Following the weeklong Thanksgiving break, the Student enrolled in the New School on December X, 2013.

February 2013 Behavior Support Plan

- In February 2013, the District developed a draft behavior support plan (BSP) for the Student, which was finalized on February 28, 2013. OCR reviewed both the draft BSP and the final BSP, and noted that the draft was more substantive and detailed than the final version. After interviewing witnesses present at the BSP meeting, there was no clarification on what prompted the revision.
- The draft BSP states that the Student's avoidance is characterized by "using verbal defiance or physical avoidance by refusing to follow directions." It states that the Student will purposely get into trouble so that he can be sent out of the classroom and to the office, or home, or to the speech room.² The draft BSP also states that the Student reports that he hates school, does not complete in-class work, shoves papers on the floor, rips papers, refuses to take in-class spelling tests, refuses to sit down in his seat, gets out of his seat multiple times in a half hour, takes his shoes on and off during test time, breaks pencils while writing and ignores the "teacher's commands to stop."

² The September 2013 BSP stated that the Student's misbehavior was triggered by threats to send him to the office, home, or the speech room.

- To remove the need for the Student to use the problem behavior, the draft BSP calls for environmental changes including seating in proximity to the teacher or peers in the classroom as well as in the cafeteria and frequent monitoring for attention. It also calls for the teacher to give the Student a list of appropriate behavior choices, reminders of his choices prior to recess, lunch, and lining up, and a five minute transition activity after lunch.
- The draft BSP stated that the teacher would use the following strategies to teach the student replacement behaviors: state the rule the Student is breaking and state the desired behavior with immediate reinforcement for desired behavior (i.e. verbal praise); use a star chart based on on-task behavior; send the charts home daily; and reward the Student as he progressed each week.
- Reactive strategies, or strategies to be employed if the Student's problem behavior continued, included prompting the Student to engage in desired behavior, reminding him to make choices that do not bother others, engaging in a positive discussion with the Student to identify the reason he started the behavior, and having the Student make a statement of responsibility.
- Finally, the draft BSP stated that the teacher would communicate with the Student's parent on a daily/weekly basis by a note or chart being sent home for the parents to sign and return to the teacher the next day.
- The District developed the final BSP on February XX, 2013. The final BSP's description of the behavior impeding the Student's learning included the following:
 - The Student engages in defiant behavior by refusing to follow directions; refuses to sit during carpet time, rolls around on the floor or rolls himself up in the carpet.
 - He yells out, touches other kids, licks his hands and wipes it on other children; sometimes he will kiss, spit at, scratch or dig his nails into other students.
 - When he does not get his way, he will yell out, jump up and down, or kick the table.
 - He leaves designated areas without permission, hides in bushes, crawls under tables, throws food, throws pencils and has been suspended for poking another student with a pencil in her private parts and laughing about it while refusing to stop.
- The final BSP indicated that these behaviors were impeding learning because the Student was not attending to his own learning and distracting others from learning. The behaviors were noted to occur one to five times a day.
- The final BSP noted that the behavior occurred during transition times in the classroom, unstructured activities, and when instructions were given.
- In response to BSP form question: "What supports the student using the problem behavior? (What is missing in the environment/curriculum or what is in the environment curriculum that needs changing?)," the final BSP states that the Student does not yet have the maturity and ability to follow teacher directions when instructed to participate in activities he finds undesirable.
- The final BSP identified the function of the behavior to be avoidance of undesirable activities and replacement behaviors were to "follow teacher directives and to stay in designated areas as well as to learn appropriate behavior by awarding [sic] him immediately."
- The 2013-2014 school year began on August XX, 2013. The Student's attendance profile for the school year shows that:

- between September X, 2013 and November XX, 2013, the Student missed school due to suspension for a total of 30 days;
- from November XX, 2013 through November XX, 2013, the Student was absent due to expulsion; and
- after November XX, 2013, the Student was no longer enrolled at the School.

September 2013 Behavior Support Plan

- The BSP was updated for first grade on September XX, 2013. It differs from the February BSP in its description of the triggers for the Student's behavior and its assessment of the severity of his behavior, and provided a more detailed plan for his instructors to respond to the problem behaviors.
- The September XX, 2013 BSP stated that the behavior which impeded the Student's learning was "assaultive behaviors" which occurred at least one to two times every three days, as reported by general education teachers, campus security assistants (CSAs), school administrators and the speech pathologist. The BSP stated that behavior impeded the Student's learning "because he [was] missing classroom instruction due to suspension (in school and out) causing disruption to his own learning and the learning of his classmates."
- According to the BSP, predictable triggers of the problematic behaviors were threatening to send the Student to the office, calling the Student's parent, sending the Student home, or sending the Student to the speech room. The behavior also occurred when the Student was "caught" for misbehaviors in the cafeteria or school bathrooms and sent to the school office. The BSP stated that the Student "needs a lot of positive attention and more guidance through unstructured times with teacher/staff proximity frequenting [sic] around [the Student]; modified class work given in small chunks; and multiple opportunities to earn choice activities/rewards for appropriate behavior in class; during lunch recess, and transitions."
- The BSP specified that the function of the Student's behavior was attention seeking, and the desired replacement behavior was to "accept appropriate positive attention through behavioral support systems."
- The BSP called for the following environmental changes to remove the Student's need to use the inappropriate behavior: seating with minimal distractions, frequent monitoring by teacher, positive behavior supports within the classroom system, a visual schedule of the day's activities with active breaks in-between, and choice activities.
- The BSP required the following intervention to teach positive replacement behaviors: "[The Student] will be taught positive replacement behaviors. [The Student] will verbally request a specified number of breaks within a given day." This intervention was to be implemented and monitored by the general education teacher, staff, and the Student's parents.
- To reinforce the positive replacement behavior the BSP required that his teachers:
 - use a visual, rainbow reward system for desired behaviors with immediate reinforcement for appropriate behavior (verbal praise, an activity, prize, etc.);
 - modify classroom work into chunks;
 - use a visual timer; and

- give the Student the option to use up to twelve “break cards” per day. A break card provided a five minute break from an activity or the classroom environment. An adult would assist with break times outside of the classroom. Breaks included computer time, physical exercise, time spent reading a book, and quiet puzzles.
- The BSP did not contain information on where he was to go and what he was to do when he used a break card, how the frequency and duration of the breaks would be monitored, how the Student would transition back into the classroom and how lost instructional time due to use of the breaks would be addressed.
- The BSP provided that when cafeteria yard duty staff “catch [the Student] being good”, they can give him a slip of paper to trade for a treasure box prize in the speech room.
- The BSP listed the following reactive strategies to be used if the problem behavior continued to occur:
 - verbal reminders of appropriate positive behavior and the desired rewards;
 - a silent tap on the table;
 - placing the Student in an area accessible to the teacher on a frequent basis;
 - reminding the Student that he can request a break;
 - prompting the Student to make appropriate positive behavior choices along with rewards and consequences;
 - reminding the student to make choices that do not bother others;
 - having a positive discussion with the Student about the reason he engaged in the behavior; and
 - having the Student make a statement of responsibility and discuss more appropriate ways the Student can resolve his behaviors.
- With regard to communication, the BSP required that the Student’s general education teacher send home daily/weekly notes on the Student’s compliance with academic and behavior expectations, which was to be acknowledged by the parent with a return response within a week.
- The District assigned a teacher on special assignment (TOSA) to assist the Student’s first grade classroom teacher with implementation of the Student’s BSP. The TOSA was a former SDC teacher and is a behavior specialist.
- According to the TOSA, the School had primary responsibility for implementing the Student’s BSP. The TOSA’s role was to support and train the classroom teacher until the classroom teacher was able to manage the Student’s behavior on her own.
- The TOSA reported to OCR that based on her observation, a negative environment existed for the Student in his first grade classroom at the School. The classroom teacher had difficulty understanding and implementing the BSP and did not track behavioral information as required by the BSP.
- The Student’s classroom teacher (Teacher) acknowledged to OCR that she was not sure whether she was supposed to be tracking the Student’s behavior and that she did not do so because it was impossible to spend so much time on just one student.

- The Teacher reported to OCR that the Student's BSP caused other students to be jealous of the Student and hate her because she had to give the Student special treatment. The classroom teacher acknowledged that she was skeptical about the BSP reward system.
- The Teacher also reported to OCR that she insisted on having the Student's mother sit with him in class and shared her speculation that a therapist who had come to class to observe the Student left and never came back because the Student was "so bad."
- The Teacher informed OCR that she attempted behavior interventions that were not in the BSP, such as frequently pulling the Student out of class to talk with him and separating the Student from his peers by moving him to the front of the class.
- The Teacher told OCR that ultimately she would just send the Student to the office because the Student's BSP was completely ineffective. The classroom teacher reported to OCR that once she sent the Student out of her classroom, his behavior was no longer her problem.
- The Teacher informed OCR that she was glad the Student was removed from her classroom.

Post-September BSP Incidents and Behavioral Interventions

- On September XX, 2013, the Student was suspended for three days for hitting the School principal. The principal requested a manifestation determination at his next IEP meeting on September XX.
- On September XX, 2013, the IEP meeting was held, but "not consummated" because the Student's parent had to return to work.
- On October X, 2013, the School principal called the police because the Student was causing disruption in the school office. The School principal reported to OCR that the Student kicked and struck a noon duty aide; kicked the principal; ran around the office turning electronic equipment on and off; and could not be calmed down. The Student was suspended for five days following this incident.
- On October X, 2013, the District convened an IEP manifestation determination meeting for the Student because by then he had been suspended 16 days for "assaultive behaviors." Participants included the Student's parents, his teacher, the speech therapist, two District program specialists, the principal, school psychologist and resource specialist.
- At the manifestation determination meeting, the Student's parents reported their concern with the police being called on the Student and indicated that in the future they would like to be called first, and be present if the police are talking to the Student.
- The manifestation determination team concluded that the conduct in question was the direct result of a failure to implement the IEP/BSP. The manifestation determination form states that a Functional Behavior Assessment (FBA) would be conducted. Parents agreed with the manifestation determination and signed an assessment plan to determine if there were additional needs or supports. The team agreed to change the BSP for further clarification.
- On October XX, 2013, the School principal once again called the police and specifically requested that they remove the Student for a 5150³ hold. According to one of the police officers who

³ Section 5150 is a section of the California Welfare and Institutions Code (specifically, the Lanterman–Petris–Short Act or "LPS") which allows a qualified officer or clinician to involuntarily confine a person suspected to have a

responded to the call, he and one other police officer responded to the call. At the time the officers arrived, the Student was playing on the jungle gym outside being observed by the principal and two to three other staff members. No other students were outside. One of the officers spoke with the principal and the other officer approached the Student. The officer who approached the Student asked him what had happened. The Student told the officer he had not wanted to do what the class was doing; his teacher said he had to. The Student took off his shoes and the teacher angrily forced his shoes back on. The Student then left the classroom. The police officer gave the Student a hug after the Student had told him what happened and played with the Student on the jungle gym.

- The police officers concluded that the Student was calm, articulate, did not present a danger to self or others and that there was no basis to “5150” the Student. The officer told OCR that he believed the principal seemed to have an “agenda.”
- According to the police officer, they are rarely called to elementary school sites and that if they are, it is typically due to the presence of an abusive parent. The officer stated to OCR that he believed it was inappropriate for the principal to have called the police about the Student’s behavior.
- On October XX, 2013, the Student’s parents were notified that the Student would be recommended for expulsion. The School’s basis for the recommendation for expulsion were the following incidents that occurred on October XX, 2013:
 - The Student refused to follow a Campus Security Assistant’s directive to return to class. The principal was notified, came to assist and told the Student to return to his classroom and threatened to call his father. Once the Student was in the class room, he deliberately knocked over equipment and rolled on the carpet before going to his desk.
 - During lunch, the Student used an open hand to slap another student across the face three times.
 - After lunch in the classroom, the Student ran around, knocked over furniture, punched buttons on the desk top computers, disconnected equipment, slammed down the tops of student lap tops and used his fists to bang on each one. The principal was called to assist and led the Student from the classroom by taking “the middle of the back of his shirt.”
 - Once out of the classroom, the Student then hit the behavioral therapist and AP multiple times and the principal once. The Student also shoved the AP into a fence. The School called the District police and the behavioral therapist sought to have the police escort the Student to Mental Health for an evaluation.
- Additionally, the School noted that during the 2013-2014 school year up until October XX, 2013, the Student kicked, hit, spit and threw water at staff including the noon duty staff, the principal, assistant principal, behavioral therapist, speech therapist, resource teacher, campus security assistant and special education program specialist. The Student similarly physically engaged students from all three first grade classes “on an ongoing basis.”
- The School concluded that Student’s presence at the School jeopardized the safety of students, staff and parents and placed the District and School staff in a position of possible litigation if the School cannot guarantee the safety of students, staff, parents and visitors.

mental disorder that makes him or her a danger to self, a danger to others, and/or gravely disabled. A qualified officer, which includes any California peace officer, as well as any specifically designated county clinician, can request the confinement after signing a written declaration.

- On or around October XX, 2013, the Student was diagnosed by a private physician with Combined type Attention Deficit Hyperactivity Disorder (ADHD).
- On October XX, 2013, the School suspended the Student for five days and extended the expulsion pending a District decision on the School's recommendation for expulsion.
- On November XX, 2013, the District notified the Student's parents that the School principal requested the District's Board of Education expel the Student for the following reasons: 1) willfully used force or violence upon another person; 2) disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, or school officials or other personnel engaged in the performance of their duties; and 3) assault or battery upon school employees. A hearing was set for December X, 2013.
- On November XX, 2014, the District held another manifestation determination IEP. Participants included the Student's parents, the principal, the Student's teacher, a special education administrator, school psychologist, program specialist, the speech teacher and an RSP teacher.
- The manifestation determination team concluded that the Student's behavior was caused by or had a direct substantial relationship to his disability, noting that the Student had recently been diagnosed with ADHD and that the Student's behavior plan would be reviewed and modified as necessary. However, the manifestation determination form also indicated that the School/District would "proceed with disciplinary proceedings, all conditions have been met. (Behavior not a manifestation of student's disability, student understood impact and consequences of behavior, student could control behavior, and services and supports were correct at time of incident)."
- The Student's IEP was updated on November XX, 2013 and stated that the Student's recent diagnosis of ADHD (October XX, 2013) "affects his ability to be on task within the classroom setting. His lack of impulsivity control also affects his ability to remain on-task with appropriate behavior. [Student] is both inattentive and hyperactive within the school [sic] setting to the extent that accomplishing [sic] classwork and following classroom rules is difficult for him."
- The IEP shows that the Student's SLI is his primary disability, and his ADHD is his secondary, "Other health impairment (OHI)." The team agreed to change the Student's evaluation date to November XX, 2013, making this IEP the Student's triennial.
- The District's offer of FAPE was general education with speech and language services. The notes show that an IEP was to be scheduled with a new IEP team at the Student's new school site for the purpose of reviewing the Student's IEP and services. The BSP was updated on November XX, 2013.
- The Student enrolled in the New School on December X, 2013. During the remainder of the 2013-2014 school year, the Student engaged in four incidents that each resulted in a one-day suspension. One incident involved hitting other students and being so disruptive that other students had to be evacuated from the classroom. The others involved a physical interaction with an adult.
- On December XX, 2013, an IEP was convened at the New School for the purpose of conducting a manifestation determination with regard to a suspension that occurred on December X, 2013. According to a District school psychologist, once a student with a disability has been suspended more than ten days, a manifestation determination meeting will be held for every subsequent suspension. The IEP team determined that the conduct in question was caused by or had a direct and substantial relationship to the Student's disability of ADHD. Additionally, the IEP team

determined that the expulsion request made by the former School principal would be revoked. The IEP team would reconvene to discuss placement and services.

- The TOSA reported at the December XX IEP that she was keeping data on the Student's behavior regarding the number of prompts needed to redirect the Student's behavior. The Student's parent indicated that similar behavior interventions were being implemented at home and that the Student loved the New School. New reinforcement suggestions for the BSP were discussed.
- The TOSA reported to OCR that in contrast to the Student's first grade teacher at the School, his teacher at the New School implemented the Student's BSP effectively. The TOSA indicated that she fairly quickly transitioned out of the Student's classroom because her direct support was no longer needed.
- The New School teacher reported to OCR that the Student's difficulty with articulation was one of his behavior triggers because the Student would become frustrated when he could not articulate his thoughts. The New School teacher told OCR that she responded to this by providing alternative strategies to support communication including writing and use of visual images. The New School teacher also indicated to OCR that the Student would get frustrated because he was far behind academically, and he lacked sufficient impulse control to handle his frustration. The New School teacher informed OCR that on a behavioral level, the Student became fully integrated into the classroom but that academically, the Student was trying to cover up how far behind he was which made it harder for him to learn.
- The New School teacher informed OCR that the Student's behavior improved with these changes and additional changes that were made to the BSP. However, once the Student started prescription medication for ADHD, his behavior improved to such an extent that the New School teacher realized that the Student's behavior had been a physiological response that he could not control. When the Student was able to be calm physiologically, he was more available to receive instruction.
- The New School principal reported to OCR that the Student has had no behavioral problems during the 2014-15 school year as a second grader. The principal told OCR that the Student remains behind academically but is in the new School's intervention program where he is making progress. The intervention program is phonics-based, small-group instruction. The Student continues to receive speech therapy.
- According to the data provided by the District, during the 2013-14 school year, the Student was suspended more frequently than any other first grade or kindergarten student at both the School and the New School.

Special Education Policies and Procedures

- The District's administrative regulation for Section 504, Administrative Regulation (AR) 6164.6, provides that "[e]ligibility to receive FAPE under Section 504 means a student has a physical or mental impairment which substantially limits one or more major life activities, or has a record of such an impairment."
- AR 6164.6 provides that "any student not served under IDEA, who may need or is believed to need special education or related services, may be referred...for consideration of eligibility for Section 504 accommodations and/or services."
- AR 6164.6 further provides that after a student is referred for services, "the principal or site 504 Coordinator will promptly consider the referral and make a decision as to whether an evaluation

under this procedure is appropriate. This determination shall be based on a review of the student's records, including academic, social and behavioral records; student's behaviors which interfere with participation in regular education; consultation with the student's teacher(s), other professionals, and the parent/guardian, as appropriate, and analysis of the student's needs."

- AR 6164.6 requires that the District conduct an evaluation of the student prior to an initial placement or change in placement if it is determined that the "student needs or is believed to need special education or related services under Section 504..."
- With regard to review and reevaluation, AR 6164.6 requires that a 504 team review the student's plan at least annually, and that "[p]rior to any significant change in the educational placement of a disabled student, the district will conduct a reevaluation of the student's needs."
- According to AR 6164.6, if it is determined that the student should be referred for IDEA eligibility, then IDEA evaluation procedures will take precedence. Additionally, if a student is referred for special education evaluation under IDEA while he or she has a 504 plan in effect, the 504 plan will remain in effect "until and unless the IEP team writes an alternative plan."
- AR 6164.4 provides that "[a] student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate."
- AR 6159 requires that an IEP team meet "[w]henver the student demonstrates a lack of anticipated progress" and at least annually to "determine whether the student's annual goals are being achieved" and "[r]eview the IEP and the appropriateness of placement." AR 6159 also requires that in developing or revising the IEP, the IEP team consider "[i]n the case of a student whose behavior impedes his/her learning or that of others...positive behavioral interventions, strategies, and support to address that behavior." AR 6159 provides that the student's teacher "participate in the development, review and revision of the student's IEP, including assisting in the determination of...[a]ppropriate positive behavior interventions and strategies for the student."

Discipline Policies and Procedure: Behavioral Interventions for Special Education Students

- AR 6164.6 contains the District's disciplinary policies regarding students with disabilities pursuant to Section 504. It provides that such students are subject to the same grounds for suspension and expulsion which apply to students without disabilities.
- According to AR 6164.6, a student covered under Section 504 "may be suspended for up to 10 consecutive school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension does not constitute a change in placement."
- Whether or not disciplinary actions against the student constitute a change of placement must be determined on a case-by-case basis. Nonetheless, when any student is "subjected to a series of removals" that exceeds 10 days it "may constitute a pattern of removal that would constitute a significant change in placement. This determination must be made in light of facts such as the (i) the [sic] length of each suspension, (ii) the proximity of the removals to one another, and (iii) the total amount of time the student is removed from school."
- AR 6164.6 requires that a 504 team conduct manifestation determination "when a student with a disability is suspended for more than 10 consecutive school days, when a series of removals of a

student constitutes a pattern of removal, or when an expulsion is proposed due to a violation of the district's code of conduct.”

- AR 6159.4, the District's policy concerning behavioral interventions for special education students, provides that “[a] special education student's behavior shall be subject to the disciplinary measures applicable to all students for such infractions unless it is a serious behavior problem...[m]ore serious behavioral problems shall be addressed through the systematic use of behavioral and emergency interventions...”
- AR 6159.4 defines a serious behavioral problem as a behavior that is self-injurious, assaultive, causes property damage, or is “pervasive and maladaptive for which instructional/behavioral approaches specified in the student's individualized education program (IEP) are found to be ineffective.”
- When a special education student's serious behavioral problem significantly interferes with implementing the goals and objectives of his IEP, the student's IEP team shall determine whether the instructional/behavioral approaches specified in the student's IEP have proven ineffective. If ineffective, a functional analysis assessment will be conducted by, or under the supervision of, a person with documented training in behavior analysis with an emphasis on positive behavioral interventions.⁴
- The parent/guardian must be given a complete written report of the assessment which includes, among other things, a description of the nature and severity of the targeted behavior(s) in objective and measurable terms, and a proposed behavioral intervention plan for consideration by the IEP team.
- AR 6159.4 also maintains that “[w]ithin 10 business days after removing a student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement, the district shall implement a behavioral intervention plan in accordance with 34 CFR 300.520, Board policy and administrative regulation.” *See also* AR 5144.2.
- A written behavioral intervention plan includes the following: 1) a summary of information gathered from the functional analysis assessment; 2) an objective and measurable description of the targeted maladaptive behavior and replacement positive behavior; 3) the student's goals and objectives specific to the behavioral intervention plan; 4) a detailed description of interventions to be used and the circumstances for their use; 5) schedules for recording the frequency of intervention use and the frequency of the targeted and replacement behaviors, including criteria for replacing or discontinuing an ineffective intervention; 6) phase-out procedures; 7) Description of behavioral interventions which will be used in the home or other noneducational [sic] settings; 8) dates for periodic review of the efficacy of the program; and 9) the frequency of consultations with the behavioral intervention case manager⁵ and individuals responsible for implementing the plan.

⁴ In a functional analysis assessment, the staff will: 1) observe the targeted inappropriate behavior, its frequency, duration and intensity; 2) observe events immediately preceding the behavior; 3) observe the consequences of the behavior to determine the purpose it serves for the student; 4) analyze the environment in which the behavior most frequently occurs; 5) analyze records for medical and health factors which may influence behavior; and 6) review the history of the behavior, including the effectiveness of interventions used in the past.

⁵ Behavioral intervention case manager is a designated certificated school/ district/county staff member or other qualified personnel contracted by the district or county office, and trained in behavior analysis with emphasis on positive behavioral interventions. OCR notes that state law has changed since the review of the District's policies.

- If the IEP team determines that changes in the behavioral intervention plan are necessary, the teacher and behavioral intervention case manager shall conduct additional functional analysis assessments and, based on the outcomes, propose changes to the plan.
- “Emergency interventions not specified in a student’s behavioral intervention plan shall be used only when necessary to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the student or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Emergency interventions shall not be used as a substitute for systematic behavioral intervention plans.”

Suspensions and Expulsions

- AR 5144.2 is the District’s policy concerning suspensions and expulsions of students with disabilities. It provides that students with disabilities are subject to the same grounds for suspension and expulsion that apply to students without disabilities.
- AR 5144.2 also provides that the district has knowledge that a student has a disability if one of the following conditions exists: 1) the parent/guardian has expressed concern that the student is in need of special education or related services; 2) the behavior or performance of the student demonstrates the need for such services; 3) the parent/guardian has requested an evaluation of the student for special education; or 4) the teacher of the student or other district personnel has expressed concern about the behavior or performance of the student to the district's director of special education or to other appropriate personnel.
- If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities.
- The Superintendent or designee may suspend a student with a disability for up to 10 consecutive school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) do not constitute a change in placement pursuant to 34 CFR 300.519.
- Students suspended for more than 10 school days in a school year shall continue to receive services during the term of the suspension, to the extent necessary to provide the student a free and appropriate public education.
- Under certain circumstances, a hearing officer may order a change in placement of a student with a disability to an appropriate interim educational setting.
- The District also provided OCR with a copy of its “Expulsions Proceedings” Manual, which contains information relevant to the discipline of students with disabilities. It requires that any school that plans to expel a student with a disability must hold an IEP team meeting or 504 Plan “to review the circumstances of the conduct and determine that the misconduct was or was not caused by, or had a direct and substantial relationship to the student’s disability and that the misconduct was not the direct result of the district’s failure to implement the I.E.P.”

Allegation 1: Whether the District denied the Student a FAPE during the 2013-14 school year by 1) subjecting the Student to a significant change in placement without first conducting an evaluation to

determine the appropriateness of the placement; 2) failing to evaluate the Student in all areas of suspected disability; 3) failing to implement the Student's IEP/behavior support plan; and/or 4) failing to provide the Student with educational services for over 20 days.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Section 504 regulations, at 34 C.F.R. §104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before initially placing the student and before any subsequent significant change in placement. Under subsection (b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Subsection (c) requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources that is carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations in disciplining disabled students. The exclusion of a disabled student from his or her program for more than ten consecutive days, or for more than 10 cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not

found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Analysis & Conclusions of Law

In this case, OCR found that the preponderance of the evidence is sufficient to support a conclusion that the District violated Section 504, Title II and the regulations because the Student was subjected to: 1) a significant change in placement without first conducting an evaluation of the Student, 2) the District failed to assess the Student in all areas of suspected disability, 3) the District failed to implement the student's IEP and BSP, and 4) the District failed to provide the student with special education and related services for 30 days.

1) Change in placement

Under Section 504 and Title II school districts are prohibited from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. The exclusion of a disabled student from his or her program for more than ten consecutive days, or for more than ten cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement.

OCR determined that due to disciplinary actions, the District excluded the Student from his educational program for more than ten days prior to the District conducting a re-evaluation of the Student. By October X, 2013, when the District first convened an IEP manifestation determination meeting for the Student, he had been suspended 14 days. Moreover, although the October X, 2013 IEP team determined that the Student's conduct was related to the failure to implement the Student's IEP/BSP and called for an FBA to be conducted, the District continued to subject the Student to exclusionary discipline prior to conducting the FBA or other evaluation of the Student. Between October X, 2013 and November XX, 2013 when the District convened a second manifestation determination IEP, which also became the Student's triennial IEP, the District, including suspensions and suspension pending expulsion, excluded the Student 16 additional days. Thus, from the beginning of the school year until November XX, 2013, the Student was excluded from school for a total of 30 days due to disciplinary reactions to his behavior.

For the reasons stated above, OCR concluded that the preponderance of the evidence was sufficient to conclude that the District subjected the Student to a significant change in placement without first conducting an evaluation of the Student in violation of Section 504, Title II and their implementing regulations.

2) Failure to evaluate

OCR determined that the District failed to evaluate the Student in all areas of suspected disability in a timely manner. The District had a reasonable basis to suspect that the Student's behaviors were related to disability beginning when the Student was in kindergarten. Although the District developed a BSP for the Student when he was in kindergarten, the Student presented ongoing behavior challenges that were not responsive to the BSP interventions indicating the need for further assessment. Rather than evaluating the Student's behavior to identify its function, triggers and effective interventions, a pattern of subjecting the Student to disciplinary exclusion for his behavior began when the Student was in kindergarten at the School and continued into first grade. By the time the Student had completed kindergarten, he had been subjected to in-school or out of school suspensions for a total of eight days. Prior to the Student's triennial IEP in first grade, the Student had been subjected to 30 more days of suspension for similar behavioral issues (and two referrals to police). Moreover, despite having difficulty sustaining his attention and managing impulsivity, rather than evaluate the Student for attention

disorders, the District relied on the Student's parent to get a medical evaluation and diagnosis. Because the Student's behavioral challenges from kindergarten continued as soon as he began first grade, the District had sufficient information to warrant reevaluating the Student as early as August of 2013. Therefore, OCR concluded that the preponderance of the evidence was sufficient to support a conclusion that the District failed to evaluate the Student in a timely manner in violation of Section 504, Title II and their implementing regulations.

3) Failure to implement the Student's IEP/BSP

The District failed to ensure that the Student's IEP was implemented at the School. In particular, the District failed to implement the Student's BSP, which was a part of his IEP. The Student's first grade teacher admitted that she was unsure of how to implement the BSP and that she did not do so because it was impossible to spend so much time on just one student. The Teacher told OCR that rather than use the "break card" accommodation to provide the Student with a break in accordance with his BSP, she instead used the accommodation to send him out of class whenever he requested to leave the classroom. As a result, the student was disciplined by other school staff when found outside of class. The TOSA reported to OCR that based on her observation, a negative environment existed for the Student in his first grade classroom at the School, and the teacher had difficulty understanding and implementing the BSP. In addition, during the October X, 2013 manifestation determination meeting, the District's IEP team concluded that the Student's IEP had not been properly implemented. Therefore, OCR concluded that the Student's IEP was not implemented during the 2013-14 school year.

4) Failure to provide the Student with special education and related services

The District excluded the Student from the instructional setting during the 30 days the Student was suspended from the School and did not provide the Student with any educational or speech therapy services during this time, as required by his IEP. According to the Student's first grade teacher at the New School, the Student was far behind and struggling. His first grade report card indicated that the Student was below basic proficiency in reading and writing, far below basic proficiency in listening and speaking, and below grade level proficiency in math, life science, and social studies; the Student's teacher at the New School also identified that the fact that he was so far behind was a trigger for his behaviors.

Based upon the foregoing, OCR determined that the preponderance of the evidence was sufficient to conclude that the District denied the Student a FAPE.

Allegation 2: Whether the District subjected the Student to different treatment in discipline on the basis of his disability.

Legal Standard

Under the Section 504 regulations at 34 C.F.R. §104.4(a) and (b), no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities.

To determine whether a school district has subjected a student to different treatment on the basis of disability in the discipline process, OCR looks at whether there is evidence that the student was treated differently than students who do not have a disability under similar circumstances, and whether the

treatment has resulted the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. To find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's disability.

Analysis & Conclusions of Law

OCR considered a number of factors to determine whether the District subjected the Student to different treatment in the imposition of discipline on the basis of his disability. According to the manifestation determination meetings, the behavior for which the Student was disciplined was related to his disability. The data also showed that the District suspended the Student more frequently than any other first grade or kindergarten student at the School and referred him for expulsion. In addition, the School subjected the Student to two law enforcement referrals, which according to the police officer interviewed by OCR, is an extremely rare course of action for elementary students, particularly kindergarteners and first graders.

In determining that the District subjected the Student to different treatment in discipline on the basis of his disability, OCR also considered pattern and practice evidence regarding discipline of students with disabilities in the District. The 2011 available CRDC data showed that at that time the District disciplined students with disabilities at a higher rate than any other demographic category of students with respect to all forms of discipline.

The District told OCR that its non-discriminatory reason for subjecting the Student to multiple suspensions, law enforcement referrals and expulsion was safety. However, OCR's investigation to date raised concerns that this reason was pretextual based on evidence gathered that the School was intentionally taking steps to exclude the Student from the School for behavior related to his disability without addressing the underlying disability through proper evaluation and implementation of his IEP and BSP. For example, the Student's teachers in first grade, based upon the Student's disability-related behavior, described the Student as "so bad" and told OCR that she was glad he was removed from her classroom. The responding police officer to the School's request for an involuntary hold believed there was no basis for the request and informed OCR that he thought the referral was inappropriate and that the principal had an "agenda" to remove the Student from the School. Furthermore, although the Student engaged in similar behavior when he first transferred to his current school, staff there safely managed the Student's behavior without resorting to such frequent use of suspensions or calling the police.

In order to complete its investigation, OCR would need to review individual incidents of discipline for nondisabled students with similar behaviors and discipline histories to the Student at the School and in the District to further assess whether the Student was treated differently on the basis of disability. Prior to concluding its investigation of this allegation, the District expressed an interest in resolving the complaint through a voluntary resolution agreement. As discussed further below, the resolution agreement is aligned to address the concerns raised during OCR's investigation.

Allegation 3: Whether the District subjects students with disabilities to discrimination in discipline on the basis of disability.

Legal Standard

Section 104.4(b)(4) of the Section 504 regulations provides that a recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration which have the effect of subjecting qualified disabled individuals to discrimination on the basis of disability. The Title II regulations contain a similar provision at 28 C.F.R. §35.130(b)(3).

To determine whether a school district's policy or practice has an unlawful disparate impact on the basis of disability, OCR examines: (1) whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students with disabilities; (2) whether there is a substantial, legitimate justification for the policy or practice; and (3) if so, whether there is an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the school district's objectives.

In this regard, if a challenged criterion, policy, practice, or procedure has a disparate impact on students with disabilities on the basis of disability, OCR will determine if there is sufficient evidence to show that the school's criterion, policy, practice, or procedure is necessary to advance a legitimate, nondiscriminatory educational goal. In this context, when analyzing whether a school has justified its use of a policy as necessary to advance a legitimate, nondiscriminatory educational goal, OCR will consider both the legitimacy of the school's articulated goal and the tightness of the fit between that goal and the means the school has adopted to achieve that goal.

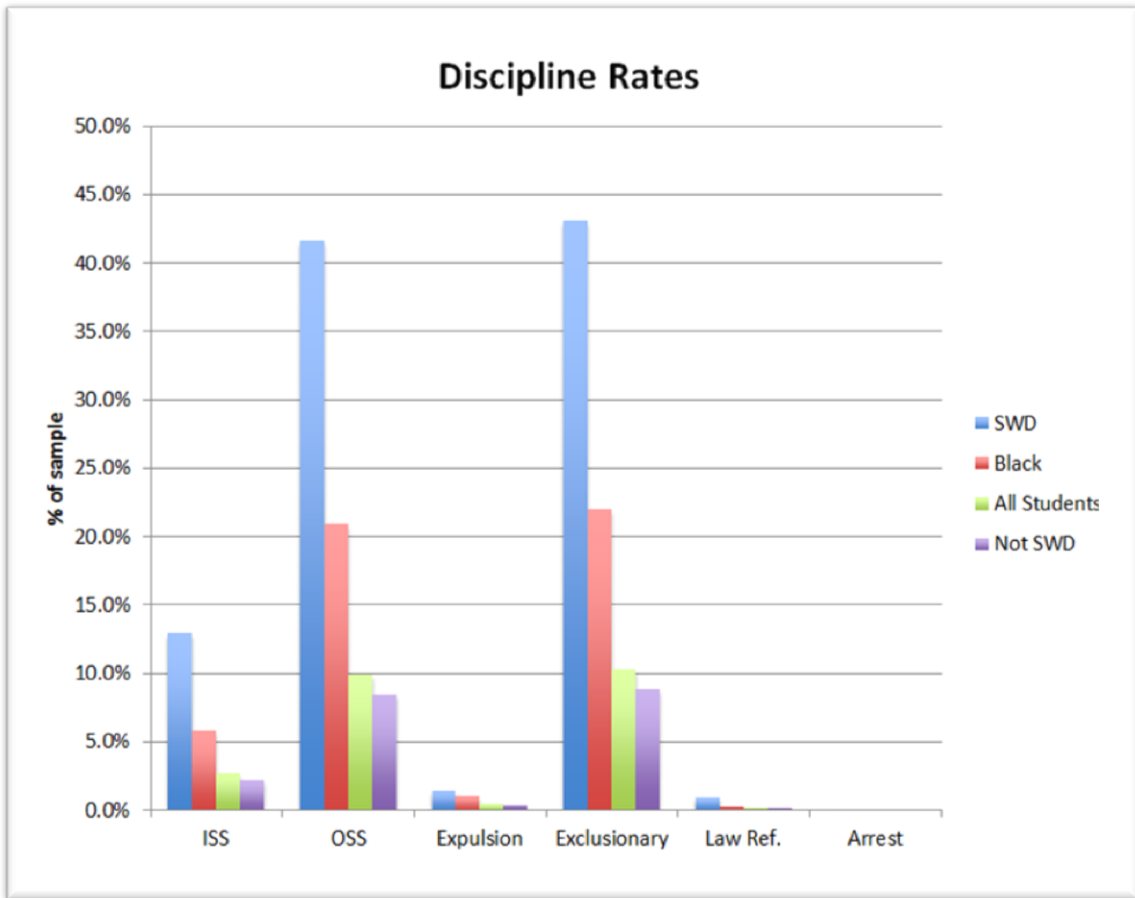
If OCR finds that that the criterion, policy, practice, or procedure is necessary to advance a legitimate, nondiscriminatory educational goal, OCR will consider whether there is sufficient evidence to show that there is a comparably effective alternative criterion, policy, practice, or procedure that would achieve the school's goal with less disparate impact.

Findings of Fact

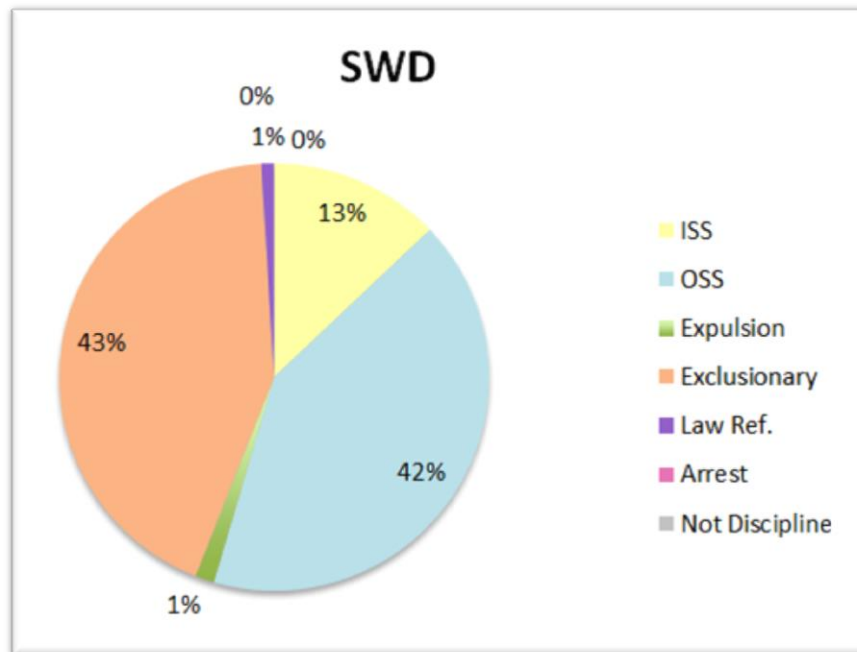
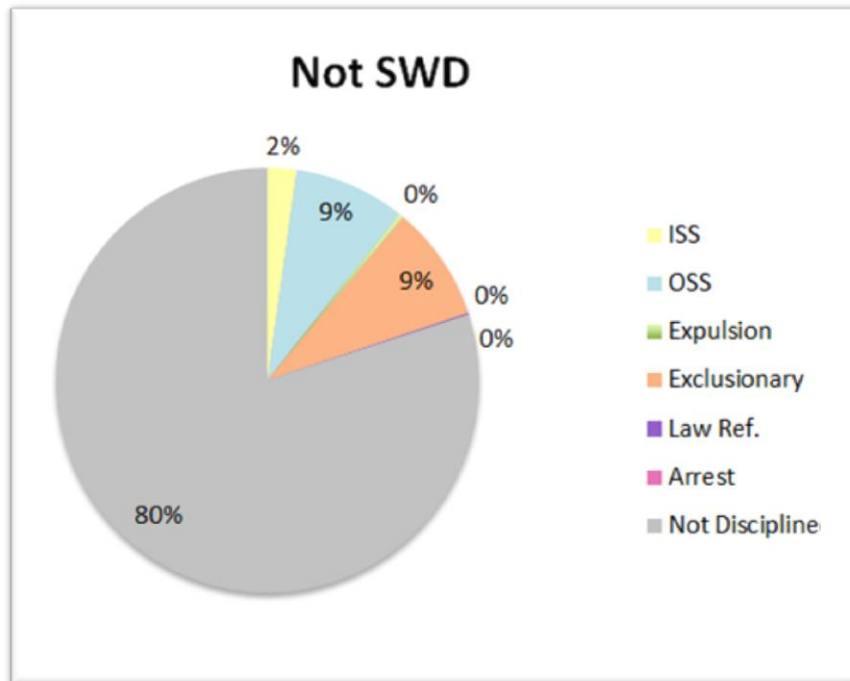
In addition to the facts relevant to allegations 1 and 2, the following additional facts are relevant to OCR's analysis:

Discipline Statistics

- Data the District reported to the CRDC shows that in 2011, students with disabilities were disciplined for all disciplinary actions at a higher rate than any other demographic category of students.

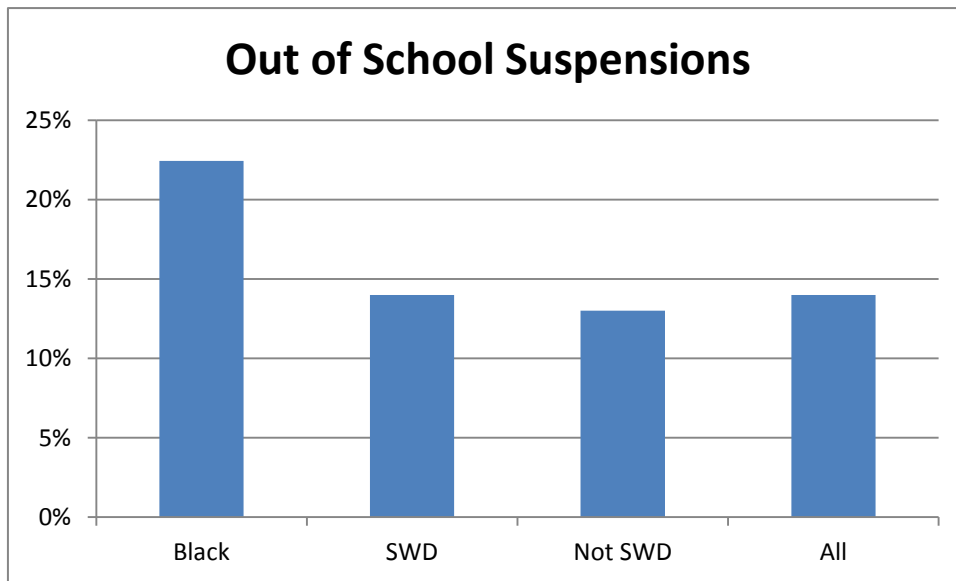


- In addition, all students with a disability in the District were subject to some form of disciplinary action.



- The most recent data the District reported to the CRDC for out of school suspensions in the 2013-14 school year showed that Students with disabilities were still more likely to receive an out of school

suspension, but the difference between students with disabilities and those without disabilities had decreased:



- Data from the California Department of Education shows that from the 2011-2012 to 2014-2015 school year the number of total in-school and out-of-school suspensions in the District increased significantly from 5,443 to 9,285:

Suspensions	2010-11	2011-12	2012-13	2013-14	2014-15
In School Suspension	N/A	964	3,374	3,162	3,148
Out of School Suspension	N/A	4,479	6,652	6,777	6,137
Total	N/A	5,443	10,026	9,939	9,285

- In the 2014-2015 school year, for certain racial/ethnic groups, the percentage of students with disabilities in the District that were suspended or expelled for more than 10 days was over the statewide rate of 2.43%.⁶
- The District reported to OCR that in the 2013-2014 school year, it had issued one or more in-school suspensions to 379 students with disabilities and one or more out-of-school suspensions to 280 students with disabilities.⁷
- In June of 2016, the California Department of Justice reported that Stockton school police had arrested 1,590 students under age 10 over 22 years, an average of 72 young students a year

⁶ <http://www.cde.ca.gov/sp/se/ds/documents/indrptlea1415s.pdf>.

⁷ <http://ocrdata.ed.gov>.

during the past three years. The Chief of the Stockton Unified School District Police Department disputed the numbers.⁸

PBIS, Restorative Approaches, Trauma-informed Support and School Climate

- According to a January 26, 2014 *Record Staff* article⁹, the District saw a dramatic drop in school expulsion rates in 2013-2014. The number of students expelled that year fell by nearly 50 percent from the year before. The District credited the drop to a strategic, multi-tiered approach to implementing Positive Behavior Intervention and Supports (PBIS).
- The District told OCR that it is in the process of implementing PBIS district-wide. In this regard, in April 2013, the District received a \$200,000 grant to expand its PBIS efforts and engage youth leaders in efforts to improve school environments throughout the District. In addition, in September 2014, the District received a Project Prevent Grant of nearly five million dollars spread over the next five years from the U.S. Department of Education. The Project Prevent grant requires that the District offer students (1) access to school-based counseling services, or referrals to community-based counseling services, for assistance in coping with trauma or anxiety; (2) school-based social and emotional supports for students to help address the effects of violence; (3) conflict resolution and other school-based strategies to prevent future violence; and (4) a safer and improved school environment, which may include activities to decrease the incidence of harassment, bullying, violence, gang involvement, and substance use. Under Project Prevent, the District must train more than 100 school counselors, psychologists and community partners in Cognitive Behavioral Intervention for Trauma in Schools (CBITS) for students in 53 schools.¹⁰
- The District's 2014-2015 Local Control Accountability Plan (LCAP) commits the District to increasing student connectedness and parent engagement to create a positive school climate that fosters academic success. The District committed to ensuring that each of its schools has a counselor to guide students and parents to resources and provide information on course options, graduation requirements, college and career choices, and mentoring and internships. The District also committed to increasing its efforts with respect to Peer Leaders Uniting Students (PLUS), Positive Behavioral Intervention and Supports (PBIS), anti-bullying, restorative justice and Response to Intervention (RTI) programs. In addition, the LCAP states that the District will implement enhanced behavioral evaluation systems to more effectively identify and serve special education students and provide the support programs needed.
- In November 2014, the District's Assistant Superintendent of Educational Support Services reported to OCR that he had conducted a needs analysis with respect to site implementation of PBIS and self-evaluations on PBIS staff "buy-in" and implementation. He reviewed data from the last five school years and found some site-based inconsistencies in the District with respect to who has received training and the level of training. He told OCR that in the last 5 years every site has commenced PBIS training although some have not completed the full training cycle. He stated that implementation was impacted by frequent site administration and teacher turnover. He stated that the data showed that most sites understood PBIS and believed they had gone through the initial

⁸ <https://edsource.org/2016/school-police-special-ed-discipline-and-juvenile-camps-under-investigation/566142>.

⁹ <http://www.recordnet.com/article/20150126/News/150129749>.

¹⁰ CBITS provides mental health screening and a standardized series of therapy sessions in schools aimed at reducing a child's symptoms related to existing traumatic experiences and enhancing skills to handle future stresses.

stages of implementation. However, sites also stated that they wanted more training and some sites stated that they needed more District support. In particular, the sites that did not put PBIS in place at the time of the initial District roll out or those that have had leadership transitions expressed the need for more support.

- The District has a District level PBIS team that trains school staff. The District team includes District administrators with expertise in behavior support, as well as the Director of Student Services, the department chairs for elementary and secondary counselors, the department chair for psychological services and the chair for the student assistance program (SAP), which is part of the counseling program.
- As of November 2014, the Assistant Superintendent indicated to OCR that identifying alternatives to suspension is an area for growth in the District and there is a desire to make more options available to sites and to develop a District-wide data system to capture all discipline-related data.
- In the 2014-2015 school year, the District hired a new police chief who had issued guidance to school sites regarding when and when not to call the police for assistance.

Analysis & Conclusions of Law

Based on the facts gathered to date, OCR's investigation raised concerns about the discipline of students with disabilities. In particular, the data from the 2011 CRDC as detailed above showed that students with disabilities were disciplined far more frequently than non-disabled students and that the District discipline practices may have had an unlawful disparate impact on students with disabilities. More recent 2013-2014 CRDC data and 2014-2015 data collected by the California Department of Education, along with information provided by the District about its implementation of PBIS provides evidence that the District had reduced the disparity in out of school suspensions between students with and without disabilities and the total number of expulsions issued to all students but that the overall number of in- and out-of-school suspensions issued to students in the District has increased significantly since 2011, some racial/ethnic groups of students with disabilities are receiving suspensions for more than 10 days at a rate that exceeds the state average, and data collected by the California Department of Justice raised concerns about arrests of young students in the District.

Because the District expressed an interest in entering into a voluntary resolution agreement to address the concerns raised and OCR determined that such resolution was appropriate, OCR did not complete its investigation, including by collecting and analyzing district-wide and school-wide data for the two most recent years with respect to the discipline of disabled and non-disabled students for referrals, in-school, out-of-school suspensions and referrals to law enforcement.

Conclusion

Without admitting to any violation of law, the District entered into the enclosed Agreement. The Agreement is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. It requires that the District (i) create and implement a plan for the Student to determine appropriate compensatory education and services related to 30 day disciplinary exclusion, denial of related services and any other services needed to address delay in evaluation; (ii) appoint a staff person to serve as liaison, collaborate with experts, develop strategies for meeting the goal of ensuring that discipline is appropriately and equitably applied consistent with FAPE, and OCR's prohibition against discrimination for students with disabilities; (iii) review and revise policies and procedures (including law enforcement referral policy) to ensure that they are consistent with Section 504 and Title II; (iv) implement appropriate alternatives to discipline and ensure timely evaluation of

students with disabilities; (v) collect data regarding behavior interventions and referrals for students with disabilities and other students and implement an appropriate mechanism to review data and address disparities in discipline; (vi) conduct a climate survey for students and staff and create a mechanism for district and school-site review to address concerns raised by survey; and (vii) provide training and professional development related to alternatives to discipline, evaluation, and appropriate positive behavior interventions and supports for students with disabilities.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

OCR would like to thank the District for its cooperation in resolving this case. If you have any questions about this letter, please contact Abony Alexander at Abony.Alexander@ed.gov or David Howard at David.Howard@ed.gov.

Sincerely,

/S/

Mary Beth McLeod
Team Leader

cc: XXX XXXXXXXX, Assistant Superintendent, Educational Services (by email only)

Enclosures