



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

XXXX

Dr. Frank Till, Jr.  
Superintendent  
Cumberland County Schools  
2465 Gillespie Street  
Fayetteville, NC 28306

Re: OCR Complaint No. 11-16-1220  
Resolution Letter

Dear Dr. Till:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Cumberland County Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) who attended XXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of race. Specifically, the complaint alleges the following:

1. From XXXX to XXXX, the District failed to investigate and respond appropriately when students at the School subjected the Student to racial harassment, including racial slurs and racial insults.
2. From XXXX to XXXX, the Student's XXXX teacher subjected the Student to racial harassment and treated the Student differently than White students on the basis of race, including making derogatory comments about him and not giving him information about assignments.
3. On or around XXXX; XXXX; and XXXX, District staff responded to incidents involving the Student by pulling him out of class and/or threatening to take disciplinary action against him, but did not treat White students with similar behavior the same way.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District faculty/staff.

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

During the course of OCR's investigation, OCR became concerned about the District's response to the Complainant's reports of racial harassment regarding Allegation 1, which the District agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support Allegations 2 and 3.

OCR's findings and conclusions are discussed below.

### **Background**

The Student, who is African American, was enrolled in XXXX grade at the School on approximately XXXX. Prior to this, the Student attended XXXX. The Student was enrolled, at least in part, in advanced courses at the School. When the Student enrolled, the School had XXXX principal. XXXX SENTENCE REDACTED XXXX. Between the time of the Student's enrollment and his withdrawal from the School, the Complainant and Student raised several concerns about racial harassment, preferential treatment of White students, and other race-related concerns. On approximately XXXX, the Complainant withdrew the Student from the School. In a letter she submitted to the School, she cited an alleged failure of the School to respond to her repeated concerns as the reason for the withdrawal.

The District has a discrimination, harassment, and bullying policy that obligates District staff to address complaints of unlawful harassment and bullying based upon race, color, or national origin. The District policy obligates responsible staff, usually the principal of the concerned school, to investigate allegations within 15 days of receipt by speaking to the person who filed the complaint, the alleged perpetrator, other witnesses identified by the filer or the alleged perpetrator, and other witnesses who may have information concerning the complaint. At the conclusion of the process, the staff member who investigates the complaint must draft and submit a written investigative report to the District Superintendent, the individual who filed the complaint, and the alleged perpetrator informing them as to whether the complaint was substantiated and any necessary corrective actions.

### **Legal Standards**

A District's failure to respond promptly and effectively to racial harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title VI. A District may also violate Title VI if an employee engages in racial harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the District had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the District's programs, activities, or services. When such harassment is based on race, color or national origin, it violates Title VI.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a District must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a District must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.<sup>1</sup>

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

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

### **Analysis**

In this section, OCR will analyze each allegation submitted by the Complainant in accordance with applicable legal standards.

Allegation 1- From XXXX to XXXX, the District failed to investigate and respond appropriately when students at the School subjected the Student to racial harassment, including racial slurs and racial insults.

The Complainant told OCR staff about incidents of racial harassment that allegedly occurred while the Student was enrolled at the School. The reported concerns included peer comments expressing derogatory racial stereotypes against African Americans and peers directing racial

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<sup>1</sup> Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>, and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001), available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

slurs at the Student. The Complainant told OCR staff that the School failed to address these race-based incidents appropriately. The District stated that it investigated the race harassment complaints made by the Complainant with the exception of one particular complaint.

As for the specific incidents, the Complainant stated that she reported the following to School administrators: soon after the Student started attending the School, approximately XXXX, a White student (Student A) approached him and began “throwing gang symbols: and repeating the word “gang.” The Complainant also alleged that Student A intentionally bumped into the Student and yelled out “XXXX,” which was XXXX. The Principal and the Assistant Principal for the XXXX grade (the Assistant Principal) told OCR staff that the Assistant Principal investigated this concern. The Assistant Principal stated that she and a school counselor spoke to Student A about this concern. She said that Student A denied that he bullied the Student and he expressed concerns that the Student “made everything about race.” They reported that the School was unable to substantiate that Complainant’s concern that Student A threw gang signs at the Student or intentionally bumped into him because Student A denied these actions and there were no witnesses; however, she asked a teacher to watch to make sure there were no more issues between the students. She noted that Student A had never had disciplinary concerns prior to this report. The Complainant and the District submitted emails that indicate that the Complainant followed up about this concern by email on XXXX and she spoke to School staff about this prior to this date. Through an email on XXXX, the Assistant Principal stated that a school counselor “did have an opportunity to work on your concern yesterday.” She further stated that, per the Complainant’s request, she did not speak to the Student, but she hopes that the matter is now resolved and that the Student should report any further incidents. This email did not state whether or not the alleged bullying concern was substantiated or any related corrective actions. The Complainant told OCR staff that the alleged racial harassment by Student A seemed to “die down” after her report but it did not stop completely.

The Complainant also reported to School administrators that, on XXXX, a White student (Student B) told the Student that XXXX during XXXX class, which she alleged to be a race-related derogatory remark. The Complainant alleged that the School did not appropriately address this issue. The XXXX teacher confirmed to OCR staff that Student B did make the alleged comment and that he heard Student B make the statement about the Student. He said that he told Student B to apologize in front of the class, and he reported this incident to the Assistant Principal. The Principal reported that she had a brief conversation with Student B about this incident and she determined that the comment was not intended to be racist. She also stated that Student B did not receive any disciplinary action and noted that Student B never had a disciplinary concern before this point. The Principal’s submitted records also indicate that, when she and the Assistant Principal spoke to Student B, she reported that the Student bothers her a lot and she “XXXX.” The School took no further action regarding this incident; specifically, School administrators did not speak with the Student or any other witnesses about the incident. The Principal reported to the Complainant in a XXXX email, that her concern had been addressed “in an appropriate way.”

In addition to the above, the Complainant also reported to School administrators multiple instances of students using racial slurs. Specifically, the Complainant reported to School staff that a student (Student C) called the Student a racial slur during their XXXX class. She further

reported that, later, the Student told Student D (XXXX) that his girlfriend called him the racial slur. While the Student used an abbreviation for the slur during this conversation, specifically stating “the n-word,” the Complainant reported that Student D responded by repeating the entire word of the racial slur multiple times. She stated that she reported this incident to the School and they did not respond. District staff confirmed that Student C and D are White. The Principal and Assistant Principal stated that they investigated this incident by speaking to and taking written statements from the Student, Student C and Student D. The Principal said that she spoke to Student C and the Assistant Principal spoke to Student D. They told OCR staff that they did not speak to any other students (e.g., other students in the XXXX class).<sup>2</sup> The Assistant Principal stated that she could not prove or disprove the Complainant’s claim that Student C used the racial slur. OCR spoke to the XXXX class teacher, who stated that she did not hear Student C say a racial slur to the Student, and she did not know an incident occurred until the Student came to her and reported it. She said that she reported the incident to an administrator but she did not know what actions were taken after this point.<sup>3</sup> Both the Complainant and the District provided OCR emails indicating that the Complainant emailed the District about this concern on XXXX, 15 days after it was initially reported, and the Principal replied the same day stating that she would address it that morning. The Complainant also copied a District administrator on a later email asking if the District had any guidelines or disciplinary rules that apply. The District did not provide a reply to this email or any written documentation concerning the results of the investigation into this incident. The Assistant Principal and the Principal acknowledged that no written report was submitted to the Complainant. The Complainant told OCR staff that the Principal told her that the School determined that Student D was simply seeking clarification as to what the Student said, but she did not get information as to any determinations as to whether they found that Student C used the slur.

The Complainant and the District also submitted a XXXX email concerning another Student (Student E), who she stated was Hispanic, who allegedly used a racial slur around the Student. In this email, the Complainant stated that the Student reported this to the Assistant Principal in her presence. Further, she wrote that the Assistant Principal told the Student to write down a statement, and the Complainant stated that “something EFFECTIVE needs to be done to address that word being used at the school.” The Assistant Principal did acknowledge that this was reported to her, but she stated that she did not investigate it because the Student never submitted a report to her. The Complainant confirmed that the Student never submitted a report and cited the lack of a response to earlier incidents as the reason.

The Complainant also told OCR that there were other race-related statements made to the Student, such as him being called “XXXX” and being told to “go back where you came from.” She and the District submitted email documentation of these incidents, but the District did not provide a written response concerning this noted concern.

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<sup>2</sup> The Assistant Principal stated that the Student told her that he spoke to Student D in the XXXX and that it was so loud that other students did not hear Student D say the slur to him. However, she stated that she did not speak to other students in the XXXX class to determine whether any of the other students heard Student C call the Student the racial slur.

<sup>3</sup> This teacher stated that she reported the incident to a staff member who is the designated “Safe Schools Coordinator.” She stated that this person is responsible for investigating instances of bullying. However, the Principal stated that this person did not investigate this incident but most likely reported it to the Assistant Principal.

As to applicable District policy, the School admits that it did not comply with the District’s “Discrimination, Harassment, and Bullying” policy in investigating the concerns submitted to it by the Complainant. As described above, the District’s policy requires an investigative report to be submitted to the Superintendent, Complainant, and alleged perpetrators indicating whether the complaint was substantiated and any necessary corrective measures. Of note, OCR found no evidence that the School notified any of the alleged perpetrators of the result of the investigations. There is also no evidence that any reports regarding these incidents were reported to the Superintendent’s office. At no time did the School assess whether a racially hostile environment existed at the School, despite receiving repeated allegations of racial harassment. The Principal told OCR staff that she did not believe the policy applied to any of the Complainant’s concerns. However, the policy states that it applies to unlawful discrimination, harassment, or bullying by students including conduct that is severe or pervasive enough to constitute a hostile environment.

Based on the totality of the circumstances, OCR has determined that there is sufficient evidence to determine that the Student was subjected to a hostile environment while he attended the School and the District failed to appropriately respond. While most of the incidents reported by the Complainant concern different students, OCR did not find them to be isolated because they all occurred within an approximate 60-day period. On at least one occasion, School staff confirmed that the Student was subjected to a racial slur (Student D). Also, the District does not dispute that Student A stated that the Student XXXX. OCR finds that there is sufficient evidence that these incidents were severe enough to create a hostile environment for the Student. The concerns with the racial slurs allegedly used by Student C and Student E were not thoroughly investigated and not investigated at all, respectively; further, none of the allegations were investigated per District policy. Therefore, there is sufficient evidence of the District’s failure to address concerns submitted to the District by the Complainant. Also, OCR notes that, during OCR’s interviews with School administrators, School staff appeared to give more weight to the accounts of Students A-E, than to the Student and Complainant. Their cited reason was the lack of prior disciplinary issues, but documents submitted to OCR by the District indicate that the Student did not have a significant disciplinary history either. This supports the Complainant’s claim that her harassment concerns were not given impartial consideration by School staff.<sup>4</sup>

Allegation 2: From XXXX to XXXX, the Student’s XXXX teacher subjected the Student to racial harassment and treated the Student differently than White students on the basis of race, including making derogatory comments about him and not giving him information about assignments.

The Complainant also alleged that the Student’s XXXX teacher (the XXXX Teacher) harassed him due to his race and treated him differently than White students. Specifically, the Complainant alleged that the XXXX Teacher made derogatory comments about the Student,

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<sup>4</sup> OCR notes that it was provided many emailed concerns by the Complainant on a variety of topics, and the Principal and Assistant Principal noted their frustration with the volume they received. Assuming that the Complainant’s concerns stretched the ability of the school to respond to each, instances of race harassment and racial slurs must still be investigated as required by law.

including placing him in a group of White students and stating, “XXXX.” She also told OCR staff that, after a student in this class said that the Student XXXX, the XXXX Teacher gave him an assignment that required him to XXXX. She also stated that the XXXX Teacher told the Student, in front of the class, that he could not go XXXX. Lastly, she stated that the XXXX Teacher announced in front of the class that the Student was submitting a project after the deadline and unfairly spoke to the Principal about the Student. More generally, she alleged that the XXXX Teacher picks on the African American students in the class by making fun of them and throwing things at them. When OCR attempted to clarify this allegation, the Complainant stated that the teacher, on one occasion, threw something at an African American student in the class but did not throw anything at the Student or any other African American students. The Complainant provided an XXXX email in which she stated that the XXXX Teacher had a history of mistreating African American students, according to a parent of a former student of the XXXX Teacher.

The XXXX Teacher denied that he harassed the Student or treated him differently because of his race. During an interview with OCR staff, OCR questioned the XXXX Teacher about the alleged harassment. He told OCR staff that he never made disparaging comments about the Student in class. He acknowledged that, on one occasion, he asked a group of White students to sit next to the Student and “XXXX.” He stated that he wanted to make sure the Student understood what the class was supposed to be doing and that he often uses peers to explain assignments to others. In a XXXX email to the Complainant, the Science Teacher stated that he moved the Student in between XXXX that could help the Student. As for the XXXX, the Science Teacher explained that all students in the class were assigned XXXX to study. The Science Teacher acknowledged that he assigned XXXX to the Student but noted that “he didn’t pay attention to the assignment list.” He said that when he learned of the Complainant’s concern, he promptly changed the assignment. Emails submitted by the District and the Complainant indicate that the XXXX Teacher changed the assignment on the same day he received the Complainant’s email. In this email, the Science Teacher stated “XXXX.” This information indicates that the XXXX Teacher issued the XXXX assignment to the Student due to a lack of attention and not with the intent to embarrass or harass him. As for the Student going XXXX, the Science Teacher told OCR staff that he did announce that he XXXX, but that he did not do it to embarrass the Student. He stated that he was simply stating the facts to the class as to who was XXXX and did not indicate that he *could not* go XXXX. He denied that he announced that the Student turned in a project late, and stated that he emailed the Principal because he was concerned about the Student’s progress in this class. A XXXX email from the Principal states that she walked in on a conversation during which the XXXX Teacher was discussing upcoming reports. The Principal told OCR staff that she suggested that the XXXX Teacher reach out about missing assignments, and this prompted the email by the XXXX Teacher. Finally, while he did state that he has a practice of throwing XXXX, he stated that he did not think he ever threw anything at the Student. As to the general allegation of harassment of African American students, the XXXX Teacher denied that he harassed the Student and was not aware of any race-related complaints made against him in the past.

Based on the evidence provided and examining the totality of the circumstances, OCR finds that there is insufficient evidence that the statements or actions by the XXXX Teacher created a hostile environment based on race or that any one statement alone created a hostile environment

for the Student. The Science Teacher did tell White students to “XXXX” and assign him an assignment concerning XXXX. He also stated that he announced that the Student was XXXX. OCR does not have evidence to determine whether or not the XXXX Teacher announced that the Student turned in a project late, but assumes for the purpose of this analysis that the XXXX Teacher did make this statement. The XXXX Teacher explained the statements and provided non-racial motivations for each that were supported by documents provided by the Complainant and the District.

OCR also investigated whether the XXXX Teacher treated the Student differently based upon his race. As for the allegations of different treatment, the Complainant alleged that the XXXX Teacher threw things at African American students in the class, told African American students to XXXX while allowing White students to XXXX, and did not allow the Student access classwork, which was referred to as “XXXX.”

As discussed above, the XXXX Teacher stated that he threw XXXX at White and African American students throughout his time at the School. The Complainant told OCR that the Student witnessed him throw XXXX at another African American student in the class but pointed out that he did not throw it at a White student XXXX in class. The Complainant did not allege that the XXXX Teacher ever threw anything at the Student. As for allowing White students to XXXX, the XXXX Teacher denied that he applied this rule to African American students only. He stated that the class has a rule that all students must XXXX. He stated that this rule applied to both African American and White students. As for access to classwork, the XXXX Teacher told OCR staff that he posted classwork online and wrote due dates for assignments on the board. The Complainant denied that the Student’s work was online or written on the board.

The Complainant and District provided some related documents. They included an email from the XXXX Teacher to the Complainant and the Principal about the Student’s progress in his class. It states that the student was XXXX due to missing assignments including XXXX, which is done daily and turned in on Friday. The District submitted a note dated XXXX from the XXXX Teacher stating that the Student asked for all of his missing work, and he told him that he did not accept missing work. On XXXX, the Complainant emailed the XXXX Teacher and Principal asking about the procedure for turning in XXXX.” The XXXX Teacher responded by email explaining the procedure for XXXX, which he indicates is fairly self-explanatory because it is in-class work. A note provided by the XXXX Teacher from XXXX indicated that multiple students were XXXX, and he told the class “as a whole” to XXXX.

OCR did review documentary evidence that confirms the Student’s access to XXXX, which was provided in class. As for the other allegations concerning throwing objects and XXX, the Complainant and the District offered differing accounts but neither provided documentary support for their allegations. OCR notes that the XXXX Teacher stated that he never did this to the Student and the Complainant does not allege that this occurred. As for students XXXX, the District submitted a note that corroborates that the XXXX Teacher asked the entire class to XXXX on XXXX. The Complainant did not submit documentary evidence that supported her allegation that the Science XXXX Teacher treated the Student differently in this regard.



Therefore, OCR finds that there is insufficient evidence that the XXXX Teacher treated the Student differently based upon his race, as alleged.

Allegation 3: On or around XXXX; XXXX; and XXXX, District staff responded to incidents involving the Student by pulling him out of class and/or threatening to take disciplinary action against him, but did not treat White students with similar behavior the same way.

The Complainant alleged that the Student was treated differently during three different incidents. OCR will review these individually.

### **XXXX Incident**

The Complainant alleged that on XXXX, the Student engaged in a verbal disagreement with a White student and the Student's XXXX teacher (the XXXX Teacher) treated the students differently when responding to the disagreement. Specifically, the Complainant alleged that the XXXX Teacher asked the Student to go into the hallway and told him that he was being defiant but did not address the other student. The Complainant provided an email from XXXX in which she stated that the XXXX Teacher did not speak to the other involved student.

OCR spoke to the XXXX Teacher who stated that, during the disagreement discussed above, a student in the Student's class accused the Student of XXXX although she did not hear the other student say anything to the Student. She said that she did see the Student XXXX and heard the Student XXXX in response. She said that she asked him to step in the hall to discuss the matter, and in the hall, she told him that she did not have an issue with his choice concerning the XXXX.<sup>5</sup> She reportedly also told the Student that he should not XXXX, but did not issue any disciplinary consequence. She also told OCR staff that, toward the end of class, she also spoke to the other involved student, who is White, and she told her that the Student did not have to XXXX and that it was disrespectful for her to complain about his choice. The Complainant told OCR staff that the Student did not see the XXXX Teacher speak to the other student.

The District provided a note from the XXXX Teacher from XXXX, in which she stated that she did not chastise the Student for not XXXX or threaten administrative action, but she asked him to speak to her in the hall about "XXXX." In this note, the XXXX Teacher acknowledges that she did not respond to the Complainant but asked the Principal to respond. The District provided a note from the Principal, dated XXXX, indicating that she followed up with the Complainant about this incident. Disciplinary documents provided to OCR, do not indicate that the Student received a disciplinary action based on this incident. Based on this information, there is insufficient evidence that the XXXX Teacher treated the Student differently based upon his race. The information received by OCR indicates that neither the Student nor the involved White student received or was threatened with disciplinary action due to this incident. Further, information provided by the XXXX Teacher confirmed that both students involved in the

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<sup>5</sup> OCR notes that the Complainant disagrees with this and alleged to OCR that the teacher admonished the Student for not XXXX. OCR did not seek to resolve this discrepancy because the Complainant did not allege any unlawful difference in treatment regarding the teacher's response to the Student's XXXX.

incident where treated similarly. Therefore, OCR finds insufficient evidence of discrimination regarding this allegation.

### **XXXX Incident**

The Complainant also alleged that the Student's XXXX teacher (the XXXX Teacher) refused to allow XXXX due to a policy of XXXX. She stated that he asked XXXX twice and was told no twice; XXXX without her permission. However, she alleged that White students did not have to comply with this rule. The Complainant did not provide OCR the names of any students or describe any incidents regarding her belief that White students did not have to comply with this rule. She provided OCR with an email from XXXX to the XXXX Teacher in which she asked the XXXX Teacher not to inhibit the Student from XXXX, and that she instructed him XXXX if she denied his request.

OCR spoke to the XXXX Teacher, who stated that there is a class rule that students are not normally permitted XXXX, and that there are limited exceptions to this rule. She stated that she required all students to comply with this rule unless they were having an emergency (e.g., in XXXX), or if they had a doctor's note. She then told OCR staff that, as alleged, the Student did request XXXX one time XXXX, and, per the class rule, she denied the request. She said that after he asked, XXXX without her permission. She also stated that she could not remember any specific student names or dates concerning any other students, including White students, who were allowed XXXX per these exceptions. She said that on XXXX, the Student did not explain that this was an emergency. The XXXX Teacher stated that she provided a verbal warning to the Student but said that he would have a silent lunch if he did this again.

There is no dispute that there was a class rule prohibiting students from XXXX. Also, the XXXX Teacher stated that during the XXXX school year, other students were allowed to XXXX emergencies or with a doctor's note. While the XXXX Teacher stated she could not recall the specific students who were allowed XXXX, OCR assumes for the purpose of this analysis that they were students who were not African American.<sup>6</sup> Based on this information, OCR finds that the Complainant established a prima facie case of different treatment when he was not permitted XXXX. OCR also finds that the District provided a legitimate non-discriminatory reason for the different treatment: that the Student was denied permission XXXX because he did not state that he was experiencing an emergency, did not have a doctor's notes and that the class rule stated that no student XXXX.

Next, OCR examined whether the legitimate non-discriminatory reason provided by the District was a pretext or an excuse or unlawful discrimination. As stated above, OCR found during this investigation that there was a class rule for all students regarding XXXX. The teacher also confirmed that the only exceptions were made for students XXXX. The Complainant did not allege to OCR that either of these exceptions applied to the Student. Next, OCR spoke to the Assistant Principal, who corroborated that students with doctor's notes, including students with disabilities, XXXX and exceptions are made to these rules for these students. The Principal also

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<sup>6</sup> OCR notes that the Complainant told OCR staff that the Student never saw the other two African American students in the class XXXX.

stated that the rule is to get permission unless you have a doctor's note. The statements of the Assistant Principal and Principal corroborated the XXXX Teacher's stated rule of XXXX unless there is an emergency or the student has a doctor's note. The XXXX Teacher stated that this incident involving the Student was the only time that a student of any race XXXX outside of the exceptions described above. As previously stated, the Complainant provided no evidence or corroboration that White students were allowed to XXXX outside of the parameters described by the XXXX Teacher. Therefore, based on all the above, OCR found that there was insufficient evidence that the legitimate non-discriminatory reason provided by the District was a pretext for discrimination.

### **March 10<sup>th</sup> Incident**

On XXXX, the Student and other students disagreed about XXXX discussed in their previous class. This discussion continued into the XXXX class, which was the next period, and resulted in the intervention of the Principal and other School staff to address the behavior.

The Complainant alleged that the Principal, the XXXX, and other staff removed the Student from class and escorted the Student to the office because they believed he was being disruptive, but did not remove the White students who were also involved in the disruptive incident. The Complainant contends that the White students were being disruptive. The Complainant stated that the Principal called her, implying that she was giving the Student a disciplinary action and, as a result, the Complainant responded that she would pick the Student up from School. The Complainant provided OCR a XXXX email to the Principal in which she expressed concerns about the unequal response since the Student was removed from class and the other students involved returned to class.

OCR spoke to the Principal who explained that on XXXX, she was called by the office and was told that XXXX grade hallway needed her attention immediately. She stated that she asked the XXXX to come with her because she did not know the reason for the urgency of the request. Upon arriving, the Principal stated that the other student involved had been removed from the class and sent to the Assistant Principal's office. She asked the Assistant Principal to interview all students involved and to obtain written statements. At that time, the Principal explained that she received a radio call on her walkie-talkie informing her that the Complainant was on the phone because of an earlier incident, and, at that point, the Principal decided to take the Student to the office with her because she knew, based on her prior interactions with the Complainant, that the Complainant would want to personally speak to the Student about the incidents that occurred that day. The Principal's written log from XXXX indicates that the Complainant was on hold waiting to speak to the Principal when they brought the Student to her office. This log also indicates that the Principal spoke to the Complainant about the incident and she said that she was coming to the School. The Principal noted that she did not take the Student to the office as a response to the incident, and that, if the Complainant was not on her way to the School, the Student would have been interviewed and asked to write a written statement by the Assistant Principal as the other students were. The Principal explained that the Complainant arrived at the School and XXXX voluntarily.

There is no dispute that no involved student was disciplined as a result of this incident. There is also no dispute that the Complainant told the Principal that she was coming to the School to discuss the incident that day and, upon her arrival, XXXX voluntarily. The Complainant told OCR staff she voluntarily XXXX. Also, the District provided the Principal's log to support her rationale for bringing the Student to her office, which was that the Complainant was waiting to speak to her at the same time she responded to this incident. These facts corroborate the Principal's statement that the Student was not taken to the office or sent home as a disciplinary response. The Assistant Principal informed OCR that she asked all involved students to separately come to her office for interviews. She said an involved White student, who the Complainant alleged was also disruptive, went to her office to give a statement and that this student stayed in the office even after the class period finished.<sup>7</sup> The XXXX Teacher noted that the Student would have been sent to the Assistant Principal if he had not been taken to the office by the Principal. The information received by OCR indicates all students involved were removed from the class and no student received any disciplinary action due to this incident. Based on all the above, OCR finds that there is insufficient evidence that the Principal treated the Student differently based upon his race, as alleged.

### **Conclusion**

On September 13, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues raised. As stated in the Agreement entered into by the District on September 13, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including 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, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

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<sup>7</sup> In her XXXX email the Complainant stated that, a week earlier, she witnessed the XXXX Teacher allow a White student to XXXX without a penalty. She alleged that this student was also involved in the XXXX incident. The documents provided to OCR along with staff statements indicate that this student XXXX in another class, and the XXXX Teacher was not involved in that disciplinary response.

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

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

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

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Timothy Riveria, the OCR attorney assigned to this complaint, at 202-453-6796 or [Timothy.Riveria@ed.gov](mailto:Timothy.Riveria@ed.gov). You may also contact Zorayda Moreira-Smith at 202-453-6946 or [Zorayda.Moreira-Smith@ed.gov](mailto:Zorayda.Moreira-Smith@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Supervisory Attorney, Team IV  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: David Phillips