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**OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION**

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, South Carolina, Virginia

February 26, 2009

Katherine Parker, Esq.
ACLU – NC
P.O. Box 28004
Raleigh, NC 27611

Re: OCR Complaint No. 11-08-1234
Letter of Findings

Dear Ms. Parker:

This letter is to inform you of the disposition of the above-referenced race and national origin discrimination complaint that you filed on May 28, 2008, with the District of Columbia Office for Civil Rights (OCR) of the U.S. Department of Education (the Department). You filed the complaint against the Wake County Public School System (the District), particularly Dillard Drive Middle School (the School), on behalf of two students (Student A and Student B), Student A's mother and Student B's father. OCR has completed its investigation of the complaint allegation. The specific complaint allegation investigated, a summary of OCR's responsibilities and the applicable legal standards, and a more detailed discussion of our findings and conclusions regarding the allegation is set forth below.

COMPLAINT ALLEGATION INVESTIGATED

Allegation: The District/School discriminated against Students A and B on the basis of race and national origin when, on December 4, 2007, the School's Principal:

- a.** Directed that all African-American students be pulled from seventh grade classes for an assembly (Assembly 1), and then directed that all Hispanic students be pulled from seventh grade classes for a different assembly (Assembly 2), following an altercation that morning at the School between one African-American and one Hispanic student; and,
- b.** Told all African-American students present at Assembly 1, including Students A and B, that: (i) she was ashamed of them and disappointed in how they acted; (ii) they made her ashamed to be African-American; and (iii) they were poorly

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dressed/violated the dress code, prone to fighting/gang activity and responsible for most of the poor grades at the School.

OCR'S RESPONSIBILITIES

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, which prohibit discrimination on the basis of race, color or national origin in programs and activities that receive Federal financial assistance (FFA) from the Department. Because the District receives FFA from the Department, we have jurisdiction over it pursuant to these laws. We also have jurisdiction over the complaint allegation.

APPLICABLE LEGAL STANDARDS

The regulation implementing Title VI provides that no individual shall, on the basis of race, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity that receives or benefits from FFA. The regulation implementing Title VI specifies that recipients of FFA are prohibited from providing services or other benefits to an individual that are different from, or provided in a different manner than, those provided to others under the program on the basis of race.

When investigating an allegation of different treatment based on race, OCR first looks to see whether there is direct evidence of discrimination – for example, an admission by a District staff member that a certain action was taken on the basis of race or a District policy that classifies students based race. Any direct evidence of discrimination must show that discrimination caused the denial of an educational benefit or other adverse consequence. Title VI requires that when actions are taken in whole or in part expressly on the basis of race, color or national origin, an analysis of those actions under the strict scrutiny standard is required. Under applicable federal court decisions interpreting Title VI, strict scrutiny requires that the use of race, color or national origin be narrowly tailored to achieve a compelling governmental interest.

OCR'S COMPLAINT ANALYSIS AND CONCLUSIONS

In investigating the complaint and making a determination in this case, OCR obtained and analyzed evidence from you and the District. This evidence included, among other things, the information in your complaint, information provided by the District in response to a data request from OCR, and information provided during interviews with School staff and students. A summary of the evidence obtained by OCR during its investigation of the complaint allegation and our analysis is provided below.

In the complaint, you allege that on December 4, 2008, the Principal of the School forced all African-American and Hispanic students in seventh grade classes to attend one of two segregated assemblies following an altercation that morning between one African-American student and one Hispanic student. At the Principal's direction, African-American students were pulled out of class and sent to the auditorium to attend Assembly 1. Immediately afterwards, Hispanic students were pulled out of class and sent to the auditorium to attend Assembly 2. According to the complaint, there was no evidence that all African-American and Hispanic seventh grade students were involved in the altercation and there was no individualized suspicion of student misconduct. Non-Hispanic Caucasian and Asian students were not required to attend either

assembly. You allege that Students A and B were among the African-American students required to attend one of the assemblies.

The District does not dispute these facts, except to indicate that it does not believe Student A attended either assembly. However, the District did provide additional detail regarding that morning's events. The District informed OCR that on the morning of December 4, 2008,¹ as seventh grade students were returning from their elective class, there was a loud commotion in the hall, where large groups of African-American and Hispanic students were engaged in a heated argument. According to the Assistant Principal's notes regarding that morning's events, dated December 21, 2007 (the Notes), the area was so filled with students that adults were not able to get through the crowd. When the Assistant Principal made it through to the middle of the crowd, she found an African-American female being held by the School Resource Officer (the Officer). The student told her that a Hispanic female was disrespecting her by wearing a blue bandana around her leg. According to the District's information, blue bandanas are commonly associated with membership in the Crips gang.

According to the Notes, staff members were eventually able to break through the crowd and move students into their classrooms. As the Assistant Principal escorted the Hispanic student, who was still wearing the bandana, out of the hallway, students were yelling at her and telling her she was "going to get hers" and she "better be careful and watch [her] back." While the hallway was "returned to a low level of order," the Notes reflect that "students quickly drew sides and comments were heard concerning additional fights and outbursts." The Assistant Principal reported the incident to the Principal, telling her that it was the closest thing to a riot she ever saw and that she did not feel the students were safe. Throughout the morning, teachers called up to the office to report a "heated atmosphere," stating students were saying it was "going to jump off" and students were overheard chanting "Black power" as they walked down the hall. During the next class change, there were incidents between African-American and Hispanic students, involving exchanges of words and shoving.

During her interview with OCR, the Principal explained that she was worried that things were getting out of control. Both the Principal and Assistant Principal informed OCR that they had never seen this level of conflict between students and were very concerned that tensions would spill over to the bus rides home, which could be dangerous. The Principal indicated that in her seven years at the School, she had never faced a situation like this before. Several of the students OCR interviewed agreed that the atmosphere at School remained heated after the incident and that there were fights, and some students said that they felt unsafe.

In response to the situation, the Principal decided to meet with students to try to calm things down and avert further conflict. The Principal and Assistant Principal explained that because they could not determine which students were or might become involved in the disturbance, they decided to meet with all African-American and Hispanic seventh graders. Because tensions between the two groups seemed to be running high, the Principal decided to meet with them separately.

According to the District, the decision to meet with only these two groups was based on the fact that the morning's events involved African-American and Hispanic students alone and there was

¹ The District's information indicates that the incident occurred on December 5. However, written documentation provided by the District shows that the incident actually occurred on December 4.

a history of conflict and tension between the two groups. The decision to meet with the two groups separately was made because of the strong tension that day between them. The Assistant Principal told OCR that she and the Principal considered not holding the assemblies, but were very concerned there could be major problems in front of the School or on the bus after dismissal that day. They also considered holding an assembly for all seventh grade students. However, from previous experience, they felt that the students they really needed to reach would not pay attention in such a large setting. The Principal also indicated that there were concerns about whether the auditorium could accommodate all seventh grade students at the same time, and that holding smaller assemblies would allow them to control seating (to prevent distraction) and limit the number of uninvolved students present. There were approximately 375 students in the seventh grade last year, divided into core groups of about 125 students.

After deciding on a course of action, the Assistant Principal emailed all seventh grade teachers to notify them of the two assemblies. The District provided a copy of the email, which included the following instructions: “[The Principal] will meet with Hispanic and Black students enrolled in grade 7 this afternoon. Send the black students at 1:55 P.M. to the auditorium. When the black students have returned to class send the Hispanic students. Try to be as discreet as possible when dismissing students.” Based on interviews with students, it appears that teachers used different methods of calling the students out to attend an assembly. For example, one student told OCR that his teacher came to him individually to give him a slip telling him to report to the auditorium. Another student indicated that her teacher called students by name and told them to report to the auditorium in front of the rest of the class. Most of the students OCR spoke with indicated that it was obvious that only African-American students, and then Hispanic students, were called upon to leave class.

According to the District, the Principal, the Assistant Principal and the Officer met with each group of students for approximately 15 minutes. There was no formal, scripted agenda, but according to the District, they used the opportunity to talk about “responsibility, respect, academic success, discipline, the high percentage of referrals, reshaping attitudes and the purpose of school.” During interviews, staff present during the assemblies said that the Principal also talked to the students about dressing appropriately for school and helping create an environment in which staff and students feel safe, and the Officer told OCR that he spoke to both assemblies about gang graffiti in the School bathrooms. Both the Principal and Assistant Principal reported that each assembly began with an apology to students who were not involved in the morning’s incident or aftermath, and each assembly ended with recognition of students who were successful academically. Students were told that even if they were not involved, it would not hurt them to hear the messages being delivered. The Assistant Principal told OCR that she reinforced the same messages delivered by the Principal.

The Principal told OCR that during Assembly 1, she talked to the students more as a mother than an administrator, and appealed to the common minority status of the African-American students, herself and the Assistant Principal. She told them that she was disappointed that many of them had made the poor decision to be directly or indirectly involved in the conflict and that the School would not tolerate gang activity. She told them that “we,” as one of the School’s subgroups, are not soaring academically as we should be, and that the students needed to reshape their attitudes and focus on the purpose of being in school. According to the District, Assembly 2 closely resembled Assembly 1, except that a Spanish teacher was present to translate. No staff that OCR spoke with recalled anyone using the word “ashamed” during either assembly. Written statements from District staff present during the assemblies expressed a belief that the Principal

handled the situation in the best possible manner and that administrators were respectful and professional when addressing the students. The Principal believed that her response to the situation that day restored order to the School and helped prevent further major disturbances at the School, and explained that she received a lot of positive feedback about her actions.

You provided a different account of what occurred during the assemblies in the complaint. You allege that during the assemblies, the Principal told the students that she was “ashamed” of them and that they were responsible for most of the fighting and poor grades at the School. You further allege that she lectured them about the School’s dress code and made reference to gangs. Several of the students OCR interviewed provided accounts similar to yours, although the accounts provided were not consistent with respect to what, exactly, was said. For example, some students recalled that the Principal said that, as a race, African-American students were underperforming academically. Other students said that the Principal stated that African-American students caused the majority of problems in the school. Some students indicated the Principal called upon students on the A/B honor roll to stand, and told others that these students needed more company. However, all Hispanic students said there was no discussion of grades at all during Assembly 2. Additionally, some Hispanic students said there was no apology given during Assembly 2 to students who were not involved in the morning’s incident and aftermath. Furthermore, students differed with respect to the length of the assemblies, with recollections ranging from 30 minutes to over an hour.

Based on the foregoing, OCR found that there is sufficient evidence to find that the District did, in fact, treat students differently based on their race when School administrators made the decision to require African-American and Hispanic students to attend two separate assemblies based on their race. Although there was conflicting evidence about whether Student A attended an assembly, the evidence showed that Student B, in addition to other African-American and Hispanic seventh graders, was pulled out of class and directed to attend an assembly solely based on race and/or national origin, whereas non-Hispanic Caucasian and Asian seventh graders were not required to leave class and attend an assembly. During the assemblies, African-American and Hispanic seventh graders were provided messages regarding the morning’s incident, poor grades, appropriate conduct, attire and graffiti, among other things, whereas non-Hispanic Caucasian and Asian seventh graders were not provided these messages. Such evidence is sufficient to find that there was direct evidence of different, and possibly discriminatory, treatment.

OCR therefore turned to the question of whether the District had a legitimate compelling interest in holding separate assemblies based on students’ race/national origin. The District contends that the purpose of the meetings was to restore safety and order at the School and to avoid a mounting crisis. According to the District, the decision to meet with only African-American and Hispanic students was based on the fact that the conflict was between these two groups alone and because meeting with smaller groups would increase the likelihood that those students who needed to hear the message would hear it. The decision to meet with the two groups separately was because of the acute tension between the two on that day. Further, according to the District, the meetings were conducted in a respectful and professional manner and were effective in quelling the disturbance at the School.

OCR has concerns regarding whether the foregoing reason proffered by the District justifies the School’s different treatment of African-American and Hispanic students on December 4, 2007. However, OCR need not determine whether the District has established a compelling interest and

whether the use of separate assemblies was narrowly tailored to achieve that interest, as the District took action during the course of our investigation to ensure that the situation will not recur. Specifically, the District provided OCR with a written statement clearly indicating that the School will not separate students based solely on their race or national origin to address issues relating to student conduct and discipline. Additionally, on February 20, 2009, the Principal sent a letter to School parents and students apologizing for her decision to do so last year. In the letter, the Principal states "I know as we continue to work together as a school family we will prevent conflicts...without the need to meet with students based on ethnicity." Because the District assured OCR that this will not occur again in the future, and that School staff have been advised that they may not pull students from class based on race or national origin and assemble them in response to incidents such as the one that occurred on December 4, OCR found that there was no outstanding compliance concern. As a result, OCR determined that this complaint is resolved and has closed it, effective the date of this letter.

This concludes OCR's investigation of the complaint. We have informed the District that no person is permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of personal privacy.

We thank you for your cooperation in the resolution of the complaint. Please be assured that we reached our determinations after carefully investigating your complaint in accordance with the laws, policies and procedures under which OCR operates. If you have any questions regarding the outcome of this complaint, please contact Emily Frangos ((202) 786-0520 or emily.frangos@ed.gov) or Rachel Glickman ((202) 786-0522) or rachel.glickman@ed.gov).

Sincerely,



Sharon Solomon

Team Leader

District of Columbia Office