

Otto, Diana

**From:** ocr\_complaint@ed.gov  
**Sent:** Sunday, January 03, 2010 9:13 PM  
**To:** [REDACTED] OCR Boston  
**Subject:** OCR Electronic Complaint Submission

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PLEASE DO NOT REPLY TO THIS E-MAIL. THIS E-MAIL ADDRESS IS USED BY DEPARTMENT OF EDUCATION AUTOMATED SYSTEMS AND IS NOT MONITORED.

Your complaint with the Office for Civil Rights, a copy of which is reproduced below, has been automatically forwarded to the following office for review:

Office for Civil Rights/ED  
Boston Office

5 Post Office Square

Boston, MA, 02109-3921

So that we can best assist you, we call your attention to the following:

1. If you need to communicate with OCR regarding your complaint before you are contacted directly, please do not reply to this message, which would result in your reply going to a send-only server address. Instead, please direct your correspondence to the above office at [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov).
2. If you need to modify or supplement your complaint, please do not use the complaint form to submit another complaint with the new information. Instead, you may simply send an email to the office that has your complaint. Filing duplicative complaints may impede our ability to review your concerns in a timely manner. (If you have a separate complaint involving other matters, you may of course use this form to submit it.)
3. Remember that before OCR can process your complaint it must receive at the above address a signed copy of the Office for Civil Rights Consent Form, which you can obtain at <http://www.ed.gov/about/offices/list/ocr/edlite-consentform.html>.
4. It is recommended that you print a copy of this message and retain it for your records.

The following information has been sent to the specified office:

OCR COMPLAINT FORM

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1. Enter information about you.

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Your First Name: [REDACTED] Your Last Name: [REDACTED]

Your Address: [REDACTED]

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Non Responsive  
City: [REDACTED]

Non Responsive  
State: MA Zip Code: [REDACTED]

Non Responsive  
Best Time to Call You: DAY Primary Phone No: [REDACTED]  
Non Responsive  
Alternative Phone No: [REDACTED]

Your Email Address: [REDACTED]  
Non Responsive

2. Who else can we call if we cannot reach you?

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Contact's Name: [REDACTED]

Daytime Phone No: [REDACTED]  
Non Responsive

Relationship to you: Spouse

3. Who was discriminated against?

Someone else

Non Responsive Injured Person's Name: [REDACTED] / age 8

Daytime Phone No: [REDACTED] Non Responsive

Relationship to You (eg. son or daughter); Daughter

Non Responsive Evening Phone No: [REDACTED]

Non Responsive Injured Person's Address: [REDACTED]

Non Responsive City: [REDACTED] State: MA

Non Responsive Zip Code: [REDACTED]

4. What institution discriminated?

(b)(7)(C) Institution Name: [REDACTED] School

(b)(7)(C) Address: [REDACTED]

City: Amherst

State: MA

Zip Code: 01002

(b)(7)(C) School or department involved: [REDACTED] School

5. Have you tried to resolve the complaint through the institution's grievance process, due process hearing, or with another agency?

Yes

Agency Name: Superintendent of Schools

Date Filed: 12/14/2009 (mm/dd/yyyy)

Status: complaint was favorably resolved by superintendent, but his directive was countermanded by a subordinate while he was on vacation

6. Describe the discrimination

OCR enforces regulations that prohibit discrimination on the basis of race, color, national origin; sex; disability; and/or age.

All that apply:

race or color

national origin

retaliation

you filed a complaint or asserted your rights

Why you believe the discrimination was because of race, sex, disability, or whatever basis you indicated above or why you believe the action was retaliatory.

please see material faxed to a Susan in your office on December 30, 2009

7. Your complaint must be filed within 180 days of the discriminatory action

When did the last act of discrimination occur?

Enter the date: 12/22/2009 (mm/dd/yyyy)

Are you requesting a waiver of the 180-day filing time limit for discrimination that occurred more than 180 days before the filing of this complaint?

No.

8. What would you like the institution to do as a result of your complaint - what remedy are you seeking?

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All we are asking is that [REDACTED] be allowed to remain in Ms [REDACTED]'s class as authorized by the Superintendent.

Do you have written information that you think will help us understand your complaint?

Yes



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

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

'JUL 02 2010

Ms. Maria Geryk  
Interim Superintendent  
Amherst Regional Public Schools  
170 Chestnut Street  
Amherst, Massachusetts 01002

Re: Complaint No. 01-10-1054

Dear Superintendent Geryk:

The United States Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that the Complainant filed on January 4, 2010, on behalf of his daughter (Student) against the Amherst Regional Public Schools (District). Specifically, the Complainant alleged that the District discriminated against the Student based on race [REDACTED] and national origin [REDACTED] descent) by subjecting her to a racially hostile environment in the classroom and by refusing to transfer her to another class. Based on our investigation, OCR has concluded that there is insufficient evidence to establish that the District subjected the Student to a racially hostile environment, or that the District treated the Student differently on the basis of race, color, or national origin when the District denied the Complainant's request to transfer her to a different classroom within her school. The reasons for our conclusion are discussed below.

(b)(7)(C)

OCR has jurisdiction to investigate this complaint under Title VI of the Civil Rights Act of 1964, as implemented by 34 C.F.R. Part 100 (Title VI), which prohibit recipients of Federal financial assistance from discriminating against students on the basis of race, color or national origin. The District is subject to Title VI because it receives Federal financial assistance from the Department.

To address these allegations, OCR investigated the following issues:

1. Whether the District discriminated against the Student on the basis of race, color or national origin by tolerating or allowing a hostile environment to exist and failing to respond appropriately to end the harassment, in violation of 34 C.F.R. Section 100.3(a) and (b); and
2. Whether the District discriminated against the Student on the basis of race, color or national origin in handling her request to transfer to another classroom in the same school, in violation of 34 C.F.R. Section 100.3(a) and (b).

During the course of this investigation, OCR reviewed documents submitted by the District and the Complainant. OCR conducted an on-site investigation at the [REDACTED] Elementary School on May 10, 2010, and interviewed the Student's former teacher, a teacher aide, the Language Resource Teacher, the School Principal, and you. OCR interviewed the former Superintendent (Former Superintendent), who held that position for most of the 2009-2010 school year, by phone on June 3, 2010, and the District Human Resources Director by phone on June 22, 2010. OCR also interviewed

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the Complainant and his wife by phone on multiple occasions and interviewed the Complainant, his wife, and the Student in person on May 10, 2010.

### ***Factual Background***

(b)(7)(C)

(b)(7)(C) The Student attended [REDACTED] grade at the District's [REDACTED] Elementary School (School) during the 2009-2010 school year. Beginning in September of 2009, the Student was assigned to a [REDACTED] classroom with 15 students. According to records provided by the District, the Student was one of [REDACTED] students in the class, and the only female student of [REDACTED] descent. The Complainant alleged that at some point in November 2009, he contacted the School Principal to complain that the Student felt that the Teacher did not like her and that she was mistreating her. Later, in December, the Complainant delivered a letter to the Principal describing what he believed was a pattern of mistreatment of the Student during the fall semester that he felt had not been addressed. On December 14th, the Complainant spoke with the Former Superintendent about his concerns and he granted the Complainant's request to transfer the Student to the other [REDACTED] grade class (Class B) in the School. (b)(7)(C)

OCR learned that on December 18, 2009, the District informed the Complainant in writing that it had investigated his allegations against the Teacher and could not substantiate his allegations. On December 22, 2009, the District informed the Complainant that because of the results of the investigation, the Student could either return to the Teacher's class when school resumed on January 4, 2010, or attend school at another elementary school with transportation provided by the District.

On January 4, 2010, the Complainant filed this race discrimination complaint with OCR. Also on January 4, 2010, the Complainant met with you, and you decided to continue the Student's placement in Class B. The Student has remained in Class B without incident since January 5, 2010.

### **Issue 1: Racially Hostile Environment**

#### ***Legal Standard***

Under the Title VI implementing regulation at 34 C.F.R. Section 100.3, no individual may be subjected to discrimination on the basis of race. Discrimination based on race may exist when a recipient creates, encourages, accepts, tolerates or leaves uncorrected a racially hostile environment.

To determine whether an individual was subject to a racially hostile environment that was created, encouraged, accepted, tolerated or left uncorrected by a recipient, OCR must find that teachers and/or students engaged in racially offensive or race-based conduct and that the conduct must be sufficiently severe, persistent or pervasive to interfere with or limit a student's ability to participate in, or benefit from, the services, activities or privileges provided by a recipient. When determining whether an environment is racially hostile, OCR examines the context, nature, frequency, and location of the race-based incidents, as well as the identity, number and relationships of the persons involved.

OCR considers whether the harassment was sufficient to have created such an environment for a reasonable person of the same age, race, and experience as the alleged victim, and under similar circumstances. Different treatment based on race may also contribute to the existence of a racially hostile environment. In a different treatment analysis under Title VI, we first seek to determine if a recipient treated an individual or group of individuals of one race, color or national origin differently

than it treated an individual or group of individuals of other races, colors or national origins under similar circumstances.

OCR generally refers to these similarly-situated persons as “comparators” because OCR compares the treatment they received to the treatment received by the individual or group of individuals alleged to have been discriminated against. If OCR determines that the recipient treated a comparator or group of comparators differently than it treated the individual or group of individuals alleged to have been discriminated against, then the recipient is afforded an opportunity to present non-discriminatory reasons or justifications for the different treatment. OCR then scrutinizes these reasons or justifications to ensure that they are legitimate and not merely a pretext for discrimination. If OCR finds that the different treatment was without a legitimate, non-discriminatory reason, such different treatment may be part of a racially hostile environment that could constitute a violation of Title VI.

If a hostile environment on the basis of race exists, and the recipient knows or should have known that it exists, OCR may find a violation of Title VI if the recipient failed to take prompt, effective action to remedy that hostile environment.

### *Analysis*

OCR first found that the Student is a member of a protected class because she is of [REDACTED] descent, and is thus protected from discrimination based on race, color or national origin (hereinafter, “race”). In investigating this issue, OCR focused on specific incidents and types of conduct that the Complainant alleged created a racially hostile environment for the Student. Specifically, the Complainant alleged that the Teacher subjected the Student to a hostile environment based on race when she: hit the Student on the head with a book and scratched her hand with a pencil, yelled at her, yelled at the Complainant’s wife in front of the Student, singled her out by seating her in the front of the classroom, assigned her to groups based on race, placed her with another student they believed performed at a lower academic level (Student B), failed to help her, and took away her pencil sharpener.

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The Complainant alleged that the Teacher hit the Student on the head while she yelled at her to pay attention in the middle of October 2009. OCR interviewed the Teacher, who denied that she ever hit the Student, with a book or otherwise. OCR interviewed the Student, who specifically stated that the Teacher hit her in the head “hard” three times with a book. To resolve these conflicting accounts, OCR interviewed the Paraprofessional who is assigned to another student in the Teacher’s class throughout the school day. The Paraprofessional stated that she never saw the Teacher hit the Student. OCR also interviewed the Language Arts Resource Teacher (Resource Teacher), who stated that she was in the class for approximately one hour per day and never saw the Teacher hit the Student.

The Complainant also alleged that on November 30, 2009, the Teacher intentionally scratched the Student’s hand. OCR interviewed the Teacher, who admitted that she scratched the Student on the hand. The Teacher told OCR that while working with a small group of students on math problems, including the Student, she had finished working with one student, and as she turned to work with another student, her pencil inadvertently touched the Student’s hand. She stated that she noticed a white line on the Student’s hand, immediately apologized, saw no injury to the Student, and, upon inquiry, the Student informed her that she was not hurt. To the contrary, the Student told OCR that

the Teacher scratched her “on purpose”, did not apologize, and that she had a scratch on her hand as a result of the incident.

OCR could not identify any other witnesses to these incidents or other evidence to reconcile these conflicting accounts, or to corroborate the Student’s contention that the Teacher hit her or that the Teacher scratched her intentionally.

The Complainant also told OCR that the Teacher yelled at the Student more than other students. The Complainant did not allege that any of the Teacher’s comments were racial in nature or content. OCR interviewed the Teacher, who admitted to occasionally yelling or having a “sharp retort” at the Student. The Teacher stated, however, that she yelled at all the students in the classroom, and did not yell at the Student any more than the other students. When OCR interviewed the Student, she also told OCR that the Teacher yelled at all the students, not just her. While OCR was unable to reconcile whether the Teacher yelled at the Student more than other students, it did note that the Teacher herself stated that she yelled and spoke harshly to all her students. Based on this information, OCR was unable to establish that the Teacher treated the Student differently, or more harshly, than other students by yelling at her.

Additionally, in his complaint, the Complainant alleged that on the first day the Student entered the class, the Teacher yelled at his wife in front of the whole class. The Complainant’s wife told OCR that the Teacher yelled to her, “You don’t have to be here. She [the Student] can bring herself [to the classroom].” The Complainant stated that the Teacher’s behavior towards his wife contributed to a hostile environment because it embarrassed the Student in front of the rest of the class. OCR interviewed the Teacher, who stated that since she was in the middle of the lesson and parent visits are supposed to be by appointment, she spoke to the Complainant’s wife in a “normal tone” and stated, “I cannot talk to you right now.” The Teacher denied raising her voice to the Complainant’s wife. OCR spoke to the Paraprofessional, who was in the classroom at the time of the exchange between the Teacher and the Complainant’s wife. She told OCR that the Teacher told the Complainant’s wife, in a normal tone, that she could not speak to her at that time because she was teaching a lesson. She stated that the Teacher did not yell at the Complainant’s wife.

As an example of harassment, the Complainant told OCR that the Teacher did not help the Student on assignments. OCR interviewed the Teacher, who stated that while she is generally unable to get around to every student for every assignment, she felt she actually gave the Student more time than any other student in the class due to her learning needs. The Resource Teacher also told OCR that the Teacher had been working hard to individualize writing instruction for the Student because she was [REDACTED]. Based on the interviews with District staff and the Student, OCR could not establish, based on a preponderance of the evidence, that the Teacher refused to help the Student or that she gave the Student less help than other students.

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(b)(7)(C) The Complainant further informed OCR that the Teacher harassed the Student when she separated the Student from the other girls, who are [REDACTED] and [REDACTED] in the class during lunch period. The Student informed OCR that the Teacher invited the other girls in the class to help clean and organize drawers filled with cards in the classroom, but did not invite her. The Student told OCR that since the Teacher did not invite her to come to the classroom during lunch, she stated that she went to the cafeteria for lunch instead. The Student told OCR that this happened multiple times. When the Student asked the other girls in the class if she could help, she reported that the girls told her that the Teacher would not let her come. The Student told OCR that when she asked the Teacher if she could

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also help clean, the Teacher said the cleaning was all done. The Student reported that it actually was not done and there were still other cards left to be cleaned in the drawer.

The Teacher, however, told OCR that she does not have a set boys/girls grouping for lunch time. Regarding the specific incident involving card cleaning, the Teacher told OCR that on one occasion two of the five girls in the class asked her to eat in the room and clean the card drawers. The next day, another girl joined them and the three of them cleaned toys. The Teacher said that these were student-initiated activities and that she never told the Student or any of the other girls that the Student could not come. The Teacher further stated that since the Student has a friend in another class, the Teacher had assumed that she was playing with her friend and did not want to come with the other girls to clean.

The Complainant further alleged that in October of 2009, the Teacher took away the Student's pencil sharpener, yelled at her, and would not let her have her sharpener back. The Teacher told OCR that this occurred while students were cleaning their desks. Since pencil sharpeners without covers create pencil shavings in the students' desks, the Teacher stated that while students cleaned their desks, she had students who possessed such sharpeners put them on a common table in the front of the classroom until the end of the day when the students were finished cleaning their desks, at which time they could pick them up. Other than the circumstances described above, the Teacher denied ever taking the Student's pencil sharpener.

Additionally, the Complainant told OCR that the Teacher harassed the Student by placing her in a group with other minority students during class, and requiring her to complete first grade spelling work. The Teacher told OCR that she assigned the students to spelling groups by reading level. She told OCR that she determined the reading levels based on a reading assessment that she had conducted at the beginning of the school year. OCR learned that the Student's class consisted of 15 students. The racial demographics of the Teacher's class were as follows: five [REDACTED] three [REDACTED] [REDACTED], four [REDACTED] two [REDACTED] and one student who was [REDACTED] and [REDACTED]. The Teacher informed OCR that the group in which the Teacher placed the Student consisted of her, another [REDACTED] student, a [REDACTED] student, and a [REDACTED] student. The Teacher informed OCR that she placed these students together based on their reading and writing level. At OCR's request, the District provided reading and writing assessments from the fall of 2009 for all the students in the class, which confirmed that these four students, including the Student, received lower than 50 percent on the assessments, while the remaining classroom students received scores between 80 and 100 percent.

The Complainant informed OCR that the Teacher harassed the Student by placing her with a student who he described as having "problems" (Student B). The Teacher confirmed that she placed Student B, who is [REDACTED] and the Student together two or three times a week for 15 minutes for spelling and for part of the one hour and 15 minute math period each day. The Teacher informed OCR that the Student and Student B both worked at the same level in spelling and math, which is why she frequently placed them together for these periods, so that they could both get individualized attention. She and the Paraprofessional told OCR that when the Student and Student B worked together, either the Teacher or the Paraprofessional worked exclusively with them during that time. As stated above, the Teacher informed OCR that she placed the Student and Student B together for spelling based on reading level. The District provided OCR with the class assessments for both reading and math. The information provided indicated that the Student's math and reading performance was at approximately the same level as Student B's performance. To the extent the Student was treated differently than other students, the District provided a legitimate, non-

discriminatory reason for placing the Student with Student B, namely her performance on reading and math. OCR found no evidence to suggest that this reason was pretextual, or that the Teacher placed the Student with Student B because of her race.

The Complainant also alleged that the Teacher singled out the Student when she seated her in the front of the class. The Teacher informed OCR that she did treat the Student differently in terms of seating her in the front of the class, but asserted that it was not because of race. District staff informed OCR that the students were seated in almost a circle, and although the assigned seat locations would frequently change, the Teacher would consistently seat the Student in the front of the classroom so she could focus better and so that the Teacher could more easily assist her with her class work. The Teacher told OCR that she placed the Student, and other students who needed extra help, towards the front of the class so that she could be near those students in order to more easily monitor them. The Teacher and the Paraprofessional also told OCR that the Student was not always seated at the front of the class, and that the Student sits with the other girls in the class during group work.

OCR reviewed the grades for the class writing assessments, which confirmed that the Student scored below the average for the class in writing. Similarly, OCR interviewed the Resource Teacher, who co-taught part of the year with the Teacher. The Resource Teacher worked directly with the Student on reading and writing. She told OCR that the Student had difficulties with writing, and the Teacher's practice was to place students with writing challenges in the front of the classroom. She also told OCR that the Student had difficulty paying attention in class. Although District staff confirmed that the Student was frequently seated in the front of the classroom, OCR was unable to establish that the seating arrangement was because of race. OCR found that while one [REDACTED] [REDACTED] sat near the Student, a third [REDACTED] student in the Teacher's class was placed in another group, and the other two students in the Student's group were [REDACTED] and [REDACTED] respectively. Additionally, District staff provided a legitimate, non-discriminatory reason for placing the Student at the front of the room, namely, to closely monitor her progress and ensure she remained on task during assignments due to her learning needs.

In sum, OCR found insufficient evidence to establish that the Teacher harassed the Student as alleged or that her actions were related to the Student's race. The Complainant believed that the Teacher engaged in conduct that harassed and humiliated the Student based on her race from September to December of 2009. However, from the evidence available, OCR was unable to establish that the Teacher yelled at the Student because of her race in light of the evidence that the Teacher engaged in this conduct with all students of differing races. Because OCR received differing accounts that could not be reconciled, OCR could not establish that the Student was hit on the head, that the Complainant's wife had been yelled at by the Teacher, or that she took away the Student's pencil sharpener. Finally, although OCR could establish that the Student had been scratched (although the description of the severity of the scratch differed), and that the Student had been seated either at the front of the room, in a group or with Student B, we found that the reasons given for these actions were legitimate and not connected to the Student's race.

Based on the above, OCR concluded that there was insufficient evidence to conclude that the District violated Title VI by subjecting the Student to a hostile environment based on race.

#### Issue 2: Different Treatment in Intra-School Transfer Process Based on Race

##### *Legal Standard*

Under the Title VI implementing regulation, at 34 C.F.R. Section 100.3, no individual may be subjected to discrimination on the ground of race. To establish a violation of this regulation, OCR usually conducts a different treatment analysis, in which OCR looks at a variety of factors.

In a different treatment analysis under Title VI, we first seek to determine if a recipient treated an individual or group of individuals of one race, color or national origin differently than it treated an individual or group of individuals of other races, colors or national origins under similar circumstances.

OCR generally refers to these similarly-situated persons as “comparators” because OCR compares the treatment they received to the treatment received by the individual or group of individuals alleged to have been discriminated against. If OCR determines that the recipient treated a comparator or group of comparators differently than it treated the individual or group of individuals alleged to have been discriminated against, then the recipient is afforded an opportunity to present non-discriminatory reasons or justifications for the different treatment. OCR then scrutinizes these reasons or justifications to ensure that they are legitimate and not merely a pretext for discrimination.

OCR looks at direct evidence of different treatment as well as, in the absence of direct evidence, other facts that may provide evidence of bias by the recipient against protected persons. Although the use of comparative information is the most common way to prove a violation of Title VI, OCR may also establish a violation if there is other evidence of discrimination based on race, color or national origin. For example, OCR may consider statistical information, statements by third party witnesses regarding statements or actions of staff, a recipient’s inconsistency with its own practices and policies, and other evidence – direct or indirect – that might suggest race, color or national origin discrimination.

### ***Facts and Analysis***

In his complaint, the Complainant alleged that the District treated the Student differently based on race, color and national origin when, on December 22, 2009, it decided to either return the Student to the Teacher’s class or to have the Student attend another elementary school. The District denied that it treated the Student less favorably than other students because of her race, stating that it initially granted the Student’s transfer to Class B while it investigated the alleged harassment by the Teacher, and subsequently decided to return her to the Teacher’s class after it could not substantiate the allegations. The District stated that after the Complainant complained to the Former Superintendent about this decision, the District made an exception to its prior practice, and allowed the Student to remain in Class B for the remainder of the school year.

OCR found that on December 14, 2009, the Complainant informed the Former Superintendent of his allegations of harassment against the Teacher, and requested a transfer to Class B. According to the Former Superintendent, he offered to transfer the Student to Class B or another elementary school within the District. After discussing these options with the Complainant, he then directed the Principal, at the Complainant’s request, to transfer the Student to Class B, and the Student began attending Class B on December 15, 2009. On December 22, 2009, the Complainant received a letter from you (you were the Acting Superintendent at that time while the former Superintendent was on vacation) which informed the Complainant that because the investigation into the Teacher’s conduct did not substantiate the allegations against her, the Student would not be permitted to remain in Class B after the winter break, but she could either return to the Teacher’s class or transfer to another

elementary school in the District with transportation to be provided by the District. The letter requested a response from the Complainant by January 1, 2010. On January 4, 2010, the first day of school after the winter break, the Complainant, his wife and the Student met with the Former Superintendent, who granted their request for the Student to continue placement in Class B. The Student has remained in Class B since January 5, 2010.

OCR conducted a different treatment analysis to assess whether the Student was directed to return to the Teacher's class because of her race, by first examining whether similarly-situated persons outside the Student's protected class were treated more favorably than the Student. In other words, OCR considered whether there was sufficient evidence to show that the District treated similarly-situated, non-[redacted] students, more favorably than it treated the Student.

(b)(7)(C) OCR learned that the District does not have a written policy in regard to classroom transfers. The District explained that it generally does not allow students to transfer from one class to another class once the school year begins. The District also explained that there have been a few limited exceptions to this practice, in the case of placement decisions through the special education process and for English Language Learners, but that requests to change classrooms based on the relationship between the student and the teacher have been consistently denied.

OCR interviewed the District's Director of Human Resources (Director), who informed OCR that because it is her responsibility to track student enrollment, District staff are required to notify her of all student transfers. She stated that during the past seven years that she has been in her position, the District's practice has been to deny all classroom transfer requests to another classroom within the same school once the school year has begun. Although the District was unable to provide any documentation to that effect, the District's other witnesses could not recall any student, other than the Student, receiving a mid-year transfer to another class within the same school for reasons other than special education or English Language Learner placement.

In this case, the Complainant mentioned one other student outside the Student's protected class (Student C), whom the Complainant stated the District treated more favorably by granting her request for transfer from the Teacher's class. OCR spoke with Student C's mother, who informed OCR that during the 2008-2009 school year, the District permitted Student C to transfer to another school because of her complaints of the Teacher's behavior towards her daughter. Student C's mother informed OCR that she had concerns about the Teacher and requested a transfer for her daughter to another school in the District after the fifth day of the school year, during the open enrollment period. She stated that the District granted her request and transferred her daughter to another elementary school within the District. Student C's mother informed OCR that the District did not offer, nor did she request, a transfer to another class within the School.

OCR found that, similar to Student C, the Former Superintendent offered the Student the option of transferring to another elementary school within the District on December 14, 2009, and you again offered to transfer the Student to another elementary school by letter on December 22, 2009. Because, like the Student, the District offered Student C a transfer to another school as a result of her complaints about the Teacher and did not offer her a transfer to another class within the School, OCR could not determine that the District treated the Student differently than Student C.

In this case, OCR found no comparative evidence suggesting that the Student was treated less favorably than other, similarly-situated individuals. Moreover, other than the Complainant's allegations that race was a factor in the December 22, 2009 decision to move the Student back to the

Teacher's class or another school, there was no evidence that the District treated the Complainant's transfer request less favorably than it would have treated a request from any other similarly-situated student. To the contrary, OCR found that the District granted the Complainant's transfer request to Class B on December 14, 2009. OCR further found that, with the exception of one day, since December 15, 2009, the Student attended Class B until the end of the school year. The evidence suggested that, excepting special education and English Language Learner placement, the District had not allowed any other student beside the Student to transfer to another classroom within the same school. For that reason, OCR found that when the District granted the Complainant's request to transfer the Student to Class B, the District treated the Student more favorably than other students. OCR concluded its different treatment analysis at this point because there was no evidence that the District treated the Complainant's transfer request less favorably based on the Student's race.

### **Conclusion**

As explained above, OCR found insufficient evidence to establish that the District subjected the Student to a racially hostile environment, or that the District treated the Student differently, or less favorably, than other students when it temporarily refused to transfer the Student to another class on her grade level. Therefore, OCR is closing this complaint as of the date of this letter.

This concludes OCR's investigation and resolution of this complaint. OCR's findings only address the specific allegations and legal issues identified in this complaint and do not pertain to the District's compliance with other aspects of Title VI, or any other laws enforced by OCR. Please be advised that the Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, are not formal statements of OCR policy, and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

OCR would like to thank you and your staff for your cooperation during this investigation. If you have any questions about this letter, please contact Michael Joyce, Civil Rights Attorney, at (617) 289-0059 or by email at [Michael.Joyce@ed.gov](mailto:Michael.Joyce@ed.gov). You may also contact me at (617) 289-0019.

Sincerely,



Donna L. Russell  
Team Leader/Civil Rights Attorney

Cc: Regina Williams Tate, Esq.

Otto, Diana

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**From:** ocr\_complaint@ed.gov  
**Sent:** Wednesday, February 03, 2010 5:12 PM  
**To:** [REDACTED] OCR Boston  
**Subject:** OCR Electronic Complaint Submission

Non Responsive

PLEASE DO NOT REPLY TO THIS E-MAIL. THIS E-MAIL ADDRESS IS USED BY DEPARTMENT OF EDUCATION AUTOMATED SYSTEMS AND IS NOT MONITORED.

Your complaint with the Office for Civil Rights, a copy of which is reproduced below, has been automatically forwarded to the following office for review:

Office for Civil Rights/ED  
Boston Office

5 Post Office Square

Boston, MA, 02109-3921

So that we can best assist you, we call your attention to the following:

1. If you need to communicate with OCR regarding your complaint before you are contacted directly, please do not reply to this message, which would result in your reply going to a send-only server address. Instead, please direct your correspondence to the above office at [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov).
2. If you need to modify or supplement your complaint, please do not use the complaint form to submit another complaint with the new information. Instead, you may simply send an email to the office that has your complaint. Filing duplicative complaints may impede our ability to review your concerns in a timely manner. (If you have a separate complaint involving other matters, you may of course use this form to submit it.)
3. Remember that before OCR can process your complaint it must receive at the above address a signed copy of the Office for Civil Rights Consent Form, which you can obtain at <http://www.ed.gov/about/offices/list/ocr/edlite-consentform.html>.
4. It is recommended that you print a copy of this message and retain it for your records.

The following information has been sent to the specified office:

OCR COMPLAINT FORM

1. Enter information about you.

Your First Name: [REDACTED]

Your Last Name: [REDACTED]

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Your Address: [REDACTED]

Non Responsive City: [REDACTED]

Non Responsive State: MA Zip Code: [REDACTED]

Non Responsive Best Time to Call You: DAY Primary Phone No: [REDACTED]

Non Responsive Alternative Phone No: [REDACTED]

Non Responsive Email Address: [REDACTED]

2. Who else can we call if we cannot reach you?

Non Responsive Contact's Name: [REDACTED]

Non Responsive Daytime Phone No: [REDACTED]

Relationship to you: Spouse

3. Who was discriminated against?

Someone else

Non Responsive Injured Person's Name: [REDACTED] Daytime Phone No:

(b)(7)(C) Relationship to You (eg. son or daughter): [REDACTED]

Non Responsive Evening Phone No: [REDACTED]

(b)(7)(C) Injured Person's Address: [REDACTED]

(b)(7)(C) City: [REDACTED] State: MA

Zip Code:

4. What institution discriminated?

Institution Name: Amherst Regional School Distri

Address: 170 Chestnut Street

City: Amherst

State: MA

Zip Code: 01002

School or department involved: Middle and High schools

5. Have you tried to resolve the complaint through the institution's grievance process, due process hearing, or with another agency?

No

Agency Name:

Date Filed: (mm/dd/yyyy)

Status:

6. Describe the discrimination

OCR enforces regulations that prohibit discrimination on the basis of race, color, national origin; sex; disability; and/or age.

All that apply:

race or color

disability

Why you believe the discrimination was because of race, sex, disability, or whatever basis you indicated above or why you believe the action was retaliatory.

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(b)(7)(C) [REDACTED] is an eight grader who found out very late last Fall of 2009 that the school secretly offered two Honors math courses to mostly white students. The information about these two courses were not made public to parents of 8th graders. [REDACTED] is qualified to take the courses but [REDACTED] was not given the opportunity to do so. (b)(7)(C)  
(b)(7)(C) [REDACTED] was disciplined for the same infraction committed by [REDACTED] peers who are white but they were not disciplined. The discipline inequity is systemic at the High school for years and currently it is still a problem.  
(b)(7)(C) [REDACTED] has autism condition, the High school Principal retaliated against me for being vocal about social justice/civil rights issues. He forced [REDACTED] out of school on 12/4/09 for a non medical emergency [REDACTED] was consequently treated differently due to [REDACTED] disability.

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(b)(7)(C)

7. Your complaint must be filed within 180 days of the discriminatory action

When did the last act of discrimination occur?

Enter the date: (mm/dd/yyyy)

Are you requesting a waiver of the 180-day filing time limit for discrimination that occurred more than 180 days before the filing of this complaint?

No.

8. What would you like the institution to do as a result of your complaint - what remedy are you seeking?

Do you have written information that you think will help us understand your complaint?

Yes



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I**

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

AUG 02 2010

Ms. Maria Geryk  
Acting Superintendent of Schools  
Amherst Regional Public Schools  
170 Chestnut Street  
Amherst, Massachusetts 01002

Re: Complaint No. 01-10-1080  
Amherst Regional Public Schools

Dear Superintendent Geryk:

The United States Department of Education (Department), Office for Civil Rights, has completed its investigation of the above-referenced complaint in which the Complainant alleged that the Amherst Regional Public Schools (District) subjected [REDACTED] to different treatment based on race [REDACTED], subjected [REDACTED] to different treatment based on disability, and retaliated against the Complainant for her prior advocacy. After a thorough investigation of this complaint, OCR has concluded that there is insufficient evidence to establish that the District discriminated against [REDACTED] or retaliated against her, as alleged, and is closing the complaint as of the date of this letter. OCR's determination is discussed in detail below.

(b)(7)(C)

(b)(7)(C)

In her complaint and conversations with OCR, the Complainant specifically alleged that during the 2009-2010 school year, [REDACTED] in the 8th grade at the Amherst Regional Middle School (Middle School) and [REDACTED] at the Amherst Regional High School (High School). The Complainant alleged that the District treated [REDACTED] differently based on race when it denied [REDACTED] the opportunity to enroll in Geometry and Algebra II courses because of [REDACTED] race. The Complainant also alleged that the District treated [REDACTED] differently on the basis of [REDACTED] disability and in retaliation for the Complainant's prior disability-related advocacy and her prior allegations of race discrimination when it required [REDACTED] to be taken to the hospital by ambulance after a choking incident.

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, as implemented by 34 C.F.R. Part 100 (Title VI), which prohibits discrimination on the basis of race, color, or national origin. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as implemented by 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990, as implemented by 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability. Title VI, Section 504 and Title II each prohibit retaliation against individuals who assert rights that are protected by the laws OCR enforces. The District is subject to Title VI and Section 504 because it receives Federal financial assistance from the Department, and it is subject to Title II because it is a public entity that operates an elementary and secondary school system. Because the District is both a recipient and a public entity that operates an educational system, OCR considers it a "covered entity" under Title VI, Section 504 and Title II.

Based on the above allegations, OCR accepted the following issues for investigation:

- (b)(7)(C) 1. Whether the District discriminated against [REDACTED] on the basis of race by treating [REDACTED] differently in the placement process for math classes, in violation of 34 C.F.R. Section 100.3(a) and (b);
- (b)(7)(C) 2. Whether the District subjected [REDACTED] to different treatment on the basis of [REDACTED] disability when it required [REDACTED] to be transported to the hospital by ambulance after a choking incident, in violation of 34 C.F.R. Section 104.4(a) and (b) and 28 C.F.R. Section 35.130; and
- (b)(7)(C) 3. Whether the District retaliated against the Complainant and [REDACTED] when it required [REDACTED] to be transported to the hospital by ambulance after a choking incident because the Complainant had engaged in protected activities, in violation of 34 C.F.R. Section 100.7(e), 34 C.F.R. Section 104.61 which incorporates 34 C.F.R. Section 1007(e), and 28 C.F.R. Section 35.134. (b)(7)(C)

### Investigative Method

As part of OCR's investigation, we reviewed documents submitted by the Complainant and the District. We also conducted interviews on May 10 and 11, 2010, with administrators and teachers relevant to the complaint. We also met the Complainant and [REDACTED] on May 10, 2010, and interviewed the Complainant by telephone on multiple occasions. (b)(7)(C)

### Issue 1: Different Treatment Based on Race

#### *Background Information*

During the 2009-2010 school year, [REDACTED] attended 8th grade at the Middle School. The Middle School serves 7th and 8th grade students and has approximately 225 students in each grade. The District recommended that [REDACTED] attend the Math 8 course for the 2009-2010 school year; however, the District placed [REDACTED] in the 8th grade Algebra Honors course at the Complainant's request. The Complainant told OCR that the District never informed her that 8th grade students could take Geometry and Algebra II, and, as a consequence, the District denied [REDACTED] the opportunity to attend those classes.

#### *Legal Standard*

The regulation implementing Title VI at 34 C.F.R. Section 100.3(a) and (b)(1) and (2) provides that a covered entity may not treat a person differently, exclude a person, or deny the person any opportunity on the basis of race under any program operated by the covered entity. In analyzing different treatment on the basis of race under Title VI, OCR looks at whether there are other persons of a different race with whom to compare the alleged victims of discrimination. (For this complaint, OCR then considered whether [REDACTED] was treated differently – that is, less favorably – than similarly situated individuals of other racial groups at the Middle School.) OCR also looks at direct evidence of bias by the covered entity against persons of a particular race. If OCR cannot establish that the covered entity treated the individual differently than other persons of a different race, then it concludes its analysis at that point.

If, however, it appears that there was different treatment, OCR would then look at whether the covered entity is able to give a legitimate, non-discriminatory and non-pretextual reason for its different treatment of the protected individual.

*Factual Background*

According to documentation from the District as well as information obtained from OCR interviews with District staff, decisions on student assignments to math classes are overseen by the Middle School math department. OCR learned that, at the time the Complainant filed this complaint, the District had no written procedure regarding placement in math classes.

8th Grade Math Placement

OCR found that for the 2008-2009 and 2009-2010 school years, the educational program in math in the 8th grade had four groups: 1) Math 8; 2) Honors Algebra; 3) Geometry; and 4) Algebra II. According to the District, only students who successfully completed 8th grade Honors Algebra in 7th grade may take Geometry in their 8th grade year, and only students who successfully completed Geometry in 7th grade may take Algebra II in their 8th grade year.

Data provided by the District showed that during the 2009-2010 school year, out of the 235 total 8th grade students, 3% (8 students) took Geometry and 2% (4 students) took Algebra II. The data showed that each of the students placed in Geometry for 8th grade took Honors Algebra in 7th Grade and those 8th grade students placed in Algebra II had taken Geometry in 7th Grade. Data provided by the District for the 2008-2009 school year showed that each 8th grade student enrolled in Geometry that year had previously completed an Algebra I course, either at the Middle School or outside the District. During that year, there were no 8th grade students in Algebra II. The District reported that because [REDACTED] had taken Math 7 in 7th grade, [REDACTED] was not considered for placement in Geometry or Algebra II in 8th grade.

(b)(7)(C)

The District informed OCR that during the 2008-2009 and 2009-2010 school years, it did not publicize the Geometry or Algebra II course options to students or parents. It stated that it made these options known only to students who had previously taken Algebra or Geometry in 7th grade and students whose parents made direct inquiries about those options.

7th Grade Math Placement

Since placement in upper level math courses in the 8th grade is determined on placement in the 7th grade math courses, OCR reviewed the placement of [REDACTED] in 7th grade as compared to [REDACTED] peers. OCR found that 7th grade students at the Middle School are placed in one of three classes: 1) Math 7; 2) 8th Grade Honors Algebra; or 3) Geometry. District staff informed OCR that beginning in the 2008-2009 school year, the District gave all students a pretest (7th Grade Placement Test), which consisted of 30 general math questions and 10 algebra questions. According to the District staff, students who perform well on both the 7th Grade Placement Test and the 10 algebraic questions are then given the opportunity to take a more comprehensive algebra test to see whether they can go directly to 8th grade Honors Algebra as 7th graders. According to the District, only those students who perform well enough on the 7th Grade Placement Test and algebra questions (approximately 20 students per year), are informed of the more comprehensive examination to place out of Math 7 into 8th grade Honors Algebra.

(b)(7)(C)

Data provided by the District showed that during the 2008-2009 school year, of the 217 total 7th grade students at the Middle School, approximately 95% (207 students) of all 7th grade students were placed in Math 7; 3% (7 students) were placed in 8th Grade Honors Algebra; and 2% (3 students) were placed in Geometry. The District provided OCR with test score data used to

determine math placement for over half of these students. The District, however, explained that because of the lack of a centralized maintenance of test scores and because of the retirement of one of the 7th grade math teachers, it was not able to provide test scores for approximately 100 students. As a result, OCR analyzed the existing data to identify evidence of discrimination.

OCR found that during the 2008-2009 school year, of the scores provided by the District, the average score on the non-algebraic portion of the 7th Grade Placement Test was 25.5/30. Of the 7 students whom the math department placed directly into 8th Grade Honors Algebra, the District provided test scores for four of these students. The average score for these 4 students on the non-algebraic questions was 26/30. The District provided OCR with a copy of [REDACTED]'s 7th Grade Placement Test, which showed that [REDACTED] scored 14/30 on the Placement Test and did not answer any of the ten algebra questions correctly. According to the available data, the students placed in 8th Grade Honors Algebra during their 7th grade year scored significantly higher than [REDACTED] on the 7th Grade Placement Test. (b)(7)(C) (b)(7)(C)

The District also informed OCR that in rare cases a 7th grade student could be placed in Geometry. If a student has previously taken an algebra course, the District allowed those 7th graders to take the 8th Grade Honors Algebra Final. If, based on the student's performance on the Final, the student demonstrated that he or she could already do the work covered in Honors Algebra, then the District placed the student in Geometry as a 7th grader.

#### *Different Treatment Analysis*

To establish different treatment on the basis of race, Title VI requires a showing that the District's class assignment practice treated [REDACTED] less favorably, on the basis of race, compared to similarly situated students of other races. (b)(7)(C)

OCR found that the District's practice in placing students for math classes, as outlined above, is not, in and of itself, suggestive of discrimination. OCR next reviewed documentation provided by the District, and interviewed relevant District teachers and administrators to determine whether the District applied the practice differently to [REDACTED] than it did to students of other races. The evidence indicated that [REDACTED] was recommended for math placement in 8th grade in a manner consistent with District practices. (b)(7)(C)

In interviews with OCR, the District staff members denied that [REDACTED] had been treated differently than other students because of [REDACTED] race when the math department did not recommend [REDACTED] for Geometry or Algebra II. In order to evaluate the claims of the District staff in this regard, OCR conducted interviews of math department staff. OCR also reviewed the District's race and ethnicity data for all Middle School math placements, as well as the 7th Grade Placement Test, and 8th Grade Placement Test for Middle School math classes. In terms of [REDACTED] [REDACTED]'s 8th grade placement, the data indicated that the math department's recommendation for [REDACTED] for Math 8 was consistent with the recommendation it made for other, non-[REDACTED] students with similar 8th Grade Placement Test scores. Correspondence between the Complainant and [REDACTED] s teacher demonstrated that despite the math department's recommendation, [REDACTED] like all students recommended for Math 8, was given the same opportunity to take 8th grade Honors Algebra, which [REDACTED] elected to do. OCR found that only students who successfully completed 8th Grade Honors Algebra in 7th grade may take Geometry in their 8th grade year, and only students who successfully completed Geometry in 7th grade may take Algebra II in their 8th grade year. Because [REDACTED] did not take 8th Grade Honors Algebra or (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C)

(b)(7)(C) Geometry in 7th grade, [REDACTED] was not eligible to take Geometry or Algebra II as an 8th grader. OCR also noted that the District's recommendation for [REDACTED] s placement in Math 7 was consistent with other students with similar 7th Grade Placement Test scores. Although the data indicated that there were no [REDACTED] students placed in either Geometry or Algebra II as 8th graders, OCR did not find any evidence to suggest that there were qualified [REDACTED] students who were denied those opportunities or that students less qualified than [REDACTED] students were placed in Geometry or Algebra II as 8th graders. Specifically, the data showed that 7th grade students who were recommended for more comprehensive exams to determine placement in either 8th grade Honors Algebra and Geometry scored significantly higher than [REDACTED] and other [REDACTED] students on this exam.

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

In sum, the weight of the evidence gathered by OCR from the Complainant, the District staff interviews, and other documentation and data provided by the District, does not indicate that [REDACTED] was subjected to different treatment based on race. Consequently, OCR found insufficient evidence to establish a violation of Title VI.

(b)(7)(C)

The Complainant also raised a particular concern that the opportunity to attend Geometry and Algebra II courses was not publicized to minority students. OCR found that the District only informed parents of these opportunities if the students had previously taken Algebra or Geometry in 7th grade or in response to parent inquiry. While OCR did not find evidence of different treatment based on race in this regard, OCR notes that during this investigation the District published on the Middle School website, a "Guide for 7th Grade Honors Level Work" which details the math placement process, including placement in the honors level courses, for all students.

### Issues 2 and 3: Different Treatment Based on Disability and Retaliation

#### *Factual Background*

(b)(7)(C) [REDACTED] is a student at Amherst Regional High School (High School) in the District. (b)(7)(C) The Complainant informed OCR that as a result of [REDACTED] s disabilities [REDACTED] has low cognitive function and is [REDACTED]. The Complainant also informed OCR that [REDACTED] has difficulty swallowing food. District staff told OCR that the staff members who work with [REDACTED] are (b)(7)(C) trained to encourage [REDACTED] to swallow as [REDACTED] eats.

(b)(7)(C)

(b)(7)(C)

(b)(7)(C) According to both the Complainant and the District, on December 4, 2009, during [REDACTED] s lunch period, [REDACTED] began choking on a sandwich. A paraprofessional in the classroom shouted to another staff member, who initiated the Heimlich maneuver for choking. Before the staff member completed the Heimlich, [REDACTED] vomited, expectorating the food. The staff member referred [REDACTED] to the School Nurse (Nurse) for assessment.

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(b)(7)(C)

(b)(7)(C) District records showed that the Nurse saw [REDACTED] at approximately 11:15 a.m. The Nurse's report provided by the District to OCR described [REDACTED] at the time of admittance as "alert, ambulatory, usual baseline drooling noted." In an interview with OCR, the Nurse stated that [REDACTED] behavior seemed slightly agitated but from her observations, [REDACTED] was not in immediate respiratory distress. The Nurse told OCR that she then called the School Nurse Leader (Nurse Coordinator) to ensure that she followed the correct choking protocol.

(b)(7)(C)

The Nurse Coordinator told OCR that because of a fear that a choking victim may aspirate as a result of food entering his or her lungs, and because school nursing staff members are only a first aid